

INVITATION FOR BID



**Missouri Department of Corrections
Fiscal Management Unit
Purchasing Section
2729 Plaza Drive, P.O. Box 236
Jefferson City, MO 65102**

**Buyer of Record:
Beth Lambert
Procurement Officer II
Telephone: (573) 526-6494
Beth.Lambert@doc.mo.gov**

**IFB 16708426
AMENDMENT 001**

**Legal Issues Training
FOR
Missouri Department of Corrections**

**Contract Period: November 1, 2016 through One
Year**

Date of Issue: August 19, 2016

Page i of 50

Bids Must Be Received No Later Than:

2:00 p.m., Tuesday, September 8, 2016

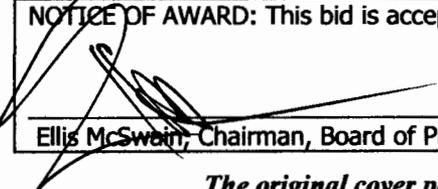
Sealed bids must be delivered to the Missouri Department of Corrections, Purchasing Section, 2729 Plaza Drive, Jefferson City, MO 65109, or P.O. Box 236, Jefferson City, Missouri 65102. The bidder should clearly identify the IFB number on the lower right or left-handed corner of the container in which the bid is submitted to the Department. This number is essential for identification purposes.

We hereby agree to provide the services and/or items, at the price quoted, pursuant to the requirements of this document and further agree that when this document is countersigned by an authorized official of the Missouri Department of Corrections, a binding contract, as defined herein, shall exist. The authorized signer of this document certifies that the contractor (named below) and each of its principals are not suspended or debarred by the federal government.

Company Name: DANE C. MILLER
Mailing Address: 402 NW HIGHWAY H
City, State Zip: WARRENSBURG MO 64093
Telephone: 660-429-1102 **Fax:** _____
Federal EIN #: 498-46-8136 **State Vendor #:** 498-46-8136
Email: dmiller@ucmo.edu

Authorized Signer's Printed Name and Title DANE C. MILLER
Authorized Signature: Dane C Miller **Bid Date** 08-29-16

NOTICE OF AWARD: This bid is accepted by the Missouri Department of Corrections as follows: **In its entirety.**
Contract No. Y16708426


Ellis McSwain, Chairman, Board of Probation and Parole

Date 10/17/16

The original cover page, including amendments, should be signed and returned with the bid.

ORIGINAL

INVITATION FOR BID



**Missouri Department of Corrections
Fiscal Management Unit
Purchasing Section
2729 Plaza Drive, P.O. Box 236
Jefferson City, MO 65102**

**Buyer of Record:
Beth Lambert
Procurement Officer II
Telephone: (573) 526-6494
Beth.Lambert@doc.mo.gov**

IFB 16708426

**Legal Issues Training
FOR
Missouri Department of Corrections**

**Contract Period: November 1, 2016 through One
Year**

Date of Issue: July 27, 2016

Page 1 of 48

Bids Must Be Received No Later Than:

2:00 p.m., August 25, 2016

Sealed bids must be delivered to the Missouri Department of Corrections, Purchasing Section, 2729 Plaza Drive, Jefferson City, MO 65109, or P.O. Box 236, Jefferson City, Missouri 65102. The bidder should clearly identify the IFB number on the lower right or left-handed corner of the container in which the bid is submitted to the Department. This number is essential for identification purposes.

We hereby agree to provide the services and/or items, at the price quoted, pursuant to the requirements of this document and further agree that when this document is countersigned by an authorized official of the Missouri Department of Corrections, a binding contract, as defined herein, shall exist. The authorized signer of this document certifies that the contractor (named below) and each of its principals are not suspended or debarred by the federal government.

Company Name: Dane C. Miller

Mailing Address: 402 N.W. Highway H

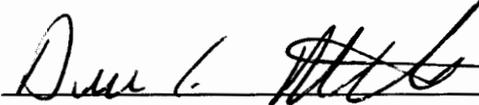
City, State Zip: Warrensburg, Mo. 64093

Telephone: 660-429-1102 **Fax:** _____

Federal EIN #: 498-46-8136 **State Vendor #** 498-46-8136

Email: dmiller@ucmo.edu

Authorized Signer's Printed Name and Title Dane C. Miller

Authorized Signature:  **Bid Date** 08-12-16

NOTICE OF AWARD:

This bid is accepted by the Missouri Department of Corrections as follows:

Contract No. _____

Ellis McSwain, Chairman, Board of Probation and Parole

Date _____

The original cover page, including amendments, should be signed and returned with the bid.

IFB 16708426 Legal Issues Training
Dane C. Miller

TABLE OF CONENTS

EXHIBIT A / PRICING PAGE, Page 3

EXHIBIT B / BIDDER INFORMATION, Page 4

EXHIBIT C / CURRENT / PRIOR EXPERIENCE, Page 5

Exhibit C1, Page 6

Exhibit C2, Page 7

Exhibit C3, Page 8

EXHIBIT D / EXPERTISE OF KEY PERSONNEL, Page 9

Exhibit D, Bidder's Expertise, Page 10

Resume, Pages 11 - 18

EXHIBIT F / METHOD OF PERFORMANCE, Page 19

Method of Performance, Page 20

Proposed Method of Performance 2016, Pages 21 - 24

Power-point Presentation (attached)

EXHIBIT I / BUSINESS ENTITY CERTIFICATION, Page 25

EXHIBIT J / MISCELLANEOUS INFORMATION, Page 26

EXHIBIT A

PRICING PAGE

The bidder shall provide firm, fixed pricing for Legal Issues Training pursuant to all mandatory requirements herein. The bidder must clearly describe any one-time required firm, fixed costs and all annual costs necessary to meet the IFB requirements herein. The bidder must indicate any other relevant information related to the pricing of their proposed products/services. Pricing must include all start-up costs, technical support, and training.

Line Item Description	Estimated Quantity	Firm, Fixed Pricing	First Renewal Pricing	Second Renewal Pricing	Third Renewal Pricing	Fourth Renewal Pricing
Curriculum Development	1	\$ <u>N/A</u>				
Curriculum Updates/Changes	4	\$ <u>1000.00</u> Per update/change				
Training (per one (1) day session) inclusive of all travel and related expenses	1	\$ <u>3,170.00</u> Per 1 day session	\$ <u>3,233.00</u> Per 1 day session	\$ <u>3,297.00</u> Per 1 day session	\$ <u>3,361.00</u> Per 1 day session	\$ <u>3,428.00</u> Per 1 day session
Follow Up Consultation	1	\$ <u>150.00</u> Per hour				

The bidder must state the number of days required before the services described herein could be provided:

30 days after effective date of contract award.

Details About Payment Terms:

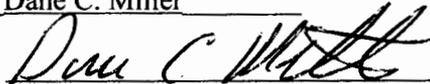
The bidder should state below its discount terms offered for the prompt payment of invoices.

N/A % discount off total invoice price if paid within N/A calendar days of the Department's receipt of invoice.

Check here if the state purchasing card (Visa) is acceptable as a method of payment: Yes, acceptable

By signing, the bidder hereby declares understanding, agreement and certification of compliance to provide the items at the prices quoted, in accordance with all requirements and specification contained herein and the Terms and Conditions. The bidder further agrees that the language of this IFB shall govern in the event of a conflict with his/her bid.

Company Name: Dane C. Miller

Authorized Signature:  Printed Name: DANE C. MILLER

Date: 08-12-16 Email: dmiller@ucmo.edu

EXHIBIT B
BIDDER INFORMATION

The bidder should provide the following information about the bidder's organization:

- a. Provide a brief company history, including the founding date and number of years in business as currently constituted.

There is no "company." Dane C. Miller is a Professor Emeritus of Criminal Justice at the University of Central Missouri. In addition to my teaching duties, which spanned over 40 years, I have also provided pro bono legal representation to indigent criminal defendants in criminal cases. During my teaching career, I provided consultation regarding probation and parole legal issues to a number of professionals across the nation. Since 2009 I have conducted legal aspects training for the Missouri Division of Probation and Parole.

- b. Describe the nature of the bidder's business, type of services performed, etc. Identify the bidder's website address, if any.

Though primarily a college educator, as a licensed attorney I have provided consultation and training to numerous professionals in the fields of probation and parole, corrections and juvenile justice. I have no website.

- c. Provide a list of and a short summary of information regarding the bidder's current contracts/clients.

I am currently contracted to teach CJ2300, Criminal Law and Procedure, for the Department of Criminal Justice at the University of Central Missouri, Dr. Lynn Urban, supervisor.

I am also contracted to teach PE4740, Legal Liability in Sports and Fitness Settings, Dr. Dennis Docheff, supervisor.

I am also contracted to do a full day of training on Missouri criminal law for the Central Missouri Police Academy P.O.S.T Program, Director Colin Comer, supervisor.

- d. Describe the structure of the organization including any board of directors, partners, top departmental management, corporate organization, corporate trade affiliations, any parent/subsidiary affiliations with other firms, etc.

I am a retired college teacher who teaches part time and does training and consulting as time permits.

EXHIBIT C
CURRENT / PRIOR EXPERIENCE

EXHIBIT C1**CURRENT/PRIOR EXPERIENCE**

The bidder should copy and complete this form documenting the bidder and subcontractor's current/prior experience considered relevant to the services required herein. In addition, the bidder is advised that if the contact person listed for verification of services is unable to be reached during the evaluation, the listed experience may not be considered.

Bidder Name or Subcontractor Name: <u>Dane C. Miller</u>	
Reference Information (Current/Prior Services Performed For:)	
Name of Reference Company:	Dr. Betsy Kreisel
Address of Reference Company <input checked="" type="checkbox"/> Street Address <input checked="" type="checkbox"/> City, State, Zip	Harmon School of Business and Professional Studies University of Central Missouri Warrensburg, Mo. 64093
Reference Contact Person Information: <input checked="" type="checkbox"/> Name <input checked="" type="checkbox"/> Phone # <input checked="" type="checkbox"/> E-mail Address	Dr. Betsy Kreisel 660-543-4788 Kreisel@ucmo.edu
Dates of Services:	1977 to present
If service/contract has terminated, specify reason:	Retirement
Dollar Value of Services	\$75,000.00 per annum
Description of Services Performed, such as: <input checked="" type="checkbox"/> Training Courses Offered <input checked="" type="checkbox"/> Number of Training Sessions Conducted <input checked="" type="checkbox"/> Total Number of Participants and Average Number of Participants per Training Session <input checked="" type="checkbox"/> Location of Training Sessions <input checked="" type="checkbox"/> Training Session Audience, Particularly Probation & Parole	Teaching criminal law, criminal procedure and corrections-related courses.
Personnel Assigned to Service/Contract (include position title):	N/A

EXHIBIT C2

CURRENT/PRIOR EXPERIENCE

Bidder Name or Subcontractor Name: <u>Dane C. Miller</u>	
Reference Information (Current/Prior Services Performed For:)	
Name of Reference Company:	Missouri Division of Probation and Parole
Address of Reference Company <input checked="" type="checkbox"/> Street Address <input checked="" type="checkbox"/> City, State, Zip	P.O. Box 236 Jefferson City, Mo. 64093
Reference Contact Person Information: <input checked="" type="checkbox"/> Name <input checked="" type="checkbox"/> Phone # <input checked="" type="checkbox"/> E-mail Address	Ms. Julie Kempker 573-751-2389 Julie.kempker@doc.mo.gov
Dates of Services:	Yearly from 2001 to present
If service/contract has terminated, specify reason:	N/A
Dollar Value of Services	\$2,600.00 per training session
Description of Services Performed, such as: <input checked="" type="checkbox"/> Training Courses Offered <input checked="" type="checkbox"/> Number of Training Sessions Conducted <input checked="" type="checkbox"/> Total Number of Participants and Average Number of Participants per Training Session <input checked="" type="checkbox"/> Location of Training Sessions <input checked="" type="checkbox"/> Training Session Audience, Particularly Probation & Parole	Conducted 5 training courses at five different locations across the state. The average number of attendees was 45. The attendees consisted of probation and parole officers and supervisors.
Personnel Assigned to Service/Contract (include position title):	N/A

EXHIBIT C3**CURRENT/PRIOR EXPERIENCE****Bidder Name or Subcontractor Name:** Dane C. Miller**Reference Information (Current/Prior Services Performed For:)**

Name of Reference Company:	Central Missouri Police Academy
Address of Reference Company <input checked="" type="checkbox"/> Street Address <input checked="" type="checkbox"/> City, State, Zip	Central Missouri Police Academy University of Central Missouri Warrensburg, Mo. 64093
Reference Contact Person Information: <input checked="" type="checkbox"/> Name <input checked="" type="checkbox"/> Phone # <input checked="" type="checkbox"/> E-mail Address	Director Colin Comer 660-543-4090 ccomer@ucmo.edu
Dates of Services:	2013 to present
If service/contract has terminated, specify reason:	N/A
Dollar Value of Services	\$30.00 per hour
Description of Services Performed, such as: <input checked="" type="checkbox"/> Training Courses Offered <input checked="" type="checkbox"/> Number of Training Sessions Conducted <input checked="" type="checkbox"/> Total Number of Participants and Average Number of Participants per Training Session <input checked="" type="checkbox"/> Location of Training Sessions <input checked="" type="checkbox"/> Training Session Audience, Particularly Probation & Parole	Conduct training on testimonial demeanor and report writing and updates on Missouri criminal law.
Personnel Assigned to Service/Contract (include position title):	N/A

EXHIBIT D
EXPERTISE OF KEY PERSONNEL / BIDDER
AND
RESUME

EXHIBIT D**EXPERTISE OF KEY PERSONNEL / BIDDER**

Title of Position: <u>Trainer & Educator</u>	
Name of Person:	DANE C. MILLER
Educational Degree (s): include college or university, major, and dates	Juris Doctorate Degree, St. Louis University, 1987 Master of Science Degree, University of Central Missouri 1977 Bachelor of Science Degree, S.E. Missouri State University, 1970
License(s)/Certification(s), #(s), expiration date(s), if applicable:	Licensed member of the Missouri Bar, Bar Number 35088
Specialized Training Completed. Include dates and documentation of completion:	Police Officer Standards and Training Instructor
# of years experience in area of service proposed to provide:	40
Describe person's relationship to bidder. If employee, # of years. If subcontractor, describe other/past working relationships	Self
Describe this person's responsibilities over the past 12 months.	Teaching college courses, conducting training for the Missouri Division of Probation and Parole, and conducting training for the Central Missouri Police Academy
Previous employer(s), positions, and dates	N/A
Identify specific information about experience in:	Clearly identify the experience, provide dates, describe the person's role and extent of involvement in the experience
✓ Conducting trainings, particularly related to Legal Issues for Probation and Parole	Between 2010 and now, I have conducted approximately 35 day-long training sessions that address the following topics: Civil Liability; Probation and Parole Eligibility and Rescission; Conditions of Supervision; Probation and Parole Revocation; Employer and Employee Relations; Report Writing and Testimony; Missouri Case Law Review; and Supervisor/Line Staff Liability Issues.

Dane C. Miller

Resume

Professor Emeritus
 Department of Criminal Justice
 University of Central Missouri
 Warrensburg, MO 64093
 dmiller@ucmo.edu

402 NW Country Road H
 Warrensburg, MO 64093
 660-429-1102

EDUCATION

- **Juris Doctorate**, St. Louis University School of Law, 1987.
- **Master of Science Criminal Justice**, University of Central Missouri, 1977.
- **Bachelor of Science Psychology**, Southeast Missouri State University, 1971.

TEACHING / PROFESSIONAL EXPERIENCE

- **Professor of Criminal Justice**, University of Central Missouri, 1977 to present.

Courses taught:

Legal Aspects of Criminal Justice	Correctional Law
Introduction to Criminal Justice	History of Corrections
Criminal Procedure	Criminal Law
Constitutional Aspects	The Juvenile and the Law
Case Preparation and Courtroom Procedure	Correctional Alternatives
Law Enforcement Studies in Group Behavior	Probation and Parole

- **Municipal Judge**, Knob Noster Municipal Court (Part Time), 2006-present
- **Municipal Prosecutor**, City of Warrensburg, Missouri, 1995-1998.
- **Attorney for Juvenile Office** of Johnson County, Missouri, 1989-1992.
- **Probation Officer, Missouri Division of Probation and Parole, 1972-1977.**

ADDITIONAL PROFESSIONAL EXPERIENCE

- **Part-time Legal Aspects Trainer, Missouri Division of Probation and Parole - 2009 to present**
- **Part-time Instructor, Central Missouri Police Academy - 2013 to present**
- Pro Bono representation of criminal defendants, 1988 to present.**
- **Domestic Relations Mediations; completed basic training 2003.**
- **Johnson County Bar Association Committee for drafting local rule regarding mediation, 2003.**
- **Guardian Ad Litem Appointments; certified 1999.**
- **Assistant Editor, Not Guilty: Newsletter for Criminal Defense Attorneys, 1989-1993.**
- **Editor, The Guardian, official publication of the Missouri Corrections Association, 1983-1984.**

LICENSES, CERTIFICATIONS AND HONORS*Dane C Miller, Resume page 2 of 8*

- Recipient, Governor's Award for Excellence in Education, 2013
- Member, Missouri State Highway Patrol Community Alliance Board, 2009 to present
- Member, Missouri Sentencing Commission, 2009-present
- Co-Chair, Governor's Advisory Committee on Corrections, 2010 to present
- Member, Governor's Advisory Committee on Corrections, 2004 to present
- Licensed, Federal Bar for the Western District of Missouri, 1988-present
- Licensed, Missouri Bar, 1988-present.
- Nomination, Byler Distinguished Faculty Award, 2004.
- Certification, The National Drug Court Institute, 2004.
- Certification, Domestic Relations Mediation Training, 2003.
- Nomination, Governor's Award for Excellence in Teaching, 1998 and 2000.
- Certification, Advanced Guardian Ad Litem Training, 1999.
- Recipient, College of Education and Human Services Faculty Award for Excellence in Teaching, 1997-98.
- Recipient, Award for Best Oralist, Mid-West Regional Moot Court Competition 1986, St. Louis University School of Law
- Certification, Specialist Instructor, State of Missouri Department of Public Safety, 1980.
- Recipient, Governor's Award for Outstanding Worker in Missouri Corrections, 1977.

PUBLICATIONS, CHAPTERS AND ARTICLES

Editor / Originator, Probation and Parole Law Reports, monthly periodical; in-depth summaries of federal and state appellate court decisions dealing with the investigation, supervision, prosecution, or defense of probation and parole cases, 1979; discontinued publication in 2007.

Editor / Originator, Traffic Law Reports, monthly periodical; in-depth summaries of federal and state appellate court decisions dealing with traffic law, 1987; discontinued publication in 1999.

Editor / Originator, Juvenile Law Reports, monthly periodical; in-depth summaries of federal and state appellate court decisions dealing with juvenile law, 1983; discontinued publication in 1996.

Coauthor, "The Revocation of Probation Based on Fraud or Lack of Candor at Sentencing"; *Perspectives: The Journal of the American Probation and Parole Association*, Volume 24, #2, Spring 2000.

Coauthor, "Can Probation be Revoked for Non-Willful Violations of Conditions of Supervision?" *Federal Probation*, June 1999.

Supplemental Readings for Chapter 4; Text Reference, "Probation and Parole Conditions: Recent Court Decisions, "Community-Based Corrections; Probation, Parole, and Intermediate Sanctions, Fourth Edition by Cromwell and Killinger (1999).

Supplemental Readings for Chapter 4; Text Reference, "Probation and Parole Conditions: Recent Court Decisions" and "Community-Based Corrections; Probation, Parole, and Intermediate Sanctions"; Third Edition by Cromwell and Killinger (1994).

Reprinted article in Chapter 7; "Revocation: 'The Good Old Days'"; Third Edition, Probation and Parole by Cromwell and Killinger (1994).

Dane C Miller, Resume page 3 of 8

Author, "Confrontation and Cross-Examination of Child Witnesses: Witness Protective Measures in Light of Coy v. Iowa." *Criminal Justice Journal*, Western University School of Law, May 1991.

"Field Sobriety Tests: Objections Beyond Self-Incrimination," *Traffic Law Reports*, January 1988.

"Revocation: The Good Old Days," *Probation and Parole Law Reports*, January 1988.

"Probation Officer's Job May Be Precarious," *Probation and Parole Law Reports*, January 1988.

"Admissions and Confessions: Total Circumstances and Special Protections," *Juvenile Law Reports*, January 1988.

"Confrontation and Cross-Examination: The Child Abuse victim as Witness," *Juvenile Law Reports*, March 1988.

"Due Process and Summary License Suspension," *Traffic Law Reports*, April 1987.

"Radar Speed Detection Testimony," *Traffic Law Reports*, May 1987.

"Searches and Seizures and the 'Routine' Traffic Stop," *Traffic Law Reports*, June 1987.

"Formal Arrest as Prerequisite to B.A.C. Testing," *Traffic Law Reports*, July 1987.

"Circumstantial Evidence of Intoxication and Simultaneous Control of Vehicle," *Traffic Law Reports*, August 1987.

"Opinion Testimony Regarding Level of Intoxication," *Traffic Law Reports*, November 1987.

"In Court," *Perspectives*, the Journal of the American Probation and Parole Association, Fall/Winter 1981.

"Probation Officer Liability," *Texas Adult Probation Commission Newsletter*, November 1979.

NATIONAL RECOGNITION

Probation and Parole Law Reports cited in and reprinted by Oregon Probation and Parole Officers Newsletter, 1988, 1989.

Probation and Parole Law Reports cited by National Institute of Corrections Information Center in Boulder, Colorado in response to individual requests from correctional practitioners, 1987.

Probation and Parole Law Reports cited by Inspector General for Utah State Department of Corrections in state-sponsored training seminars, 1986.

Probation and Parole Law Reports cited and reprinted in *Probation and Parole in the Criminal Justice System*, second edition; text book by Cromwell, Killinger, Kerper and Walker. 1985.

Juvenile Law Reports cited by Training Coordinator for the Texas Juvenile Justice Center, San Marcos, Texas, 1985.

Probation and Parole Law Reports cited in training presentation by Training Officer of the Idaho Department of Corrections, 1983.

Probation and Parole Law Reports cited in "The Three R's of Parole Representation; Release, Rescission and Revocation,"; paper delivered to Public Defense Attorneys in the state of New York. Paper delivered by Donald Zuckerman, Director of Parole Revocation Unit of the New York Public Defender's Office, 1983.

Probation and Parole Law Reports cited and reprinted in *Perspectives*, the journal of the American Probation and Parole Association, 1981.

Dane C Miller, Resume page 4 of 8

Probation and Parole Law Reports cited in and reprinted by Illinois Training Officer Newsletter, 1980.

Probation and Parole Law Reports cited and reprinted in Straight Talk, Newsletter of the Nebraska Probation System, 1980.

Probation and Parole Law Reports cited in and reprinted by the Newsletter of the Texas Adult Probation Commission, 1979.

TRAINING, PRESENTATIONS AND PAPERS

"Hearsay in Probation Revocation Proceedings," co-author Robin Blodgett, paper presented to the Academy of Criminal Justice Sciences, March 2008

"Probation and Parole Supervision: The Legal Landscape", training sessions for the Missouri Division of Probation and Parole, Kansas City and St. Charles, October 2007.

"Probation Conditions and Probation Officer Directives: Where the Twain Shall Meet," co-author Gene Bonham, paper to be presented at the Academy of Criminal Justice Sciences Annual Conference, March 2006.

"Criticized Yet Critical: the Role of Defense Counsel in Criminal Proceedings" and the "Realities of Today's Court System and Legal Process," presented as a participant of the "Crime and the Constitution" panel, American Democracy Project, September 2005.

"Probation Officer Civil Liability," Sixth Annual Line Staff Training Conference, Ohio Probation Officer's Association, June 2005.

"Civil Liability of Community Supervision Personnel: Recent Cases and Trends," South Dakota Community Service Officer's Conference, April 2005.

"Conditions of Probation That Limit Computer and Internet Access," coauthor, Academy of Criminal Justice Sciences Annual Conference, March 2005.

"Probation and Parole Supervision: Legal Aspects for the Line Officer," Ohio Probation and Parole Officer Association, July 2004.

"Legal Liability Issues for Probation and Parole Supervisory Staff," Ohio Probation and Parole Officer Association, August 2004.

"Polygraph Conditions in Probation and Parole: Recent Cases and Trends," coauthor, Academy of Criminal Justice Sciences Annual Conference, March 2003.

"Forced Medication as a Condition of Probation in Light of Washington v. Harper and Riggins v. Nevada: A Review of Legal Trends," coauthor, National Conference of the American Society of Criminology, November 2002.

"The Constitutionality of Probation Conditions that Restrict Procreation," coauthor, American Criminological Society Annual Conference, 2002.

"Alford and Nolo Contendere Pleas in the Context of Probation Supervision: The Impact on Therapeutic Expectations," Annual Conference of Criminal Justice Sciences, March 2002.

Dane C Miller, Resume page 5 of 8

"Conditions of Supervision: Legal Issues and Trends," Annual Conference of the American Probation and Parole Association, 2002.

"Probation and Parole: The Legal Landscape," Annual Conference of the American Probation and Parole Association, 2001.

"Polygraph Conditions of Probation and Parole: Recent Issue and Trends," coauthor, Annual Conference of Criminal Justice Sciences, March 2001

"Supervision Law: Creative and Constitutional Conditions of Community Supervision," Annual Conference of the American Probation and Parole Association, August 2001.

"Due Diligence in the Pursuit of Probation and Parole Revocation Proceedings: What is the Appropriate Constitutional Analysis?," coauthor, Annual Conference of the Academy of Criminal Justice Sciences, March 2000.

"Creative and Constitutional Conditions of Supervision," Annual Conference of the American Probation and Parole Officers Association, 2000.

"Circumstantial Evidence of the Element of 'Operation and Control' in D.W.I. Cases: Have the Courts Gone Too Far?," coauthor, Annual Conference of the Academy of Criminal Justice Sciences, March 2000.

"Creative and Constitutional Conditions of Supervision," Annual Conference of the American Probation and Parole Officers Association, 2000.

"Probation and Parole: the Legal Landscape," Annual Conference of the American Probation and Parole Officers Association, 2000.

"Issues and Trends in Parole Law," Association of Paroling Authorities International, April 1999.

"Legal Analysis of Revocation Where Probation Was Granted on the Basis of Inaccurate or Incomplete Sentencing Information," coauthor, National Conference of the Academy of Criminal Justice Sciences, March 1999.

"The Revocation of Probation Based on Pre-Probation Activity," coauthor, American Academy of Criminal Justice Sciences, March 1999.

"Recent Issues and Trends in Probation and Parole Law," Association of Paroling Authorities International, April 1998.

"Polygraph Conditions in Probation and Parole: Recent Cases and Trends," coauthor, Academy of Criminal Justice Sciences, March 1993.

"Teaching Effectiveness," presentation for the Promotion / Tenure Dossier Preparation Workshop, April 1992.

"Polygraph Conditions in Probation and Parole: Recent Cases and Trends," coauthor, Academy of Criminal Justice Sciences, March 1993.

"Legal Investigative Skills in the Area of Elder Abuse," Missouri Department of Social Services, Division of Aging Annual Conference, October 1991.

Chair, Discussion Panel on "Juvenile Law and It's Implementation," National Conference of the Academy of Criminal Justice Sciences, May 1989.

Dane C Miller, Resume page 6 of 8

"Constitutionality of Child Witness Protective Measures," National Conference of the Academy of Criminal Justice Sciences, March 1989.

"Conditions of Probation and Parole," Missouri Board of Probation and Parole Training Program, Jefferson City, Kansas City, and St. Louis, 1987.

"Civil Liability of Correctional Personnel," American Probation and Parole Association in conjunction with the Iowa Corrections Association Training Institute, 1986.

"Legal Issues In Probation and Parole Supervision," Missouri Board of Probation and Parole Training Program, Kansas City, and St. Louis, 1984.

Speaker, Regional Training Workshops for Missouri Probation and Parole Officers, St. Louis, Kansas City, and Jefferson City, 1985.

Discussion Leader, "Probation, Parole and the Judiciary," Missouri Corrections Conference, 1981.

RESEARCH AND CONSULTATION

The right to consult with counsel during presentence interview, for Veronica Perry, Chief Probation Officer, Medina County Adult Probation Department, Medina, Ohio; August 2005.

Absconders and timely execution of probation warrants, for Pete Hoose, Summit County Probation Office, Summit County Ohio, September 2004.

Probation searches, for Gary Senna, Adult Probation Services, Philadelphia, Pennsylvania, January 2003.

Notice of conditions of supervision, for Steve Holmquist, Stearns County Community Corrections, Stearns County Minnesota, March 2002.

Conditions limiting sexual activity, for Tom Letcavage, Northumberland County Probation Services, Northumberland County, Pennsylvania; January 2002.

Restrictions on residence, for Merit Carlton, Las Vegas, Nevada; January 2002.

Civil liability of probation officers, for Sarah Duncan, State of Washington Probation Services, December 2001.

Supervision fees and separation of powers, for Steve Holmquist, Stearns County Community Corrections, Stearns County Minnesota, January 2001.

Use of probationers as informants, for Dale Jacobson, Illinois Probation and Parole, District Five, February 2000.

Probation conditions requiring DNA test, for Sandy Jett, Missouri Probation and Parole, Johnson County, Missouri, March 1999.

Co-counsel, State v. Corbett, 17th Judicial Circuit, Johnson County, Missouri, Summer 1997.

American Disability Act and conditions of probation, for Terri Morrison, Colorado Court Administrator Office of Probation Services, August 1997.

Dane C Miller, Resume page 7 of 8

Driving while revoked and felony murder, for Ike Avery, North Carolina's Attorney General's Office, October 1996.

Searches of probationers during home visits, for Ben Stole, Probation and Parole Office, Clairmont, Vermont, September 1996.

Disclosure of Juvenile Court file material, for Chris Swatosh, Attorney, Boone County Juvenile Office, May 1996.

National prison litigation, for Jack Hutchins, California State Prisons, May 1996.

Juvenile's invocation of counsel, for Renata Francis, Prosecuting Attorney's Office, Birmingham, Alabama, March 1994.

Grant of probation on erroneous information, for Vince Polito, Probation Department, Cleveland, Ohio, February 1994.

Defendant's refusal of probation, for Mike Raleigh, Wausau, Wisconsin, December 1993.

Liability of training officer for DWI experiments, for Rob Holloway, Pinellas County Sheriff's Office, October 1993.

Legal issues in the use of polygraph in supervising sex offenders, for Vicki Boyd, Chair, Sex Offender Committee, Missouri Board of Probation and Parole, 1992.

Execution of probation arrest warrants, for Carl Lamier, Federal Public Defender, Sacramento, California, 1989.

Field sobriety tests, for Mancke, Wagner and Marcello, private law firm, Harrisburg, Pennsylvania, 1988.

Presentence reports, for Carl Larson, Federal Public Defender's Office, Los Angeles, California, 1987.

Minimum age at which juvenile can be adjudicated delinquent, for Jim Orr, Director of Youth Services, Fairbanks, Alaska, 1986.

Special procedures to protect the child witness, for Scott Keating, Law Clerk for the Circuit Court, Orlando, Florida. 1986.

Liability of a program which funded transportation for runaway juveniles to return home, for Mae Bacon, Division of Youth Services, Jefferson City, Missouri, 1986.

Conditions requiring probationers and parolees to submit to various tests, for Sue Zavros, Probation Officer, St. Louis, Missouri. 1983.

The nature of probation and parole interviews, for Mark Wernicke, private attorney, Minneapolis, Minnesota. The results of this consultation were subsequently utilized by Mr. Wernicke to help prepare his brief and arguments before the United States Supreme Court in the case of Minnesota v. Murphy.

Disparity in parole eligibility for codefendants, for Mike Abbott, Georgia Parole Commission. 1983.

Parole revocation based on dismissed charges, for Carl Larson, Federal Public Defender, Los Angeles, California, 1982.

Dane C Miller, Resume page 8 of 8

Nonresident aliens qualifying as state probation and parole officers, for Angelo Musto, Massachusetts Department of Probation and Parole, Boston, Massachusetts. 1982.

Conditions of probation and effect of nolo contendere pleas, for Ray Higginbotham, United States Probation Office in southern Florida, 1981.

Presentence reports, for Texas Adult Probation Commission, 1981.

Credit for probation time, for Richard Sweet, Wisconsin State Legislative Counsel, 1980.

Interstate compact supervision, for Rufus Strother, Interstate Compact Administrator, North Carolina Division of Corrections, 1980.

Timely hearing requirements in revocation of parole, for Victor Townsley, Louisiana Division of Probation and Parole, 1980.

Duties and obligation of probation officers, for Berton Root, Training Officer for United States Probation Office, Sacramento, California, 1979.

Civil liability of parole authorities, for Legal Aid Society of New York, 1979.

Antabuse conditions of probation, for Greg O'Neil, University of Oregon law student, 1979.

EXHIBIT F
METHOD OF PERFORMANCE
AND
PROPOSED METHOD OF PERFORMANCE 2016 (pages 21-24)

EXHIBIT F**METHOD OF PERFORMANCE**

The bidder should present a written plan for performing the requirements specified in this Invitation for Bid. In presenting such information, the bidder should specifically address each of the following issues:

1. A sample of the proposed curriculum, or minimally a preliminary outline and description of the content proposed for training.

See "Method of Performance," Page 21

2. Copies of training materials (e.g. manuals, resource books, handouts, reinforcement materials) proposed for use in conducting the training sessions.

See attached Power-point Presentation

3. Organization chart - the offeror should provide an organizational chart showing the staffing and lines of authority for the key personnel to be used. The organizational chart should include (1) The relationship of service personnel to management and support personnel, (2) The names of the personnel and the working titles of each, and (3) Any proposed subcontractors including management, supervisory, and other key personnel.

N/A

4. Economic Impact to Missouri - the offeror should describe the economic advantages that will be realized as a result of the offeror performing the required services. The offeror should respond to the following:

- Provide a description of the proposed services that will be performed and/or the proposed products that will be provided by Missourians and/or Missouri products.

All services provided and products and services utilized will come from Missouri.

- Provide a description of the economic impact returned to the State of Missouri through tax revenue obligations.

All research indicates that staff training regarding the legal aspects of their on-the-job duties plays a paramount role in the efficient delivery of services; the professionalism, expertise and confidence of staff; and the avoidance of civil liability. The acceptance of this proposal will provide probation and parole personnel in the State of Missouri with up-to-date legal developments relevant to their specific tasks at minimal cost and expense per employee.

- Provide a description of the company's economic presence within the State of Missouri (e.g. type of facilities; sales offices; sales outlets; divisions; manufacturing; warehouse; other), including Missouri employee statistics.

N/A

IFB 16708426 Legal Issues Training
Proposed Method of Performance 2016
Dane C Miller

The proposed method of performance entails the following major components: (1) Five 6-hour training sessions at locations to be designated by the Missouri Division of Probation and Parole; (2) Availability of the trainer both before and after each session for set-up and individual questions; (3) A power-point presentation providing case law and statutory law updates on the topics set forth in paragraph 2.2.1 of IFB 16708426; (3) A brochure of hand-outs which will include a hard copy of the power point slides on which the attendees may take notes; (4) An appendix which provides summaries of Missouri cases dealing with probation and parole from 1997 to 2014; (5) An appendix which sets forth the major Missouri statutes dealing with probation and parole; (6) Group exercises and question and answer sessions in which the attendees will role play the positions of judge, defendant, prosecutor and defense counsel.

The power point presentation is divided into an introduction followed by seven parts. The introduction presents the nature of the entire training session and what it will entail, along with the presenter's background and qualifications.

PART I

Part I of the presentation deals with legal basics and provides attendees with a review and up-date of basic legal concepts and developments in the prosecution and defense of criminal cases. Basic legal concepts will be defined and the participants will be called upon to play the roles of the prosecution and defense in a hypothetical case.

The learning objectives of Part I are to enable attendees to:

- A. Identify the general elements of a crime;
- B. Identify the basic structure and functions of the various levels of Missouri courts;
- C. Identify major problem areas in the prosecution and defense of criminal cases, with a view toward exploring the attendee's role in this process.

PART II

Part II of the presentation deals with civil liability in the probation and parole setting. This section discusses the major avenues of civil liability for probation and parole officers. It also explains the process of litigation from the filing of a claim by a plaintiff to the entry of judgment and enforcement thereof. This section explains the specific elements of a tort action under Missouri law and the specific elements for a successful cause of action under federal civil rights legislation. This segment sets forth specific cases decided by the courts dealing with probation and parole officer liability. The last segment of this section utilizes hypothetical situations and calls upon the members of the audience to assess the hypothetical in terms of whether the plaintiff should win or lose given the circumstance presented.

