**MCCRACKEN COUNTY ATTORNEY’S OFFICE**

**NEW ATTORNEY HANDBOOK**

PREPARED BY: Sam Clymer, McCracken County Attorney

REVISED: November, 2018

**I. GENERAL DUTIES OF THE CAO**

County Attorneys’ Offices services/duties are limited to those authorized by statute and the actions incidental to carrying out those services. Services/duties are divided into 2 categories: (1) prosecutorial duties and (2) Civil duties.

Examples of these statutory duties are set forth below with the number of cases handled pursuant to such duties when last tallied.

**(1) Prosecutorial Duties:**

* Misdemeanor criminal prosecutions and Felony prosecutions prior to indictment (CA can take action with relation to charging/amending/disposing of a felony case prior to indictment) – *3,078 Cases in 2014.*
* Juvenile prosecution for both misdemeanors and felonies *– 299 Cases in 2014.*
* DUI and traffic safety violation prosecutions *– 8,656 Cases in 2014.*
* Family court dependency, abuse and neglect prosecutions and status offense prosecutions *– 451 Cases in 2014.*
* Child support enforcement, collection and prosecution for both misdemeanor and felony obligors – *2,021 Prosecutions in 2014 and approximately 4,000 active cases.*

**NOTE:** the child support enforcement activities of the McCracken County Attorney’s Office collected 6.2 million dollars for the support of McCracken County children.

**NOTE:** in 2014, the McCracken County Attorney’s Office handled and saw through to final disposition 14,656 court cases.

**(2) Civil Duties:**

* Legal advisor to the fiscal court
* Legal advisor to the general county government and all county officers and offices therein pertaining to county business to the extent consistent to fiscal court representation
* Legal advisor to the many county boards
* Legal advisor to the many county commissions
* Legal advisor to the county special districts
* Legal assistance to the petitioner in all adult disability guardianships and assistance to the court in introduction of evidence  *- 151 Cases in 2014.*
* Legal representative of the Environmental and Public Protection Cabinet in any actions in the County
* Due to McCracken County being a county having a city of the 2nd class, must act as legal representative to the Commonwealth of Kentucky in any civil action wherein the Commonwealth is an interested party
* Legal representative of the Property Valuation