The learning objectives of Part II of the presentation are for attendees to:

- A. Identify and understand the elements of Missouri torts;
- B. Identify and understand the elements of a federal civil rights action;
- C. Be familiar with past cases and how they were decided in relation to civil liability;
- D. Be able to identify behaviors that might potentially lead to civil or criminal liability.

PART III

Part III of the presentation addresses eligibility for probation or parole. The first segment of this part reviews statutes and discusses the wide discretion vested in courts and parole boards regarding their determination of who might be granted probation or parole release. The notion of probation as a "sentence" is discussed and Missouri

statutes and cases dealing with this issue are provided. This portion of the presentation also discusses whether a defendant or inmate has an expectation of liberty in parole or probation release that is protected by due process. The presentation then moves to the kinds of factors that might be considered by the court or board in determining release. May Alford or *nolo contendere* pleas to past crimes properly be considered in determining parole release or probation eligibility? This section also addresses the rescission of parole or probation based on newly discovered information or information that was not known at the time probation or parole was granted. Several cases dealing with this issue are also provided. Finally, the right to counsel at the proceeding at which probation or parole is considered or granted is addressed.

The learning objectives of Part III of the presentation are for attendees to:

- A. Understand the authority by which courts and boards grant probation or parole;
- B. Understand the limitations on the factors that might be considered in determining probation or parole eligibility;
- C. Familiarize attendees with the legal issues that arise when it is determined that probation or parole has been improvidently granted and probation or parole is rescinded;
- D. Understand the parameters of the Sixth Amendment right to counsel at sentencing and the limitations on the right to counsel at parole release hearings.

PART IV

Part IV of the power point presentation addresses the general topic of conditions of supervision. This part of the presentation stresses the critical role of the court or board in setting conditions. It also points out the constitutional problems of permitting the probation or parole officer to new conditions of supervision via the use of his power to issue directives or instructions to the offender. Specific recommendations are made regarding situations where in the probation agent finds it necessary to impose new or additional conditions of supervision. This section spends a substantial amount of time on the various tests that have been formulated to test the validity of the conditions of supervision. The importance of documenting the need for certain conditions is emphasized, as well as the importance of tailoring conditions to the offender's circumstances. Finally, cases are discussed which deal with the validity of specific conditions of supervision that concern sexual conduct, residence, treatment, travel, association, searches, sweat patches and other drug testing devices, polygraphs, plethysmographs, electronic monitoring devices, internet and computer restrictions and restitution. This part concludes by providing several hypothetical conditions and asking the audience to evaluate the condition in terms of what they know about the validity of conditions of supervision.

The learning objectives of this part are to get the attendee to:

- A. Understand the general tests for the validity of conditions that have been applied by the courts;
- B. Identify the importance of relating the conditions of supervision to the defendant's Circumstances;
- C. Identify the parameters set by the courts with regard to specific conditions of Supervision;
- D. Identify and solve the problems associated with suggested conditions of supervision.

PART V

Part V of the presentation focuses on probation and parole revocation. This section starts with a history of the revocation process and gives a detailed analysis of the original requirements of Morrissey v. Brewer (1972) and Gagnon v. Scarpelli (1973). The right to assistance of counsel, the right to confront witnesses and the use of hearsay at revocation hearings are also analyzed. Cases presenting the major problems in the revocation process

will also be addressed such as whether a “conviction” on a new offense is necessary to support revocation; whether a nolo contendere plea may be used to revoke; whether insanity may be asserted as a defense; and whether principles of double jeopardy or due process bar the “re-hearing” of alleged violations.

The learning objectives for this part are to get the attendee to:

- A. Know the appropriate minimal procedure applicable to revocation of probation or parole;
- B. Identify the appropriate court rules and statutes applicable to Missouri’s revocation process;
- C. Identify the types of evidence that can be admitted in revocation proceedings;
- D. Understand the major “defenses” to revocation that have been asserted.

PART VI

Part VI of the presentation focuses on employer-employee issues. This section identifies the types of discrimination that are actionable under federal law. It provides the general elements to causes of action based on discrimination in the areas of race, religion, sex, age or disability. Major cases from the United States Supreme Court are utilized to identify the elements of a cause of action. The facts from several cases are instrumental in pinpointing why a defendant was or was not held liable. This section not only addresses individual liability, but also supervisory liability for failing to adopt an appropriate policy, failure to take appropriate remedial action and inappropriate investigative activities. Specific recommendations to supervisors will be made with a view toward avoiding complaints and litigation concerning race, sex and age discrimination.

The learning objectives for this part are to get the attendee to:

- A. Understand the “garden varieties” of discrimination that can result in civil rights violations by identifying the specific behaviors that violate the law.
- B. Identify appropriate remedial actions that are not only advisable, but required by the law.
- C. Distinguish between the roles of staff and supervisors in the context of civil liability for discrimination under the law.
- D. Identify “best practices” with a view toward acknowledging diversity, which the law encourages, and avoiding behaviors which the law prohibits.

PART VII

Part VII focuses on report writing in the legal context and testimonial demeanor. Through role play and participation, this section will pay particular attention to the importance of detailed facts for court related reports. The interrelationship between facts and recommendations and conclusions will be explored. Attendees will be encouraged to draw connections between the facts they put in reports and the conclusions and recommendations they make based on those facts. Common testimonial and report writing “pitfalls” will be identified and specific solutions will be suggested. This section not only seeks to improve report writing in the legal context, but seeks to improve writing in general. Specific recommendations about how to handle difficult questions, how to handle voluminous material, and how to improve poise and demeanor on the witness stand will be made. “Trap” questions will be identified and role playing will be utilized to allow the audience to assess the relative effectiveness of a given response on direct and cross examination.

The learning objectives for this part are to get the attendee to:

- A. Improve his/her reporting writing skills by identifying common and recurring problems of report writing in the legal arena;

- B. Build the attendee's self confidence on the witness stand by giving him/her the opportunity to "testify" under pressure;
- C. Identify negative behaviors in other witnesses that might detract from their effectiveness as a witness;
- D. Identify negative behaviors or mannerisms in themselves that might detract from their effectiveness as a communicator on the witness stand.

EXHIBIT I

**BUSINESS ENTITY CERTIFICATION, ENROLLMENT DOCUMENTATION,
AND AFFIDAVIT OF WORK AUTHORIZATION**

BUSINESS ENTITY CERTIFICATION:

The bidder must certify their current business status by completing either Box A or Box B or Box C on this Exhibit.

- BOX A:** To be completed by a non-business entity as defined below.
- BOX B:** To be completed by a business entity who has not yet completed and submitted documentation pertaining to the federal work authorization program as described at http://www.dhs.gov/files/programs/gc_1185221678150.shtm.
- BOX C:** To be completed by a business entity who has current work authorization documentation on file with a Missouri Department including Department.

Business entity, as defined in section 285.525, RSMo, pertaining to section 285.530, RSMo, is any person or group of persons performing or engaging in any activity, enterprise, profession, or occupation for gain, benefit, advantage, or livelihood. The term “**business entity**” shall include but not be limited to self-employed individuals, partnerships, corporations, contractors, and subcontractors. The term “**business entity**” shall include any business entity that possesses a business permit, license, or tax certificate issued by the state, any business entity that is exempt by law from obtaining such a business permit, and any business entity that is operating unlawfully without such a business permit. The term “**business entity**” shall not include a self-employed individual with no employees or entities utilizing the services of direct sellers as defined in subdivision (17) of subsection 12 of section 288.034, RSMo.

Note: Regarding governmental entities, business entity includes Missouri schools, Missouri universities (other than stated in Box C), out of state agencies, out of state schools, out of state universities, and political subdivisions. A business entity does not include Missouri state agencies and federal government entities.

BOX A - CURRENTLY NOT A BUSINESS ENTITY

I certify that Dane C. Miller (Company/Individual Name) **DOES NOT CURRENTLY MEET** the definition of a business entity, as defined in section 285.525, RSMo pertaining to section 285.530, RSMo as stated above, because: (check the applicable business status that applies below)

- I am a self-employed individual with no employees; **OR**

- The company that I represent employs the services of direct sellers as defined in subdivision (17) of subsection 12 of section 288.034, RSMo.

I certify that I am not an alien unlawfully present in the United States and if Dane C. Miller (Company/Individual Name) is awarded a contract for the services requested herein under 16708426 (IFB Number) and if the business status changes during the life of the contract to become a business entity as defined in section 285.525, RSMo pertaining to section 285.530, RSMo then, prior to the performance of any services as a business entity, Dane C. Miller (Company/Individual Name) agrees to complete Box B, comply with the requirements stated in Box B and provide the Department with all documentation required in Box B of this exhibit.

DANE C. MILLER
Authorized Representative's Name (Please Print)

Dane C. Miller
Authorized Representative's Signature

NA
Company Name (if applicable)

08-12-16
Date

EXHIBIT J

MISCELLANEOUS INFORMATION

Employee Bidding/Conflict of Interest:

<p>Bidders who are elected or appointed officials or employees of the State of Missouri or any political subdivision thereof, serving in an executive or administrative capacity, must comply with sections 105.450 to 105.458, RSMo, regarding conflict of interest. If the bidder or any owner of the bidder's organization is currently an elected or appointed official or an employee of the State of Missouri or any political subdivision thereof, please provide the following information:</p>	
<p>Name and title of elected or appointed official or employee of the State of Missouri or any political subdivision thereof:</p>	<p>Dane C. Miller</p>
<p>If employee of the State of Missouri or political subdivision thereof, provide name of Department or political subdivision where employed:</p>	<p>Member, Citizen's Advisory Committee on Corrections</p>
<p>Percentage of ownership interest in bidder's organization held by elected or appointed official or employee of the State of Missouri or political subdivision thereof:</p>	<p><u> 0 </u> %</p>

Missouri Secretary of State/Authorization to Transact Business

<p>In accordance with section 351.572.1, RSMo, the Department is precluded from contracting with a vendor or its affiliate who is not authorized to transact business in the State of Missouri. Bidders must either be registered with the Missouri Secretary of State, or exempt per a specific exemption stated in section 351.572.1, RSMo. (http://www.moga.mo.gov/mostatutes/stathtml/35100005721.html)</p>	
<p>If the bidder is registered with the Missouri Secretary of State, the bidder shall state legal name or charter number assigned to business entity</p>	<p>Legal Name: _____ Missouri State Charter # _____</p>
<p>If the bidder is not required to be registered with the Missouri Secretary of State, the bidder shall state the specific exemption stated per section 351.572.1, RSMo.</p>	<p>State specific exemption <u> N/A </u> (List section and paragraph number) Stated in section 351.572.1 RSMo, <u> Not a foreign corporation </u> (State Legal Business Name)</p>

MISSOURI PROBATION AND PAROLE LEGAL ISSUES TRAINING

by
Dane C. Miller
Professor Emeritus

Department of Criminal Justice
University of Central Missouri

Copyrighted by the author, 2015.

1

Nature of Presentation

- » Legal issues and concepts divided into 6 parts:
 - Legal Basics
 - Civil liability
 - Conditions of supervision
 - Issues in Revocation
 - Employer/Supervisor and Employee issues
 - Legal writing and testimonial demeanor
- » Not too much detail. Highpoints for training and training ideas. Focus is on cases as examples. Note Missouri cases in Appendix A and selected statutes in Appendix B
- » Cases from other jurisdictions not binding, but may provide issues to keep your eye on
- » Casual discussion --- with questions, observations and recommendations from you. Your successful experiences are the best training. Share your ideas with me and your colleagues
- » Use of label of "P.O." throughout -- Skip slides???

2

My Qualifications

- ▣ J.D., St. Louis University
- ▣ P.P.L.R.
- ▣ P.O. & Murray Sapp Case
- ▣ Every Unwanted Legal Job In Johnson County Missouri: Attorney for Juvenile Office; City Prosecutor; Special Prosecutor; Knob Noster Municipal Judge.
- ▣ Qualifications do not mean this will be "interesting" ---Graduate Assistant Comment

3

Why Do You Need To Know the Law?

- ▣ Like it or not, you are a legal practitioner. You apply the law every day.
- ▣ You will be working closely with judges and lawyers and understanding the law enhances your professional interaction (William F. Buckley, Jr. comment)
- ▣ You will be a major voice in policy directions for M.D.O.C.
- ▣ You will need to explain the law and legal process to others:
 - To Employees
 - To Clients
 - To Public
 - To Media
 - To Lawyers?
- ▣ Training ideas for your staff
- ▣ As a supervisor, you are particularly vulnerable to law suits

4

PART I

LEGAL BASICS

5

Basic Legal Terms and Concepts

- Forms and Types of Law
 - Common Law – Statutory Law – Case Law
 - Procedural Law versus Substantive Law
 - Constitutional Law
 - Administrative Law and Regulations
 - Rules of Court
 - Criminal versus Civil Law
- Basic Elements of a Crime: Actus Reus and Mens Rea and Proximate Causation
- Corpus Delicti and Corpus Delicti Rule

6

A SAMPLE LAW

- R.S.Mo. 123.456 (2004) provides:
"Anyone arrested for driving while intoxicated shall be brought to trial within 30 days of his arrest."
- Interpretation of statute?
- Is the law criminal or civil?
- Is it procedural or substantive?
- What kind of law will the court's opinion produce?
- Will a violation of the statute involve a constitutional issue?
- Is administrative law involved?
- Will a rule of court be important in determining what the full meaning of this law is?

7

Missouri Courts and Judges

- Dual court system
- Trial courts versus appellate courts
- Courts of non-record and trial de novo
- Habeas corpus, Mandamus & Prohibition
- Discretionary review – Certiorari
- Process of trial
- Process of appeal

8

PART II CIVIL LIABILITY RELATING TO OFFENDER SUPERVISION

9

Can I Be Sued?

- Bad question?
- Good Answer?
- Better question?
- Best answer?
- Even if you win, being a defendant is not fun and there are always attorneys fees and equitable relief.

10

Major Sources of Civil Liability

- ▢ State tort action
- ▢ Federal civil rights
- ▢ State civil rights (R.S.Mo. 213.000 etc.)
- ▢ What is a "Tort" --- the origin of all actions
- ▢ Intentional and negligent torts and major advantage of pleading intentional tort.

11

Process of Civil Litigation

- ▢ Complaint or Petition Setting Out Cause of Action, Elements, Jurisdiction and Venue -- Tendency to over plead in order to touch all bases.
- ▢ Demurrers, Answers, Alternate Pleading, Motions to Dismiss and Motions for Summary Judgment
- ▢ Discovery: Interrogatories, Depositions, Examination of Evidence, Physical & Mental Examinations
- ▢ Jury Trial or Bench Trial
- ▢ Frivolous Suits? See section 217.262 for Missouri Statute permitting sanctions. Under 42 U.S.C.A. § 1988[b] (1976) the award of reasonable attorneys' fees is available to the prevailing party in cases brought under various federal civil rights laws, including section 1983. However, if it is the defendant who prevails, attorney's fees are appropriate only where the suit was "vexatious, frivolous, or brought to harass or embarrass the defendant", *Hensley v. Eckerhart*, 461 U.S. 424 (1983).

12

General Elements of Tort Liability

- Duty and Sources of Duty
 - Public Duty Rule
 - Sources of Duty
 - Statute (see, for example, section 217.410 R.S.Mo. Imposing duty to report offender abuse)
 - Case Law
 - Common Law
 - Special Relationships
- Breach of Duty: Some Theories of Recovery from Supervisors
 - Failure to Investigate
 - Failure to Train
 - Negligent Hiring
 - Negligent Retention
 - Negligent Supervision – Employee – Offender
 - Failure to Warn
 - Any Negligent or Malicious/Intentional Conduct that Causes Harm
- Causation
 - Factual Cause
 - Legal Cause
 - Proximate Cause
- Damages
- Sovereign Immunity Statutes: R.S.Mo. 537.600, in its current version, permits liability for state entity only for negligent operation of motor vehicle in course of employment and negligent maintenance of property.

13

General Principals of Liability under 42 U.S.C. 1983

- Federal Civil Rights Actions
 - Rights protected by the United States Constitution
 - Various Federal Civil Rights Statutes
- Statutory Language of Section 1983
 - "Person"
 - Under Color of Law
 - Violation of Rights Under Federal Law or Federal Constitution of which a Reasonable Person Should Have Known

14

General Principals of Liability under 42 U.S.C. 1983

- 3 Entities not covered under Section 1983
 - State is Immune ---- Cities, Counties and "persons" are NOT
 - Persons Not Acting Under Color of Law are immune
 - Judicial and Quasi-Judicial Immunity. See **Forrester v. White**, 484 U.S. 219 (1988) (not everything a judge does is "judicial")
 - Qualified immunity in relation to "ministerial" acts
- 3 Concept of "mens rea" that approaches "knowing or malicious disregard" for rights

15

Immunity Under Missouri Law

- 3 Sovereign Immunity – government agencies and government officials – but not in their "individual" capacity
- 3 Official Immunity – applies to discretionary acts but not to "ministerial" acts (acts that do not require judgment or exercise of discretion).
- 3 Public Duty Doctrine

Specific Examples of Civil Liability Cases in Area of Offender Supervision

17

Deliberate Indifference to Offender Safety

- Farmer v. Brennan, warden, 511 U.S. 825 (1994). Prison officials may be held liable for violation of Eighth Amendment where there is a showing of deliberate indifference to inmate safety. Farmer, an effeminate pre-op trans-sexual was assaulted. Court defines "deliberate indifference" as "subjective recklessness", i.e, reckless disregard of harm of which defendant was in fact aware. Thus, "constructive knowledge" is insufficient. Note higher standard under the 8th Amendment.
- Sexual conduct note: "Zero tolerance" policy adopted via Director Lombardi's video message regarding sexual conduct with offenders, and specific statement "there is no such thing as "consensual sexual contact" between staff and offenders!"
- Note criminal statutes regarding offender abuse (section 217.405 and sexual relationships with offenders (section 566.145). Also note duty to report (section 217.410)

18

Negligent or "Illegal" Grants of Parole and Negligent Supervision

▣ ***Martinez v. California***, 444 U.S.277 (1980)

- Parolee with history of sex offenses killed a 15 year old girl after only five months of parole release & parents sued

- State cannot immunize its employees from 1983 liability

- Parolee's action five months after release could not be characterized as "state action" within the meaning of this section

- Even if it could be said that board had a "duty" to the plaintiff's decedent, the actions of parole officials could not form basis for recovery because parolee was in no sense an agent of the parole board, and the board was not aware that appellants' decedent, as distinguished from the public at large, faced any special danger. Appellants' decedent's death was too remote a consequence of appellees' action to hold them responsible under 1983.

19

Negligent or "Illegal" Grants of Parole and Negligent Supervision

Joyce v. State of Washington, 119 P.3d 825 (Wash. 2005)

Offender under supervision for assault and possession of stolen property. Offender commits numerous violations of which P.O. is aware, but which she fails to bring to attention of court. None of the violations implicate the offenses for which offender was under supervision. It is known that defendant is using drugs and that he has a tendency to get "out of control" when driving a motor vehicle.

While under community supervision of P.O. Lo, defendant steals a car and crashes into deceased's vehicle – deceased has three children. Results in 22 million dollar verdict. By the time it gets to Washington Supreme Court about two years later, the award is up to about 33 million. Washington Supreme Court Reverses and matter is settled by Washington A.G. for about 6 million.

Points against liability? Factors for liability?

Why does Washington Supreme Court reverse?

20

Negligent Parole and Supervision Continued

- **Taggart v. State**, 822 P.2d 243 (Wash. Sup. 1992).
 - └ P.O. has duty to protect others from harm when harm is reasonably foreseeable. Great case for discussion of judicial immunity, quasi judicial immunity and duty to protect.

- **Zavalas v. D.O.C./ Olivares v. D.O.C.**, 809 P.2d 1329 (Or. App. 1991)
 - └ Though P.O. entitled to assert discretionary immunity re decision to arrest defendant, duty to report violations to court imposed non-discretionary duty on which liability could rest.
 - └ Causation not negated by fact that P.O. did not intend to recommend revocation

- **A.L. v. Commonwealth**, 521 N.E.2d 1017 (Mass. 1988)
 - └ Condition prohibiting contact with minors created special relationship so that duty was owed to minor students
 - └ Failure to enforce condition left state liable
 - └ See also **Acevedo by Acevedo v. Pima County Adult Probation Dept.**, 690 P.2d 38 (Ariz.1984). making almost the same precise point in very similar factual circumstances.

21

Negligent Content or Conduct of Presentence Report

- **Crosby-Bey v. Jansson**, 586 F.Supp. 96 (D. C. D. C.(1984)
 - P.O. entitled to quasi-judicial immunity against claim that he included false information in a sentencing report. **Demoran v. Witt**, 777 F.2d 1402 (9th Cir. 1985) suggests that same is true even if P.O. acts with malice.

- **Park County v. Cooney**, 854 P.2d 346 (Wyo. 1992)
 - P.O. not entitled to assert immunity in suit claiming that he included information he knew was false in report.

- **Joyce v. Drown** (N.H. Super. 1997)
 - P.O. Entitled to qualified immunity for recommendations regarding suitability of parole plan).

22

Illegal Disclosure of Confidential Information

- 3 Even where a defendant is able to establish an illegal disclosure, it is hard for him/her to demonstrate resulting damages.
- 3 In **United States v. Smith** (Southern District New Jersey), the prosecutor was simply required to post an internet apology for disclosing confidential sentencing information to various people/agencies and send apology letter to each agency.
- 3 **State v. Cianci** (R.I. 1985), though report was confidential, court would not impose sanctions for disclosure to media absent clear indication that such disclosure was forbidden.
- 3 **Herring v. Keenan**, 218 F.3d 1171 (10th Cir. 2000). Even if P.O. breached duty of confidentiality to client by revealing his positive HIV status, the client was not entitled to recover because exact parameters of right of confidentiality were not clearly established at time of disclosure. Moreover, the client voluntarily disclosed the information to the P.O. who then disclosed it to employer under belief that it was unlawful for client to work as a waiter if he were HIV positive.
- 3 Caution urged where legislature has specifically provided for confidentiality regarding victims, family or witnesses. Factors of natural sympathy and presumed damage will sway result their way.

23

Illegal Disclosure Continued

- **Richardson v. Sherwood**, 337 S.W. 3d 58 (W.D. Ct. App. Feb. 2011)
First Missouri case to find P.O. liable. Offender brought tort action against P.O. for improper disclosure of information to defendant's employer (that defendant was using drugs) which caused him to lose his job as a trucker. Because P.O. violated statutory duty (See §559.125) of non-disclosure and because P.O. acted outside agency policy, the \$75, 000.00 judgment was affirmed. Why was claim of "official immunity" rejected by court of appeals? Why did the plaintiff choose a state tort action versus a section 1983 action?
- Observations about the merits of the case?
 - Statutory Duty
 - Policy
 - Alternatives for P.O. --- Arrest? Refusal of Travel Permit?
 - A Word about sympathetic plaintiffs and unsympathetic defendants and how the Richardson case worked in that way.
 - Moral versus Legal Obligations ?
- A word about costs of litigation and appeal

24

SPEEDY HEARINGS, RELIGIOUS RIGHTS & WRONGFUL ARREST

SPEEDY HEARING: Wolfel v. Sanborn (6th Cir. 1981). Affirmed award of \$2000.00 in damages against two probation agents for failure to conduct preliminary revocation hearing for 27 days. This award was later set aside however on grounds of qualified, good faith immunity. See **Wolfel v. Sandborn** (6th Cir. 1982). See also **Gelatt v. County of Broom**, 811 F. Supp. 61 (N.D.N.Y. 1993) rejecting claim of absolute immunity in favor of qualified immunity in such situations.

RELIGIOUS RIGHTS: Warner v. Orange County Department of Probation, 115 F.3d 1068 (2d Cir. 1997) District Court awarded \$1.00 in damages for violating defendant's religious rights by recommending AA as a condition of supervision. The 2d Circuit upheld the award but noted that principles of qualified/good faith immunity were particularly relevant to issues present: (1) There was no settled case law that AA was a violation of religious rights. (2) Purpose was NOT to interfere or establish religion, but to overcome defendant's alcohol problem. (3) Any harm suffered was minimal. Had award been any higher, the 2d Circuit would have remanded.

WRONGFUL ARREST: Swift v. California, 384 F.3d 1184 (9th Cir. 2004), provides a good discussion of the distinction between quasi-judicial immunity (absolute immunity) and good faith immunity and finds that parole officials who investigate violations and issue parole holds act more like police officers than judges and are NOT entitled to assert quasi-judicial immunity.

25

Wrongful Revocation

Harper v. Jeffries, 808 F.2d 281 (3rd Cir. 1986). While parole board member entitled to quasi-judicial (absolute) immunity against claim that revocation was wrongful because it was based on erroneous information, the supervising P.O. was entitled only to qualified immunity.

Compare **Harper** with **Schiff v. Dorsey**, 877 F. Supp. 73 (U.S.D. Conn. 1994) (P.O. absolutely immune from liability for filing motion to revoke, however, court notes defendant would have been entitled to qualified immunity if absolute immunity was not accorded. **Gant v. United States Probation Office**, 994 F. Supp. 729 (S.D. W.Va. 1998), makes basically same point.

26

Supervisory Liability

- » An employer can be held vicariously liable for discriminatory conduct of supervisor where the discrimination leads to a tangible job detriment, i.e., demotion, pay differential, etc. Where there is no "tangible" job detriment, then the employer may take advantage of an affirmative defense by showing (1) employer exercised reasonable care to prevent and promptly correct discriminatory behavior; and (2) that plaintiff unreasonably failed to take advantage of preventive or corrective opportunities. See **Faragher v. City of Boca Raton**, 524 U.S. 724 (1998).
- » Supervisor can be held directly liable under Section 1983 if supervisor (1) directly participated in violation; (2) failed to remedy a known wrong; (3) permitted unconstitutional policy or custom to exist; or (4) was grossly negligent in supervising and lack of supervision caused violation. **Monell v. Department of Social Services**, 436 U.S. 658 (1978)
- » Monell is significant for two other reasons
 - Rejects *respondeat superior* as theory of liability
 - Local government entities (cities and counties) are "persons" under 42 U.S.C. §1983.

27

Seven Deadly Sins for Supervisors

- » Negligent employment: Someone is hurt because person hired is unfit for the job.
- » Negligent entrustment: Allowing an incompetent or inexperienced person to operate equipment or system
- » Negligent assignment: Supervisor knows, or should have known, that person was unfit for an assignment.
- » Negligent retention: Organization continues to employ someone who has repeated minor or serious conduct on the job
- » Negligent supervision: Employee has not been adequately supervised
- » Failing to train: Organization failed to provide adequate training
- » Failing to direct: Organization did not provide policies/procedures for employees to follow in emergencies

28

Summary and Recommendations for Civil Liability in Relation to Offenders

- No significant danger of liability
- Getting sued is inevitable but the folks in the Attorney General's office are capable people
- Act with common sense and act reasonably
- Know and follow department rules and regulations
- If you "think" you should not be doing what you are doing, you are PROBABLY correct!
- Remember Missouri's Legal Defense Fund (R.S.Mo. §105.711)

29

PART III: PROBATION & PAROLE ELIGIBILITY & RESCISSION

30

Statutory Provisions and the Existence of Discretion: Probation Statutes

- Probation largely came into being via "informal" recognition. Note, **Ex Parte United States**, 242 U.S. 27 (1916) (the Killits Case). Provides an excellent historical review of state and federal practices as of early 1900's.
- Mo. Rev. Stat. 559.012 (see Appendix B)
- Hard to argue that this statute expresses a preference for probation --- but note that eligibility is very broad.
- Is probation a "sentence" in Missouri? Can a defendant reject probation? Though many states consider probation simply another "sentencing" alternative, **St. Louis County v. Corse**, 913 S.W.2d 79 (Mo. App. 1995), suggests that a defendant in Missouri may reject probation and take the alternative. This suggests that probation is NOT a sentence. Also, see **Bell v State**, 996 S.W.2d 739 (Mo. App. 1999) and **State v. Ferrell**, 317 S.W.2d 688 (S.D. Ct. App. 2010), finding that probation was not a sentence, penalty or punishment for the purposes of appeal. (see appendix A for cases)
- Factors Determining Eligibility

31

Statutory Provisions and Existence of Discretion: Parole Statutes

PAROLE RELEASE:

Mo. Rev. Stat. 217.690 (see appendix B) (see **Anselmo v. Mo. Bd. of Probation and Parole**, Appendix A,) provides for parole release when, in opinion of Board, such release will not cause detriment to community or the parolee. Even then, release is within the "discretion" of the Board.

Inmates of Nebraska Penal and Correctional Complex, 442 U.S. 1, (1979) (no liberty interest in parole unless statute creates same)

Board of Pardons v. Allen (1987) (while mere use of "shall parole" in statute does not create liberty interest, the Montana statute mandated release unless certain findings were made and also used "shall" language)

FACTORS TO CONSIDER:

Most statutes, like Missouri's, give the Board very broad authority to determine suitability for release.

State v. King, 925 P.2d 606 (Wash. 1996). Board could consider the defendant's admission to other crimes during therapy in setting release date.

32

Treatment, Counseling, Therapy Issues

- Alford and nolo contendere pleas
 - **People v. Birdsong**, 937 P.2d 877 (Colo.App.1997), held that because the defendant was not informed that successful completion of therapy would require admission of underlying crime, on remand the sentencing court could do two things: (1) allow the defendant to withdraw Alford plea and plead anew; or (2) continue the defendant on probation, but inform him that admission would be a requirement.
 - Contrast **State ex rel Warren v. Schwarz**, 566 N.W.2d 173 (Wis. App.1997) where the court holds that an Alford plea promises nothing to a defendant and certainly did NOT limit the requirements the Dept. of Corrections could otherwise impose on an offender.

33

Probation Rescission and New Information

- Several cases hold that a court may "recall" an order of probation on grounds of "fraud" at sentencing. In most jurisdictions, the court retains the authority to modify a judgment for a certain number of days.
- Missouri cases, however, run contrary to this view. Though Mo. Rev. Stat. 559.115.2 (see appendix B) permits the court 120 days within which to evaluate probation eligibility under Missouri's "call back" provisions, this is a specific extension of the court's sentencing power. **State ex rel Popowich v. Conley**, 967 S.W.2d 294 (Mo. App. April 1998) suggests that once probation is granted, a judge can only revoke it based on violations occurring during the term of probation. He or she may not simply vacate the order of probation and order a sentence executed.

34

Parole Rescission and New Information Continued

- **In Re Johnson**, 41 Cal. Rptr. 449 (Cal. App 1995) Board may revisit a tentative parole release decision on grounds that parole was improvidently granted and rescind date based on public safety or factors that were not given adequate consideration at original proceeding, however, Board must make findings on these issues.
- **Ex parte Ellard**, 474 So.2d 758 (Ala. Sup. 1985) Board had inherent authority to rescind parole based on public outcry so long as due process was observed -- note however court does not say what process was due.
- **Ellard v. Alabama**, 824 F.2d 937 (11th Cir. 1987) State may declare grant of parole void, but it must be based on more than mere declaration of "new information" - - must have been clear departure from law that undermines penological interests -- failure to consider psych report was such departure.
- **Johnson v. Williford**, 682 F.2d 868 (9th Cir. 1982) Because parole officials were so grossly negligent in overlooking parole eligibility and because defendant had been problem free during 15 months of release, due process prevented "revocation".

35

Right to Counsel in Probation and Parole Eligibility Determination

- **Mempa v. Rhay**, 339 U.S. 128 (1967) held that defendant has a right to representation by counsel at time of sentencing.
- **Franciosi v. Michigan Parole Board**, 503 N.W.2d 903 (Mich.App.1998). Parole release decision must entail an assessment of the "inmate's" responses, not those of counsel.

36

Extensions and Modifications

- Modifications can be made to conditions of supervision any time during the supervision term. Suggested process would involve notice and an opportunity to object.
- An extension of the term is permitted under 559.016 (2010) for one year beyond the 5 year maximum term (up to six years) if defendant admits violation or court finds a violation. See **Starry v. State**, 318 S.W. 2d 780 (Mo. W.D. Ct. App. 2010)
- An extension need not be based on a finding that a violation has occurred. Moreover, under the Missouri Statutory scheme, a hearing is not required before the court may extend the probationary term. See **Andrews v. State**, 282 S.W.3d 372 (Mo. W.D. App. 2009); and **Ockel v. Riley**, 541 S.W. 2d 535 (Mo. Sup. 1976) (due process does not require notice and hearing before probation may be extended)

37

PART IV: CONDITIONS OF SUPERVISION

38

Authority to Impose and Delegation of Duty

- ┆ Need to look at statutory provisions to see exactly what it says about your authority to impose and enforce conditions. Crucial things to look for are:(1) Does it vest wide discretion in "you" to impose "conditions"? And (2) For what purposes does it allow you to enforce conditions?
- ┆ Missouri refers to public safety and offender's need for guidance and training
- ┆ Missouri law does NOT allow the P.O. to impose "conditions". This is strictly a function of the court or the board. If the court attempts to give you too much authority to impose conditions, then there may be a violation of separation of powers. See 559.021. 1. (Appendix B). Note, the defendant must be given the conditions in writing. Several courts have held that this is an "absolute" requirement.

39

Authority to Impose and Delegation of Duties cont'd.

- ┆ The general rule is that an agent's "instructions" or "directives" may augment or supplement "conditions", but they may not impose new and independent requirements, i.e., new conditions See **State v. Ornelas**, 675 N.W.2d 74 (Minn. Sup. 2004)
- ┆ "Conditions versus "Directives/Instructions". **Ackerman v. State**, 835 So.2d 354 (Fla. App. 2003) (Agent's directive which prohibited the defendant from being near school went beyond the "condition" which merely prohibited him from residing near school). Compare **United States v. Genovese**, 2d Cir. Court App. 2009, Lexis #3611, (condition of treatment simply left to the P.O. the functions of selecting specific program and time frame and did not improperly delegate court's authority).

40

Recommended Process to Observe When Imposing New Requirements

- Courts have approved a post-deprivation process which will satisfy requirements of due process. If you find it necessary to enforce a new "condition", issue the directive, notify the court or board and observe procedural due process.
- Suggested procedure
 - Notice to the defendant regarding new requirement in writing and acknowledged by the defendant
 - Notice to court or board regarding new requirement and recommendation that it be added as a condition of supervision
 - Notice to the defendant that he may contest the new requirement, but that he must adhere to it until hearing
 - Adequate documentation in file regarding the new requirement and factual basis for the need

41

General Tests for Validity of Conditions

- Early test used by courts was announced in **People v. Lent**, 541 P.2d 545 (Cal. 1975), in what is probably one of the worst sentences in jurisprudential history, to wit:
 - "A probation condition will not be held invalid ... unless it (1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not related to future criminality."
- To make matters worse, several courts began to use "or" in place of "and".
- The recent trend is to continue to give courts and parole boards broad discretion to impose conditions so long as those conditions reasonably relate to: (1) the defendant's offense; (2) his rehabilitation or treatment; (3) the protection of the victim or general public; (4) to the defendant's future criminality; (5) AND, more courts require that the condition be reasonably narrow in its scope consistent with its purpose. A critical question then becomes whether less intrusive methods would have accomplished the same result.
- **People v. Murillo**, 89 Cal. Rptr. 3d 530 (Cal. Ct. App. 2009). Condition requiring defendant to take all prescribed medication invaded defendant's privacy and was not reasonably related to the defendant's crime (sexual intercourse with minor) or defendant's rehabilitation. Case gives excellent discussion of "relation to goals of probation" issue. This case provides excellent example of how much courts rely on information provided to court by P.O.!!

42

General Tests for Validity of Conditions Continued

- 3 A "direct" relationship to crime of conviction is NOT required. **State v. Shepard**, 554 N.W. 2D 821 (N.D. Sup. 1997) (sex offender treatment was permissible condition for defendant who was convicted of mere burglary, where file noted his intent to commit sex related offense inside). See also **Mayorga v. State of Missouri**, et al, 442 F.3d 1128 (8th Cir. 2006), where defendant was required to undergo sex offender treatment based on facts set forth in the presentence report. Great discussion of types of immunity.
- 3 **United States v. Rodriguez**, 558 F. 3d 408 (5th Cir. 2009), holds that "no association with minors" condition was permissible, even though the offense was not sexual in nature, but merely an assault.
- 3 **People v. Patel**, 126 Cal. Rptr. 3d 855 (Cal. App. 2011), provides a good discussion of mens rea requirement of "scienter" for conditions relating to probationer's presence, possession, association, or "similar action"
- 3 Documentation is the key! Note importance of presentence report. Conley story about weekend jail time.

43

Conditions Limiting Association and Sexual Conduct

- 3 Although the general rule is that conditions concerning sexual activity must be narrowly drawn, some courts have approved very intrusive conditions.
 - **State v. Maland**, 864 P.2d 668 (Idaho App. 1993)(condition which prohibited rape defendant from dating anyone without his counselor's permission was valid).
 - **Ex Parte Alakayi**, 102 S.W.3d 426 (Tex. App. 2003) (condition which prohibited defendant from association with children under a certain age was valid even though condition prohibited defendant's contact with his own children).
- 3 Conditions which require a defendant to stay away from the victim or other felons or those who have contributed to criminal activity in the past are routinely approved by the courts

44

Conditions Limiting Association and Sexual Conduct Continued

- Where a condition is very invasive, the court may require it to be very narrowly drawn consistent with what it hopes to accomplish. **Houston v. State**, 852 So.2d 425 (Fla. App. 2003); (condition which required chemical castration was invalid because there was no medical determination that defendant would benefit from such treatment or that condition would achieve its intended purpose).
- Generally, however, courts are more willing to allow procreation restrictions on males. Compare **State v. Oakley**, 629 N.W.2d 200 (Wis. Sup. 2001) (condition that forbade dead beat dad from fathering any children unless he was able to demonstrate his ability to support same was permissible) with **People v. Pointer**, 199 Cal. Rptr. 357 (Cal. App. 1984) (condition that mother not conceive children while on probation was invalid as goal of protection could have been accomplished by less intrusive means). See also **Rodriguez v. State**, 378 So.2d 7 (Fla. App. 1979); **People v. Ferrell**, 659 N.E.2d 992 (Ill. App. 1995); **State v. Mosburg**, 768 P.2d 313 (Kan. App. 1989); and **Trammell v. State**, 751 N.E.2d 283 (Ind. App. 2001) over-turning "no-pregnancy" conditions.
- **United States v. Woods**, 5th Cir. Ct. App. Filed October 28, 2008. The condition which prohibited the defendant from residing with any person to whom she was not ceremonially married or related by blood was overbroad. This case contains a great discussion regarding association and residential conditions with citations from several other cases.

45

Conditions Imposing Detention Time

-- R.S.Mo. section 557.011 is the general statute that permits probation to be imposed and under what circumstances

-- R.S.Mo. section 559.026 provides for "shock probation" and anticipates that detention time may be imposed by a court based on a determination by a P.O. that the offender has violated a term of supervision

-- R.S.Mo. Section 217.718 permits a P.O. to impose detention as an alternative to revocation and imposes certain obligations

Discussion: Look at section 217.718 in the appendix. What issue or issues would you raise on behalf of a defendant under that statute? Note also the practicalities of jail space availability and the costs of same.

46

Banishment

- **Commonwealth v. Pike**, 701 N.E.2d 951 (Mass. 1999), provides excellent and thorough discussion about the invalidity of banishment condition because it did NOT serve the purposes of probation. First, not related to rehabilitation. Second, not related to protection of public. Finally, such conditions were contrary to public policy.
- **Commonwealth v. Luna**, Pa. Super. Ct. 2009, Lexis #35. Condition requiring illegal alien convicted of DWI to remove himself from Pennsylvania as a condition of parole was beyond state authority and contrary to rehabilitative purpose of probation.

47

Alcoholics Anonymous

- Because the program which the defendant was required to attend was deeply religious/spiritual (meetings open and closed with prayer, participants told to pray to god), the court held that the A.A. requirement violated Establishment Clause of the First Amendment. **Warner v. Orange County Department of Probation**, 115 F.3d 1068 (2d Cir. 1997).
- Court might have reached different result had defendant been given options. Thus, a good avenue here is to give the defendant an "array" of choices approved by you and let defendant choose.

48

Association

- ▣ **LoFranco v. U.S. Parole Commission**, 986 F. Supp. 796 (U.S.N.Y. 1997) (condition prohibiting defendant from associating with "outlaw motorcycle gangs was too vague, but defendant could be prohibited from associating with motorcycle gang of which he had been member because PSI chronicled the gang's contribution to the defendants use of drugs and criminal activity.)
- ▣ Note relationship between information in the presentence report and/or case file and the condition imposed.

49

Travel

- ▣ Conditions restricting travel are routinely permitted but where the conditions "banishes" defendant from certain geographic area, there had better be evidence in justification, like victim lives there and defendant does NOT live or work there. **People v. Brockleman**, 933 P.2d 1315 (Colo. Sup. 1997)

50

Search and Seizure and the Exclusionary Rule

- 3 **Griffin v. Wisconsin, 483 U.S. 868 (1987)**. "Special needs" doctrine permitted warrantless searches by the probation officer on less than probable cause. All the government need do is point to significant governmental interest and a reduced expectation of privacy to justify intrusion on less than probable cause.
- 3 **Pennsylvania Board of Probation and Parole v. Scott, 524 U.S. 357 (1999)** makes the exclusionary rule inapplicable to parole revocation proceedings BUT, continued imposition of well drafted conditions in this area is a must for two reasons: (1) State provisions re search and seizure; and (2) Searches frequently uncover evidence we want to use, not in a revocation proceeding, but in a new criminal trial.
- 3 **U.S. v. Knights, 534 U.S. 112 (2001)**. Probationers have a reduced expectation of privacy that will permit police officers to conduct warrantless searches under certain circumstances if such searches are based on reasonable suspicion.

51

Search & Seizure Continued

- 3 **Samson v. California, 547 U.S. 843 (2006)**. A suspicion-less search conducted pursuant to a statute permitting same as a condition of parole release is permissible so long as it is not arbitrary, capricious, or done to harrass. Thus, police search of known parolee which produced drugs was not unconstitutional.
- 3 Home visits distinguished from searches and seizures in **United States v. Reyes, 283 F.3d (2d Cir. 2002)**, as being routine and less intrusive than searches. "Searches" are more intrusive and are carried out to find specific evidence of violations. **Reyes** case provides thorough discussion of role of U.S.P.O.
- 3 Condition authorizing warrantless searches and seizures permitted police to enter probationer's home without any individualized suspicion. The government has a legitimate interest in assuring that probationers are not committing more crimes. **United States v. King, 672 F.3d 1133 (9th Cir. March 2013)**

52

Search and Seizure Continued

- Compare cases from Iowa:

State of **Iowa v. Baldon** (2013) where Iowa Supreme court rejects argument that "consent" to search condition of parole waived any expectations of privacy retained by parolee. Consent was clearly not "voluntary".

State of **Iowa v. Kern** (2013), where court rejects "special needs" doctrine, because (a) search too entangled with law enforcement; and (b) nothing suggested that warrant was not practical.

53

Treatment and Counseling

- Alford and *Nolo Contendere* Pleas (See above)
- Self-Incrimination and Miranda (see polygraphs, below)
- **United States v. Bee**, 162 F.3d 1232 (9th Cir. 1998). The condition which prohibited the defendant from possessing sexually stimulating material which was deemed inappropriate by treatment staff or P.O. did not infringe on defendant's first amendment right of free speech.

54

Polygraphs

- 1 **Minnesota v. Murphy**, 465 U.S. 420, 104 S.Ct. 1136 (1984). The protections of Miranda are not "self executing" in the context of a probation or parole interview. Thus, a P.O. need not "Mirandize" a probationer prior to routine interviews. Rather, a defendant must assert the right. Where a defendant asserts the right, probation or parole may not be revoked where a defendant can demonstrate that the right was asserted in the face of a genuine likelihood of criminal prosecution.

55

Points of caution in relation to **Minnesota v. Murphy**

- 1 There clearly could be situations where the PO is conducting "custodial interrogation" within the meaning of Miranda.
- 2 Agents must be careful how they treat a defendant who refuses to answer by asserting the right to be free from self-incrimination. However, the burden will be on the defendant to demonstrate that his assertion of the right was "legitimate."
- 3 Distinction between using polygraph as a supervisory tool versus using either the results or the defendants refusal to submit as basis for revocation.
- 4 See **U.S. V. Vreeland**, 684 F.3d 653 (6th Cir. 2012). The defendant's rights under the Fifth Amendment did not vest him with a right to lie to his P.O., even in the face of questions the answers to which would have subjected him to probation revocation. The defendant could properly be prosecuted for providing false statements to a federal agent. Fifth amendment rights are not self-executing in the context of probation interviews.

56

Admissibility of Polygraph Results

- Generally inadmissible in civil and criminal trials because courts view as unreliable and dependent on administrator of test
- **Leonard v. State**, 385 S.W.3d 570 (Tex. Cr. App. 2012)
 - Testimony from therapist that defendant was dismissed from treatment because five polygraphs indicated defendant was not being truthful and revocation court's reliance thereon was error. Original opinion was later withdrawn and matter reheard. Court held that polygraph results were NOT admissible and order of revocation was reversed.
 - "The history of this Court's dealings with polygraph evidence is long but not very complicated. For more than sixty years, we have not once wavered from the proposition that the results of polygraph examinations are inadmissible over proper objection because the tests are unreliable. . . . Whether requiring the appellant to submit to a polygraph examination is a reasonable condition is an issue we are not called on to decide today. What we decide is that any such requirement does not justify admitting legally unreliable evidence."
- Note two problems: One is reliability – the other is hearsay
- P. S.: Subsequently the Texas Court of Appeals required that the order of revocation be set aside because the defendant's term of supervision had ended and because the trial court order extending supervision had been improperly entered. See **In re Leonard**, 402 S.W.3d 421 (Tex. App. 2012)

Penile Plethysmographs

- If a defendant contests such a condition on self-incrimination grounds, what result? On Fourth Amendment grounds, what result?
- In **Walrath v. United States**, 830 F. Supp. 444 (U.S.D. Ill.1993), a condition requiring the defendant to undergo periodic penile plethysmograph testing was upheld against such claims. The court did envision constitutional problems, however, where the condition allowed wider use beyond therapy/rehabilitation and public protection.
- The defendant's supervision was later revoked by the Parole Commission after the defendant failed to undergo testing when the facility refused to test him after being presented with the defendant's refusal to waive civil liability of testing facility. On review by the 7th Circuit, the Court upheld the revocation, finding that the defendant's position effectively prevented testing in direct violation of a condition to which he had agreed. See **Walrath v. Getty**, 71 F.3d (7th Cir. 1995).
- In a 1993 report to the Texas Legislature, Glen Kercher, Ph.D., concluded that while penile plethysmography is reliable in assessing arousal patterns and a valuable therapeutic tool, it cannot be used to determine if person engaged in such behavior or as a predictor of recidivism.

Urinalysis and Breathalyzers

- These conditions are routinely upheld by the courts. The major issue usually comes in the form of hearsay objections to admission of lab reports. Most courts, however, permit "reliable" hearsay in revocation proceeding. See, however, **State v. Austin**, 685 A.2d 1076 (Vt. Sup. 1996), where Court says that finding of good cause is nonetheless required.
- Note analysis in above situation might go something like this:
 - How critical was the evidence? Was it merely cumulative?
 - What is good cause? Delays, expense, etc.?
 - Did the defendant have alternatives? Could he have subpoenaed the author?

59

Electronic Monitoring— G.P.S. & Home Detention

- Not much litigation going on in this area --- surprising?
- Expert witness not necessary to establish exactly how computer home monitor system worked, however, some evidence regarding how the computer equipment worked was necessary before the court would receive printouts into evidence. **J.J.C. v. State**, 792 N.E.2d 85(2003).
 - Does this mean someone like me could testify regarding how it worked? Very doubtful!!!
- Supervising Officer could testify about what computer "hits" meant. **State v. Rivers**, 945 P.2d 367 (Ariz. App. 1997).
- Credit for time served? Most courts have held that a defendant is NOT entitled to credit for time served on electric monitoring.
- **Chism v. State**, 813 N.E.2d 402 (Ind. App. 2004) provides a good discussion of revocation based on results of "hit" from monitoring device indicating that defendant was away from home. The court rejects notion that GPS was permissible under Indiana statute, because GPS provides much broader range of information than defendant's mere presence in or near home. Under Indiana law, GPS was NOT a permissible condition.

60

G.P.S. Monitoring, continued

- ▣ Massachusetts court recently upheld a claim that GPS condition of probation and parole was imposed in violation of ex post facto provisions. (**Massachusetts v. Goodwin**, 933 N.E. 925 (Mass. Sup. 2010)
 - "Punitive or Remedial?" (1) Does it apply to something that is already a crime? (2) Does sanction come into play only upon finding of scienter (blameworthy knowledge); (3) Does it involve an affirmative disability or restraint? And (4) Does its operation promote traditional goals of punishment, i.e., retribution and deterrence?
 - Weighing these factors and given absence of remedial or administrative purpose, the court found that it was "punitive."
- ▣ Opposing view expressed in **Doe v. Bredesen**, 507 F.3d 998 (6th Cir. 2003). Surveillance components usually are NOT considered punitive. (Life time supervision considered as "less harsh" than other traditional dispositions. **Smith v. Doe**, 538 U.S. 84 (2003)

61

GPS Continued

- ▣ **United States v. Jones**, 565 U.S. ___ (2012) (unanimous court held that attaching GPS device to automobile constitutes invasion of privacy and must be supported by a warrant)
- ▣ Note difference between ex post facto analysis and Fourth Amendment claim

62

Restitution, Willful Violations & Indigents

- **Bearden v. Georgia**, 461 U.S. 660 (1983), sets forth the relevant law in this area. Court must first determine defendant's ability to pay. If defendant has ability, revocation may ensue. If NOT, then granting authority must consider whether penal objectives can be satisfied by alternate means. Only AFTER alternate means considered and found ineffective can revocation proceed for someone who did not have ability or means. What are alternate means?
- Does bankruptcy discharge restitution obligations? See **Kelly v. Robinson**, 479 U.S. 36 (1986) (restitution not discharged under chapter 7 of bankruptcy code) and **United States v. Colasuonno**, ___ F.3d ___ (2nd Cir. 2012) (same result and holds that defendant's reliance on bankruptcy attorney's advice to the contrary did not provide a defense because defendant had not fully and honestly put all facts in front of bankruptcy attorney).

63

Computer and Internet Restrictions

- More and more courts are suspicious of conditions that sweep too broadly in restricting computer and internet access.
- In **United States v. Crandon**, 173 F.3d 122 (3d Circuit 1999), the defendant was convicted of receiving child pornography via interstate commerce. The court upheld a condition that defendant not "possess, procure, purchase or otherwise obtain access to any form of computer network, bulletin board, Internet, or exchange format involving computers unless specifically approved by the U.S.P.O."
- In **United States v. White**, 244 F.3d 1199 (10th Cir. 2001), the court struck down the exact same condition in relation to a similar case because a condition barring all access to computers or internet was simply too broad in light of all the legitimate computer and internet uses.
- **United States v. Perazza-Mercado**, 553 F.3d 65 (1st Cir. 2009). Total ban on internet use and possession of pornography was improper, given lack of nexus between the conditions and the defendant's crime (sexual contact with minor) and considering importance of computer and internet use. Court gives excellent discussion on other cases on the issue.
- Much of the differences can be explained from a perspective on how you view computers. Note also that "total" bans on other things related to a crime would not be allowed. Recommendation is that any condition be narrowly drawn and that staff become familiar with use and limits of spy ware.
- **United States v. Albertson**, 645 F.3d 191 (3rd Cir. 2011), applies a three-part analysis to claims of overbreadth: breadth of the condition; the duration of the condition; and the severity of the defendant's criminal conduct. This court found a 20 year restriction on internet use to be unreasonable.

64

Computer and Internet Conditions Continued

■ In **Doe v. Prosecutor, Marion County**, 705 F.3d. 694 (Jan., 7th Cir. 2013). Indiana Code § 35-42-4-12 prohibited certain sex offenders from knowingly or intentionally using: a social networking web site or an instant messaging or chat room program that the offender knew allowed a person who was less than 18 to access or use the web site or program. The 7th Circuit found that this law violated the free speech clause because it was too broad and not narrowly tailored to the problem of keeping sex offenders from communicating with those under 18. First, other statutes already punished adults who engaged in communication with children for sexual purposes. Second, supervised release restrictions could prohibit internet use on a case-by-case basis that would not be over-inclusive.

65

Sweat Patches and other Drug Detection Methods

■ **United States v. Meyer**, 483 F.3d 865 (8th Cir. 2007) The court noted that sweat patch results were a generally reliable method of determining whether an offender has violated a condition of probation. While there might be some cases wherein an offender could offer compelling reasons to believe the sweat patch was in error, district courts were to analyze these claims on a case-by-case basis. Sandra Day O'Connor sat by special designation to hear the case.

- Interlock Devices
- Saliva Swabs
- Urinalysis
- Breathalyzers

66

Medical Marijuana

- Missouri Does Not Recognize Medical Marijuana – but watch for constitutional attack in this area.
- **State v. Nelson**, 195 P.3d 826 (Mont. Sup. 2008). Condition prohibiting defendant from possessing marijuana except in pill form violated Montana Medical Marijuana Act because Act permitted a qualifying patient to grow and possess certain amounts of marijuana.
- Note also that **Nelson** Court held that condition requiring defendant to obey all laws was invalid insofar as it suggested the possibility of revocation based on violation of federal law.
- Dissent by Judge Rice would have upheld the conditions.

67

Findings Re Conditions

- **United States v. Siegel**, 753 F.3d 705 (7th Cir. 2014). Judge Richard Posner provides a great discussion of need for specific findings by sentencing judge regarding the conditions imposed and the importance of the probation service in recommending sufficiently narrow conditions and providing the social-scientific basis for such
- He is someone who understands what the role of the PO *could* be, as evidenced by the following quote.

68

Quote from Posner

"Judges are limited in their ability to look behind the recommendations of the probation officers. The academic studies of recidivism are unfamiliar to most judges and often difficult for a judge who lacks a social-scientific background to evaluate. And it is doubtful that even experienced judges, who have sentenced a great many criminals, acquire from that experience a sophisticated understanding of the likely behavior of convicted criminals upon their release from prison and how that behavior can be altered by imposing post-release restrictions before, often long before, a prisoner's release.

So it is both inevitable and proper that judges give weight to the probation service's recommendations regarding what conditions of supervised release to impose. But how much weight? Normally the recommendations in the report are those of a single probation officer, and the scientific basis (if there is a scientific basis) of his recommendation is not disclosed in his presentence report. Probation officers receive only limited training in the duties of their job (consisting primarily of six weeks at the Federal Probation and Pretrial Services Training Academy, though there is follow on training as well). (Citations omitted)

Sentencing judges don't always rely entirely on the probation officer's recommendations of conditions of supervised. The conditions the judge decides to impose may be an amalgam of the recommendations in the presentence report, (rarely) the recommendations of the prosecutor and the defense lawyer, and the judge's intuitions. But often judges seem not to look behind the recommendations, as suggested by the fact that in his sentencing statement the judge may recite the conditions of supervised release that he is imposing without giving reasons for why he imposed those particular conditions."

PART V: PAROLE & PROBATION REVOCATION

What did *Morrissey v. Brewer* and *Gagnon v. Scarpelli* really mean?

- ┌ Does the defendant have the right to Counsel?
Note three sources of right to counsel under the Constitution.
- ▣ Is a Preliminary Revocation Hearing Constitutionally Required in ALL Revocations ?
- ▣ The "Two" Stages to a Final Revocation Hearing
 - (1) do the facts support the alleged violation?
 - (2) if proven, do the violations call for revocation? (see argument in *Hoover v. Boehm* case)

71

What did *Morrissey & Gagnon* Really Mean (cont'd)

- ▣ Notice of Specific Violations Alleged
- ▣ Issues not alleged in specific alleged violations?
 - *United States v. Warren*, 720 F.3d 321 (5th Cir. July 2013)
 - ┌ Reaffirms two important inquiries in revocation process – one to determine if violations occurred, one to determine if violations merit revocation
 - ┌ On the second issue, revocation court's reliance on issues which were NOT alleged in petition to revoke was NOT improper. Great language in this case re the importance of P.O.'s assessment of defendant's behavior while on probation. "Deciding what to do about a violation once it is identified, is not purely factual but also predictive and discretionary. The factors entering into these decisions relate in major part to a professional evaluation, by trained probation or parole officers, as to the overall social readjustment of the offender in the community, and include consideration of a number of variables ..."
 - ┌ Allegations in report re "unsuccessful" urine tests were not improperly considered by the revocation court.

72

What did *Morrissey v. Brewer* and *Gagnon v. Scarpelli* really mean?

- Confrontation, Cross-Examination and Good Cause
 - Four essential things to remember in this area: (1) How reliable is the hearsay? (2) Are there alternatives to face to face confrontation? (3) Does good cause exist for not allowing confrontation? (4) How critical was the hearsay to the revocation process?
 - For "good cause", hearing officers should be wary of mere cost or time, unless those costs are substantial
- In criminal trials, the following are critical cases: ***Crawford v. Washington*** (2004) (changes analysis from "reliability" to "testimonial". If statement IS testimonial, then declarant MUST be unavailable and defendant must have had opportunity to cross examine; ***Melendez-Diaz v. Massachusetts*** (2009) (Lab analysis affidavits were "testimonial" and thus admission without opportunity for cross-examination violated defendant's rights).
- Do *Crawford* and *Melendez* control revocation? Probably not? See ***U.S. v. Barazza***, 318 F. Supp. 1031 (S.D. Cal. 2004) (*Crawford* not applicable to revocation) and ***U.S. v. Martin***, 382 F.3d 840 (8th Cir. 2004) (government demonstrated "good cause" for not recognizing defendant's "limited" right of confrontation because victim of assault expressed fear of the defendant, had refused to testify at his criminal trial, and her statements to a medical doctor were reliable)

73

Confrontation Continued

- ***John v. U.S. Parole Commission***, 122 F.3d 1278 (9th Cir. 1997). While defendant's new conviction obviated the need for a preliminary revocation hearing, at final hearing the commission still had to determine whether continued release was appropriate. Because revocation based on a new conviction was NOT automatic, the defendant had the right to confront and cross-examine the rape victim unless good cause existed for not allowing such. Traditional face to face confrontation not required, depositions and affidavits might be used. Also, the court noted that the defendant had made threats to the victim previously and that this might suffice for "good cause " not to allow face to face confrontation. Court also suggested that previous threats to the victim might provide requisite good cause for not allowing direct confrontation and cross-examination.

74

Confrontation cont'd

- In **State v. Casiano**, 667 A.2d 1233 (R.I.Sup. 1995) Rhode Island Supreme Court holds that the admission of a child's hearsay statement did not violate the defendant's right of confrontation and cross-examination because the hearsay was reliable and good cause existed for NOT permitting face to face confrontation. A psychologist testified that it would have been very detrimental for the child to be required to testify against his mother.

75

Confrontation Cont'd

- **McBride v. Johnson**, 118 F.3d 432 (5th Cir. 1997) discusses the reliability of hearsay and good cause for not allowing confrontation and cross-examination. The court suggests that where hearsay is corroborated or otherwise reliable, revocation may rest on such. In the present case, however, the hearsay came from a single witness without independent corroboration. Furthermore, mere fact that the witness was in another state did not establish "good cause" for not allowing confrontation and cross-examination.

76

Confrontation Continued

- **State v. Rivers**, 945 P.2d 367 (Ariz.App. 1997). Testimony from PO is sufficient to establish operation of computer set up even though the P.O. was not "expert" re computers.

77

Confrontation Continued

- **Ex Parte Taylor**, 957 S.W.2d 43 (Tex.Crim.App.1997). Defendant's right to confront and cross examine wife/victim and sole witness was not violated where hearing officer noted trauma if victim testified AND defendant cross examined by submitting questions to hearing officer and hearing officer had opportunity to observe demeanor of missing witness. It is essential that good cause be established and that the reliability of the evidence be examined.

78

Confrontation and Hearsay in Missouri

- **In Re Carson v. Pierce**, 789 S.W.2d 495 (Mo. Ct. App. S.D. 1990). The use of unsworn & unsigned lab report and probation violation report indicating urinalysis testing positive for cocaine violated the right to confrontation protected by due process – order of revocation reversed.
- **State ex rel Mack v. Purkett**, 825 S.W. 2d 851 (Mo. Sup. 1992). Use of parole reports relating what prior parole reports, police reports and lab reports contained without finding of “good cause” violated the defendant’s due process rights. Defendant restored to parole.
 - Alternatives: (1) Voluntary appearance of witness; (2) depositions; or (3) preliminary hearing transcript.
 - Record silent as to alternatives and efforts to obtain
 - Exact boundaries of right of confrontation at revocation are “imprecise”
 - Factors to consider in determining proper use of hearsay: (1) Why is witness appearance undesirable or impractical? (2) Reliability of hearsay; (3) defendant’s assertion of accuracy of the hearsay presented.
- Court rejects claim that lab reports and parole reports are generically unreliable!

79

Confrontation continued (not in your handouts)

- In **State ex rel Hoover v. Boehm**, __ S.W.2d __ (2004) the petitioner’s brief alleged two flaws in the revocation process. First, that reliance on hearsay in the form of a probation report denied the defendant the right of confrontation. Second, that the revocation court failed to observe the requirements of §559.036.4 (2000) when she did not make specific findings that violations committed warranted revocation.
- Merits of the case never heard. Writ denied without opinion.

80

New Offenses

- ▣ New conviction is NOT a necessary prerequisite to revocation based on a new offense. **State ex rel Carrion v. Ohio Adult Parole Authority**, 687 N.E.2d 759 (Ohio 1998), holds that unless all factual support for the revocation is removed, parole may be revoked even though criminal charges are dismissed, the defendant is acquitted, or the conviction is reversed on appeal.
- ▣ Revocation may also rest on a defendant's plea of nolo contendere to a new offense. **State v. Evans/State v. Lewis**, 508 S.E.2d 606 (W.Va. 1998)
- ▣ A point to remember here is that revocation MUST have underlying factual support. Thus, SOME evidence must be in the record to support a conclusion that the defendant has violated his probation.
- ▣ Most courts hold that a mere arrest, without more, is not sufficient.

81

Insanity and Willful Violations

- ▣ **United States v. Woods**, 944 F. Supp. 778 (U.S.D. Minn. 1996), points out that while mental competency may be a factor in determining whether a defendant will remain at liberty, it is not an issue in determining the defendant's "responsibility" for violation of supervision. **Patterson v. State**, 659 N.E.2d 220 (Ind.App. 1995); 18 PPLR 59 (April 1996), basically makes the same point, holding that while insanity/mental competency may be a factor in determining if revocation is warranted, it is not a complete defense. Note, Patterson case also canvases cases from other jurisdictions dealing with the issue.
- ▣ The general rule here is that insanity and mental competency probably will NOT serve to insulate a defendant from probation or parole revocation.
- ▣ CAUTION --- the reach of such decisions is limited to those situations where the probationer poses a risk to self or others. **Bearden v. Georgia**, 461 U.S. 660 (1983) requires further inquiry where the violation was based on a failure to pay restitution.

82

Willful Violations Continued

- 1 **State ex rel Nixon v. Campbell**, 906 S.W.2d 369 (Mo. Sup. 1995). The discontinuation of the custodial treatment program in which defendant was enrolled and recommendation of primary therapist that defendant be placed in a secure setting permitted revocation of defendant's probation.
- 2 To reconcile Campbell with cases like Bearden, two points should be noted: (1) in Campbell the defendant's probation was part of a plea agreement; and (2) Campbell's offense behavior involved risks to the community, while Bearden's did not, and (3) there were no other custodial sex offender treatment programs available.

83

Alford and Nolo Contendere Pleas and Requirements of Admission of Participation in Criminal Offense.

- 1 **Covington v. State**, 938 P.2d 1085 (Alas. App. 1997) and **Marcoullier v. Warden**, 666 A.2d 977 (N.H. Sup. 1995) (supervision may be revoked based on defendants refusal to admit involvement in present offense).
- 2 **State v. King**, 925 P.2d 606 (Wash. Sup. 1996) (board could consider the defendants admission to other crimes during therapy in setting release date).

84

Double Jeopardy and "Recharging" Violations

- **Person v. Pa. Bd. Of Probation and Parole**, 701 A.2d 1381 (Pa. Cmwlth. Ct. 1997) Where administrative regulation was silent on such procedure, Board could properly charge the parolee with same violations that had been disposed of in his favor in the preliminary revocation hearing. Moreover, second hearing was NOT untimely where second warrant was issued and time for hearing was counted from date of issuance of second warrant.

85

PART VI: EMPLOYER – EMPLOYEE RELATIONSHIPS

86

Major Areas of Discrimination & Litigation

Race & National Origin

Religion

Sex

Age

Equal Pay

Disabilities

87

Race, Religion and Nat'l Origin

- Critical elements of the Civil Rights Act of 1964
<http://www.eeoc.gov/policy/vii.html>
- The elements of equal protection analysis: Suspect, non-suspect and semi-suspect classes
- Distinctions in treatment based on race, national origin or religion are actionable and almost always successful in some way, i.e., equitable relief, etc.
- "National Origin" includes birthplace, ancestry, culture, or linguistic characteristics common to a specific ethnic group
- Note, requiring only certain group to show employment verification is discriminatory and actionable

88

Sex Discrimination in Employment

- Major Areas of Sex Discrimination
 - Housing
 - Education
 - Equal pay
 - Pregnancy
 - Employment (Excellent article in Volume 27, Number 2, Spring 2003 issue of Perspectives: The Journal of the American Probation and Parole Association entitled "*Addressing Sexual Misconduct in Community Corrections*")

89

Sex Discrimination Continued

- The "I was just kidding" defense paves the road to hell!!!!
- Real defenses for employers & supervisors in this area are:
 - Employer or supervisor exercised reasonable care to prevent
 - Corrected known problem promptly
 - Victim failed to take advantage of preventive or corrective opportunities
 - Supervisor did not know and could not have known of problem
- Promises of confidentiality should NOT be given to the complainant. The law requires prompt investigation and remedial action. Even where "victim" requests inaction, the employer can be liable for failing to take appropriate steps. A promise of confidentiality can create three problems:
 - "Victim" can deny that he/she requested confidentiality or that no action be taken
 - Employer is obligated by law to take action anyway
 - Inaction and/or confidentiality might cause others to be victimized by same perpetrator – so employer-supervisor becomes part of the "problem."

90

Sex Discrimination Continued

- "Atmosphere" in office can form basis for legitimate complaint (Fire Station "Play"). Following are examples of behavior that should be discussed and prohibited:
 - Distribution or posting of sexually explicit material
 - Creating sexually offensive drawings or graffiti
 - Sex-related jokes
 - Sex-related comments or derogatory references to opposite sex
 - Organization functions at strip clubs
 - Strippers attending office functions
 - Sex-related gifts

91

Do's and Don'ts

- Do NOT presume staff are aware of boundaries
 - Do set limits with specific definitions and examples of "inappropriate" behavior
- Do NOT presume this is largely a "male" issue
 - Do realize that the problem of sexually inappropriate conduct occurs not only in male- female relationships, but also in male-male supervisory relationships; female-male supervisory relationships (note escape at Cross Roads Correctional Center) and female-female supervisory relationships.
- Do NOT presume that victims "consent" to the activity or they "bring it on" themselves.
 - Employment and health care are at the core of any employer-employee relationship. Thus, there is ALWAYS an implied element of "coercion".

92

Do's and Don'ts Continued

- ▮ Do not presume that the perpetrator will be the new, inexperienced employee.
 - The statistics show that it is quite the opposite. Victims report that inappropriate relationships and activity has gone on for years. The longer it goes on, the closer we get to supervisor liability.
 - Frequently the new employee is "inducted" into the mood or atmosphere of the office – "We tolerate this here!" In an attempt to "fit in", the new employee may push the envelope of inappropriate conduct or be reticent to complain.

93

Avoiding Liability for Sexual Misconduct

- ▮ Establish a zero tolerance policy and make sure your staff is aware of agency policy
 - In writing
 - Well published
 - Referred to frequently
- ▮ Specifically define inappropriate conduct
 - Sexually oriented jokes
 - Obscene gestures
 - Lewd comments
- ▮ Require employees to report inappropriate conduct
- ▮ Make sure policies are consistent and updated
- ▮ Require sub-contractors to adopt zero tolerance
- ▮ Orient new staff and provide regular training for seasoned staff

94

Avoiding Liability For Negligent Hiring

- Follow procedures for interviewing
- Check references before hiring
- Where applicable, utilize criminal checks, background checks and fingerprint records
- Be thorough in your interviews and applications
- Review application material thoroughly

95

Avoiding Liability in Employee Discipline Situation

- Follow policy concerning the discipline process
- Clarify employee job duties, position descriptions and be sure that instructions are understood
- Review policies with employees (especially when policies have been changed) and document the review
- Maintain accurate training records, conduct ongoing training as necessary, and observe employees to be reasonably certain that they are performing as trained
- Ensure that employees know and understand rules and procedures
- Utilize progressive discipline, including coaching, training, reprimand and finally suspension and/or termination if behavior does not improve.

96

Age Discrimination

- Law protects both employees and applicants
- Prohibits differential treatment based on age in the following areas: hiring, firing, layoffs, promotion, training, benefits, compensation, and job assignments
- Ditch the "old codger" jokes --- they are NOT funny!

97

Disabilities Discrimination

- The law prohibits discrimination against an "otherwise" qualified individual based on the individual's disability.
- A "disability" is any physical or mental condition that substantially limits a major life activity.
- There is a duty on the part of employers to make "reasonable" accommodations, i.e., those that can be made without undue hardship for the employer. Expense can be a factor depending on its impact on the employer.
- Defenses here are usually that the individual will be "unable" to perform the tasks of the job even with reasonable accommodation.

98

Avoid These Common Supervisor Mistakes

- ❑ Failing to check references
- ❑ Failing to take action on reported problem
- ❑ Failing to provide feedback
- ❑ Failing to train staff
- ❑ Failing to provide instructions/direction to staff
- ❑ Failing to document problems
- ❑ Failing to provide adequate supervision

99

PART VII: LEGAL INVESTIGATIVE SKILLS, REPORT WRITING AND TESTIMONIAL DEMEANOR

100

Report Writing in the Legal Context

- ▣ Know the file and the case. Where file is large, have an index available.
- ▣ Relationship between the defendant's behavior and what you want to do.
- ▣ Consistency in allegations and suggested "findings".
- ▣ Findings of fact --- In your report, give the court the facts on which findings can be entered and logical conclusions based on those facts.
- ▣ Avoid use of initials and acronyms.
- ▣ Your reports should connect the dots
- ▣ Taking the file to court? Remember the confidentiality provisions of R.S.Mo. §559.125. Check with legal counsel.

101

Legal Investigative Skills

- ▣ Aunt Bea and Robo Cop
- ▣ Who, what, when, where, why, how – names, dates, places, times, addresses, phone numbers, e-mail addresses, hat sizes ---- Details, Details, Details. Pretend that you are dead!
- ▣ Keep EVERYTHING --- "The Verdict"
- ▣ Avoid "conclusions" – stick to the facts.
- ▣ Avoid use of terms like "suspect" or "perpetrator". Use names unless the names become confusing.
- ▣ Write in chronological order!
- ▣ Summarize past reports for the reader.
- ▣ Spell check and proof !!!!!

102

Testimonial Demeanor

- Prepare! Prepare! Prepare! – Yourself AND your attorney
- Never, never, never lie or “adjust facts”.
- Good Nervousness versus Bad Nervousness --- Try to be the “natural” you.
- Visit the Arena and Know the Lay of the Land
- All eyes on you as you take the oath.

103

Testimonial Demeanor Continued

- Over use of “Sir” or “Ma’am.”
- Okay to say good things about the defendant.
- Casual, confident, and competent --- not smug. No vested interest in outcome – no ax to grind.
- Do not look to your attorney or co-defendant for your answer
- Recommend looking at jury or judge, but do not overdo it. It is MOST natural to look at the person who asked you the question.

104

Testimonial Demeanor Continued

- Watch your poise on the stand. Nervous habits can be distracting and irritating. Relaxed professional demeanor.
- Take out the gum!!
- Avoid running on in response to opposing side's questions.
- Avoid running on in response to your side's questions, unless your attorney is an idiot --- then you may want to "help".
- "Have you discussed your testimony with your attorney?" "Did he tell you . . .?"
- Do not let a foolish attorney or judge put a guilt trip on YOU.

105

Testimonial Demeanor Continued

- It is PERFECTLY alright to say "I'm sorry, I don't remember the exact date. May I refer to my notes?"
- DO NOT be afraid of your own recommendations.
- Do not answer with "uh huh" or "huh uh" or with a nod.
- Do not interrupt the person asking you a question and do not "anticipate" the question.
- Above all do NOT interrupt or argue with the judge.

106

Testimonial Demeanor Continued

- ▮ If you do not understand a question, say as much, but be careful not to overdo the "can you repeat the question?"
- ▮ "Do I have to answer that question?"
- ▮ "You and Mr. Defendant engaged in serious altercations in your office, didn't you?" " You raised your voice to him?" Do NOT try to evade the question! But you might try to qualify the question in a very brief and direct way.
 - ▮ "Yes, I did raise my voice, because I felt that Mr. Jones was not listening to me."

107

Role Play

- ▮ Grade witness in following areas:
 - Physical Presence. How did the witness present herself? Did she appear nervous? Overly confident? What did her body language convey? Any unconscious annoyances or habits?
 - Command of Facts. Did she tell a good story? Did it have a logical flow? Did she try to evade questions? Did she justify changes in approaches to the case with facts? Did she know the file?
 - Voice and Demeanor. How was the volume of her voice? Did she look at the questioner or did she look away? Did she look at the appropriate people or did she fix her gaze to a particular person? Was this the appropriate person?
 - Attitude. Did he over-use sir and ma'am? Was he appropriately respectful? Was he ever condescending? Did you want to help him at any time? Did he ever look like an advocate for one side or the other?

108

A Final Word

- Question and Answer
- Remember you ARE Missouri Probation & Parole
 - No other agency depends so much on how its personnel implements policy
 - Missouri is poised to place even MORE emphasis on Community Corrections in the years ahead
 - How you interact with each other – with other professionals --- with offenders --- with the public will be absolutely critical
 - A lot of folks are counting on you!
- Please fill out the evaluation sheets and please include comments!

THANK YOU !!!!!

APPENDIX A
CASE INDEX 1996-2015

CIVIL LIABILITY -----	1
CONDITIONS -----	1
PAROLE ELIGIBILITY -----	1
PRESENTENCE REPORTS -----	2
PROBATION ELIGIBILTY -----	3
PROBATION RESCISSION -----	5
PROBATION REVOCATION -----	5
SENTENCING -----	12

CIVIL LIABILITY (Confidentiality)

Richardson v. Sherwood, 337 S.W.2d 3d 58 (W.D. 2011). Richardson was under probation supervision by defendant Sherwood pursuant to an interstate agreement. While Richardson was serving his term of probation, P.O. Sherwood learned from the offender's treatment provider that Richardson was possibly using drugs. After Sherwood confronted Richardson with her suspicions, Richardson allegedly denied then admitted to drug usage. In a phone conversation with Richardson's employer, Ms. Sherwood allegedly revealed information about Richardson's drug use. As a result, Richardson was terminated from his employment as an over-the-road truck driver. Richardson brought suit against Sherwood claiming that Sherwood tortiously interfered with his employment by revealing information to his employer that was made confidential by R.S.Mo. 559.125. The jury awarded damages to plaintiff Richardson. Sherwood appealed claiming that, as a probation officer, she was entitled to assert official immunity.

On review by the Missouri Court of Appeals for the Western District, the court disagreed that Ms. Sherwood was entitled to assert official immunity for her conduct. Official immunity is available for certain state actors who are engaged in "discretionary" functions. The purpose of such immunity is to protect state actors who are vested with discretionary decision making. While the court found that Missouri probation officers exercised considerable discretion regarding many facets of their job, in the present case a specific statute did not permit discretion. By its express terms, the court found that R.S.Mo 559.125 made the information disclosed in the present case confidential. Thus, the duty to keep the information confidential was "ministerial" in nature permitting no exercise of judgement as to the release of such information. Because official immunity is not accorded those acts by public officials deemed ministerial in nature, Ms. Sherwood was not entitled to this instruction to the jury.

The award of damages in the amount of \$74, 045.00 for lost earnings was affirmed.

CONDITIONS

St. Louis County v. Corse. 913 S.W.2d 79 (Mo. App. Dec. 1995). The defendant was convicted for violating various zoning ordinances. Among the conditions of probation was a condition that the defendant abate the ordinance violations by a certain date. The defendant claimed, inter alia, that this condition was invalid.

On review by the Missouri Court of Appeals, the court disagreed. Under Section 557.011.2(1) through (5), a trial court has discretion to impose a fine; sentence a person to a term of imprisonment; suspend the imposition of a sentence, with or without placing a defendant on probation; pronounce a sentence, then suspend its execution, placing the person on probation; and imposing conditions of probation. The trial court also has discretion to grant probation. Under these provisions, the trial court was authorized to order the defendant to abate the violations by a certain date, as a condition of probation. The defendant was free to accept the punishment or probation on the terms offered. The court found no abuse of discretion in the condition imposed.

PAROLE ELIGIBILITY

(Statutes and Ordinances)

Anselmo v. Mo. Bd. of Probation & Parole. 27 S.W.3d 831 (Mo. App. Sept. 2000). Section 217.690 of the Revised Missouri Statutes provides as follows:

1. When in its opinion there is reasonable probability that an offender of a correctional center can be released without detriment to the community or to himself, the board may in its discretion release or parole such person except as otherwise prohibited by law. All paroles shall issue upon order of the board, duly adopted...

3. The board shall adopt rules not inconsistent with law, in accordance with section 217.040, with respect to the eligibility of offenders for parole, the conduct of parole hearings or conditions to be imposed upon paroled offenders. Whenever an order for parole is issued it shall recite the conditions of such parole...

8. The board may, at its discretion, require any of-fender seeking parole to meet certain conditions during the term of that parole so long as said conditions are not illegal or impossible for the offender to perform. These conditions may include an amount of restitution to the state for the cost of that offender's incarceration.

In the present case the court held that a prisoner had no liberty interest in parole under the above section. The board has almost unlimited discretion in determining whether to grant parole release. Under the circumstances presented, the board had the authority to create eligibility requirements. The requirements that the defendant complete long term drug counseling, abstain from drinking and attend a substance abuse program were not in excess of the board's authority.

Bailey v. Missouri Board of Probation and Parole. 36 S.W.3d 13 (Mo. App. December 2000). Appellant sought review of the Circuit Court of Cole County, Missouri decision dismissing his petition for declaratory judgment, claiming the application of Mo. Rev. Stat. Mo. Rev. Stat. § 558.019.2(2) to his felony sentence constituted an ex post facto violation. Appellant was convicted of receiving stolen property and sentenced to eight years in prison. Because appellant had two prior department of corrections commitments, appellee informed him that he would not be eligible for parole until he served a minimum 50 percent of his prison sentence, pursuant to Mo. Rev. Stat. § 558.019.2(2). Appellant filed a pro se petition for declaratory judgment, claiming application of the statute constituted a prohibited ex post facto application of the statute. The trial court dismissed the petition. The court affirmed. The legislature intended for the minimum term provisions of the statute to apply only to a sentence for a crime occurring on or after August 28, 1994. Contrary to appellant's argument, the court did not read Mo. Rev. Stat. § 558.019.7 as being a limitation on the previous prison commitments that could be used to determine an offender's eligibility for parole. The statutory intent was to enhance appellant's punishment for the present conviction, which would not violate ex post facto provisions.

Wheat v. Bd. of Probation & Parole. 932 S.W.2d 835 (Mo. App. Oct. 1996). A prisoner has no liberty interest in the application of the statutory and regulatory conditions for parole in effect at the time of the offense, rather than those currently in effect, unless he can show that he would have been entitled to parole under the older standard before it was repealed. Moreover, Missouri parole regulations did not en-title the prisoner to release on parole simply because he had completed the sex offender program. Even if the inmate was correct in his belief that prisoners were "typically" released in the year or so after completing the program, that did not entitle the prisoner to release a specific time. The standards for release are those set forth in the statute, and even then release is firmly committed to the Parole Board's discretion.

The decision of the circuit court which denied relief was affirmed.

(Treatment and Counseling)

State ex rel. Nixon v. Pennoyer. 39 S.W.3d 521 (Mo. App. March 2001). The court found that Missouri's sex offender program was not penal in nature, but rehabilitative. The fact that the defendant was required to complete the program before being eligible for parole did not violate ex post facto prohibitions.

PRESENTENCE REPORTS

Brown v. State. 924 S.W.2d 311 (Mo. App. June 1996). The defendant was not entitled to set aside his guilty plea on grounds that his waiver of the presentence report was neither knowing nor voluntary. The court found an express waiver of the presentence report in the record. The defendant had a college education and a degree. He expressly acknowledged that he had received no promises or threats which coerced him in any way to waive his right to a presentence investigation.

PROBATION ELIGIBILITY

(Extensions and Modifications)

Bell v. State. 996 S.W.2d 739 (Mo. App. Aug.1999). The defendant's original term of probation was properly extended by the trial court. The court rejected the defendant's claim that the extension constituted additional punishment in violation of double jeopardy or an application of law ex post facto. Section 559.036 (Supp.1991) provided in pertinent part:

2. The court may terminate a period of probation and discharge the defendant at any time before completion of the specific term fixed under section 559.016 if warranted by the conduct of the defendant and the ends of justice. The court may extend the term of probation, but no more than one extension of any probation may be ordered. Total time on probation including any extension shall not exceed the maximum term established in section 559.016.

Under Section 559.016 (Supp.1991), the following was provided:

1. Unless terminated as provided in section 559.036, the terms during which probation shall remain conditional and be subject to revocation are:

(1) A term of years not less than one year and not to exceed five years for a felony;

...

...

3. The court may extend a period of probation, however, no more than one extension of any probation may be ordered. Total time on probation, including any extension shall not exceed the maximum term as established in subsection 1 of this section.

Both of the above sections were amended in 1995. As amended, Section 559.036 permitted an extension of probation only to the point where any total time on probation, including any extension, was not to exceed the maximum term established under 559.016. Moreover, this section permitted the court upon revocation of probation to place an offender on a second term of probation. Such second term of probation could be for a term of probation as provided under Section 559.016, notwithstanding any amount of time served by the offender on the first term of probation. Under Section 559.016, as amended, the total time on "any" probationary term, including any extension, not exceed the maximum term as established by subsection 1, i.e., a term of years not less than one year and not to exceed five years for a felony. Concluding that probation was not a penalty or a punishment, the court went on to conclude that Section 1.160 did not apply to prevent the application of the current versions of the above statutes. Because that section applied only to penalties and punishments, the new versions of the statutes could be applied to the defendant. Because the defendant's probation was properly extended, the order revoking the term was timely.

State ex rel. Moyer v. Calhoun. 22 S.W.3d 250 (Mo. App. July 2000). Pursuant to Sections 559.016.3 and 559.036.2 (Supp.1999), a court may extend a period of probation one time, but the total term on any probation for a misdemeanor may not exceed the maximum two-year period authorized under Section 559.016.1. If a probation violation occurs, the court is authorized to revoke the defendant's probation and to impose a new period of probation. A court may take advantage of Section 559.036.3 and impose a new term of probation only once. See *State ex rel. Brown v. Combs*, 994 S.W.2d 69 (Mo. App.1999). If the court again revokes probation, it has no authority to impose a third period of probation.

In the present case, an order entered in April of 1997 revoked the defendant's initial term of probation and suspended execution of the sentence. That order operated as an additional term of probation authorized under Section 559.036.3. After that point, the trial court did not have the authority to impose a new probationary term, although upon revocation under Section 559.036.3, the court could have ordered execution of the sentence previously imposed or mitigate any sentence of imprisonment by reducing the term by all or part of the time the defendant was on probation. The judge in this case chose the former option and executed the defendant's sentence.

The court, however, had no authority to impose an additional term of probation when he granted the defendant early release in September of 1998.

A writ of prohibition was issued which ordered the trial court to cancel the revocation hearing on the defendant's purported violation of his probation.

State ex rel. Wright v. Dandurand. 973 S.W.2d 161 (Mo. App. July 1998). In 1992, the defendant was placed on a five-year term of probation after pleading guilty to deviate sexual assault. The defendant twice violated probation, and the sentencing court extended probation after each violation. In 1997, pursuant to a third probation violation report, the court issued an order extending the defendant's probation three years. Conditions of this extension required the defendant to serve 60 days in jail and complete a sex offender counseling program. Another violation report was subsequently issued. The defendant, however, moved for discharge from probation claiming that his probationary term had expired. The court denied the defendant's motion and the defendant sought a writ of prohibition.

On review by the Missouri Court of Appeals for the Western District, the court granted the writ. 559.016.3 provides in pertinent part:

The court may extend period of probation, however, no more than one extension of any probation may be ordered. Total time on any probation term, including any extension, shall not exceed the maximum term as established in subsection 1 of this section.

Under subsection 1, a term of probation remains conditional and subject to revocation for a term of years not less than one year and not to exceed five years for a felony. In the present case, the court interpreted this section as standing for the proposition that a court may impose felony probation for a term of one to five years and that the court may extend the period of probation, but no more than one time. Furthermore, the total time on any probationary term, including that one extension, may not exceed five years for a felony.

In the present case, the defendant's term of probation was not revoked. This was not a second term of probation. This was, rather, a continuation and extension of the original term of probation. As such, the maximum amount of time the court was able to place the defendant on probation was one term of five years. That term would have ended on July 13, 1997. Thus, the sentencing judge acted in excess of his jurisdiction in refusing to grant discharge from probation.

(Government Appeals)

State v. Drake. 906 S.W.2d 787 (Mo. App. July 1995). In this case the prosecution appealed the order of the circuit court which suspended the imposition of the defendant's sentence and granted him a term of probation after the defendant pleaded guilty as a persistent offender to two separate counts of driving while intoxicated. On review by the Missouri Court of Appeals, the court held that the prosecution's appeal was due to be dismissed. Stated the court:

The state appeals pursuant to RSMo § 547.200.2 (1994), which provides the state may appeal in criminal cases except those where the outcome might result in double jeopardy for the defendant. The state claims the circuit court lacked the authority to suspend imposition of driver's sentence under the sentencing guidelines set forth in RSMo § 577.023.4 (1994). However, before reaching a decision on the merits of this case, we must first consider whether we have jurisdiction over the matter.

Generally, the state has no right to appeal a judgment favoring the accused unless such a right is conferred by statute. *State v. Reed*, 770 S.W.2d 517, 519 (Mo. App.E.D.1989). The statutory provision cited by the state, § 547.200.2, appears on its face to give the state the right to appeal the circuit court's sentencing decision. However, before that right arises, the circuit court's order must constitute a final judgment. Rule 30.01 (a).

In criminal cases, a judgment does not become final until sentence is entered. *State v. Lynch*, 679 S.W.2d 858, 860 (Mo. App. 1984). It follows that sentence must be imposed in order to render a judgment final. *State v. Harris*, 486 S.W.2d 227, 229 (Mo. 1972). Thus, the suspension of imposition of sentence is not a final judgment from which a party may appeal. *Lynch*, 679 S.W.2d at 860.

PROBATION RESCISSION

Brown v. State, 72 S.W.3d 233 (Mo. App. April 2002). The defendant originally pleaded guilty to receiving stolen property. He was sentenced to a term of confinement of three years. Execution of this sentence was suspended and the defendant was placed on probation. He was subsequently charged with again receiving stolen property. The defendant pleaded guilty to receiving stolen property in relation to the second charge. He was sentenced for a term of confinement of six years. That sentence was ordered to run concurrently with the previous sentence. The court, however, went on to indicate that it would consider the defendant for further probation during the first 120 days of his confinement as permitted under Section 559.115.2. The defendant was then released on his own recognizance and ordered to report to the sheriff's office in approximately four months. In relation to the probation matter, the defendant also entered a plea of true to violating his probation. He waived an evidentiary hearing and the previously imposed sentence was ordered executed. Thereafter, he was released in relation to the probation case and again ordered to report to the sheriff as directed.

After the defendant failed to appear at the sheriff's office as required by the orders in both cases, the court simply rescinded its previous order which requested a progress report regarding the possibility of probation within 120 days. The court then ordered the execution of the previously imposed sentences. The defendant's appeal claimed that he was entitled to representation by counsel at this proceeding.

On review by the Missouri Court of Appeals for the Southern District, the court disagreed. Although *Mempa v. Rhay*, 389 U.S. 128, 88 S.Ct. 254, 19 L.Ed.2d 336 (1967), requires the appointment of counsel at probation revocation proceedings and at sentencing, the court noted that *Mempa* was inapplicable to the facts of this case. In the present case, the defendant was represented by counsel when he was sentenced to terms of confinement. Moreover, he was represented by counsel when his probation was revoked. Section 559.115.2 grants a circuit court discretion to consider a defendant for probation during the first 120 days of his incarceration. The court's discretion is almost unfettered in this regard. The refusal to grant a defendant probation is not tantamount to a probation revocation proceeding. Insofar as the defendant claimed that he was misled as to his eligibility for probation during the 120-day term, that claim concerned effective assistance of counsel.

The defendant's sentences were affirmed.

PROBATION REVOCATION

(Appeal)

State v. Gallegos, 47 S.W.3d 402 (Mo. App. June 2001). Where a defendant claims that errors were made during the revocation of probation, he or she must raise those issues through a writ of habeas corpus, rather than on direct appeal from revocation. Stated the court:

Appellant's claim of error on appeal is the trial court's denial of Appellant's motion to dismiss the probation revocation proceeding. In *Green v. State*, 494 S.W.2d 356 (Mo. banc 1973) the Missouri Supreme Court was faced with an appeal relating to the legality of revocation of the appellant's probation. The appellant brought his appeal under the then effective Rule 27.26, 494 S.W.2d at 357. The court held that the rule did not allow the relief defendant was requesting. *Id.* The court then stated, "Habeas corpus would appear to be the proper remedy." *Id.*

Revocations of probation are not final judgments. "[A] judgment in a criminal case is final for purposes of appeal when the sentence is entered." *State v. Murphy*, 626 S.W.2d 649, 650 (Mo. App.E.D.1981). Therefore, a revocation of probation is not a final judgment. *State v. Henderson*, 750 S.W.2d 507, 516 (Mo. App. 1988); *Murphy*, 626 S.W.2d at 650. Rather, errors in revoking probation must be addressed through a writ of habeas corpus. *Henderson*, 750 S.W.2d at 516; *Murphy*, 626 S.W.2d at 651.

Appellant alleges no error with the original judgment in his case. This court has no jurisdiction over the error alleged by Appellant. The appeal is dismissed.

An order was entered accordingly.

State v. Stewart. 14 S.W.3d 671 (Mo. App. March 2000). An order revoking probation is a final judgment from which an appeal may be taken. Errors in probation revocation proceedings may be raised by a writ of habeas corpus. See *Boyer v. State*, 646 S.W.2d 388 (Mo. App. E.D. 1983).

(Mental Competency)

State ex rel. Juergens v. Cundiff. 939 S.W.2d 381 (Mo. Sup. Feb. 1997). Because the probationer was found incompetent to proceed in the involuntary manslaughter case, the trial court erred in determining that he did not have to be competent in order to proceed with probation revocation proceedings. Stated the court:

The issue presented is whether a probationer must have mental fitness to proceed before a probation revocation proceeding can commence. Relator invokes both section 552.020.1, RSMo 1994, and due process requirements. It is unnecessary for this Court to reach the due process issue because section 552.020.1 governs the disposition of this case.

Section 552.020.1 provides that "[n]o person who as a result of mental defect or disease lacks capacity to understand the proceedings against him or to assist in his own defense shall be tried, convicted or sentenced for the commission of an offense so long as the incapacity endures." Although sentencing has been held in other contexts not to include probation, *Gleason v. State*, 851 S.W.2d 51, 53 (Mo. App.1993); *Bames v. State*, 826 S.W.2d 74, 76 (Mo. App.1992), it would strain credulity to find that the general assembly intended to exclude probation revocation proceedings from the meaning of "sentenced" in section 552.020.1. Section 552.020 provides an orderly procedure not only for determining the mental capacity of the defendant, but, also, for determining when capacity is restored. Section 552.020 allows the court to retain jurisdiction over the probationer and ensures that the probationer receives the treatment and examinations necessary to determine whether and when the probationer obtains capacity to proceed. Section 552.020 confers upon the courts a mechanism to ensure that an unfit probationer will not be able to remain free as a danger to himself or to society.

In addition, the general assembly granted specific rights to probationers in a revocation proceeding. Section 559.036.4, RSMo 1994, provides that "[p]robation shall not be revoked without giving the probationer notice and the opportunity to be heard on the issues of whether he violated a condition of probation, and if he did, whether revocation is warranted under all the circumstances." The general assembly afforded these rights to probationers; therefore, it can hardly be imagined that the general assembly did not intend for probationers to proceed to hearing without having capacity to exercise them. For these reasons, probation revocation hearings are part of sentencing for section 552.020.1 purposes.

An order was entered accordingly.

(PreProbation Activity)

State ex rel. Popowich v. Conley. 967 S.W.2d 294 (Mo. App. April 1998). The defendant entered a plea of guilty in relation to a charge of possession of a controlled substance. A presentence investigation was ordered. The defendant appeared for sentencing and was sentenced to a four-year term of imprisonment, the execution of which was suspended for 90 days, at which time the defendant was to appear for "final disposition." While awaiting final disposition, the court ordered the defendant to be supervised by probation authorities. Probation authorities were further ordered to furnish the court with a recommendation prior to the final disposition. Further-more, the defendant was ordered to pay court costs, complete 100 hours of community service, obtain counseling, and submit to random urinalysis and breathalyzer tests. When the defendant appeared for final disposition, the court placed him on supervised probation for a period of five years.

Approximately 30 days later, a probation violation report was filed stating that the defendant had violated the condition of his probation that he maintain lawful behavior in that he had been arrested for stealing. In the report, the probation officer recommended that any action be delayed until the stealing charges were disposed of. Approximately 30 days later, the defendant appeared on the alleged probation violations. A probation revocation hearing was set. In a supplemental re-port, the reporting officer stated:

After further investigation, the law violations cited in this report occurred prior to Popowich [the relator] being placed on probation on July 7, 1997, therefore, this is not a violation of this probation. The date of the offenses as listed in the affidavit filed by the Prosecuting Attorney indicate the dates of occurrence as 5-23-97 and 7-3-97. Therefore, this report was submitted in error/ However, it should be noted that Popowich was under courtesy supervision from 4-7-97 and committed the offenses while awaiting final disposition. Unfortunately this information was not discovered for inclusion in the supplemental report.

The recommendation portion of the supplemental report indicated that, because the violations were committed prior to formal placement on probation, no recommendation was being made. A violation hearing was subsequently held. After hearing the evidence, the court made the following docket entry:

Court finds from evidence adduced that after pleading guilty and having been sentenced on April 7, 1997, with said sentences (sic) suspended until July 7, 1997, and that thereafter on July 3, 1997, said defendant violated state law to-wit: theft of property which was pawned on that same date and that said fact was not known to the State or P & P on July 7, 1997, or to this court. Said defendant was placed on supervised probation on July 7, 1997, without this court having knowledge of said violation of law. Order of probation set aside, final disposition set for 9:00 A.M., October 14, 1997, Division II, to allow P & P to make recommendation if any and for defendant to produce such extraordinary remedies as may be available.

The probationer sought review of the order of revocation via a writ of prohibition.

On review by the Missouri Court of Appeals, the court held that the order purporting to revoke probation had to be set aside. The power of a court to place a defendant on probation is found under Rule 29.07(e) and Sections 559.012, 559.100, 559.120. Although the parties in the present case agreed the court placed the defendant on probation on July 7, 1997, the sentencing judge departed in several respects from the procedure envisioned by the above provisions. First, when the defendant entered a plea of guilty, the court ordered the "imposition of sentence suspended" pending the completion of a presentence report. This was technically a misnomer and procedurally confusing in several respects. First, a suspension of imposition of sentence requires the trial court to designate a specific term of probation. See Section 559.016.2. Further-more, a suspended imposition of sentence is an authorized "disposition" under Section 557.011.2(3), not a preliminary step to a final disposition, as was ordered by the judge in the present case. Furthermore, when the sentencing judge subsequently imposed the four-year prison term then suspended execution of that sentence, the judge was also required by Section 557.011.2(4) to place the defendant on probation. This he did not do. Additionally, Section 559.016.1(1) requires that any felon probation be for a term of years not less than one year and not to exceed five years. Also, Section 559.016.2 requires a trial court to designate a specific term of probation at the time of sentencing or at the time of suspension of imposition of sentence. In the present case, neither order satisfied that requirement. Instead, the judge, in effect, bifurcated final sentencing by continuing the case to make a final determination as to whether to grant the defendant probation after hearing a recommendation from the probation and parole office. The court found this to be a "curious twist," inasmuch as the judge, in suspending the sentence, was required to grant him probation for a specific term. The court could only assume that, if the judge had ultimately determined that probation was inappropriate, he then would have ordered the defendant's sentence executed.

The court went on to note that the ultimate disposition of the matter was also confusing with respect to the fact that, although probation was not granted until subsequently, the judge ordered the defendant to complete 100 hours of community service. In this regard the court found it difficult to understand on what authority the judge ordered the defendant to do community service, when no probation had yet existed. At most, the judge could only have required the defendant to do those things which were authorized as conditions of any bond set to allow him to remain free while awaiting final sentencing.

The court went on to note that the order purporting to revoke probation was also invalid because it was based on violations that had occurred prior to the existence of any probationary term. The court also rejected the rationale that the judge was merely vacating the order of probation or modifying that order of probation because the original grant of probation was based on the judge's mistaken belief as to the defendant's criminal history. Section 559.036 provides for only two instances in which a probationary term can be truncated. In the first instance, Section 559.036.2 provides that the court may terminate a period of probation and discharge the defendant at any time prior to the completion of the specific term if warranted by the conduct of the defendant and the ends of justice. Clearly this provision was not applicable. In the second instance, Section 559.036.3 provides for what is to occur if the defendant violates a condition of probation. This provision, however, was inapplicable because the

judge did not purport to "revoke" probation, but merely to set it aside. Even if the judge was attempting to revoke probation, he could not because the alleged violations in question occurred prior to the commencement of the probationary term.

Although the appellate court appreciated the frustration trial judges must face where they mistakenly grant probation based on an incomplete criminal history, this frustration did not empower sentencing judges to do that which was not authorized by Missouri law. The court noted, moreover, that this was not a situation where the defendant's undisclosed criminal activity at the time his probation was granted would go unpunished. The court noted that the State was free to pursue the defendant in reference to the alleged criminal violations in question.

Because the order of the trial court which set aside the defendant's probation was invalid, the court granted the writ of prohibition.

(Speedy Trial – Timely Hearing)

Roach v. State. 64 S.W.3d 884 (Mo. App. Jan. 2002). The jurisdiction of the revocation court ceased five years after the defendant's conviction. Thus, the court's attempt to revoke the defendant's probation beyond that time period, without more, was null and void. Under the versions of Sections 559.016 and 559.036 in effect at the time the defendant was convicted, the court was prohibited from granting a second period of probation following a revocation that extended the defendant's supervision beyond the five-year maximum set forth in Section 559.016. See *State ex rel. Musick v. Dickerson*, 813 S.W.2d75 (Mo. App.1991).

State ex rel. Brown v. Combs. 994 S.W.2d 69 (Mo. App. June 1999). The probationer was entitled to a writ of prohibition to prevent the trial court from proceeding with revocation of the defendant's probation. The Western District Court of Appeals found that the relator's probation terminated as of January 24, 1998. Because the State failed to complete the probation revocation process by executing sentence within a reasonable time thereafter, the State lost the authority to pursue revocation.

The facts giving rise to the present case indicated that the defendant pleaded guilty to tampering in the second degree on January 24, 1996. Imposition of sentence was suspended and the defendant was placed on a two-year term of probation. Approximately fifteen months later, a motion to revoke probation was filed. On June 25, 1997, the court entered an order imposing and then suspending execution of a one-year sentence except for fifteen days of shock probation. The court then ordered probation to continue on its original terms plus some additional terms. In August of 1997, another probation violation report was filed. After a hearing on October 8, 1997, the court apparently believed that it had previously extended rather than revoke the defendant's original probation. Thus, the court ordered that the original term of probation be revoked and a new term of probation of two years was imposed. On October 22, 1998, the defendant again violated her probation and another motion to revoke was filed. A hearing was scheduled on January 7, 1999. The defendant moved to dismiss, claiming that the earlier imposition of a new two-year probationary term was void because it constituted a third term of probation in violation of Missouri law. The trial court denied the motion. The defendant sought a writ of prohibition.

On review by the Western District Court of Appeals, the court agreed with the defendant. Pursuant to Section 559.016.3 and Section 559.036.2, the court may extend a period of probation previously ordered one time, but the total time on any term of probation for a misdemeanor may not exceed the maximum two-year period authorized by Section 559.016.1. If a violation of probation occurs, the court is authorized by Section 559.036.3 to revoke the defendant's probation and to impose a new period of probation as follows:

(3) If the defendant violates a condition of probation at any time prior to the expiration or termination of the probation term, the court may continue him on the existing conditions, with or without modifying or enlarging the conditions or extending the term, or, if such continuation, modification, enlargement or extension is not appropriate, may revoke probation and order that any sentence previously imposed be executed. If imposition of sentence was suspended, the court may revoke probation and impose any sentence available under section 557.011, RSMo. The court may mitigate any sentence of imprisonment by reducing the prison or jail term by all or part of the time the defendant was on probation. The court may, upon revocation of probation, place an offender on a second term of probation. Such probation shall be for a term of probation as provided by section 559.016, notwithstanding any amount of time served by the offender on the first term of probation.

§ 559.036.3 (emphasis added).

In the present case, when the defendant pleaded guilty to the misdemeanor of tampering the judge initially suspended imposition of sentence and placed the defendant on a two-year term of probation beginning on January

24, 1996. That period would have ended on January 24, 1998, unless that period of probation was terminated under Section 559.036.3 and a new period of up to two years was imposed before the latter date. The court, however, failed to explicitly state that it revoked probation in its June 25, 1997 order. Thus, the Court of Appeals found that the June 25, 1997 order implicitly revoked the defendant's probation after suspending imposition of sentence because this was the only way the trial court could impose a sentence and order shock probation and suspension of execution of the one-year sentence imposed. The Court of Appeals could not treat the order of October 8, 1997 as merely an extension of the new term of probation because that order expressly stated that the probation previously ordered was revoked. More-over, Section 559.036.6 (emphasis added) provides:

The power of the court to revoke probation shall extend for the duration of the term of probation designated by the court and for any further period which is reasonably necessary for the adjudication of matters arising before its expiration, provided that some affirmative manifestation of an intent to conduct a revocation hearing occurs prior to the expiration of the period and that every reasonable effort is made to notify the probationer and to conduct the hearing prior to the expiration of the period.

In the present case, the period of probation was set to end on January 24, 1998. The court gave notice of revocation and held a revocation hearing prior to that date. The court thus had a reasonable period after January 24, 1998, in which to complete the revocation process. However, the court did not complete the necessary act within a reasonable period of time, nor did it make a reasonable effort to do so. Because the court failed to complete probation revocation proceedings within a reasonable time following the end of the probationary period on January 24, 1998, it lost jurisdiction over the probationer.

State ex rel Witttenhall v. Conklin, 294 S.W. 3d 106 (Mo. App. 2009). The order revoking the defendant's probation had to be reversed. While a probationary term may be tolled to conduct revocation proceedings beyond a probationary term, there must be some manifestation of an intent to revoke prior to the expiration of the probationary term and every reasonable effort must be made to conduct the revocation hearing prior to the expiration of the term.

State v. Burnett, 72 S.W.3d 212 (Mo. App. April 2002). The defendant originally pleaded guilty to the Class B misdemeanor of driving while intoxicated. He received a suspended imposition of sentence and was placed on supervised probation for a period of two years. The conditions of probation included the completion of 40 hours of community service, paying the required sum to the Crime Victims Compensation Fund, obeying all laws, and reporting to the probation officer as directed. The probation conditions also required that the defendant report any arrest for any law violations within 48 hours.

While the defendant was on probation, he was arrested and charged with driving while intoxicated in another state. He did not report this violation to his probation officer within the required 48-hour time limit. When the probation officer became aware of the violation, a probation violation report was filed. The revocation court entered an order that stayed the running of the probationary term. A revocation hearing was scheduled, however, the defendant requested a continuance. The State did not object to the requested continuance. Subsequently, the State was granted three continuances. The hearing was finally scheduled after the original date for discharge from his probationary term. Around that time, the defendant's attorney sent him a letter indicating that his probation had been discharged by operation of law because the time had expired. Thereafter, the probation officer wrote to the defendant and ordered him to report. The defendant did not report. The defendant's probation was ultimately revoked. He appealed.

On review by the Missouri Court of Appeals for the Western District, the court held that direct appeal was not the appropriate avenue to raise the jurisdictional claim raised by the defendant. Rather, his appropriate avenue for relief was via a writ. The appeal was dismissed.

Stellies v. State, 72 S.W.3d 196 (Mo. App. March 2002). The order revoking the defendant's probation was affirmed. The court found that the conduct of the revocation hearing outside the original time limits of the defendant's probation was proper in the instant case. The defendant had left the jurisdiction of Missouri and was in another state. Although the original order which required the defendant to appear to explain why he was not paying court costs did not demonstrate an affirmative manifestation of the prosecution's intent to conduct probation revocation proceedings, the subsequent issuance of a capias warrant and an order suspending the defendant's probation prior to the expiration of the probationary term was sufficient to toll the running of the probationary

period. Furthermore, the delay in conducting the revocation hearing until such time as the defendant was returned to the state of Missouri after his out-of-state incarceration was reasonable under the circumstances. The court reached this set result even though there was a procedure in place to transfer a prisoner from Washington to Missouri for a probation revocation hearing. Citing *United States v. Garrett*, 253 F.3d 443 (9th Cir.2001), the court noted that it is not unreasonable to delay a revocation hearing beyond the time of expiration of the probationary term where a defendant is serving a sentence for an out-of-state conviction.

The order of revocation was affirmed.

Williams v. State, 927 S.W.2d 903 (Mo. App. July 1996). The court rejected the defendant's claim that, because the order of revocation occurred beyond the original five-year probationary term, the order was invalid. The defendant was originally placed on probation in 1986. After the court received information that he had absconded from supervision, the court suspended the term of probation, terminated supervision, and issued a *capias* warrant for the defendant's arrest. Under these circumstances, the order of revocation which occurred beyond the original five-year term of probation was proper. In certain circumstances, the power of the court to revoke probation extends beyond the duration of the term of probation. Under Section 559.036.6, the power of the court to revoke probation extends for the duration of the term of probation designated by the court and for any further period which is reasonably necessary for the adjudication of matters arising before the expiration of the probationary term, provided that some affirmative manifestation of an intent to conduct revocation proceedings occurs prior to the expiration of the probationary term and every reasonable effort has been made to notify the probationer and to conduct the hearing prior to the expiration of the probationary term. In this case the failure to enter the *capias* warrant in N.C.I.C. did not nullify the other actions taken by the court to initiate revocation proceedings within the probationary term. A probationer bears the burden of showing that the court failed to make every reasonable effort to contact him and conduct a hearing within the probationary period. Although the defendant in this case argued that the court should have contacted his parents' home in Nevada, Missouri, this assumed that the court knew that he had absconded to that locale and that he had not left Missouri for the state of California. Furthermore, the probationer did not suggest that a contact with his parents would have resulted in his apprehension any earlier.

The order of revocation was affirmed.

(Willful Violations)

State ex rel. Nixon v. Cambell, 906 S.W.2d 369 (Mo. Sup. Sept. 1995). The defendant was originally convicted in relation to charges of rape and abuse. He was sentenced to terms of imprisonment of seven and four years, to run concurrently. Execution of these sentences were suspended and the defendant was placed on probation for five years, with a special condition that he complete a two-year, inpatient sex offenders' program at Fulton State Hospital. This sentence was ordered pursuant to a plea agreement.

Less than three months after the defendant entered the program, the program was discontinued by the State. The prosecuting attorney moved to revoke the defendant's probation based on alleged violations of the conditions imposed. The trial court, after offering the defendant the opportunity to withdraw his plea of guilty, proceeded with revocation and ordered the suspended sentence executed. Thereafter, the defendant sought habeas corpus relief claiming the order of re-vocation was improper because he had not willfully violated any of the conditions of his probation. The habeas court granted relief. The State sought review.

On review by the Missouri Supreme Court, the court rein-stated the defendant's sentence. In doing so, the court stated in pertinent part [footnotes omitted]:

There can be no question that Craig violated the terms of his probation. The court had conditioned his probation upon completion of a two-year sex offender's program. The state has now discontinued this program and Craig cannot comply with the terms of his probation. The term violate as used in § 559.036.3 does not necessarily require a finding of culpability. In Webster's Third New International Dictionary, the verb "violate" is de-fined merely as "to fail to keep." However, it is equally clear that this violation did not occur through the fault or culpability of Craig. Thus, the question is squarely posed, may a non-culpable violation of a condition of probation warrant revocation?

The leading authority in this matter is *Bearden v. Georgia*, 461 U.S. 660, 103 S.Ct. 2064, 76 L.Ed.2d 221 (1983). In *Bearden*, the United States Supreme Court addressed a situation where an individual's probation was revoked because he was unable to make restitution and to pay' a court-imposed fine as a condition of probation. The Court was obviously troubled by the equal protection and due process implications and the

fundamental unfairness of imprisoning an indigent for the inability to pay a debt. 461 U.S. at 665-67.103 S.Ct. at 2068-70.

The Court reversed the revocation and required that the trial court find either that the probationer be somehow at fault for the violation or that alternative forms of punishment were inadequate. 461 U.S. at 662, 103 S.Ct. at 2067. Of particular significance was the Court's explanation that:

We do not suggest that, in other contexts, the probationer's lack of fault in violating a term of probation would necessarily prevent a court from revoking probation. For in-stance, it may indeed be reckless for a court to permit a person convicted of driving while intoxicated to remain on probation once it becomes evident that efforts at control-ling his chronic drunken driving have failed. Ultimately, it must be remembered that the sentence was not imposed for a circumstance beyond the probationer's control but be-cause he had committed a crime.

461 U.S. at 668 (n. 9), 103 S. Ct. at 2070 (n. 9) (citations omitted).

In a similar case, an Illinois appellate court sustained the revocation of probation that was conditioned on completion of an inpatient treatment program for alcohol and drug dependency. In *People v. Davis*. 123 Ill.App.3d 349, 78 Ill.Dec. 705, 462 N.E.2d 824 (1984), the court allowed revocation when no acceptable treatment program would accept defendant, even though the failure was not due to any fault of the probationer. The Illinois court explained:

While the probationer's culpability in violating the conditions of his or her probation ordinarily occupies a preeminent position among the factors considered in determining whether probation should be revoked, an approach to the probation revocation question which regards this factor as the sole touchstone of whether a probation violation has occurred ignores the fact that circumstances other than con-duct chargeable to the probationer may frustrate the purposes of probation. The most important purpose of probation is, of course, to bring about the rehabilitation of the offender without sentencing him or her to prison. Also of importance is the protection of the public. . . .

Thus, although the defendant's fault is, in most cases, of great importance in determining whether the conditions of probation have been violated, circumstances beyond the defendant's control may provide an adequate basis for probation revocation where such circumstances frustrate the fundamental purpose or reason for the imposition of a sentence of probation.

78 Ill. Dec. at 708-09, 462 N.E.2d at 827-28. Additional states have agreed that fault of the defendant in not meeting the probation conditions may not be a necessary factor in deciding whether to revoke probation. See *State v. Baxter*, 19 Conn. App. 304, 563 A.2d 721, 729 (1989) (holding that probation may be revoked even if the failure to obey a condition of probation is not found to be intentional or willful); *State v. Bennett*, 35 Wash. App. 298, 666 P.2d 390, 392 (1983) (explaining that when treatment in a sex offender program fails, a good faith attempt to comply with the conditions of probation must be distinguished from a violation of conditions which relate to the defendant's potential for rehabilitation).

Although the court noted two decisions which indicated that actual fault by the probationer may be required, see *Johnson v. State*, 561 So.2d 1254 (Fla.App.1990), and *State v. Austin*, 295 N.W.2d 246 (Minn.1980), the court refused to follow these cases. The court noted that a necessary condition of the defendant's probation was that he complete a two-year sexual offender program. The evidence before the revocation court was that defendant had only made minimal progress during the initial months of the program. There was further evidence that, without further inpatient treatment, he would revert to pedophilia. In the absence of any acceptable alternative outside of the penitentiary system, the court could not say the order of revocation was improper.

The court noted that the present case was' complicated, however, by the fact that the defendant's probation was part of a plea bargain. This problem was overcome, however, when the trial court offered the defendant the option of withdrawing his guilty plea and beginning the plea negotiation process anew.

The order of revocation was affirmed.

SENTENCING

(Prior Record)

State v. Prell. 35 S.W.3d 447 (Mo. App. November 2000). Defendant challenged a judgment, based upon a jury verdict, of the Circuit Court of Jackson County (Missouri) convicting him of several sexual crimes involving children and sentencing him to 375 years of imprisonment as a prior offender under Mo. Rev. Stat. §§ 558.016 (1994), 557.036 (Supp. 1997).

Over several months, defendant became acquainted with many young boys, allowing them to visit him home often. Defendant supplied the boys with cigarettes and alcoholic beverages. While at his home, defendant permitted the boys to view explicit pornographic materials. Defendant either committed or attempted to commit several sexual acts against five boys. During trial, the State presented evidence defendant was a prior offender. The trial counsel for defendant stated he had no objection when the prior offense was offered into evidence. Defendant also failed to object at the sentencing hearing, where he was sentenced as a prior offender. Defendant's numerous convictions were affirmed; however, the court reversed defendant's sentence and remanded the case for re-sentencing. Defendant's sentences for his three child molestation in the first degree offenses were enhanced by the trial court on the improper assumption defendant had a prior conviction. In fact, he was not previously convicted, but rather received and completed a suspended imposition of sentence. The trial court had no jurisdiction to impose the sentence, as it was not authorized by law.

Case was remanded for sentencing only, and trial court was ordered to resentence defendant on the three counts of child molestation in the first degree, class C felonies. Trial court had no authority to enhance these three convictions for sentencing purposes, as defendant's completion of a suspended imposition of sentence for a prior sexual assault charge was not considered a prior conviction.

(Victim Information)

Adams v. State. 951 S.W.2d 722 (Mo. App. Sept. 1997). The statements from the victim recommending that the defendant be sentenced to the maximum possible sentence did not violate Missouri's victim impact law. Stated the court:

With respect to the victim impact evidence that is admissible during a plea bargain or sentencing in a criminal proceeding, we find the Eastern District's holding in *Sharp v. State*, 908 S.W.2d 752,756 (Mo. App.1995), to be persuasive. Citing our holding in *Figgins v. State*, 858 S.W.2d 853,856 (Mo. App.1993), where we held that § 557.041 does not preclude individuals other than the victim from testifying "when appropriate," the *Sharp* court held that nothing in the statute precludes a crime victim from making a specific sentencing recommendation if permitted by the court. Although the victim may only have an absolute right to submit a written statement or testimony about the facts of the case and its impact on the victim, the trial court retains its broad discretion to receive any information from any source it deems relevant to the sentencing process, including recommendations as to the appropriate sentence to be imposed.

Thus, the victim impact testimony in the case at bar recommending that the court give appellant the maximum possible sentence did not violate § 557.041.2 and was admissible on the issue of sentencing. Because trial counsel cannot be found to be ineffective for failure to make non-meritorious objections, *State v. Lay*, 896 S.W.2d 693, 701 (Mo. App.1995), we cannot find that the trial court's finding that appellant did not receive ineffective assistance of counsel is clearly erroneous.

An order was entered accordingly.

Epperson v. Mo. Bd. of Probation and Parole. 81 S.W.3d 540 (Mo. App. Feb. 2002). The defendant was convicted of the first-degree murder of his wife and two children. He was sentenced to three consecutive terms of life imprisonment. He was given a parole consideration hearing in 1999. The Board denied parole for the following reason:

Release at this time would depreciate the seriousness of the offense committed or promote disrespect for the law based on the following:

A. Circumstances of present offense—Three lives lost.

In 2001 he was again considered for parole and was again denied for the following reason:

Release at this time would depreciate the seriousness of the present offense based on the following:

A. Circumstances surrounding present offense.

The prisoner sought judicial review claiming that the Parole Board acted unlawfully in considering him "ineligible" for parole. He also claimed that the statements denying parole stated insufficient facts to justify denial of parole.

On review by the Missouri Court of Appeals for the Western District, the court disagreed with both claims. First of all, the Board did not classify the defendant as ineligible for parole. Rather, the Board has consistently considered the defendant eligible for parole. The Board merely denied parole release based on the seriousness of the offense in question. This is a valid reason for denial of parole. Additionally, the Board's use of the new parole statute did not violate the prohibition against ex post facto laws because the new statute did not increase the defendant's punishment beyond that allowed by the old parole statute in effect at the time of the defendant's crime.

The order of the circuit court granting summary judgment in favor of the Board of Probation and Parole was affirmed.

Blackburn v. Mo. Bd. of Probation & Parole, 83 S.W.3d 585 (Mo. App. Sept. 2002). Although the inmate alleged that the Board failed to follow its own rules and regulations in making its parole release decision, the court held that this did not violate due process. Section 217.690 gives the Board almost unlimited discretion in making parole release decisions. Various parole regulations are simply intended to provide guidelines, and did not remove the Board's discretion in relation to parole release decisions. As such, the regulations did not create a liberty interest which was protected by due process. See *Fults v. Missouri Board of Probation and Parole, 857 S.W.2d 388 (Mo. App.1993)*.

State v. Henry, 88 S.W.3d 451 (Mo. App. June 2002). The defendant entered an Alford plea to felony possession of marijuana. Although he originally received a suspended imposition of sentence and probation, his probation was subsequently revoked and he was sentenced to a five-year prison term. The defendant's appeal claimed that the sentencing court lacked jurisdiction to enter the five-year sentence because the court had already sentenced him when it ordered him to complete the institutional phase of the Missouri Postconviction Drug Treatment Program as a condition of his probation.

On review by the Missouri Court of Appeals for the Western District, the court disagreed. The condition that the defendant complete the drug treatment program was not a "sentence". A "sentence" imposed upon conviction of a crime consists of punishment that comes within the particular statute designating the permissible penalty for the particular offense. Probation operates independently of a criminal sentence. See *State v. Sapp, 55 S.W.3d 382 (Mo. App.2001)*. Thus, the conditions of probation were not part of the defendant's criminal sentence.

The court noted that when a defendant violates a condition of probation, Section 559.036.3 specifically permits the court to exercise its discretion to enlarge the conditions of probation. This is exactly what the court did in the present case. After finding that the defendant violated the terms of his probation a second time, the court enlarged the conditions of his probation by ordering him to complete the institutional phase of the Missouri Postconviction Drug Treatment Program. Under Section 217.785.4, a sentencing court is permitted to assign an offender to the institutional phase of such a program as a special condition of the defendant's probation, without the necessity of formal revocation of probation. Everything in the record in the present case demonstrated that such was the sentencing judge's intention. Stated the court:

The court's actual order after the second probation violation hearing definitively shows that when the court ordered Mr. Henry to successfully complete the institutional phase of the Missouri Postconviction Drug Treatment Program, it was adding that as a condition of Mr. Henry's probation and not sentencing him for the possession of marijuana offense. The circuit clerk's indication otherwise in completing the April 14, 2000,

"Sentence and Judgment" form was a clerical mistake, apparent from the face of the record, in the recording of the court's April 12, 2000, order. Therefore, this court directs the trial court to correct this clerical mistake nunc pro tunc, pursuant to Rule 29.12(c), to make the record conform to the true order of the court by striking the April 14, 2000, document entitled "Sentence and Judgment" from the record. *State v. Carrasco*, 877 S.W.2d 115, 117 (Mo. banc 1994).

An order was entered accordingly.

Greem v. State, 90 S.W.3d 498 (Mo. App. Nov. 2002). The petitioner in the present case claimed that he was entitled to set aside his plea of guilty because it was entered based on ineffective assistance of counsel. Specifically, the defendant claimed that counsel erred when the defendant was told not to talk to anyone from Probation and Parole until the issues involving the defendant's prior convictions were resolved. This, claimed the defendant, caused him to be ineligible for a 120-day drug treatment program.

On review by the Missouri Court of Appeals, the court held that the defendant was not entitled to a hearing based on his claim of ineffective assistance of counsel. In order to succeed in a post-conviction motion based on ineffective assistance of counsel under Rule 24.035, the defendant must: (1) allege facts which merit relief; (2) the facts alleged must raise matters not refuted by files and records in the case; and (3) the matters must have resulted in prejudice to the movant. In the present case, although the defendant alleged facts, there was also indication in the file that various other factors might have rendered the defendant ineligible for drug treatment. Moreover, the defendant was specifically asked if he was satisfied with the services of his attorney. The defendant indicated that he was.

Johnson v. Mo. Bd. of Probation & Parole, 92 S.W.3d 107 (Mo. App. Jan. 2003). Section 558.011.4 provides in relevant part:

(1) A sentence of imprisonment for a term of years for felonies other than dangerous felonies as defined in section 556.061, RSMo, and other than sentences of imprisonment which involve the individual's fourth or subsequent remand to the department of corrections shall consist of a prison term and a conditional release term. The conditional release term of any term imposed under section 557.036 RSMo, shall be:

* * *

(c) Five years for terms more than fifteen years; and the prison term shall be the remainder of such term. The prison term may be extended by the board of probation and parole pursuant to subsection 5 of this section.

Subsection 5 provides that the date of release from the prison term may be extended up to a maximum of the entire sentence of imprisonment. The statute goes on to provide as follows:

(2) "Conditional release" means the conditional discharge of an offender by the board of probation and parole, subject to conditions of release that the board deems reasonable to assist the offender to lead a law-abiding life, and subject to the supervision under the state board of probation and parole. The conditions of release shall include avoidance by the offender of any other crime, federal or state, and other conditions that the board in its discretion deems reasonably necessary to assist the release in avoiding further violation of the law.

In the present case, the defendant was sentenced to a 25-year term of confinement in relation to his convictions for robbery and stealing. After serving more than 11 years of his sentence, the Board released the defendant on parole. The defendant's parole was subsequently revoked. The defendant sought habeas corpus review claiming that he had served more than 6 years on parole and that section 558.011 required the Board to release him from supervision after he completed five years of parole.

On review by the Missouri Court of Appeals for the Western District, the court disagreed. When Johnson was paroled, he had not yet reached his conditional release date. At the time of revocation, the defendant had served about 17 years of his 25-year sentence. His conditional release date had still not arisen. Accordingly, the conditional release statute had no bearing on the Board's ability to revoke the defendant's parole. Moreover, an inmate's

entitlement to conditional release cannot be established until the inmate completes the prison term of his sentence pursuant to Section 558.011.4. In Mr. Johnson's case that would be 20 years.

State ex rel. Beggs v. Dormire. 91 S.W.3d 605 (Mo. Sup. Dec. 2002). After the defendant was convicted of certain offenses, he was sentenced to a 7-year term of imprisonment and ordered to undergo a program for offenders with substance abuse addiction. See Section 217.362 (RSMo 2000). Over an eleven-month period, the prisoner was sentenced under the same statute in seven other cases before three other judges in two other counties. The petitioner successfully completed the program. The Missouri Board of Parole recommended probation. The judges in two counties determined that the petitioner was fit for probation and followed the Board's recommendations and placed the defendant on probation. The circuit judge in Polk County, however, denied probation. In doing so, the judge noted that the placement of the defendant on probation after reviewing his file, convictions and numerous failures to appear would constitute an abuse of discretion. The prisoner sought review by the Missouri Supreme Court claiming that the failure of the Polk County Circuit Court to grant probation was improper in light of the requirements of the statute.

On review by the Missouri Supreme Court, the court agreed. Section 217.362.3 provides:

[U]pon successful completion of the program, the board of probation and parole may advise the sentencing court of the eligibility of the individual for probation. The original sentencing court shall hold a hearing to make a determination as to the fitness of the offender to be placed on probation. The court shall follow the recommendation of the board unless the court makes a determination that such a placement would be an abuse of discretion.

In the present case, the Board recommended placement on probation, noting that the petitioner was an excellent worker in the program. Moreover, the Board stated:

During this incarceration, offender has not incurred any conduct violations which is highly unusual... [and] went from almost zero tolerance of criticism to the point of seeking feedback as a means of guidance and validation . . . [he] is hard working and courageous and his efforts definitely paid off.

The Board concluded its report to the court indicating its recommendation for probation in light of the defendant's completion of the long-term drug program as stipulated by the courts.

The Missouri Supreme Court noted that the Polk County judge based the denial of probation based largely on the defendant's prior record. All of these events occurred prior to sentencing. Nonetheless at sentencing, the Polk County judge sentenced the defendant to the program which he successfully completed. Moreover, although the Polk County judge expressed concern that the defendant completed the program in eleven months and twenty days, rather than 24 months, this was not evidence of the defendant's unfitness. Section 217.362.3 specifically contemplates that the Department may recommend that probation be granted immediately for a defendant who completes the program prior to the end of the 24-month period.

Concluded the court:

A sentencing court "shall follow" the Board's recommendation, unless placement on probation would be an abuse of discretion. Sec. 217.362.3 RSMo 2000. A sentencing court must determine, based on evidence, that the offender is unfit for probation, before it can determine that placement on probation would be an abuse of discretion. Here, no evidence supports the sentencing court's implicit determination that petitioner is unfit for probation. Thus, placement on probation is not an abuse of discretion, and the board's recommendation for probation must be followed.

An order was entered accordingly.

State v. Pressley. 94 S.W.3d 449 (Mo. App. Jan. 2003). The court stated in pertinent part [footnotes omitted]:

The defendant pleaded guilty to two counts of forgery. On June 3, 1999, the trial court sentenced her to two concurrent terms of seven years' imprisonment. However, the trial court suspended execution of the

sentence and placed the defendant on probation for five years. On June 20, 2002, the trial court granted her motion to terminate probation, but set that order aside the next day. The court then rescheduled the motion for a later hearing and denied it on July 11, 2002. On August 6, 2002, the defendant filed her "Motion to Reinstate Order Terminating Probation." The trial court issued an order denying this motion on August 22, 2002. The defendant appeals from this order.

We have a duty to sua sponte determine whether we have jurisdiction to entertain an appeal. *State v. Wilson*, 15 S.W.3d 71, 72 (Mo. App. S.D.2000). We issued an order directing the parties to show cause why this appeal should not be dismissed. The defendant failed to file a response.

A final judgment in a criminal case occurs only when a sentence is entered. *State v. Lynch*, 679 S.W.2d 858, 859-60 (Mo. bane 1984). Probation is not part of the sentence and consequently, there is no right to appeal a trial court's decision to grant or deny probation. *State v. Williams*, 871 S.W.2d 450, 452 (Mo. bane 1994). In addition, there is no right to appeal the terms and conditions of an order of probation. *Id.* It follows that a defendant does not have the right to appeal from the trial court's refusal to end probation early before its term has expired.

The appeal is dismissed for lack of a final, appeal-able judgment.

State ex rel. Beaird v. Del Muro. 98 S.W.3d 902 (Mo. App. March 2003). Although there was evidence in the record that the defendant had received notice of one of the four alleged violations, the Court of Appeals nonetheless held that the order of revocation had to be reversed. The court could not say that the lack of written notice of the remaining three violations was harmless error, even though it was alleged that the defendant had received actual notice of these alleged violations. Stated the court:

The language used in this last finding indicates that the court revoked Mr. Poole's probation on the basis of all four violations. The court refers to Mr. Poole's conduct as the reason for incarcerating him, and not one particular aspect of that conduct or one specific violation. As this finding follows the court's finding that Mr. Poole committed all four violations, the implication is that the conduct to which the court is referring is Mr. Poole's having committed all four violations. The use of the general term "conduct" indicates that the court intended to rely on not one but all four violations as the basis for revoking Mr. Poole's probation.

Because Mr. Poole did not receive notice as to two of those four violations prior to the probation revocation hearing, the court erred in relying on those violations to revoke his probation. The State has not demonstrated that the failure to provide Mr. Poole proper notice that his probation could be revoked on the bases that he failed to provide the court evidence of full-time employment and he failed to appear in court on February 21, 2001 was harmless error. The State argues that Mr. Poole's decision not to present any evidence on the issue of his failing to pay \$200 per month as a basis for revoking his probation indicates that he would not have presented evidence on any of the other violations found by the court. Mr. Poole chose not to present any evidence on the issue of his failure to pay because he believed that the State had the burden of proving that his failure to pay was willful, and the State failed to do so. Simply because Mr. Poole relied on what he believed to be the State's failure of proof on that violation does not indicate that he would have acted similarly with regard to the two violations found by the court for which he received no notice.

This court is unable to conclude that the failure to provide Mr. Poole notice of all of the conditions upon which his probation was revoked was harmless beyond a reasonable doubt. *Abel*, 574 S.W.2d at 418. Because the lack of notice is a sufficient basis upon which to uphold the habeas court's granting Mr. Poole's petition for writ of habeas corpus, this court does not need to address the State's remaining allegations of error. The judgment of the habeas court is affirmed.

An order was entered accordingly.

State v. Dunn. 103 S.W.3d 886 (Mo. App. April 2003). After pleading guilty to the offense of stealing, the defendant was sentenced to a seven-year term of imprisonment. The execution of this sentence was suspended and the defendant was placed on probation. The defendant did not appeal. Thereafter, the trial court revoked the defendant's probation and ordered the previously suspended sentence executed. The defendant sought credit for time served on probation. The trial court denied the defendant's request. The defendant appealed.

On review by the Missouri Court of Appeals for the Eastern District, the court affirmed the sentence imposed by the trial court.

There is no right to an appeal without statutory authority. *State v. Williams*, 871 S.W.2d 450, 452 (Mo. bane 1994). Section 547.070, RSMo 2000, provides for an appeal in criminal cases in all cases from a "final judgment." A final judgment in a criminal case occurs only when a sentence is entered. *State v. Lynch*, 679 S.W.2d 858, 859-60 (Mo. bane 1984). Probation is not part of the sentence and consequently, there is no right to appeal a trial court's decision to grant or deny probation. *Williams*, 871 S.W.2d at 452. In addition, there is no right to appeal the terms and conditions of an order of probation. *Id.* It follows that a defendant does not have the right to appeal from the trial court's refusal to credit probation time towards his sentence. Such a request is also akin to a request for a reduction in his sentence, which is not a final, appealable judgment. See, *State v. Stout*, 960 S.W.2d 535, 536-37 (Mo. App. E.D.1998). As in *Stout*, there is no law permitting an appeal.

The court issued an order which directed the defendant to show cause why his appeal should not be dismissed.

State v. Weekly, 107 S.W.3d 340 (Mo. App. July 2003). The offender was originally charged with felonious restraint, armed criminal action and unlawful use of a weapon. He was diagnosed as having vascular dementia, with delusions. The defendant pleaded not guilty by reason of mental disease or defect. The Jackson County Circuit Court accepted the defendant's plea and committed him to the custody of the Department of Mental Health. Approximately three years after his commitment, the defendant fled the mental health facilities. He soon returned voluntarily, but admitted to using illegal drugs while he was away from the facility. Approximately two years after the flight incident, the offender applied for conditional release. He was granted this release and successfully completed six months of this release. At the termination of the conditional release, he immediately applied for a second conditional release. A second conditional release was also granted. During this second term of release, the offender was guilty of numerous violations of the supervision conditions. His conditional release was revoked. Shortly thereafter, the offender sought unconditional release. On review by the Jackson County Circuit Court, the court granted unconditional release. The Department of Mental Health appealed.

On review by the Missouri Court of Appeals for the Western District, the court reversed the order of the circuit court. The court held that the offender was not entitled to unconditional release. Even though the patient's mental defect was in remission, Missouri statutory provisions required an additional finding that the offender was not likely to have a mental disease that rendered him dangerous to himself or others. In the present case, a psychiatrist opined that if the offender was unconditionally released that he more than likely would relapse into illegal drug use. Moreover, a plea of not guilty by reason of mental disease or defect supports an inference of a continuing mental illness. Because the defendant had not carried his burden, he was not entitled to release.

Monroe v. Mo. Dept. of Corrections, 105 S.W.3d 915 (Mo. App. June 2003). Under Section 558.031.1, a person shall receive credit toward the service of a sentence of imprisonment for all time in prison, jail or custody after the offense occurred and before the commencement of the sentence, when the time in custody was related to that offense. Time spent in prison following a parole revocation and previous to a new sentence is "related to" the new sentence when the offense underlying the new sentence was the "reason" for the parole revocation and the "reason" for the inmate's detention. See *Goings v. Missouri Department of Corrections*, 6 S.W.3d 906 (Mo. bane 1999). In the present case, the parolee's initial period of incarceration was related to the new felony charge of forgery and the court should have granted a hearing as to whether the inmate was entitled to credit for this period of time. As to the second period of incarceration, however, the facts pleaded by the in-mate indicated that the time spent was in relation to parole violations only, not because of the still pending forgery charge. As such, the inmate had not pleaded sufficient facts to require a hearing to determine if he was entitled to credit for this second period of incarceration.

State ex rel. Dane v. State, 115 S.W.3d 879 (Mo. App. Oct. 2003). After the defendant pleaded guilty in relation to the possession of methamphetamines, he was sentenced under Section 217.362. After the defendant's successful completion of an in-house drug treatment program, the Board of Probation and Parole recommended that the

defendant be released on probation. The sentencing court conducted the hearing required by Section 217.362 and refused to grant the defendant probation. The defendant sought a writ of mandamus.

On review by the Missouri Court of Appeals for the Western District, the court held that the defendant was entitled to the writ. A sentencing court is required to follow the Board's recommendation unless placement on probation would be an abuse of discretion. A sentencing court must determine, based on evidence, that the offender is unfit for probation, before it can determine that placement on probation would be an abuse of discretion. See *State ex rel. Beggs v. Donnire*, 91 S.W.3d 605 (Mo. banc 2002).

Turning to the facts of this case, the court stated:

The trial court, in entering its order denying probation, found that the Board's recommendation that probation be granted was an abuse of discretion because Dane had already completed the long-term treatment program once before (roughly one year before being incarcerated on the present charges). The trial court stated that it was not aware of that prior treatment when sentencing him on the charges at issue. Finally, the court found that Relator had conduct violations while in the Department of Corrections. No evidence was presented about these conduct violations other than in the Board's report. They appear minor as, for one, Relator was given an activity restriction and, for the other, given unspecified extra duty. There was no other testimony or evidence about these violations. Under *State ex rel. Beggs*, Dane's prior participation in the long-term drug treatment program is presentencing conduct that may not, standing alone, provide a basis for denying probation under Section 217.362. See *id.* Respondent asks us to distinguish *State ex rel. Beggs*, however, on the basis that neither respondent nor the Board of Probation and Parole was aware of Dane's previous participation in that drug treatment program.

The court found it clear that the Board was aware that the defendant had previously participated in a long-term drug treatment program. Its recommendation that the defendant be released on probation was made with that knowledge. The sentencing judge did not argue that she would not have accepted the plea agreement and sentenced the defendant under Section 217.362 if she had known about his prior prison drug treatment. More-over, the sentencing judge did not cite any authority for the proposition that someone who had already completed such treatment was inappropriate for additional drug treatment or not eligible for the long-term drug treatment program.

Based on this record, the defendant was entitled to the writ.

State v. Engle. 125 S.W.3d 344 (Mo. App. Jan. 2004). In Missouri, a defendant may not take a direct appeal from an order revoking his probation. Rather, the appropriate avenue to review errors in probation revocation matters is to seek an appropriate writ.

State ex rel. Aziz v. McCondichie. 132 S.W.3d 238 (Mo. Sup. April 2004). Parole revocation proceedings are not criminal proceedings and, as such, the formal rules of evidence do not apply. More flexible standards are applicable to parole revocation proceedings. The right to confront and cross-examine witnesses at the parole re-vocation hearing is not absolute. Hearsay is admissible. The reliability of certain reports can be accepted where such reports are disclosed to the parolee prior to the hearing and where the parolee has the opportunity to test their validity. The Board of Probation and Parole is given wide discretion and authority to determine the conditions of an offender's supervision. Section 217.705.2 requires that probation and parole agents keep informed of the offender's conduct and use all suitable methods to aid and encourage the offender to bring about improvements in his conduct. Moreover, if the Board determines that additional conditions need to be placed upon an offender, the Board is free to do so without the constraints of a hearing. If the Board determines that supervision is best accomplished through electronic monitoring for a period of time, the Board should be able to make those changes without going through the hearing process.

Although the prisoner in the present case was on parole with greater restrictions on his freedom than existed prior to his original arrest, the court found the above principles applicable. Because the prisoner's complaint alleged due process violations in his parole revocation proceedings, and because he had been released from prison, the court held that his petition was moot.

Boone v. State. 147 S.W.3d 801 (Mo. App. Aug. 2004). Requiring the defendant to complete the Missouri sex offender program did not violate the defendant's First Amendment rights. The program requirements did not violate

the Establishment Clause because the statute had a secular purpose and its primary effect did not advance or inhibit religion. Moreover, the requirement did not encourage government to be excessively entangled in religion.

Nor could the court agree that the program requirement burdened his right to the free exercise of his religion. Where there is a claim that a particular practice violates the free exercise clause, the essential inquiry is whether the law is neutral and of general applicability. Even where those requirements are not met, however, the law is permissible so long as there is a compelling governmental interest. In the present case, the court found that protecting the public from future crime was a compelling governmental interest. The goal of the program was to prevent recidivism in sex offenders. Furthermore, the program was narrowly tailored to advance that goal. It was a voluntary program. Failure to complete the program did not result in any additional punishment beyond what had already been imposed. Offenders who did not successfully complete the program for whatever reason are evaluated at the end of their confinement period. Information gained from that evaluation may be used in potential proceedings under Missouri's sexually violent predator statute. Unable to say that requiring the defendant to participate in and complete the program violated the defendant's religious rights, the court affirmed the judgment which found the defendant to be a sexually violent predator.

Irvin v. Kempker. 152 S.W.3d 358 (Mo. App. Jan. 2005). Section 559.115 provides for a 120-day callback program. Under this program, an offender may be sent to a penal institution, but the trial court retains jurisdiction to call the offender back and place the offender on probation for a period of 120 days. In the present case, the petitioner claimed that his minimum prison term was improperly calculated under Section 558.019 because his time in the callback program was counted as a prior "commitment" for the purposes of determining his minimum prison term.

On review by the Missouri Court of Appeals for the Western District, the court agreed. Citing *State ex rel. Nixon v. Russell*, 129 S.W. 3d 867 (Mo. App. 2004), the court held that amendments to Section 559.115 were to be retroactively applied to the petitioner in the present case. Under those amendments, the time the petitioner spent in custody of the Department of Corrections pursuant to the 120-day callback program and prior to his release on probation could not be considered a "prior commitment" for the purposes of calculating his minimum prison term before becoming eligible for parole.

Powell v. Mo. Dept. of Corrections. 152 S.W.3d 363 (Mo. App. Jan. 2005). See *Irvin v. Kempker*, above.

Olds v. Mo. Bd. of Probation & Parole. 162 S.W.3d 33 (Mo. App. Feb. 2005). Appellants who proceed pro se do not receive preferential treatment regarding compliance with the rules of appellate procedure. They are held to the same standard as appellants represented by counsel. In the present case, the prisoner's complaint was lacking. The prisoner merely made a general allegation that the trial court erred in dismissing his petition for relief. He failed to explain specifically what supported his claim of reversible error. Abstract statements of law, standing alone, do not comply with Rule 84.04(d)(4). Moreover, the prisoner's claim that the Missouri Board of Parole erred in reclassifying him as a dangerous offender did not assert an error committed by the trial court. Thus, this claim too failed to comply with Rule 84.04(d)(1)(a).

State ex rel. Sanders v. Kramer. 160 S.W.3d 822 (Mo. App. April 2005). The offender in the present case committed a criminal homicide when he was fourteen years of age. He was certified to stand trial as an adult and was ultimately convicted of murder in the second degree. The defendant was sentenced to twenty-five years on this charge. He was ordered initially committed to the Division of Youth Services and was to remain in custody of that agency until he turned seventeen. When he turned seventeen, his custody was to be transferred to the Division of Adult Institutions. When the matter came on for a hearing for transfer, the court heard evidence regarding the defendant's rehabilitation and changed lifestyle. The court then proceeded to suspend the execution of the remainder of the defendant's sentence and place the defendant on probation. The prosecution sought a writ of mandamus claiming that the trial court was without authority to suspend the defendant's sentence.

On review by the Missouri Court of Appeals, the court disagreed. Section 211.073 gives a court the authority to invoke dual jurisdiction of both the criminal and juvenile codes. Moreover, under Section 211.073, a court may revoke the suspension of a sentence and direct that the offender be taken into custody, or the court may direct that the offender be placed on probation. Accordingly, the court found that Section 211.073 expressly authorized a court to take further action with regard to a defendant's sentence.

State ex rel. Johnston v. Berkemeyer. 165 S.W.3d 222 (Mo. App. June 2005). No Missouri statute authorizes a sentencing judge to place a defendant on probation after the defendant has been committed to jail or the Department of Corrections. In the present case, the defendant was sentenced to 30 days in the county jail after pleading guilty. At the time sentence was imposed, the judge did not place the defendant on probation or sentence the defendant to a period of detention or imprisonment with the possibility of probation at a later time. Under these circumstances, the judge was without authority to place the defendant on probation "after" he had served part of his total jail sentence.

Delay v. Mo. Bd. of Probation & Parole. 174 S.W.3d 662 (Mo. App. Sept. 2005). The Parole Board's application of the parole statute in effect at the time of the offender's hearing, rather than the statute in effect when the offender had his parole hearing, did not violate ex post facto prohibitions. Stated the court:

There is no substantive due process right to early release from prison, *Greenholtz v. Inmates of Neb. Penal & Corr. Complex*, 442 U.S. 1, 799 S.Ct. 2100, 60 L.Ed.2d 668 (1979), so, if a liberty interest exists in parole it necessarily must arise from a statute. The Missouri Supreme Court has rejected the assertion that there is a continuing due process right to parole hearings governed by the former statute. *Cavallaro*, 908 S.W.2d at 135-36. Quoting *Cavallaro*: "the legislature that creates a statutory entitlement [] is not precluded from altering or terminating the entitlement by a later enactment. Accordingly, as regards due process, any continuing liberty interest in the use of the old parole statute was extinguished by enactment of the new law." *Id.* at 136 (citations omitted).

In other words, where statutory entitlements are concerned, what the legislature gives it can also take away. The only liberty interest *Delay* asserts is under a repealed statute. The legislature, in 1982, was within its power to terminate the statutorily created parole entitlement that *Delay* now claims. As stated, *Delay* is not entitled to a perpetual application of the old statute in all subsequent parole hearings, and, thus, his liberty interest argument fails.

Because the statute in question did not impose increased punishment on the offender, the application of the newer statute did not violate ex post facto prohibitions.

State ex rel. White v. Davis. 174 S.W.3d 543 (Mo. App. Aug. 2005). The court held that the inmate was entitled to habeas corpus relief. The court found nothing in the record to indicate that the defendant's original probationary term had been extended. Stated the court:

More correctly stated, however, the question before us is whether the record before respondent showed that there was a legal basis for the Sheriff's confinement of *Trowbridge*. "Generally, habeas corpus proceedings are limited to determining the facial validity of confinement." *State ex rel. Nixon v. Jaynes*, 73 S.W.3d 623, 624 (Mo. banc 2002). The record before respondent has been extensively discussed earlier. There is no docket entry, other order, or oral pronouncement that the court was extending *Trowbridge's* probation beyond its original term. Relator argues unconvincingly that the "amended judgment and sentence" extended *Trowbridge's* probation for another two years. No such words were used in the order, however. The "amended sentence" was identical to the original sentence except for the placement ordered pursuant to Section 559.115. As discussed earlier, that placement would have required a revocation of probation and imposition of a prison term. Release after completion of that program would have necessarily been on a new probation. However, the court's comments clearly indicate that it wanted to continue *Trowbridge* on probation with a suspended imposition of sentence. Moreover, relator admits that probation was never revoked. If there was any intent in the "amended judgment and sentence" to do anything more than provide for institutional drug treatment with continued SIS status, it is not expressed. On the face of the record before this court, *Trowbridge's* probation expired on August 16, 2004, and his subsequent confinement for alleged probation violations after that date was illegal. Therefore, respondent was obligated to issue the writ of habeas corpus.

The judgment of the court below was affirmed.

Ridinger v. Mo. Bd. of Probation & Parole. 189 S.W.3d 658 (Mo. App. April 2006). Under Missouri's parole statute, 558.019.2, an inmate's parole eligibility is determined by the number of previous prison commitments he has undergone. In the present case, the inmate claimed that the Board incorrectly determined that he had three previous prison commitments and was required to serve at least 80 percent of his current sentence. On review by the Missouri Court of Appeals for the Western District, the court determined that the inmate had only two qualifying previous

prison commitments and had to serve 50 percent of his current sentence before becoming eligible for parole. Accordingly, the judgment of the trial court granting summary judgment in favor of the Parole Board was reversed. Under Section 558.019, "prison commitment" means the receipt by the Department of Corrections of a defendant after sentencing. In the present case, the Department of Corrections erroneously calculated that the inmate had three previous prison commitments. The court noted that certain statutory pro-visions were amended in 2003 to provide that an offender's first incarceration for 120 days for participation in a Department of Corrections program prior to release on probation was not to be considered a previous prison commitment for the purposes of determining a minimum prison term. Finding that this statutory amendment was retroactively applicable to the inmate in the present case, the court held that one of the three prior commitments counted by the Department of Corrections was improperly counted.

Petree v. State. 190 S.W.3d 641 (Mo. App. May 2006). Even though the proceeding to revoke the defendant's probation occurred beyond the expiration of the original term of probation, the revocation court nonetheless retained jurisdiction to enter the revocation order. Notice of the State's intent to revoke probation was filed prior to the expiration of the probationary term. Additionally, the defendant failed to show that the delay beyond the expiration date was unreasonable.

Appendix B

Selected Statutes 2015

Table of Contents

ACCESS TO FILE OR PROCEEDINGS -----	1
APPOINTMENT OF OFFICERS -----	2
ARREST-DETENTION -----	2
ASSAULT -----	4
ATTORNEYS FEES AND COSTS OF LITIGATION -----	6
BRIBERY -----	6
COMMUNITY CORRECTIONS -----	7
CIVIL LIABILITY & IMMUNITY (See Indemnification, Sovereign Immunity) -----	8
COMMUNITY SERVICE (See Conditions) -----	8
CONDITIONS (See also Written Conditions)-----	8
CONFIDENTIALITY -----	11
COURT SERVICES -----	12
DETENTION (See also Conditions, Probation Eligibility) -----	12
DURATION OF PROBATION (See Sentencing) -----	12
ELECTRONIC MONITORING -----	12
EMPLOYEE DISQUALIFICATION -----	14
EMPLOYMENT DISCRIMINATION -----	14
FINES AND COST -----	15
FIREARMS -----	15
HIGHWAY PATROL -----	16
HOUSE ARREST & HOME DETENTION (See also Electronic Monitoring) -----	16
INDEMNIFICATION & LEGAL EXPENSE FUND -----	17
OFFENDER ABUSE -----	20

OFFENDER REGISTRATION -----	22
PARDONS AND COMMUTATIONS -----	22
PAROLE BOARD GENERAL DUTIES (See also Parole & Conditional Release Eligibility) -----	22
PAROLE & CONDITIONAL RELEASE ELIGIBILITY -----	23
PAROLE & CONDITIONAL RELEASE REVOCATION -----	26
PHYSICAL FORCE (See Offender Abuse) -----	27
PREPAROLE REPORTS (See also Presentence Reports & Investigations) -----	27
PRESENTENCE REPORTS & INVESTIGATIONS -----	27
PRIVATE PROBATION CONTRACTS -----	28
PROBATION ELIGIBILITY (See also Sentencing) -----	28
RESTITUTION -----	30
SENTENCING -----	30
SEX OFFENDERS (See also Electronic Monitoring, Supervision, HighwayPatrol, and Offender Registration) -----	31
SOVERIGN IMMUNITY -----	32
SUPERVISION FEES (See also Conditions & Fines and Costs) -----	32
TRANSFER OF SUPERVISION -----	33
TREATMENT & COUNSELLING -----	33
UNETHICAL BEHAVIOR (See also Bribery, PhysicalForce, Offender Abuse) -----	35
VICTIM COMPENSATION (See Conditions, Fines and Costs, Restitution) -----	35
VICTIM IMPACT STATEMENT (See also Presentence Reports) -----	35
WARRANTS & DETAINERS (See also Board of Parole Duties) -----	35
WRITTEN CONDITIONS (See also Conditions) -----	35

ACCESS TO FILE OR PROCEEDINGS (see also “confidentiality”)

Probation and parole board to have access to offenders and records, when.

217.270. All correctional employees shall:

- (1) Grant to members of the state board of probation and parole or its properly accredited representatives access at all reasonable times to any offender;
- (2) Furnish to the board the reports that the board requires concerning the conduct and character of any offender in their custody; and
- (3) Furnish any other facts deemed pertinent by the board in the determination of whether an offender shall be paroled.

Offender records, public records, exceptions—inspection of, when—access to medical records—copies admissible as evidence—violations, penalty.

217.075. 1. All offender records compiled, obtained, prepared or maintained by the department or its divisions shall be designated public records within the meaning of chapter 610, RSMo, except:

- (1) Any information, report, record or other document pertaining to an offender's personal medical history, which shall be a closed record;
- (2) Any information, report, record or other document in the control of the department or its divisions authorized by federal or state law to be a closed record;
- (3) Any internal administrative report or document relating to institutional security.

2. The court of jurisdiction, or the department, may at their discretion permit the inspection of the department reports or parts of such reports by the offender, whenever the court or department determines that such inspection is in the best interest or welfare of the offender.

3. The department may permit inspection of its files by treatment agencies working with the department in the treatment of the offender.

4. No department employee shall have access to any material closed by this section unless such access is necessary for the employee to carry out his duties. The department by rule shall determine what department employees or other persons shall have access to closed records and the procedures needed to maintain the confidentiality of such closed records.

5. No person, association, firm, corporation or other agency shall knowingly solicit, disclose, receive, publish, make use of, authorize, permit, participate in or acquiesce in the use of any name or lists of names for commercial or political purposes of any nature in violation of this section.

6. All health care providers and hospitals who have cared for offenders during the period of the offender's incarceration shall provide a copy of all medical records in their possession related to such offender upon demand from the department's health care administrator. The department shall provide reasonable compensation for the cost of such copies and no health care provider shall be liable for breach of confidentiality when acting pursuant to this subsection.

7. Copies of all papers, documents, or records compiled, obtained, prepared or maintained by the department or its divisions, properly certified by the appropriate division, shall be admissible as evidence in all courts and in all administrative tribunals in the same manner and with like effect as the originals, whenever the papers, documents, or records are either designated by the department of corrections as public records within the meaning of chapter 610, RSMo, or are declared admissible as evidence by a court of competent jurisdiction or administrative tribunal of competent jurisdiction.

8. Any person found guilty of violating the provisions of this section shall be guilty of a class A misdemeanor.

APPOINTMENT OF OFFICERS

Probation, parole, institutional parole, officers--appointment--duties.

- 217.705. 1. The chairman shall appoint probation and parole officers and institutional parole officers as deemed necessary to carry out the purposes of the board.
2. Probation and parole officers shall investigate all persons referred to them for investigation by the board or by any court as provided by sections 217.750 and 217.760. They shall furnish to each offender released under their supervision a written statement of the conditions of probation, parole or conditional release and shall instruct the offender regarding these conditions. They shall keep informed of the offender's conduct and condition and use all suitable methods to aid and encourage the offender to bring about improvement in the offender's conduct and conditions.
3. The probation and parole officer may recommend and, by order duly entered, the court may impose and may at any time modify any conditions of probation. The court shall cause a copy of any such order to be delivered to the probation and parole officer and the offender.
4. Probation and parole officers shall keep detailed records of their work and shall make such reports in writing and perform such other duties as may be incidental to those enumerated that the board may require. In the event a parolee is transferred to another probation and parole officer, the written record of the former probation and parole officer shall be given to the new probation and parole officer.
5. Institutional parole officers shall investigate all offenders referred to them for investigation by the board and shall provide the board such other reports the board may require. They shall furnish the offender prior to release on parole or conditional release a written statement of the conditions of parole or conditional release and shall instruct the offender regarding these conditions.
6. The department shall furnish probation and parole officers and institutional parole officers, including supervisors, with credentials and a special badge which such officers and supervisors shall carry on their person at all times while on duty.

ARREST-DETENTION

Arrest of person paroled or on conditional release--report--procedure--revocation of parole or release--effect of sentence--arrest of parolee from another state.

- 217.720. 1. At any time during release on parole or conditional release the board may issue a warrant for the arrest of a released offender for violation of any of the conditions of parole or conditional release. The warrant shall authorize any law enforcement officer to return the offender to the actual custody of the correctional center from which the offender was released, or to any other suitable facility designated by the board. If any parole or probation officer has probable cause to believe that such offender has violated a condition of parole or conditional release, the probation or parole officer may issue a warrant for the arrest of the offender. The probation or parole officer may effect the arrest or may deputize any officer with the power of arrest to do so by giving the officer a copy of the warrant which shall outline the circumstances of the alleged violation and contain the statement that the offender has, in the judgment of the probation or parole officer, violated conditions of parole or conditional release. The warrant delivered with the offender by the arresting officer to the official in charge of any facility designated by the board to which the offender is brought shall be sufficient legal authority for detaining the offender. After the arrest the parole or probation officer shall present to the detaining authorities a similar statement of the circumstances of violation. Pending hearing as hereinafter provided, upon any charge of violation, the offender shall remain in custody or incarcerated without consideration of bail.
2. If the offender is arrested under the authority granted in subsection 1 of this section, the offender shall have the right to a preliminary hearing on the violation charged unless the offender waives such hearing. Upon such arrest and detention, the parole or probation officer shall immediately notify the board and shall submit in writing a report showing in what manner the offender has violated the conditions of his parole or conditional release. The board shall order the offender discharged from such facility, require as a condition of parole or conditional release the placement of the offender in a treatment center operated by the department of corrections, or shall cause the offender to be brought before it for a hearing on the violation charged, under such rules and regulations as the board may adopt. If the violation is established and found, the board may continue or revoke the parole or conditional release, or enter such other order as it may see fit. If no violation is established and found, then the parole or conditional release shall continue. If at any time during release on parole or conditional release the offender is arrested for a crime which later leads to conviction, and

sentence is then served outside the Missouri department of corrections, the board shall determine what part, if any, of the time from the date of arrest until completion of the sentence imposed is counted as time served under the sentence from which the offender was paroled or conditionally released.

3. An offender for whose return a warrant has been issued by the board shall, if it is found that the warrant cannot be served, be deemed to be a fugitive from justice or to have fled from justice. If it shall appear that the offender has violated the provisions and conditions of his parole or conditional release, the board shall determine whether the time from the issuing date of the warrant to the date of his arrest on the warrant, or continuance on parole or conditional release shall be counted as time served under the sentence. In all other cases, time served on parole or conditional release shall be counted as time served under the sentence.

4. At any time during parole or probation, the board may issue a warrant for the arrest of any person from another jurisdiction, the visitation and supervision of whom the board has undertaken pursuant to the provisions of the interstate compact for the supervision of parolees and probationers authorized in section 217.810, for violation of any of the conditions of release, or a notice to appear to answer a charge of violation. The notice shall be served personally upon the person. The warrant shall authorize any law enforcement officer to return the offender to any suitable detention facility designated by the board. Any parole or probation officer may arrest such person without a warrant, or may deputize any other officer with power of arrest to do so by issuing a written statement setting forth that the defendant has, in the judgment of the parole or probation officer, violated the conditions of his release. The written statement delivered with the person by the arresting officer to the official in charge of the detention facility to which the person is brought shall be sufficient legal authority for detaining him. After making an arrest the parole or probation officer shall present to the detaining authorities a similar statement of the circumstances of violation.

Probation officers, power to arrest, when—preliminary hearing allowed, when—notice to sentencing court.

217.722. 1. If any probation officer has probable cause to believe that the person on probation has violated a condition of probation, the probation officer may issue a warrant for the arrest of the person on probation. The officer may effect the arrest or may deputize any other officer with the power of arrest to do so by giving the officer a copy of the warrant which will outline the circumstances of the alleged violation and contain the statement that the person on probation has, in the judgment of the probation officer, violated the conditions of probation. The warrant delivered with the offender by the arresting officer to the official in charge of any jail or other detention facility shall be sufficient authority for detaining the person on probation pending a preliminary hearing on the alleged violation. Other provisions of law relating to release on bail of persons charged with criminal offenses shall be applicable to persons detained on alleged probation violations.

2. Any person on probation arrested under the authority granted in subsection 1 of this section shall have the right to a preliminary hearing on the violation charged as long as the person on probation remains in custody or unless the offender waives such hearing. The person on probation shall be notified immediately in writing of the alleged probation violation. If arrested in the jurisdiction of the sentencing court, and the court which placed the person on probation is immediately available, the preliminary hearing shall be heard by the sentencing court. Otherwise, the person on probation shall be taken before a judge or associate circuit judge in the county of the alleged violation or arrest having original jurisdiction to try criminal offenses or before an impartial member of the staff of the Missouri board of probation and parole, and the preliminary hearing shall be held as soon as possible after the arrest. Such preliminary hearings shall be conducted as provided by rule of court or by rules of the Missouri board of probation and parole. If it appears that there is probable cause to believe that the person on probation has violated a condition of probation, or if the person on probation waives the preliminary hearing, the judge or associate circuit judge, or member of the staff of the Missouri board of probation and parole shall order the person on probation held for further proceedings in the sentencing court. If probable cause is not found, the court shall not be barred from holding a hearing on the question of the alleged violation of a condition of probation nor from ordering the person on probation to be present at such a hearing.

3. Upon such arrest and detention, the probation officer shall immediately notify the sentencing court and shall submit to the court a written report showing in what manner the person on probation has violated the conditions of probation. Thereupon, or upon arrest by warrant, the court shall cause the person on probation to be brought before it without unnecessary delay for a hearing on the violation charged. Revocation hearings shall be conducted as provided by rule of court.

ASSAULT

Assault of a law enforcement officer, corrections officer, emergency personnel, highway worker, or probation and parole officer in the first degree, definition, penalty.

565.081. 1. A person commits the crime of assault of a law enforcement officer, corrections officer, emergency personnel, highway worker in a construction zone or work zone, utility worker, cable worker, or probation and parole officer in the first degree if such person attempts to kill or knowingly causes or attempts to cause serious physical injury to a law enforcement officer, corrections officer, emergency personnel, highway worker in a construction zone or work zone, utility worker, cable worker, or probation and parole officer.

2. As used in this section, "emergency personnel" means any paid or volunteer firefighter, emergency room or trauma center personnel, or emergency medical technician as defined in subdivisions (15), (16), (17), and (18) of section 190.100, RSMo.

3. As used in this section the term "corrections officer" includes any jailer or corrections officer of the state or any political subdivision of the state.

4. When used in this section, the terms "highway worker", "construction zone", or "work zone" shall have the same meaning as such terms are defined in section 304.580, RSMo.

5. As used in this section, the term "utility worker" means any employee while in performance of their job duties, including any person employed under contract of a utility that provides gas, heat, electricity, water, steam, telecommunications services, or sewer services, whether privately, municipally, or cooperatively owned.

6. As used in this section, the term "cable worker" means any employee including any person employed under contract of a cable operator, as such term is defined in section 67.2677.

7. Assault of a law enforcement officer, corrections officer, emergency personnel, highway worker in a construction zone or work zone, utility worker, cable worker, or probation and parole officer in the first degree is a class A felony.

Assault of a law enforcement officer, corrections officer, emergency personnel, or probation and parole officer in the second degree, definition, penalty.

565.082. 1. A person commits the crime of assault of a law enforcement officer, corrections officer, emergency personnel, highway worker in a construction zone or work zone, utility worker, cable worker, or probation and parole officer in the second degree if such person:

(1) Knowingly causes or attempts to cause physical injury to a law enforcement officer, corrections officer, emergency personnel, highway worker in a construction zone or work zone, utility worker, cable worker, or probation and parole officer by means of a deadly weapon or dangerous instrument;

(2) Knowingly causes or attempts to cause physical injury to a law enforcement officer, corrections officer, emergency personnel, highway worker in a construction zone or work zone, utility worker, cable worker, or probation and parole officer by means other than a deadly weapon or dangerous instrument;

(3) Recklessly causes serious physical injury to a law enforcement officer, corrections officer, emergency personnel, highway worker in a construction zone or work zone, utility worker, cable worker, or probation and parole officer; or

(4) While in an intoxicated condition or under the influence of controlled substances or drugs, operates a motor vehicle or vessel in this state and when so operating, acts with criminal negligence to cause physical injury to a law enforcement officer, corrections officer, emergency personnel, highway worker in a construction zone or work zone, utility worker, cable worker, or probation and parole officer;

(5) Acts with criminal negligence to cause physical injury to a law enforcement officer, corrections officer, emergency personnel, highway worker in a construction zone or work zone, utility worker, cable worker, or probation and parole officer by means of a deadly weapon or dangerous instrument;

(6) Purposely or recklessly places a law enforcement officer, corrections officer, emergency personnel, highway worker in a construction zone or work zone, utility worker, cable worker, or probation and parole officer in apprehension of immediate serious physical injury; or

(7) Acts with criminal negligence to create a substantial risk of death or serious physical injury to a law enforcement officer, corrections officer, emergency personnel, highway worker in a construction zone or work zone, utility worker, cable worker, or probation and parole officer.

2. As used in this section, "emergency personnel" means any paid or volunteer firefighter, emergency room or trauma center personnel, or emergency medical technician as defined in subdivisions (15), (16), (17), and (18) of section 190.100, RSMo.

3. As used in this section the term "corrections officer" includes any jailer or corrections officer of the state or any political subdivision of the state.

4. When used in this section, the terms "highway worker", "construction zone", or "work zone" shall have the same meaning as such terms are defined in section 304.580, RSMo.

5. As used in this section, the term "utility worker" means any employee while in performance of their job duties, including any person employed under contract of a utility that provides gas, heat, electricity, water, steam, telecommunications services, or sewer services, whether privately, municipally, or cooperatively owned.

6. As used in this section, the term "cable worker" means any employee, including any person employed under contract of a cable operator, as such term is defined in section 67.2677.

7. Assault of a law enforcement officer, corrections officer, emergency personnel, highway worker in a construction zone or work zone, utility worker, cable worker, or probation and parole officer in the second degree is a class B felony unless committed pursuant to subdivision (2), (5), (6), or (7) of subsection 1 of this section in which case it is a class C felony. For any violation of subdivision (1), (3), or (4) of subsection 1 of this section, the defendant must serve mandatory jail time as part of his or her sentence.

Assault of a law enforcement officer, corrections officer, emergency personnel, highway worker, or probation and parole officer in the third degree, definition, penalty.

565.083. 1. A person commits the crime of assault of a law enforcement officer, corrections officer, emergency personnel, highway worker in a construction zone or work zone, utility worker, cable worker, or probation and parole officer in the third degree if:

(1) Such person recklessly causes physical injury to a law enforcement officer, corrections officer, emergency personnel, highway worker in a construction zone or work zone, utility worker, cable worker, or probation and parole officer;

(2) Such person purposely places a law enforcement officer, corrections officer, emergency personnel, highway worker in a construction zone or work zone, utility worker, cable worker, or probation and parole officer in apprehension of immediate physical injury;

(3) Such person knowingly causes or attempts to cause physical contact with a law enforcement officer, corrections officer, emergency personnel, highway worker in a construction zone or work zone, utility worker, cable worker, or probation and parole officer without the consent of the law enforcement officer, corrections officer, emergency personnel, highway worker in a construction zone or work zone, utility worker, cable worker, or probation and parole officer.

2. As used in this section, "emergency personnel" means any paid or volunteer firefighter, emergency room or trauma center personnel, or emergency medical technician as defined in subdivisions (15), (16), (17), and (18) of section 190.100.

3. As used in this section the term "corrections officer" includes any jailer or corrections officer of the state or any political subdivision of the state.

4. When used in this section, the terms "highway worker", "construction zone", or "work zone" shall have the same meaning as such terms are defined in section 304.580.

5. As used in this section, the term "utility worker" means any employee while in performance of their job duties, including any person employed under contract of a utility that provides gas, heat, electricity, water, steam, telecommunications services, or sewer services, whether privately, municipally, or cooperatively owned.

6. As used in this section, the term "cable worker" means any employee, including any person employed under contract of a cable operator, as such term is defined in section 67.2677.

7. Assault of a law enforcement officer, corrections officer, emergency personnel, highway worker in a construction zone or work zone, utility worker, cable worker, or probation and parole officer in the third degree is a class A misdemeanor.

ATTORNEYS FEES & COSTS OF LITIGATION (See also Indemnification & Legal Defense Fund)

Frivolous lawsuits, false testimony, abuse of judicial system by offender--sanctions.

217.262. 1. An additional sixty days shall be added to the time that an offender is first eligible for parole consideration hearing or a sum of up to fifty percent of the average balance of the offender's account for any portion of the preceding twelve months during which the offender's account had a positive balance, shall be deducted from an offender's account for each instance that a court finds that the offender has done any of the following while in the custody of the department:

- (1) Filed a false, frivolous or malicious action or claim with the court;
- (2) Brought an action or claim with the court solely or primarily for delay or harassment;
- (3) Unreasonably expanded or delayed a judicial proceeding;
- (4) Testified falsely or otherwise submitted false evidence or information to the court;
- (5) Attempted to create or obtain a false affidavit, testimony, or evidence; or
- (6) Abused the discovery process in any judicial action or proceeding.

2. The department of corrections may promulgate rules in accordance with section 217.040 providing that the conduct described in subdivisions (1) to (6) of subsection 1 of this section shall be a conduct violation and subject an offender to discipline.

3. The maximum term of imprisonment of an offender as imposed by the sentencing court shall not be extended by the provisions of subsection 1 of this section.

4. In no instance shall the balance of an offender's account be reduced to an amount less than ten dollars pursuant to this section. The amount due pursuant to subsection 1 of this section may be deducted from any compensation payable or later paid to the offender, or from any other property belonging to the offender in the custody and control of the department.

BRIBERY

Bribery or receipt of gifts from prisoners by officers or employees of department, penalty--duty to report, failure, effect--director to investigate and report, when.

217.120. 1. Any employee of the department who receives, under any pretense, from any offender or offender's family, any services, legal tender or article of value not authorized by the department shall be guilty of a class A misdemeanor.

2. Any employee of the department who, directly or indirectly, receives anything of value for procuring, or attempting or assisting to procure, the pardon or parole of any offender shall be guilty of a class B felony.

3. Any employee of the department who becomes aware of a violation of this section shall report such knowledge to the director. Failure to do so shall be grounds for dismissal, or other appropriate disciplinary action.

4. If the director has cause to believe that any violation of this section has occurred, he shall investigate the matter and report the facts, together with the names of the witnesses, to the prosecuting attorney of the county in which the offense occurred or to the circuit attorney of any city not within a county.

COMMUNITY CORRECTIONS

Community corrections program alternative for eligible offenders, purpose--operation--rules.

217.777. 1. The department shall administer a community corrections program to encourage the establishment of local sentencing alternatives for offenders to:

(1) Promote accountability of offenders to crime victims, local communities and the state by providing increased opportunities for offenders to make restitution to victims of crime through financial reimbursement or community service;

(2) Ensure that victims of crime are included in meaningful ways in Missouri's response to crime;

(3) Provide structured opportunities for local communities to determine effective local sentencing options to assure that individual community programs are specifically designed to meet local needs;

(4) Reduce the cost of punishment, supervision and treatment significantly below the annual per-offender cost of confinement within the traditional prison system; and

(5) Improve public confidence in the criminal justice system by involving the public in the development of community-based sentencing options for eligible offenders.

2. The program shall be designed to implement and operate community-based restorative justice projects including, but not limited to: preventive or diversionary programs, community-based intensive probation and parole services, community-based treatment centers, day reporting centers, and the operation of facilities for the detention, confinement, care and treatment of adults under the purview of this chapter.

3. The department shall promulgate rules and regulations for operation of the program established pursuant to this section as provided for in section 217.040 and chapter 536, RSMo.

4. Any proposed program or strategy created pursuant to this section shall be developed after identification of a need in the community for such programs, through consultation with representatives of the general public, judiciary, law enforcement and defense and prosecution bar.

5. In communities where local volunteer community boards are established at the request of the court, the following guidelines apply:

(1) The department shall provide a program of training to eligible volunteers and develop specific conditions of a probation program and conditions of probation for offenders referred to it by the court. Such conditions, as established by the community boards and the department, may include compensation and restitution to the community and the victim by fines, fees, day fines, victim-offender mediation, participation in victim impact panels, community service, or a combination of the aforementioned conditions;

(2) The term of probation shall not exceed five years and may be concluded by the court when conditions imposed are met to the satisfaction of the local volunteer community board.

6. The department may staff programs created pursuant to this section with employees of the department or may contract with other public or private agencies for delivery of services as otherwise provided by law.

CIVIL LIABILITY & IMMUNITY (see Indemnification, Sovereign Immunity)

COMMUNITY SERVICE (see Conditions)

CONDITIONS (see also Written Conditions)

Terms of probation--extension.

559.016. 1. Unless terminated as provided in section 559.036, the terms during which each probation shall remain conditional and be subject to revocation are:

- (1) A term of years not less than one year and not to exceed five years for a felony;
- (2) A term not less than six months and not to exceed two years for a misdemeanor;
- (3) A term not less than six months and not to exceed one year for an infraction.

2. The court shall designate a specific term of probation at the time of sentencing or at the time of suspension of imposition of sentence. Such term may be modified by the division of probation and parole under section 217.703.

3. The court may extend a period of probation, however, no more than one extension of any probation may be ordered except that the court may extend the total time on probation by one additional year by order of the court if the defendant admits he or she has violated the conditions of his or her probation or is found by the court to have violated the conditions of his or her probation. Total time on any probation term, including any extension, shall not exceed the maximum term as established in subsection 1 of this section plus one additional year if the defendant admits or the court finds that the defendant has violated the conditions of his or her probation.

Conditions of probation--compensation of victims--free work, public or charitable--defendant not an employee for workers' compensation purposes--payment to county restitution fund, when.

559.021. 1. The conditions of probation shall be such as the court in its discretion deems reasonably necessary to ensure that the defendant will not again violate the law. When a defendant is placed on probation he shall be given a certificate explicitly stating the conditions on which he is being released.

2. In addition to such other authority as exists to order conditions of probation, the court may order such conditions as the court believes will serve to compensate the victim, any dependent of the victim, any statutorily created fund for costs incurred as a result of the offender's actions, or society. Such conditions may include restorative justice methods pursuant to section 217.777, RSMo, or any other method that the court finds just or appropriate including, but not limited to:

- (1) Restitution to the victim or any dependent of the victim, or statutorily created fund for costs incurred as a result of the offender's actions in an amount to be determined by the judge;
- (2) The performance of a designated amount of free work for a public or charitable purpose, or purposes, as determined by the judge;
- (3) Offender treatment programs;
- (4) Work release programs in local facilities; and
- (5) Community-based residential and nonresidential programs.

3. The defendant may refuse probation conditioned on the performance of free work. If he does so, the court shall decide the extent or duration of sentence or other disposition to be imposed and render judgment accordingly. Any county, city, person, organization, or agency, or employee of a county, city, organization or agency charged with the supervision of such free work or who benefits from its performance shall be immune from any suit by the defendant or any person deriving a cause of action from him if such cause of action

arises from such supervision of performance, except for an intentional tort or gross negligence. The services performed by the defendant shall not be deemed employment within the meaning of the provisions of chapter 288, RSMo. A defendant performing services pursuant to this section shall not be deemed an employee within the meaning of the provisions of chapter 287, RSMo.

4. In addition to such other authority as exists to order conditions of probation, in the case of a plea of guilty or a finding of guilt, the court may order the assessment and payment of a designated amount of restitution to a county law enforcement restitution fund established by the county commission pursuant to section 50.565, RSMo. Such contribution shall not exceed three hundred dollars for any charged offense. Any restitution moneys deposited into the county law enforcement restitution fund pursuant to this section shall only be expended pursuant to the provisions of section 50.565, RSMo.

5. A judge may order payment to a restitution fund only if such fund had been created by ordinance or resolution of a county of the state of Missouri prior to sentencing. A judge shall not have any direct supervisory authority or administrative control over any fund to which the judge is ordering a defendant to make payment.

6. A defendant who fails to make a payment to a county law enforcement restitution fund may not have his or her probation revoked solely for failing to make such payment unless the judge, after evidentiary hearing, makes a finding supported by a preponderance of the evidence that the defendant either willfully refused to make the payment or that the defendant willfully, intentionally, and purposefully failed to make sufficient bona fide efforts to acquire the resources to pay.

7. The court may modify or enlarge the conditions of probation at any time prior to the expiration or termination of the probation term.

Repayment for medical care to be term of probation, parole or conditional release.

221.122. All persons placed upon probation, parole or conditional release from any county jail or county correctional facility shall upon request of the authority concerned, as a term of such county probation, parole, or conditional release, repay the county for medicine, dental care, or medical attention as provided in section 221.120, RSMo.

Detention condition of probation.

559.026. Except in infraction cases, when probation is granted, the court, in addition to conditions imposed pursuant to section 559.021, may require as a condition of probation that the offender submit to a period of detention up to forty-eight hours after the determination by a probation or parole officer that the offender violated a condition of continued probation or parole in an appropriate institution at whatever time or intervals within the period of probation, consecutive or nonconsecutive, the court shall designate, or the board of probation and parole shall direct. Any person placed on probation in a county of the first class or second class or in any city with a population of five hundred thousand or more and detained as herein provided shall be subject to all provisions of section 221.170, RSMo, even though he was not convicted and sentenced to a jail or workhouse.

(1) In misdemeanor cases, the period of detention under this section shall not exceed the shorter of thirty days or the maximum term of imprisonment authorized for the misdemeanor by chapter 558, RSMo.

(2) In felony cases, the period of detention under this section shall not exceed one hundred twenty days.

(3) If probation is revoked and a term of imprisonment is served by reason thereof, the time spent in a jail, half-way house, honor center, workhouse or other institution as a detention condition of probation shall be credited against the prison or jail term served for the offense in connection with which the detention condition was imposed.

Alternative to revocation proceedings, period of detention, requirements.

217.718. 1. As an alternative to the revocation proceedings provided under sections 217.720, 217.722, and 559.036, and if the court has not otherwise required detention to be a condition of probation under section 559.026, a probation or parole officer may order an offender to submit to a period of detention in the county jail, or other appropriate institution, upon a determination by a probation or parole officer that the offender has violated a condition of continued probation or parole.

2. The period of detention may not exceed forty-eight hours the first time it is imposed against an offender during a term of probation or parole. Subsequent periods may exceed forty-eight hours, but the total number of hours an offender spends in detention under this section shall not exceed three hundred and sixty in any calendar year.

3. The officer shall present the offender with a written report detailing in what manner the offender has violated the conditions of parole, probation, or conditional release and advise the offender of the right to a hearing before the court or board prior to the period of detention. The division shall file a copy of the violation report with the sentencing court or board after the imposition of the period of detention and within a reasonable period of time that is consistent with existing division procedures.
4. Any offender detained under this section in a county of the first class or second class or in any city with a population of five hundred thousand or more and detained as herein provided shall be subject to all the provisions of section 221.170, even though the offender was not convicted and sentenced to a jail or workhouse.
5. If parole, probation, or conditional release is revoked and a term of imprisonment is served by reason thereof, the time spent in a jail, halfway house, honor center, workhouse, or other institution as a detention condition of parole, probation, or conditional release shall be credited against the prison or jail term served for the offense in connection with which the detention was imposed.
6. The division shall reimburse the county jail or other institution for the costs of detention under this section at a rate determined by the department of corrections, which shall be at least thirty dollars per day per offender and subject to appropriation of funds by the general assembly. Prior to ordering the offender to submit to the period of detention under subsection 1 of this section, the probation and parole officer shall certify to the county jail or institution that the division has sufficient funds to provide reimbursement for the costs of the period of detention. A jail or other institution may refuse to detain an offender under this section if funds are not available to provide reimbursement or if there is inadequate space in the facility for the offender.
7. Upon successful completion of the period of detention under this section, the court or board may not revoke the term of parole, probation, or conditional release or impose additional periods of detention for the same incident unless new or additional information is discovered that was unknown to the division when the period of detention was imposed and indicates that the offender was involved in the commission of a crime. If the offender fails to complete the period of detention or new or additional information is discovered that the incident involved a crime, the offender may be arrested under sections 217.720 and 217.722.

Circuit courts, power to place on probation or parole--revocation--conditions--restitution.

- 559.100. 1. The circuit courts of this state shall have power, herein provided, to place on probation or to parole persons convicted of any offense over which they have jurisdiction, except as otherwise provided in sections 195.275 to 195.296, section 558.018, section 559.115, section 565.020, RSMo, sections 566.030, 566.060, 566.067, 566.151, and 566.213, section 571.015, RSMo, and subsection 3 of section 589.425, RSMo.
2. The circuit court shall have the power to revoke the probation or parole previously granted under section 559.036 and commit the person to the department of corrections. The circuit court shall determine any conditions of probation or parole for the defendant that it deems necessary to ensure the successful completion of the probation or parole term, including the extension of any term of supervision for any person while on probation or parole. The circuit court may require that the defendant pay restitution for his crime. The probation or parole may be revoked under section 559.036 for failure to pay restitution or for failure to conform his behavior to the conditions imposed by the circuit court. The circuit court may, in its discretion, credit any period of probation or parole as time served on a sentence.
 3. Restitution, whether court-ordered as provided in subsection 2 of this section or agreed to by the parties, or as enforced under section 558.019, shall be paid through the office of the prosecuting attorney or circuit attorney. Nothing in this section shall prohibit the prosecuting attorney or circuit attorney from contracting with or utilizing another entity for the collection of restitution and costs under this section. When ordered by the court, interest shall be allowed under subsection 1 of section 408.040. In addition to all other costs and fees allowed by law, each prosecuting attorney or circuit attorney who takes any action to collect restitution shall collect from the person paying restitution an administrative handling cost. The cost shall be twenty-five dollars for restitution of less than one hundred dollars and fifty dollars for restitution of at least one hundred dollars but less than two hundred fifty dollars. For restitution of two hundred fifty dollars or more an additional fee of ten percent of the total restitution shall be assessed, with a maximum fee for administrative handling costs not to exceed seventy-five dollars total. Notwithstanding the provisions of sections 50.525 to 50.745, the costs provided for in this subsection shall be deposited by the county treasurer into a separate interest-bearing fund to be expended by the prosecuting attorney or circuit attorney. This fund shall be known as the "Administrative Handling Cost Fund", and it shall be the fund for deposits under this section and under section 570.120. The funds shall be expended, upon warrants issued by the prosecuting attorney or circuit attorney directing the treasurer to issue checks thereon, only for purposes related to that authorized by subsection 4 of this section.
 4. The moneys deposited in the fund may be used by the prosecuting attorney or circuit attorney for office supplies, postage, books, training, office equipment, capital outlay, expenses of trial and witness preparation, additional employees for the staff of the

prosecuting or circuit attorney, employees' salaries, and for other lawful expenses incurred by the prosecuting or circuit attorney in the operation of that office.

5. This fund may be audited by the state auditor's office or the appropriate auditing agency.

6. If the moneys collected and deposited into this fund are not totally expended annually, then the unexpended balance shall remain in the fund and the balance shall be kept in the fund to accumulate from year to year.

7. Nothing in this section shall be construed to prohibit a crime victim from pursuing other lawful remedies against a defendant for restitution.

Probation, payment for services may be condition.

600.093. The court may require a defendant to repay all or a part of the value of the legal services rendered by the state public defender system as a condition of probation.

Court to order participation in program, when--fees determined by department of corrections--supplemental fee to be deposited in correctional substance abuse earnings fund.

559.633. 1. Upon a plea of guilty or a finding of guilty for a commission of a felony offense pursuant to chapter 195, RSMo, except for those offenses in which there exists a statutory prohibition against either probation or parole, when placing the person on probation, the court shall order the person to begin a required educational assessment and community treatment program within the first sixty days of probation as a condition of probation. Persons who are placed on probation after a period of incarceration pursuant to section 559.115 may not be required to participate in a required educational assessment and community treatment program.

2. The fees for the required educational assessment and community treatment program, or a portion of such fees, to be determined by the department of corrections, shall be paid by the person receiving the assessment. Any person who is assessed shall pay, in addition to any fee charged for the assessment, a supplemental fee of sixty dollars. The administrator of the program shall remit to the department of corrections the supplemental fees for all persons assessed, less two percent for administrative costs. The supplemental fees received by the department of corrections pursuant to this section shall be deposited in the correctional substance abuse earnings fund created pursuant to section 559.635.

CONFIDENTIALITY

Record of applications for probation or parole to be kept--information to be privileged--exceptions.

559.125. 1. The clerk of the court shall keep in a permanent file all applications for probation or parole by the court, and shall keep in such manner as may be prescribed by the court complete and full records of all presentence investigations requested, probations or paroles granted, revoked or terminated and all discharges from probations or paroles. All court orders relating to any presentence investigation requested and probation or parole granted under the provisions of this chapter and sections 558.011 and 558.026 shall be kept in a like manner, and, if the defendant subject to any such order is subject to an investigation or is under the supervision of the state board of probation and parole, a copy of the order shall be sent to the board. In any county where a parole board ceases to exist, the clerk of the court shall preserve the records of that board.

2. Information and data obtained by a probation or parole officer shall be privileged information and shall not be receivable in any court. Such information shall not be disclosed directly or indirectly to anyone other than the members of a parole board and the judge entitled to receive reports, except the court or the board may in its discretion permit the inspection of the report, or parts of such report, by the defendant, or offender or his attorney, or other person having a proper interest therein.

3. The provisions of subsection 2 of this section notwithstanding, the presentence investigation report shall be made available to the state and all information and data obtained in connection with preparation of the presentence investigation report may be made available to the state at the discretion of the court upon a showing that the receipt of the information and data is in the best interest of the state.

COURT SERVICES

Probation services provided to circuit courts, when.

217.750. 1. At the request of a judge of any circuit court, the board shall provide probation services for such court as provided in subsection 2 of this section.

2. The board shall provide probation services for any person convicted of any class of felony. The board shall not provide probation services for any class of misdemeanor except those class A misdemeanors the basis of which is contained in chapters 565 and 566, RSMo, or in section 568.050, RSMo, 455.085, RSMo, 589.425, RSMo, or section 455.538, RSMo.

Probation services for courts, rules authorized.

217.755. The board shall adopt general rules and regulations, in accordance with section 217.040, concerning the conditions of probation applicable to cases in the courts for which it provides probation service. Nothing herein, however, shall limit the authority of the court to impose or modify any general or specific conditions of probation.

DETENTION (See also Conditions, Probation Eligibility)

DURATION OF PROBATION (see Sentencing)

ELECTRONIC MONITORING

Lifetime supervision required for certain offenders--electronic monitoring--termination at age sixty-five permitted, when--rulemaking authority.

217.735. 1. Notwithstanding any other provision of law to the contrary, the board shall supervise an offender for the duration of his or her natural life when the offender has pleaded guilty to or been found guilty of an offense under section 566.030, 566.032, 566.060, or 566.062, RSMo, based on an act committed on or after August 28, 2006, or the offender has pleaded guilty to or has been found guilty of an offense under section 566.067, 566.083, 566.100, 566.151, 566.212, 566.213, 568.020, 568.080, or 568.090, RSMo, based on an act committed on or after August 28, 2006, against a victim who was less than fourteen years old and the offender is a prior sex offender as defined in subsection 2 of this section.

2. For the purpose of this section, a prior sex offender is a person who has previously pleaded guilty to or been found guilty of an offense contained in chapter 566, RSMo, or violating section 568.020, RSMo, when the person had sexual intercourse or deviate sexual intercourse with the victim, or violating subdivision (2) of subsection 1 of section 568.045, RSMo.

3. Subsection 1 of this section applies to offenders who have been granted probation, and to offenders who have been released on parole, conditional release, or upon serving their full sentence without early release. Supervision of an offender who was released after serving his or her full sentence will be considered as supervision on parole.

4. A mandatory condition of lifetime supervision of an offender under this section is that the offender be electronically monitored. Electronic monitoring shall be based on a global positioning system or other technology that identifies and records the offender's location at all times.

5. In appropriate cases as determined by a risk assessment, the board may terminate the supervision of an offender who is being supervised under this section when the offender is sixty-five years of age or older.

6. In accordance with section 217.040, the board may adopt rules relating to supervision and electronic monitoring of offenders under this section.

Lifetime supervision of certain sexual offenders--electronic monitoring--termination at age sixty-five permitted, when.

559.106. 1. Notwithstanding any statutory provision to the contrary, when a court grants probation to an offender who has pleaded guilty to or has been found guilty of an offense in section 566.030, 566.032, 566.060, or 566.062, RSMo, based on an act committed on or after August 28, 2006, or the offender has pleaded guilty to or has been found guilty of an offense under section 566.067, 566.083, 566.100, 566.151, 566.212, 566.213, 568.020, 568.080, or 568.090, RSMo, based on an act committed on or after August 28, 2006, against a victim who was less than fourteen years old and the offender is a prior sex offender as defined in subsection 2 of this section, the court shall order that the offender be supervised by the board of probation and parole for the duration of his or her natural life.

2. For the purpose of this section, a prior sex offender is a person who has previously pleaded guilty to or has been found guilty of an offense contained in chapter 566, RSMo, or violating section 568.020, RSMo, when the person had sexual intercourse or deviate sexual intercourse with the victim, or of violating subdivision (2) of subsection 1 of section 568.045, RSMo.

3. When probation for the duration of the offender's natural life has been ordered, a mandatory condition of such probation is that the offender be electronically monitored. Electronic monitoring shall be based on a global positioning system or other technology that identifies and records the offender's location at all times.

4. In appropriate cases as determined by a risk assessment, the court may terminate the probation of an offender who is being supervised under this section when the offender is sixty-five years of age or older.

House arrest authorized for certain prisoners--jailer to establish program--remote electronic surveillance allowed--percentage of prisoner's wage to pay cost--violation penalty--(St. Louis City).

217.543. 1. The jailer of any city not within a county having custody of pretrial detainees or persons serving sentences for violation of state or local laws may establish a program of house arrest consistent with the provisions of this section.

2. Such jailer shall by rule establish a program of house arrest. Such jailer may extend the limits of confinement for pretrial detainees or persons serving sentences for violation of* state or local laws.

3. *The inmate or detainee shall remain an inmate of such jailer and shall be subject to the rules and regulations of the house arrest program.*

4. Such jailer shall require the inmate or detainee to participate in work or educational or vocational programs and other activities that may be necessary to the supervision and treatment of the inmate or detainee.

5. An inmate or detainee released to house arrest shall be authorized to leave his place of residence only for the purpose and time necessary to participate in the programs and activities authorized.

6. Such jailer shall supervise every inmate or detainee released to the house arrest program and shall verify compliance with the requirements set forth for each person so released and such other rules and regulations that such jailer shall promulgate, and may do so by remote electronic surveillance. Such jailer may direct to any peace officer the return of any inmate or detainee from house arrest for violation of the conditions of release.

7. Each inmate or detainee who is released on house arrest shall pay a percentage of his wages to cover the costs of house arrest, such amount to be established by the jailer.

8. An inmate released to the house arrest program pursuant to this section commits the crime of escape from custody if such inmate purposely fails to return to his place of residence or activity as established by the jailer when he is required to do so. Escape from custody is a class D felony.

EMPLOYEE DISQUALIFICATION

Disqualification from holding position in correctional facility, when.

217.415. A person convicted of any crime under section 217.400, 217.405, or 217.410 shall be disqualified from holding any position in the department.

EMPLOYMENT DISCRIMINATION

Unlawful employment practices—exceptions.

213.055. 1. It shall be an unlawful employment practice:

(1) For an employer, because of the race, color, religion, national origin, sex, ancestry, age or disability of any individual:

(a) To fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, national origin, sex, ancestry, age or disability;

(b) To limit, segregate, or classify his employees or his employment applicants in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, national origin, sex, ancestry, age or disability;

(2) For a labor organization to exclude or to expel from its membership any individual or to discriminate in any way against any of its members or against any employer or any individual employed by an employer because of race, color, religion, national origin, sex, ancestry, age or disability of any individual; or to limit, segregate, or classify its membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, national origin, sex, ancestry, age or disability; or for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, national origin, sex, ancestry, age or disability in admission to, or employment in, any program established to provide apprenticeship or other training;

(3) For any employer or employment agency to print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification, or discrimination, because of race, color, religion, national origin, sex, ancestry, age or disability unless based upon a bona fide occupational qualification or for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, national origin, sex, ancestry, age as it relates to employment, or disability, or to classify or refer for employment any individual on the basis of his race, color, religion, national origin, sex, ancestry, age or disability.

2. Notwithstanding any other provision of this chapter, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences or such systems are not the result of an intention or a design to discriminate, and are not used to discriminate, because of race, color, religion, sex, national origin, ancestry, age or disability, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test, provided that such test, its administration, or action upon the results thereof, is not designed, intended or used to discriminate because of race, color, religion, national origin, sex, ancestry, age or disability.

3. Nothing contained in this chapter shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this chapter to grant preferential treatment to any individual or to any group because of the race, color, religion, national origin, sex, ancestry, age or disability of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, national origin, sex, ancestry, age or disability employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to or employed in any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, national origin, sex, ancestry, age

or disability in any community, state, section, or other area, or in the available workforce in any community, state, section, or other area.

4. Notwithstanding any other provision of this chapter, it shall not be an unlawful employment practice for the state or any political subdivision of the state to comply with the provisions of 29 U.S.C. 623 relating to employment as firefighters or law enforcement officers.

FINES AND COSTS

Cost of misdemeanor probation to be paid by offenders, exceptions.

559.604. Neither the state of Missouri nor any county of the state shall be required to pay any part of the cost of probation and rehabilitation services provided to misdemeanor offenders under sections 559.600 to 559.615. The person placed on probation shall contribute not less than thirty dollars or more than fifty dollars per month to the private entity providing him with supervision and rehabilitation services. The amount of the contribution shall be determined by the sentencing court. The court may exempt a person from all or part of the foregoing contribution if it finds any of the following factors to exist:

- (1) The offender has diligently attempted, but has been unable, to obtain employment which provides him sufficient income to make such payments;
- (2) The offender is a student in a school, college, university or course of vocational or technical training designed to fit the student for gainful employment. Certification of such student status shall be supplied to the court by the educational institution in which the offender is enrolled;
- (3) The offender has an employment handicap, as determined by a physical, psychological or psychiatric examination acceptable to or ordered by the court;
- (4) The offender's age prevents him from obtaining employment;
- (5) The offender is responsible for the support of dependents, and the payment of such contribution constitutes an undue hardship on the offender;
- (6) There are other extenuating circumstances as determined by the court to exempt or partially reduce such payments; or
- (7) The offender has been transferred outside the state under an interstate compact adopted pursuant to law.

FIREARMS

Firearms may be carried by designated employees—powers of arrest and apprehension.

217.280. 1. Under the rules and regulations of the department, designated employees may carry firearms when necessary for the proper discharge of their duties in this state or any state.

2. Those persons authorized to act by the director shall have the same power as granted any other law enforcement officers in this state to arrest escaped offenders and apprehend all persons who may be aiding and abetting such escape as defined in section 217.390.

Firearms, authority to carry, department's duties, training—rulemaking procedure.

217.710. 1. Probation and parole officers, supervisors and members of the board of probation and parole, who are certified pursuant to the requirements of subsection 2 of this section shall have the authority to carry their firearms at all times. The department of corrections shall promulgate policies and operating regulations which govern the use of firearms by probation and parole officers, supervisors and members of the board when carrying out the provisions of sections 217.650 to 217.810. Mere possession of a firearm shall not constitute an employment activity for the purpose of calculating compensatory time or overtime.

2. The department shall determine the content of the required firearms safety training and provide firearms certification and recertification training for probation and parole officers, supervisors and members of the board of probation and parole. A minimum of sixteen hours of firearms safety training shall be required. In no event shall firearms certification or recertification training for probation and parole officers and supervisors exceed the training required for officers of the state highway patrol.
3. The department shall determine the type of firearm to be carried by the officers, supervisors and members of the board of probation and parole.
4. Any officer, supervisor or member of the board of probation and parole that chooses to carry a firearm in the performance of such officer's, supervisor's or member's duties shall purchase the firearm and holster.
5. The department shall furnish such ammunition as is necessary for the performance of the officer's, supervisor's and member's duties.
6. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is promulgated under the authority of this chapter, shall become effective only if the agency has fully complied with all of the requirements of chapter 536, RSMo, including but not limited to, section 536.028, RSMo, if applicable, after August 28, 1998. All rulemaking authority delegated prior to August 28, 1998, is of no force and effect and repealed as of August 28, 1998, however nothing in section 571.030, RSMo, or this section shall be interpreted to repeal or affect the validity of any rule adopted and promulgated prior to August 28, 1998. If the provisions of section 536.028, RSMo, apply, the provisions of this section are nonseverable and if any of the powers vested with the general assembly pursuant to section 536.028, RSMo, to review, to delay the effective date, or to disapprove and annul a rule or portion of a rule are held unconstitutional or invalid, the purported grant of rulemaking authority and any rule so proposed and contained in the order of rulemaking shall be invalid and void, except that nothing in section 571.030, RSMo, or this section shall affect the validity of any rule adopted and promulgated prior to August 28, 1998.

HIGHWAY PATROL

Notification of monitoring to highway patrol--information entered into MULES and sexual offender registry.

- 559.107. 1. The department of corrections shall notify the highway patrol of any offender who is required as a mandatory condition of lifetime supervision to be electronically monitored, under section 217.735, RSMo, and section 559.106, and shall notify the highway patrol when the supervision of the offender has been terminated in appropriate cases as determined by a risk assessment when the offender is sixty-five years of age or older.
2. The highway patrol shall enter the electronic monitoring of the offender into the Missouri law enforcement system (MULES) and sexual offender registry where it is available to members of the criminal justice system, and other entities as provided by law, upon inquiry.

HOUSE ARREST & HOME DETENTION (see also electronic monitoring)

House arrest program, department to establish and regulate--limited release, when--offenders to fund program--arrest warrant may be issued by probation or parole officer, when.

- 217.541. 1. The department shall by rule establish a program of house arrest. The director or his designee may extend the limits of confinement of offenders serving sentences for class C or D felonies who have one year or less remaining prior to release on parole, conditional release, or discharge to participate in the house arrest program.
2. The offender referred to the house arrest program shall remain in the custody of the department and shall be subject to rules and regulations of the department pertaining to offenders of the department until released on parole or conditional release by the state board of probation and parole.
3. The department shall require the offender to participate in work or educational or vocational programs and other activities that may be necessary to the supervision and treatment of the offender.

4. An offender released to house arrest shall be authorized to leave his place of residence only for the purpose and time necessary to participate in the program and activities authorized in subsection 3 of this section.

5. The board of probation and parole shall supervise every offender released to the house arrest program and shall verify compliance with the requirements of this section and such other rules and regulations that the department shall promulgate and may do so by remote electronic surveillance. If any probation/parole officer has probable cause to believe that an offender under house arrest has violated a condition of the house arrest agreement, the probation/parole officer may issue a warrant for the arrest of the offender. The probation/parole officer may effect the arrest or may deputize any officer with the power of arrest to do so by giving the officer a copy of the warrant which shall outline the circumstances of the alleged violation. The warrant delivered with the offender by the arresting officer to the official in charge of any jail or other detention facility to which the offender is brought shall be sufficient legal authority for detaining the offender. An offender arrested under this section shall remain in custody or incarcerated without consideration of bail. The director or his designee, upon recommendation of the probation and parole officer, may direct the return of any offender from house arrest to a correctional facility of the department for reclassification.

6. Each offender who is released to house arrest shall pay a percentage of his wages, established by department rules, to a maximum of the per capita cost of the house arrest program. The money received from the offender shall be deposited in the inmate fund and shall be expended to support the house arrest program.

Failure to return to house arrest, felony.

217.542. 1. An offender of the department released to the house arrest program commits the crime of failure to return to house arrest if he purposely fails to return to his place of residence or activity authorized by subsection 3 of section 217.541 when he is required to do so.

2. Failure to return to house arrest is a class D felony.

INDEMNIFICATION & LEGAL EXPENSE FUND

Legal expense fund created--officers, employees, agencies, certain health care providers covered, procedure--rules regarding contract procedures and documentation of care--certain claims, limitations--funds not transferable to general revenue--rules.

105.711. 1. There is hereby created a "State Legal Expense Fund" which shall consist of moneys appropriated to the fund by the general assembly and moneys otherwise credited to such fund pursuant to section 105.716.

2. Moneys in the state legal expense fund shall be available for the payment of any claim or any amount required by any final judgment rendered by a court of competent jurisdiction against:

(1) The state of Missouri, or any agency of the state, pursuant to section 536.050 or 536.087, RSMo, or section 537.600, RSMo;

(2) Any officer or employee of the state of Missouri or any agency of the state, including, without limitation, elected officials, appointees, members of state boards or commissions, and members of the Missouri national guard upon conduct of such officer or employee arising out of and performed in connection with his or her official duties on behalf of the state, or any agency of the state, provided that moneys in this fund shall not be available for payment of claims made under chapter 287, RSMo;

(3) (a) Any physician, psychiatrist, pharmacist, podiatrist, dentist, nurse, or other health care provider licensed to practice in Missouri under the provisions of chapter 330, 332, 334, 335, 336, 337 or 338, RSMo, who is employed by the state of Missouri or any agency of the state under formal contract to conduct disability reviews on behalf of the department of elementary and secondary education or provide services to patients or inmates of state correctional facilities on a part-time basis, and any physician, psychiatrist, pharmacist, podiatrist, dentist, nurse, or other health care provider licensed to practice in Missouri under the provisions of chapter 330, 332, 334, 335, 336, 337, or 338, RSMo, who is under formal contract to provide services to patients or inmates at a county jail on a part-time basis;

(b) Any physician licensed to practice medicine in Missouri under the provisions of chapter 334, RSMo, and his professional corporation organized pursuant to chapter 356, RSMo, who is employed by or under contract with a city or county health department organized under chapter 192, RSMo, or chapter 205, RSMo, or a city health department operating under a city charter, or a combined city-county health department to provide services to patients for medical care caused by pregnancy, delivery, and child care, if such

medical services are provided by the physician pursuant to the contract without compensation or the physician is paid from no other source than a governmental agency except for patient co-payments required by federal or state law or local ordinance;

(c) Any physician licensed to practice medicine in Missouri under the provisions of chapter 334, RSMo, who is employed by or under contract with a federally funded community health center organized under Section 315, 329, 330 or 340 of the Public Health Services Act (42 U.S.C. 216, 254c) to provide services to patients for medical care caused by pregnancy, delivery, and child care, if such medical services are provided by the physician pursuant to the contract or employment agreement without compensation or the physician is paid from no other source than a governmental agency or such a federally funded community health center except for patient co-payments required by federal or state law or local ordinance. In the case of any claim or judgment that arises under this paragraph, the aggregate of payments from the state legal expense fund shall be limited to a maximum of one million dollars for all claims arising out of and judgments based upon the same act or acts alleged in a single cause against any such physician, and shall not exceed one million dollars for any one claimant;

(d) Any physician licensed pursuant to chapter 334, RSMo, who is affiliated with and receives no compensation from a nonprofit entity qualified as exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, which offers a free health screening in any setting or any physician, nurse, physician assistant, dental hygienist, dentist, or other health care professional licensed or registered under chapter 330, 331, 332, 334, 335, 336, 337, or 338, RSMo, who provides health care services within the scope of his or her license or registration at a city or county health department organized under chapter 192, RSMo, or chapter 205, RSMo, a city health department operating under a city charter, or a combined city-county health department, or a nonprofit community health center qualified as exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, if such services are restricted to primary care and preventive health services, provided that such services shall not include the performance of an abortion, and if such health services are provided by the health care professional licensed or registered under chapter 330, 331, 332, 334, 335, 336, 337, or 338, RSMo, without compensation. MO HealthNet or Medicare payments for primary care and preventive health services provided by a health care professional licensed or registered under chapter 330, 331, 332, 334, 335, 336, 337, or 338, RSMo, who volunteers at a free health clinic is not compensation for the purpose of this section if the total payment is assigned to the free health clinic. For the purposes of the section, "free health clinic" means a nonprofit community health center qualified as exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code of 1987, as amended, that provides primary care and preventive health services to people without health insurance coverage for the services provided without charge. In the case of any claim or judgment that arises under this paragraph, the aggregate of payments from the state legal expense fund shall be limited to a maximum of five hundred thousand dollars, for all claims arising out of and judgments based upon the same act or acts alleged in a single cause and shall not exceed five hundred thousand dollars for any one claimant, and insurance policies purchased pursuant to the provisions of section 105.721 shall be limited to five hundred thousand dollars. Liability or malpractice insurance obtained and maintained in force by or on behalf of any health care professional licensed or registered under chapter 330, 331, 332, 334, 335, 336, 337, or 338, RSMo, shall not be considered available to pay that portion of a judgment or claim for which the state legal expense fund is liable under this paragraph;

(e) Any physician, nurse, physician assistant, dental hygienist, or dentist licensed or registered to practice medicine, nursing, or dentistry or to act as a physician assistant or dental hygienist in Missouri under the provisions of chapter 332, 334, or 335, RSMo, or lawfully practicing, who provides medical, nursing, or dental treatment within the scope of his license or registration to students of a school whether a public, private, or parochial elementary or secondary school or summer camp, if such physician's treatment is restricted to primary care and preventive health services and if such medical, dental, or nursing services are provided by the physician, dentist, physician assistant, dental hygienist, or nurse without compensation. In the case of any claim or judgment that arises under this paragraph, the aggregate of payments from the state legal expense fund shall be limited to a maximum of five hundred thousand dollars, for all claims arising out of and judgments based upon the same act or acts alleged in a single cause and shall not exceed five hundred thousand dollars for any one claimant, and insurance policies purchased pursuant to the provisions of section 105.721 shall be limited to five hundred thousand dollars; or

(f) Any physician licensed under chapter 334, RSMo, or dentist licensed under chapter 332, RSMo, providing medical care without compensation to an individual referred to his or her care by a city or county health department organized under chapter 192 or 205, RSMo, a city health department operating under a city charter, or a combined city-county health department, or nonprofit health center qualified as exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or a federally funded community health center organized under Section 315, 329, 330, or 340 of the Public Health Services Act, 42 U.S.C. Section 216, 254c; provided that such treatment shall not include the performance of an abortion. In the case of any claim or judgment that arises under this paragraph, the aggregate of payments from the state legal expense fund shall be limited to a maximum of one million dollars for all claims arising out of and judgments based upon the same act or acts alleged in a single cause and shall not exceed one million dollars for any one claimant, and insurance policies purchased under the provisions of section 105.721 shall be limited to one million dollars. Liability or malpractice insurance obtained and maintained in force by or on behalf of any physician licensed under chapter 334, RSMo, or any dentist licensed under chapter 332, RSMo, shall not be considered available to pay that portion of a judgment or claim for which the state legal expense fund is liable under this paragraph;

(4) Staff employed by the juvenile division of any judicial circuit;

(5) Any attorney licensed to practice law in the state of Missouri who practices law at or through a nonprofit community social services center qualified as exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or through any agency of any federal, state, or local government, if such legal practice is provided by the attorney without compensation. In the case of any claim or judgment that arises under this subdivision, the aggregate of payments from the state legal expense fund shall be limited to a maximum of five hundred thousand dollars for all claims arising out of and judgments based upon the same act or acts alleged in a single cause and shall not exceed five hundred thousand dollars for any one claimant, and insurance policies purchased pursuant to the provisions of section 105.721 shall be limited to five hundred thousand dollars; or

(6) Any social welfare board created under section 205.770, RSMo, and the members and officers thereof upon conduct of such officer or employee while acting in his or her capacity as a board member or officer, and any physician, nurse, physician assistant, dental hygienist, dentist, or other health care professional licensed or registered under chapter 330, 331, 332, 334, 335, 336, 337, or 338, RSMo, who is referred to provide medical care without compensation by the board and who provides health care services within the scope of his or her license or registration as prescribed by the board.

(7) Any person who is selected or appointed by the state director of revenue under subsection 2 of section 136.055 to act as an agent of the department of revenue, to the extent that such agent's actions or inactions upon which such claim or judgment is based were performed in the course of the person's official duties as an agent of the department of revenue and in the manner required by state law or department of revenue rules.

3. The department of health and senior services shall promulgate rules regarding contract procedures and the documentation of care provided under paragraphs (b), (c), (d), (e), and (f) of subdivision (3) of subsection 2 of this section. The limitation on payments from the state legal expense fund or any policy of insurance procured pursuant to the provisions of section 105.721, provided in subsection 7 of this section, shall not apply to any claim or judgment arising under paragraph (a), (b), (c), (d), (e), or (f) of subdivision (3) of subsection 2 of this section. Any claim or judgment arising under paragraph (a), (b), (c), (d), (e), or (f) of subdivision (3) of subsection 2 of this section shall be paid by the state legal expense fund or any policy of insurance procured pursuant to section 105.721, to the extent damages are allowed under sections 538.205 to 538.235, RSMo. Liability or malpractice insurance obtained and maintained in force by any health care professional licensed or registered under chapter 330, 331, 332, 334, 335, 336, 337, or 338, RSMo, for coverage concerning his or her private practice and assets shall not be considered available under subsection 7 of this section to pay that portion of a judgment or claim for which the state legal expense fund is liable under paragraph (a), (b), (c), (d), (e), or (f) of subdivision (3) of subsection 2 of this section. However, a health care professional licensed or registered under chapter 330, 331, 332, 334, 335, 336, 337, or 338, RSMo, may purchase liability or malpractice insurance for coverage of liability claims or judgments based upon care rendered under paragraphs (c), (d), (e), and (f) of subdivision (3) of subsection 2 of this section which exceed the amount of liability coverage provided by the state legal expense fund under those paragraphs. Even if paragraph (a), (b), (c), (d), (e), or (f) of subdivision (3) of subsection 2 of this section is repealed or modified, the state legal expense fund shall be available for damages which occur while the pertinent paragraph (a), (b), (c), (d), (e), or (f) of subdivision (3) of subsection 2 of this section is in effect.

4. The attorney general shall promulgate rules regarding contract procedures and the documentation of legal practice provided under subdivision (5) of subsection 2 of this section. The limitation on payments from the state legal expense fund or any policy of insurance procured pursuant to section 105.721 as provided in subsection 7 of this section shall not apply to any claim or judgment arising under subdivision (5) of subsection 2 of this section. Any claim or judgment arising under subdivision (5) of subsection 2 of this section shall be paid by the state legal expense fund or any policy of insurance procured pursuant to section 105.721 to the extent damages are allowed under sections 538.205 to 538.235, RSMo. Liability or malpractice insurance otherwise obtained and maintained in force shall not be considered available under subsection 7 of this section to pay that portion of a judgment or claim for which the state legal expense fund is liable under subdivision (5) of subsection 2 of this section. However, an attorney may obtain liability or malpractice insurance for coverage of liability claims or judgments based upon legal practice rendered under subdivision (5) of subsection 2 of this section that exceed the amount of liability coverage provided by the state legal expense fund under subdivision (5) of subsection 2 of this section. Even if subdivision (5) of subsection 2 of this section is repealed or amended, the state legal expense fund shall be available for damages that occur while the pertinent subdivision (5) of subsection 2 of this section is in effect.

5. All payments shall be made from the state legal expense fund by the commissioner of administration with the approval of the attorney general. Payment from the state legal expense fund of a claim or final judgment award against a health care professional licensed or registered under chapter 330, 331, 332, 334, 335, 336, 337, or 338, RSMo, described in paragraph (a), (b), (c), (d), (e), or (f) of subdivision (3) of subsection 2 of this section, or against an attorney in subdivision (5) of subsection 2 of this section, shall only be made for services rendered in accordance with the conditions of such paragraphs. In the case of any claim or judgment against an officer or employee of the state or any agency of the state based upon conduct of such officer or employee arising out of and performed in connection with his or her official duties on behalf of the state or any agency of the state that would give rise to a cause of action under section 537.600, RSMo, the state legal expense fund shall be liable, excluding punitive damages, for:

(1) Economic damages to any one claimant; and

(2) Up to three hundred fifty thousand dollars for noneconomic damages. The state legal expense fund shall be the exclusive remedy and shall preclude any other civil actions or proceedings for money damages arising out of or relating to the same subject matter against the state officer or employee, or the officer's or employee's estate. No officer or employee of the state or any agency of the state shall be individually liable in his or her personal capacity for conduct of such officer or employee arising out of and performed in connection with his or her official duties on behalf of the state or any agency of the state. The provisions of this subsection shall not apply to any defendant who is not an officer or employee of the state or any agency of the state in any proceeding against an officer or employee of the state or any agency of the state. Nothing in this subsection shall limit the rights and remedies otherwise available to a claimant under state law or common law in proceedings where one or more defendants is not an officer or employee of the state or any agency of the state.

6. The limitation on awards for noneconomic damages provided for in this subsection shall be increased or decreased on an annual basis effective January first of each year in accordance with the Implicit Price Deflator for Personal Consumption Expenditures as published by the Bureau of Economic Analysis of the United States Department of Commerce. The current value of the limitation shall be calculated by the director of the department of insurance, financial institutions and professional registration, who shall furnish that value to the secretary of state, who shall publish such value in the Missouri Register as soon after each January first as practicable, but it shall otherwise be exempt from the provisions of section 536.021, RSMo.

7. Except as provided in subsection 3 of this section, in the case of any claim or judgment that arises under sections 537.600 and 537.610, RSMo, against the state of Missouri, or an agency of the state, the aggregate of payments from the state legal expense fund and from any policy of insurance procured pursuant to the provisions of section 105.721 shall not exceed the limits of liability as provided in sections 537.600 to 537.610, RSMo. No payment shall be made from the state legal expense fund or any policy of insurance procured with state funds pursuant to section 105.721 unless and until the benefits provided to pay the claim by any other policy of liability insurance have been exhausted.

8. The provisions of section 33.080, RSMo, notwithstanding, any moneys remaining to the credit of the state legal expense fund at the end of an appropriation period shall not be transferred to general revenue.

9. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is promulgated under the authority delegated in sections 105.711 to 105.726 shall become effective only if it has been promulgated pursuant to the provisions of chapter 536, RSMo. Nothing in this section shall be interpreted to repeal or affect the validity of any rule filed or adopted prior to August 28, 1999, if it fully complied with the provisions of chapter 536, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 1999, shall be invalid and void.

OFFENDER ABUSE

Offender abuse, penalty—employees not to use physical force, exception.

217.405. 1. Except as provided in subsection 3 of this section, a person commits the crime of "offender abuse" if he knowingly injures the physical well-being of any offender under the jurisdiction of the department by beating, striking, wounding or by sexual contact with such person.

2. Offender abuse is a class C felony.

3. No employee of the department shall use any physical force on an offender except the employee shall have the right to use such physical force as is necessary to defend himself, suppress an individual or group revolt or insurrection, enforce discipline or to secure the offender.

Abuse of offender, duty to report, penalty—confidentiality of report, immunity from liability—harassment prohibited.

217.410. 1. When any employee of the department has reasonable cause to believe that an offender in a correctional center operated or funded by the department has been abused, he shall immediately report it in writing to the director.

2. The written report shall contain the name and address of the correctional center; the name of the offender; information regarding the nature of the abuse; the name of the complainant; and any other information which might be helpful in an investigation.
3. Any person required by subsection 1 of this section to report or cause a report to be made, but who fails to do so within a reasonable time after the act of abuse or neglect is guilty of a class A misdemeanor.
4. In addition to those persons required to report under subsection 1 of this section, any other person having reasonable cause to believe that an offender has been abused may report such information to the director.
5. Upon receipt of a report, the department shall initiate an investigation within twenty-four hours.
6. If the investigation indicates possible abuse of an offender, the investigator shall refer the complaint, together with his report, to the director for appropriate action.
7. Reports made pursuant to this section shall be confidential and shall not be deemed a public record and shall not be subject to the provisions of section 109.180, RSMo, or chapter 610, RSMo.
8. Anyone who makes a report pursuant to this section or who testifies in any administrative or judicial proceeding arising from the report shall be immune from any civil or criminal liability for making such a report or for testifying, except for liability for perjury, unless such person acted in bad faith or with malicious purpose.
9. Within five working days after a report required to be made under subsection 1 of this section is received, the person making the report shall be notified in writing of its receipt and of the initiation of the investigation.
10. No person who directs or exercises any authority in a correctional center operated or funded by the department shall harass, dismiss or retaliate against an offender or employee because he or any member of his family has made a report of any violation or suspected violation of laws, ordinances or regulations applying to the correctional center which he has reasonable cause to believe has been committed or has occurred.

Sexual contact with prisoner or offender—definitions—penalty—consent not a defense.

566.145. 1. A person commits the crime of sexual contact with a prisoner or offender if:

- (1) Such person is an employee of, or assigned to work in, any jail, prison or correctional facility and such person has sexual intercourse or deviate sexual intercourse with a prisoner or an offender who is confined in a jail, prison, or correctional facility; or
- (2) Such person is a probation and parole officer and has sexual intercourse or deviate sexual intercourse with an offender who is under the direct supervision of the officer.

2. For the purposes of this section the following terms shall mean:

- (1) "Offender", includes any person in the custody of a prison or correctional facility and any person who is under the supervision of the state board of probation and parole;
- (2) "Prisoner", includes any person who is in the custody of a jail, whether pretrial or after disposition of a charge.

3. Sexual contact with a prisoner or offender is a class D felony.

4. Consent of a prisoner or offender is not an affirmative defense.

OFFENDER REGISTRATION

Release from custody under supervision of probation and parole, registration with law enforcement officials required.

217.695. 1. As used in this section, the following terms mean:

(1) "Chief law enforcement official", the county sheriff, chief of police or other public official responsible for enforcement of criminal laws within a county or city not within a county;

(2) "County" includes a city not within a county;

(3) "Offender", a person in the custody of the department or under the supervision of the board.

2. Each offender to be released from custody of the department who will be under the supervision of the board, except an offender transferred to another state pursuant to the interstate corrections compact, shall shortly before release be required to: complete a registration form indicating his intended address upon release, employer, parent's address, and such other information as may be required; submit to photographs; submit to fingerprints; or undergo other identification procedures including but not limited to hair samples or other identification indicia. All data and indicia of identification shall be compiled in duplicate, with one set to be retained by the department, and one set for the chief law enforcement official of the county of intended residence.

3. Any offender subject to the provisions of this section who changes his county of residence shall, in addition to notifying the board of probation and parole, notify and register with the chief law enforcement official of the county of residence within seven days after he changes his residence to that county.

4. Failure by an offender to register with the chief law enforcement official upon a change in the county of his residence shall be cause for revocation of the parole of the person except for good cause shown.

5. The department, the board, and the chief law enforcement official shall cause the information collected on the initial registration and any subsequent changes in residence or registration to be recorded with the highway patrol criminal information system.

6. The director of the department of public safety shall design and distribute the registration forms required by this section and shall provide any administrative assistance needed to facilitate the provisions of this section.

PARDONS AND COMMUTATIONS

Pardons by governor—conditions and restrictions—notice to central repository.

217.800. 1. In all cases in which the governor is authorized by the constitution to grant pardons, he may grant the same, with such conditions and under such restrictions as he may think proper.

2. All applications for pardon, commutation of sentence or reprieve shall be referred to the board for investigation. The board shall investigate each such case and submit to the governor a report of its investigation, with all other information the board may have relating to the applicant together with any recommendations the board deems proper to make.

3. The department of corrections shall notify the central repository, as provided in sections 43.500 to 43.530, RSMo, of any action of the governor granting a pardon, commutation of sentence, or reprieve.

PAROLE BOARD GENERAL DUTIES (see also Parole & Conditional Release Eligibility)

Board of paroles—powers.

559.321. The board of paroles shall have and exercise the same powers of probation and parole and be subject to the same regulations that trial courts are endowed with and provided for by sections 559.012 to 559.036.

Board of paroles--duties--records.

559.331. It shall be the duty of the board to keep a record of persons paroled and as far as possible of their whereabouts, occupation and conduct, and a record of the final discharge of such person upon parole, or the revocation of any parole revoked and the reasons therefor.

PAROLE & CONDITIONAL RELEASE ELIGIBILITY

Probation and parole board, general duties.

217.655. 1. The board of probation and parole shall be responsible for determining whether a person confined in the department shall be paroled or released conditionally as provided by section 558.011, RSMo. The board shall provide supervision to all persons referred by the circuit courts of the state as provided by sections 217.750 and 217.760.

2. The board shall provide such programs as necessary to carry out its responsibilities consistent with its goals and statutory obligations.

Decisions to be by majority vote--hearing panel, membership, duties--jurisdiction removal or appeal to board, when--decision to be final--closed meetings authorized.

217.670. 1. The board shall adopt an official seal of which the courts shall take official notice.

2. Decisions of the board regarding granting of paroles, extensions of a conditional release date or revocations of a parole or conditional release shall be by a majority vote of the hearing panel members. The hearing panel shall consist of one member of the board and two hearing officers appointed by the board. A member of the board may remove the case from the jurisdiction of the hearing panel and refer it to the full board for a decision. Within thirty days of entry of the decision of the hearing panel to deny parole or to revoke a parole or conditional release, the offender may appeal the decision of the hearing panel to the board. The board shall consider the appeal within thirty days of receipt of the appeal. The decision of the board shall be by majority vote of the board members and shall be final.

3. The orders of the board shall not be reviewable except as to compliance with the terms of sections 217.650 to 217.810 or any rules promulgated pursuant to such section.

4. The board shall keep a record of its acts and shall notify each correctional center of its decisions relating to persons who are or have been confined in such correctional center.

5. Notwithstanding any other provision of law, any meeting, record, or vote, of proceedings involving probation, parole, or pardon, may be a closed meeting, closed record, or closed vote.

6. Notwithstanding any other provision of law, when the appearance or presence of an offender before the board or a hearing panel is required for the purpose of deciding whether to grant conditional release or parole, extend the date of conditional release, revoke parole or conditional release, or for any other purpose, such appearance or presence may occur by means of a videoconference at the discretion of the board. Victims having a right to attend parole hearings may testify either at the site where the board is conducting the videoconference or at the institution where the offender is located. The use of videoconferencing in this section shall be at the discretion of the board, and shall not be utilized if either the offender, the victim or the victim's family objects to it.

Board of paroles--rules and regulations--meetings--members.

559.311. The board shall have power to make all needed rules and regulations concerning terms and conditions of parole and applications for parole as herein provided, but no formal or technical form of application therefor shall be required. The board so constituted shall hold regular meetings at least once in each week and more often if they shall deem it necessary, and all records, hearings and proceedings of the board shall be public and open to the inspection of the public. Whenever either of the members of the

board of parole from any cause shall be unable to be present at any meeting or meetings of the board the attorneys of the court who are present but not less in number than five may elect one of its members then in attendance having the qualifications of a circuit judge to act as a temporary member of the board in the place of the member who is absent and the attorney together with the regular member of the board who is present shall have power to hear and determine all applications for parole.

Handbook of rules governing conduct of parolees furnished to whom, duties of board.

217.675. The members of the board shall prepare and cause to be published a handbook containing all rules, regulations, and suggestions governing the conduct of parolees. Handbooks shall be furnished to all parolees and to any employer of a parolee who requests it. The handbook shall be continuously revised and updated by the board.

Board may order release or parole, when--personal hearing--fee--standards--rules--minimum term for eligibility for parole, how calculated--first degree murder, eligibility for hearing--hearing procedure--notice--education requirements, exceptions--rulemaking authority.

217.690. 1. When in its opinion there is reasonable probability that an offender of a correctional center can be released without detriment to the community or to himself, the board may in its discretion release or parole such person except as otherwise prohibited by law. All paroles shall issue upon order of the board, duly adopted.

2. Before ordering the parole of any offender, the board shall have the offender appear before a hearing panel and shall conduct a personal interview with him, unless waived by the offender. A parole shall be ordered only for the best interest of society, not as an award of clemency; it shall not be considered a reduction of sentence or a pardon. An offender shall be placed on parole only when the board believes that he is able and willing to fulfill the obligations of a law-abiding citizen. Every offender while on parole shall remain in the legal custody of the department but shall be subject to the orders of the board.

3. The board has discretionary authority to require the payment of a fee, not to exceed sixty dollars per month, from every offender placed under board supervision on probation, parole, or conditional release, to waive all or part of any fee, to sanction offenders for willful nonpayment of fees, and to contract with a private entity for fee collections services. All fees collected shall be deposited in the inmate fund established in section 217.430. Fees collected may be used to pay the costs of contracted collections services. The fees collected may otherwise be used to provide community corrections and intervention services for offenders. Such services include substance abuse assessment and treatment, mental health assessment and treatment, electronic monitoring services, residential facilities services, employment placement services, and other offender community corrections or intervention services designated by the board to assist offenders to successfully complete probation, parole, or conditional release. The board shall adopt rules not inconsistent with law, in accordance with section 217.040, with respect to sanctioning offenders and with respect to establishing, waiving, collecting, and using fees.

4. The board shall adopt rules not inconsistent with law, in accordance with section 217.040, with respect to the eligibility of offenders for parole, the conduct of parole hearings or conditions to be imposed upon paroled offenders. Whenever an order for parole is issued it shall recite the conditions of such parole.

5. When considering parole for an offender with consecutive sentences, the minimum term for eligibility for parole shall be calculated by adding the minimum terms for parole eligibility for each of the consecutive sentences, except the minimum term for parole eligibility shall not exceed the minimum term for parole eligibility for an ordinary life sentence.

6. Any offender under a sentence for first degree murder who has been denied release on parole after a parole hearing shall not be eligible for another parole hearing until at least three years from the month of the parole denial; however, this subsection shall not prevent a release pursuant to subsection 4 of section 558.011, RSMo.

7. Parole hearings shall, at a minimum, contain the following procedures:

- (1) The victim or person representing the victim who attends a hearing may be accompanied by one other person;
- (2) The victim or person representing the victim who attends a hearing shall have the option of giving testimony in the presence of the inmate or to the hearing panel without the inmate being present;
- (3) The victim or person representing the victim may call or write the parole board rather than attend the hearing;

- (4) The victim or person representing the victim may have a personal meeting with a board member at the board's central office;
 - (5) The judge, prosecuting attorney or circuit attorney and a representative of the local law enforcement agency investigating the crime shall be allowed to attend the hearing or provide information to the hearing panel in regard to the parole consideration; and
 - (6) The board shall evaluate information listed in the juvenile sex offender registry pursuant to section 211.425, RSMo, provided the offender is between the ages of seventeen and twenty-one, as it impacts the safety of the community.
8. The board shall notify any person of the results of a parole eligibility hearing if the person indicates to the board a desire to be notified.
 9. The board may, at its discretion, require any offender seeking parole to meet certain conditions during the term of that parole so long as said conditions are not illegal or impossible for the offender to perform. These conditions may include an amount of restitution to the state for the cost of that offender's incarceration.
 10. Nothing contained in this section shall be construed to require the release of an offender on parole nor to reduce the sentence of an offender heretofore committed.
 11. Beginning January 1, 2001, the board shall not order a parole unless the offender has obtained a high school diploma or its equivalent, or unless the board is satisfied that the offender, while committed to the custody of the department, has made an honest good-faith effort to obtain a high school diploma or its equivalent; provided that the director may waive this requirement by certifying in writing to the board that the offender has actively participated in mandatory education programs or is academically unable to obtain a high school diploma or its equivalent.
 12. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2005, shall be invalid and void.

Eligibility for parole, offenders with life sentence, when—criteria.

217.692. 1. Notwithstanding any other provision of law to the contrary, any offender incarcerated in a correctional institution serving any sentence of life with no parole for fifty years or life without parole, whose plea of guilt was entered or whose trial commenced prior to December 31, 1990, and who:

- (1) Pleaded guilty to or was found guilty of a homicide of a spouse or domestic partner;
- (2) Has no prior violent felony convictions;
- (3) No longer has a cognizable legal claim or legal recourse; and
- (4) Has a history of being a victim of continual and substantial physical or sexual domestic violence that was not presented as an affirmative defense at trial or sentencing and such history can be corroborated with evidence of facts or circumstances which existed at the time of the alleged physical or sexual domestic violence of the offender, including but not limited to witness statements, hospital records, social services records, and law enforcement records;

shall be eligible for parole after having served fifteen years of such sentence when the board determines by using the guidelines established by this section that there is a strong and reasonable probability that the person will not thereafter violate the law.

2. The board of probation and parole shall give a thorough review of the case history and prison record of any offender described in subsection 1 of this section. At the end of the board's review, the board shall provide the offender with a copy of a statement of reasons for its parole decision.

3. Any offender released under the provisions of this section shall be under the supervision of the parole board for an amount of time to be determined by the board.

4. The parole board shall consider, but not be limited to the following criteria when making its parole decision:

- (1) Length of time served;
- (2) Prison record and self-rehabilitation efforts;
- (3) Whether the history of the case included corroborative material of physical, sexual, mental, or emotional abuse of the offender, including but not limited to witness statements, hospital records, social service records, and law enforcement records;
- (4) If an offer of a plea bargain was made and if so, why the offender rejected or accepted the offer;
- (5) Any victim information outlined in subsection 7 of section 217.690 and section 595.209, RSMo;
- (6) The offender's continued claim of innocence;
- (7) The age and maturity of the offender at the time of the board's decision;
- (8) The age and maturity of the offender at the time of the crime and any contributing influence affecting the offender's judgment;
- (9) The presence of a workable parole plan; and
- (10) Community and family support.

5. Nothing in this section shall limit the review of any offender's case who is eligible for parole prior to fifteen years, nor shall it limit in any way the parole board's power to grant parole prior to fifteen years.

6. Nothing in this section shall limit the review of any offender's case who has applied for executive clemency, nor shall it limit in any way the governor's power to grant clemency.

7. It shall be the responsibility of the offender to petition the board for a hearing under this section.

8. A person commits the crime of perjury if he or she, with the purpose to deceive, knowingly makes a false witness statement to the board. Perjury under this section shall be a class C felony.

9. In cases where witness statements alleging physical or sexual domestic violence are in conflict as to whether such violence occurred or was continual and substantial in nature, the history of such alleged violence shall be established by other corroborative evidence in addition to witness statements, as provided by subsection 1 of this section. A contradictory statement of the victim shall not be deemed a conflicting statement for purposes of this section.

Board may parole prisoner held on warrant.

217.725. When a court or other authority has issued a warrant against a person, the board may release him on parole to answer the warrant of such court or authority.

PAROLE & CONDITIONAL RELEASE REVOCATION

Parole time as time of imprisonment, exception—final discharge—procedure to register to vote.

217.730. 1. The period served on parole, except for judicial parole granted or revoked pursuant to section 559.100, RSMo, shall be deemed service of the term of imprisonment and, subject to the provisions of section 217.720 relating to an offender who is or has been a fugitive from justice, the total time served may not exceed the maximum term or sentence.

2. When an offender on parole or conditional release, before the expiration of the term for which the offender was sentenced, has performed the obligation of his parole for such time as satisfies the board that his final release is not incompatible with the best

interest of society and the welfare of the individual, the board may make a final order of discharge and issue a certificate of discharge to the offender. No such order of discharge shall be made in any case less than three years after the date on which the offender was paroled or conditionally released except where the sentence expires earlier.

3. Upon final discharge, persons shall be informed in writing on the process and procedure to register to vote.

PHYSICAL FORCE (see Offender Abuse)

PREPAROLE REPORTS (See Presentence Reports & Investigations)

PRESENTENCE REPORTS & INVESTIGATIONS

Probation and parole officers furnished to circuit courts, when--presentence and preparole investigations--requirements.

217.760. 1. In all felony cases and class A misdemeanor cases, the basis of which misdemeanor cases are contained in chapters 565 and 566, RSMo, and section 577.023, RSMo, at the request of a circuit judge of any circuit court, the board shall assign one or more state probation and parole officers to make an investigation of the person convicted of the crime or offense before sentence is imposed. In all felony cases in which the recommended sentence established by the sentencing advisory commission pursuant to subsection 6 of section 558.019, RSMo, includes probation but the recommendation of the prosecuting attorney or circuit attorney does not include probation, the board of probation and parole shall, prior to sentencing, provide the judge with a report on available alternatives to incarceration. If a presentence investigation report is completed then the available alternatives shall be included in the presentence investigation report.

2. The report of the presentence investigation or preparole investigation shall contain any prior criminal record of the defendant and such information about his or her characteristics, his or her financial condition, his or her social history, the circumstances affecting his or her behavior as may be helpful in imposing sentence or in granting probation or in the correctional treatment of the defendant, information concerning the impact of the crime upon the victim, the recommended sentence established by the sentencing advisory commission and available alternatives to incarceration including opportunities for restorative justice, as well as a recommendation by the probation and parole officer. The officer shall secure such other information as may be required by the court and, whenever it is practicable and needed, such investigation shall include a physical and mental examination of the defendant.

Presentence investigation, required, when--victim impact statement, prepared when, contents.

217.762. 1. Prior to sentencing any defendant convicted of a felony which resulted in serious physical injury or death to the victim, a presentence investigation shall be conducted by the board of probation and parole to be considered by the court, unless the court orders otherwise.

2. The presentence investigation shall include a victim impact statement if the defendant caused physical, psychological, or economic injury to the victim.

3. If the court does not order a presentence investigation, the prosecuting attorney may prepare a victim impact statement to be submitted to the court. The court shall consider the victim impact statement in determining the appropriate sentence, and in entering any order of restitution to the victim.

4. A victim impact statement shall:

(1) Identify the victim of the offense;

(2) Itemize any economic loss suffered by the victim as a result of the offense;

(3) Identify any physical injury suffered by the victim as a result of the offense, along with its seriousness and permanence;

- (4) Describe any change in the victim's personal welfare or familial relationships as a result of the offense;
- (5) Identify any request for psychological services initiated by the victim or the victim's family as a result of the offense; and
- (6) Contain any other information related to the impact of the offense upon the victim that the court requires.

Presentence investigation and report--inquiry of victim, when.

- 557.026. 1. When a probation officer is available to any court, such probation officer shall, unless waived by the defendant, make a presentence investigation in all felony cases and report to the court before any authorized disposition under section 557.011. In all class A misdemeanor cases a probation officer shall, if directed by the court, make a presentence investigation and report to the court before any authorized disposition under section 557.011. The report shall not be submitted to the court or its contents disclosed to anyone until the defendant has pleaded guilty or been found guilty.
2. The presentence investigation report shall be prepared, presented and utilized as provided by rule of court, except that no court shall prevent the defendant or the attorney for the defendant from having access to the complete presentence investigation report and recommendations before any authorized disposition under section 557.011.
 3. The defendant shall not be obligated to make any statement to a probation officer in connection with any presentence investigation hereunder.
 4. When the jury enters a finding of guilty and assesses punishment, the probation officer shall, as part of the presentence investigation, inquire of the victim of the offense for which such punishment was assessed of the facts of the offense and any personal injury or financial loss incurred by the victim. If the victim is dead or otherwise unable to make a statement, the probation officer shall attempt to obtain such information from a member of the immediate family of the victim.

PRIVATE PROBATION CONTRACTS

Qualifications and factors considered by judges in approving private entities to serve as probation offices.

559.609. The associate circuit or municipal judges approving the private entity to function as a probation office shall base their decision on factors such as length of time in the probation field, experience in supervising various types of offenders, the financial ability to operate a probation office in the jurisdiction, and other factors as the judges deem necessary and relevant.

PROBATION ELIGIBILITY (see also Sentencing)

Appeals, probation not to be granted, when--probation granted after delivery to department of corrections, time limitation, assessment--one hundred twenty day program--notification to state, when, hearing--no probation in certain cases.

- 559.115. 1. Neither probation nor parole shall be granted by the circuit court between the time the transcript on appeal from the offender's conviction has been filed in appellate court and the disposition of the appeal by such court.
2. Unless otherwise prohibited by subsection 8 of this section, a circuit court only upon its own motion and not that of the state or the offender shall have the power to grant probation to an offender anytime up to one hundred twenty days after such offender has been delivered to the department of corrections but not thereafter. The court may request information and a recommendation from the department concerning the offender and such offender's behavior during the period of incarceration. Except as provided in this section, the court may place the offender on probation in a program created pursuant to section 217.777, RSMo, or may place the offender on probation with any other conditions authorized by law.
 3. The court may recommend placement of an offender in a department of corrections one hundred twenty-day program under this subsection or order such placement under subsection 4 of section 559.036. Upon the recommendation or order of the court, the department of corrections shall assess each offender to determine the appropriate one hundred twenty-day program in which to place the offender, which may include placement in the shock incarceration program or institutional treatment program. When the court recommends and receives placement of an offender in a department of corrections one hundred twenty-day program, the offender shall

be released on probation if the department of corrections determines that the offender has successfully completed the program except as follows. Upon successful completion of a program under this subsection, the board of probation and parole shall advise the sentencing court of an offender's probationary release date thirty days prior to release. The court shall follow the recommendation of the department unless the court determines that probation is not appropriate. If the court determines that probation is not appropriate, the court may order the execution of the offender's sentence only after conducting a hearing on the matter within ninety to one hundred twenty days from the date the offender was delivered to the department of corrections. If the department determines the offender has not successfully completed a one hundred twenty-day program under this subsection, the offender shall be removed from the program and the court shall be advised of the removal. The department shall report on the offender's participation in the program and may provide recommendations for terms and conditions of an offender's probation. The court shall then have the power to grant probation or order the execution of the offender's sentence.

4. If the court is advised that an offender is not eligible for placement in a one hundred twenty-day program under subsection 3 of this section, the court shall consider other authorized dispositions. If the department of corrections one hundred twenty-day program under subsection 3 of this section is full, the court may place the offender in a private program approved by the department of corrections or the court, the expenses of such program to be paid by the offender, or in an available program offered by another organization. If the offender is convicted of a class C or class D nonviolent felony, the court may order probation while awaiting appointment to treatment.

5. Except when the offender has been found to be a predatory sexual offender pursuant to section 558.018, the court shall request the department of corrections to conduct a sexual offender assessment if the defendant has pleaded guilty to or has been found guilty of sexual abuse when classified as a class B felony. Upon completion of the assessment, the department shall provide to the court a report on the offender and may provide recommendations for terms and conditions of an offender's probation. The assessment shall not be considered a one hundred twenty-day program as provided under subsection 3 of this section. The process for granting probation to an offender who has completed the assessment shall be as provided under subsections 2 and 6 of this section.

6. Unless the offender is being granted probation pursuant to successful completion of a one hundred twenty-day program the circuit court shall notify the state in writing when the court intends to grant probation to the offender pursuant to the provisions of this section. The state may, in writing, request a hearing within ten days of receipt of the court's notification that the court intends to grant probation. Upon the state's request for a hearing, the court shall grant a hearing as soon as reasonably possible. If the state does not respond to the court's notice in writing within ten days, the court may proceed upon its own motion to grant probation.

7. An offender's first incarceration under this section prior to release on probation shall not be considered a previous prison commitment for the purpose of determining a minimum prison term under the provisions of section 558.019.

8. Notwithstanding any other provision of law, probation may not be granted pursuant to this section to offenders who have been convicted of murder in the second degree pursuant to section 565.021; forcible rape pursuant to section 566.030 as it existed prior to August 28, 2013; rape in the first degree under section 566.030; forcible sodomy pursuant to section 566.060 as it existed prior to August 28, 2013; sodomy in the first degree under section 566.060; statutory rape in the first degree pursuant to section 566.032; statutory sodomy in the first degree pursuant to section 566.062; child molestation in the first degree pursuant to section 566.067 when classified as a class A felony; abuse of a child pursuant to section 568.060 when classified as a class A felony; an offender who has been found to be a predatory sexual offender pursuant to section 558.018; or any offense in which there exists a statutory prohibition against either probation or parole.

Eligible for probation, when.

559.012. The court may place a person on probation for a specific period upon conviction of any offense or upon suspending imposition of sentence if, having regard to the nature and circumstances of the offense and to the history and character of the defendant, the court is of the opinion that

(1) Institutional confinement of the defendant is not necessary for the protection of the public; and

(2) The defendant is in need of guidance, training or other assistance which, in his case, can be effectively administered through probation supervision.

RESTITUTION

Restitution may be ordered for tampering and stealing offenses--limitation on release from probation.

- 559.105. 1. Any person who has been found guilty of or has pled guilty to an offense may be ordered by the court to make restitution to the victim for the victim's losses due to such offense. Restitution pursuant to this section shall include, but not be limited to a victim's reasonable expenses to participate in the prosecution of the crime.
2. No person ordered by the court to pay restitution pursuant to this section shall be released from probation until such restitution is complete. If full restitution is not made within the original term of probation, the court shall order the maximum term of probation allowed for such offense.
3. Any person eligible to be released on parole shall be required, as a condition of parole, to make restitution pursuant to this section. The board of probation and parole shall not release any person from any term of parole for such offense until the person has completed such restitution, or until the maximum term of parole for such offense has been served.
4. The court may set an amount of restitution to be paid by the defendant. Said amount may be taken from the inmate's account at the department of corrections while the defendant is incarcerated. Upon conditional release or parole, if any amount of such court-ordered restitution is unpaid, the payment of the unpaid balance may be collected as a condition of conditional release or parole by the prosecuting attorney or circuit attorney under section 559.100. The prosecuting attorney or circuit attorney may refer any failure to make such restitution as a condition of conditional release or parole to the parole board for enforcement.

SENTENCING

Authorized dispositions.

- 557.011. 1. Every person found guilty of an offense shall be dealt with by the court in accordance with the provisions of this chapter, except that for offenses defined outside this code and not repealed, the term of imprisonment or the fine that may be imposed is that provided in the statute defining the offense; however, the conditional release term of any sentence of a term of years shall be determined as provided in subsection 4 of section 558.011.
2. Whenever any person has been found guilty of a felony or a misdemeanor the court shall make one or more of the following dispositions of the offender in any appropriate combination. The court may:
- (1) Sentence the person to a term of imprisonment as authorized by chapter 558, RSMo;
 - (2) Sentence the person to pay a fine as authorized by chapter 560, RSMo;
 - (3) Suspend the imposition of sentence, with or without placing the person on probation;
 - (4) Pronounce sentence and suspend its execution, placing the person on probation;
 - (5) Impose a period of detention as a condition of probation, as authorized by section 559.026, RSMo.
3. Whenever any person has been found guilty of an infraction, the court shall make one or more of the following dispositions of the offender in any appropriate combination. The court may:
- (1) Sentence the person to pay a fine as authorized by chapter 560, RSMo;
 - (2) Suspend the imposition of sentence, with or without placing the person on probation;
 - (3) Pronounce sentence and suspend its execution, placing the person on probation.

4. Whenever any organization has been found guilty of an offense, the court shall make one or more of the following dispositions of the organization in any appropriate combination. The court may:

- (1) Sentence the organization to pay a fine as authorized by chapter 560, RSMo;
- (2) Suspend the imposition of sentence, with or without placing the organization on probation;
- (3) Pronounce sentence and suspend its execution, placing the organization on probation;
- (4) Impose any special sentence or sanction authorized by law.

5. This chapter shall not be construed to deprive the court of any authority conferred by law to decree a forfeiture of property, suspend or cancel a license, remove a person from office, or impose any other civil penalty. An appropriate order exercising such authority may be included as part of any sentence.

6. In the event a sentence of confinement is ordered executed, a court may order that an individual serve all or any portion of such sentence on electronic monitoring; except that all costs associated with the electronic monitoring shall be charged to the person on house arrest. If the judge finds the person unable to afford the costs associated with electronic monitoring, the judge may order that the person be placed on house arrest with electronic monitoring if the county commission agrees to pay the costs of such monitoring. If the person on house arrest is unable to afford the costs associated with electronic monitoring and the county commission does not agree to pay from the general revenue of the county the costs of such electronic monitoring, the judge shall not order that the person be placed on house arrest with electronic monitoring.

Probation may be granted, when.

559.120. The circuit court may place a defendant on probation and require his participation in a program established pursuant to section 217.777, RSMo, if, having regard to the nature and circumstances of the offense and to the history and character of the defendant, the court is of the opinion that:

- (1) Traditional institutional confinement of the defendant is not necessary for the protection of the public, given adequate supervision; and
- (2) The defendant is in need of guidance, training or other assistance which, in his case, can be effectively administered through participation in a community-based treatment program.

SEX OFFENDERS (see also Electronic Monitoring, Supervision, Highway Patrol, and Offender Registration)

Authority to require registered sexual offenders to provide access to personal home computer.

589.042. The court or the board of probation and parole shall have the authority to require a person who is required to register as a sexual offender under sections 589.400 to 589.425, RSMo, to give his or her assigned probation or parole officer access to his or her personal home computer as a condition of probation or parole in order to monitor and prevent such offender from obtaining and keeping child pornography or from committing an offense under chapter 566, RSMo. Such access shall allow the probation or parole officer to view the Internet use history, computer hardware, and computer software of any computer, including a laptop computer, that the offender owns.

Probation and parole officers to notify law enforcement of sex offender change of residence, when—probation officer defined.

589.415. 1. Any probation officer or parole officer assigned to a sexual offender who is required to register pursuant to sections 589.400 to 589.425 shall notify the appropriate law enforcement officials whenever the officer has reason to believe that the offender will be changing his or her residence. Upon obtaining the new address where the offender expects to reside, the officer shall report such address to the chief law enforcement official with whom the offender last registered and the chief law enforcement official of the county having jurisdiction over the new residence, if different. The officer shall also inform the offender of the offender's duty to register. However, nothing in this section shall affect the offender's duty to register, pursuant to sections 589.400 to 589.425.

2. As used in this section, the term "probation officer" includes any agent of a private entity assigned to provide probation supervision services to an offender due to the offender's status as a sexual offender who is required to register pursuant to sections 589.400 to 589.425.

SOVEREIGN IMMUNITY

Sovereign immunity in effect—exceptions.

537.600. 1. Such sovereign or governmental tort immunity as existed at common law in this state prior to September 12, 1977, except to the extent waived, abrogated or modified by statutes in effect prior to that date, shall remain in full force and effect; except that, the immunity of the public entity from liability and suit for compensatory damages for negligent acts or omissions is hereby expressly waived in the following instances:

(1) Injuries directly resulting from the negligent acts or omissions by public employees arising out of the operation of motor vehicles or motorized vehicles within the course of their employment;

(2) Injuries caused by the condition of a public entity's property if the plaintiff establishes that the property was in dangerous condition at the time of the injury, that the injury directly resulted from the dangerous condition, that the dangerous condition created a reasonably foreseeable risk of harm of the kind of injury which was incurred, and that either a negligent or wrongful act or omission of an employee of the public entity within the course of his employment created the dangerous condition or a public entity had actual or constructive notice of the dangerous condition in sufficient time prior to the injury to have taken measures to protect against the dangerous condition. In any action under this subdivision wherein a plaintiff alleges that he was damaged by the negligent, defective or dangerous design of a highway or road, which was designed and constructed prior to September 12, 1977, the public entity shall be entitled to a defense which shall be a complete bar to recovery whenever the public entity can prove by a preponderance of the evidence that the alleged negligent, defective, or dangerous design reasonably complied with highway and road design standards generally accepted at the time the road or highway was designed and constructed.

2. The express waiver of sovereign immunity in the instances specified in subdivisions (1) and (2) of subsection 1 of this section are absolute waivers of sovereign immunity in all cases within such situations whether or not the public entity was functioning in a governmental or proprietary capacity and whether or not the public entity is covered by a liability insurance for tort.

3. The term "public entity" as used in this section shall include any multistate compact agency created by a compact formed between this state and any other state which has been approved by the Congress of the United States.

SUPERVISION FEES (see also Conditions, Fines and Costs)

Municipal ordinance violations, probation may be contracted for by municipal courts, procedure—cost to be paid by offenders, exceptions.

559.607. 1. Judges of the municipal division in any circuit, acting through a chief or presiding judge, either may contract with a private or public entity or may employ any qualified person to serve as the city's probation officer to provide probation and rehabilitation services for persons placed on probation for violation of any ordinance of the city, specifically including the offense of operating or being in physical control of a motor vehicle while under the influence of intoxicating liquor or narcotic drugs. The contracting city shall not be required to pay for any part of the cost of probation and rehabilitation services authorized under sections 559.600 to 559.615. Persons found guilty or pleading guilty to ordinance violations and placed on probation by municipal or city court judges shall contribute a service fee to the court in the amount set forth in section 559.604 to pay the cost of their probation supervision provided by a probation officer employed by the court or by a contract probation officer as provided for in section 559.604.

2. When approved by municipal court judges in the municipal division, the application, judicial order of approval, and the contract shall be forwarded to and filed with the board of probation and parole. The court-approved private or public entity or probation officer employed by the court shall then function as the probation office for the city, pursuant to the terms of the contract or conditions of

employment and the terms of probation ordered by the judge. Any city in this state which presently does not have probation services available for persons convicted of its ordinance violations, or that contracts out those services with a private entity, may, under the procedures authorized in sections 559.600 to 559.615, contract with and continue to contract with a private entity or employ any qualified person and contract with the municipal division to provide such probation supervision and rehabilitation services.

TRANSFER OF SUPERVISION

Transfer to another court.

559.031. Jurisdiction over a probationer may be transferred from the court which imposed probation to a court having equal jurisdiction over offenders in any other part of the state, with the concurrence of both courts. Retransfers of jurisdiction may also occur in the same manner. The court to which jurisdiction has been transferred under this section* shall be authorized to exercise all powers permissible under this chapter over the defendant, except that the term of probation shall not be terminated without the consent of the sentencing court.

Transfer of supervision.

559.029. Any criminal case under probation supervision may be transferred to another judge in the circuit in the manner provided by local circuit rule.

TREATMENT & COUNSELING

Program for offenders with substance abuse addiction—eligibility, disposition, placement—completion, effect.

217.362. 1. The department of corrections shall design and implement an intensive long-term program for the treatment of chronic nonviolent offenders with serious substance abuse addictions who have not pleaded guilty to or been convicted of a dangerous felony as defined in section 556.061, RSMo.

2. Prior to sentencing, any judge considering an offender for this program shall notify the department. The potential candidate for the program shall be screened by the department to determine eligibility. The department shall, by regulation, establish eligibility criteria and inform the court of such criteria. The department shall notify the court as to the offender's eligibility and the availability of space in the program. Notwithstanding any other provision of law to the contrary, except as provided for in section 558.019, RSMo, if an offender is eligible and there is adequate space, the court may sentence a person to the program which shall consist of institutional drug or alcohol treatment for a period of at least twelve and no more than twenty-four months, as well as a term of incarceration. The department shall determine the nature, intensity, duration, and completion criteria of the education, treatment, and aftercare portions of any program services provided. Execution of the offender's term of incarceration shall be suspended pending completion of said program. Allocation of space in the program may be distributed by the department in proportion to drug arrest patterns in the state. If the court is advised that an offender is not eligible or that there is no space available, the court shall consider other authorized dispositions.

3. Upon successful completion of the program, the board of probation and parole shall advise the sentencing court of an offender's probationary release date thirty days prior to release. If the court determines that probation is not appropriate the court may order the execution of the offender's sentence.

4. If it is determined by the department that the offender has not successfully completed the program, or that the offender is not cooperatively participating in the program, the offender shall be removed from the program and the court shall be advised. Failure of an offender to complete the program shall cause the offender to serve the sentence prescribed by the court and void the right to be considered for probation on this sentence.

5. An offender's first incarceration in a department of corrections program pursuant to this section prior to release on probation shall not be considered a previous prison commitment for the purpose of determining a minimum prison term pursuant to the provisions of section 558.019, RSMo.

Offenders under treatment program, placement, rules—eligibility—use, purpose, availability—failure to complete.

217.364. 1. The department of corrections shall establish by regulation the "Offenders Under Treatment Program". The program shall include institutional placement of certain offenders, as outlined in subsection 3 of this section, under the supervision and control of the department of corrections. The department shall establish rules determining how, when and where an offender shall be admitted into or removed from the program.

2. As used in this section, the term "offenders under treatment program" means a one-hundred-eighty-day institutional correctional program for the monitoring, control and treatment of certain substance abuse offenders and certain nonviolent offenders followed by placement on parole with continued supervision.

3. The following offenders may participate in the program as determined by the department:

(1) Any nonviolent offender who has not previously been remanded to the department and who has pled guilty or been found guilty of violating the provisions of chapter 195, RSMo, or whose substance abuse was a precipitating or contributing factor in the commission of his offense; or

(2) Any nonviolent offender who has pled guilty or been found guilty of a crime which did not involve the use of a weapon, and who has not previously been remanded to the department.

4. This program shall be used as an intermediate sanction by the department. The program may include education, treatment and rehabilitation programs. If an offender successfully completes the institutional phase of the program, the department shall notify the board of probation and parole within thirty days of completion. Upon notification from the department that the offender has successfully completed the program, the board of probation and parole may at its discretion release the offender on parole as authorized in subsection 1 of section 217.690.

5. The availability of space in the institutional program shall be determined by the department of corrections.

6. If the offender fails to complete the program, the offender shall be taken out of the program and shall serve the remainder of his sentence with the department.

7. Time spent in the program shall count as time served on the sentence.

Postconviction drug treatment program, established, rules--required participation, completion--institutional phase--report.

217.785. 1. As used in this section, the term "Missouri postconviction drug treatment program" means a program of noninstitutional and institutional correctional programs for the monitoring, control and treatment of certain drug abuse offenders.

2. The department of corrections shall establish by regulation the "Missouri Postconviction Drug Treatment Program". The program shall include noninstitutional and institutional placement. The institutional phase of the program may include any offender under the supervision and control of the department of corrections. The department shall establish rules determining how, when and where an offender shall be admitted into or removed from the program.

3. Any first-time offender who has pled guilty or been found guilty of violating the provisions of chapter 195, RSMo, or whose controlled substance abuse was a precipitating or contributing factor in the commission of his offense, and who is placed on probation may be required to participate in the noninstitutional phase of the program, which may include education, treatment and rehabilitation programs. Persons required to attend a program pursuant to this section may be charged a reasonable fee to cover the costs of the program. Failure of an offender to complete successfully the noninstitutional phase of the program shall be sufficient cause for the offender to be remanded to the sentencing court for assignment to the institutional phase of the program or any other authorized disposition.

4. A probationer shall be eligible for assignment to the institutional phase of the postconviction drug treatment program if he has failed to complete successfully the noninstitutional phase of the program. If space is available, the sentencing court may assign the offender to the institutional phase of the program as a special condition of probation, without the necessity of formal revocation of probation.

5. The availability of space in the institutional program shall be determined by the department of corrections. If the sentencing court is advised that there is no space available, then the court shall consider other authorized dispositions.

6. Any time after ninety days and prior to one hundred twenty days after assignment of the offender to the institutional phase of the program, the department shall submit to the court a report outlining the performance of the offender in the program. If the department determines that the offender will not participate or has failed to complete the program, the department shall advise the sentencing court, who shall cause the offender to be brought before the court for consideration of revocation of the probation or other authorized disposition. If the offender successfully completes the program, the department shall release the individual to the appropriate probation and parole district office and so advise the court.

7. Time spent in the institutional phase of the program shall count as time served on the sentence.

Treatment program for first offenders, cost--second offense, no suspension of sentence or probation.

568.120. 1. Any person who has pleaded guilty to or been found guilty of violating the provisions of section 568.020, 568.060, 568.080 or 568.090, and who is granted a suspended imposition or execution of sentence, or placed under the supervision of the board of probation and parole, shall be required to participate in an appropriate program of treatment, education and rehabilitation. Persons required to attend a program pursuant to this section may be charged a reasonable fee to cover the costs of such program.

2. Notwithstanding other provisions of law to the contrary, any person who has previously pleaded guilty to or been found guilty of violating the provisions of sections 568.020, 568.060, 568.080 and 568.090, and who subsequently pleads guilty or is found guilty of violating any one of the foregoing sections, shall not be granted a suspended imposition of sentence, a suspended execution of sentence, nor probation by the circuit court for the subsequent offense.

UNETHICAL BEHAVIOR (see also Bribery, Physical Force, Offender Abuse)

VICTIM COMPENSATION (see Conditions, Fines and Costs, Restitution)

VICTIM IMPACT STATEMENT (see also Presentence Reports)

WARRANTS & DETAINERS (see also Board of Parole Duties and Parole - Conditional Release Eligibility)

WRITTEN CONDITIONS (See also Conditions)

Parole or probation, when granted--certificate--conditions of probation--modification of conditions.

479.190. 1. Any judge hearing violations of municipal ordinances may, when in his judgment it may seem advisable, grant a parole or probation to any person who shall plead guilty or who shall be convicted after a trial before such judge. When a person is placed on probation he shall be given a certificate explicitly stating the conditions on which he is being released.

2. In addition to such other authority as exists to order conditions of probation, the court may order conditions which the court believes will serve to compensate the victim of the crime, any dependent of the victim, or society in general. Such conditions may include, but need not be limited to:

(1) Restitution to the victim or any dependent of the victim, in an amount to be determined by the judge; and

(2) The performance of a designated amount of free work for a public or charitable purpose, or purposes, as determined by the judge.

3. A person may refuse probation conditioned on the performance of free work. If he does so, the court shall decide the extent or duration of sentence or other disposition to be imposed and render judgment accordingly. Any county, city, person, organization, or agency, or employee of a county, city, organization or agency charged with the supervision of such free work or who benefits from its

performance shall be immune from any suit by the person placed on parole or probation or any person deriving a cause of action from him if such cause of action arises from such supervision of performance, except for intentional torts or gross negligence. The services performed by the probationer or parolee shall not be deemed employment within the meaning of the provisions of chapter 288, RSMo.

4. The court may modify or enlarge the conditions of probation at any time prior to the expiration or termination of the probation term.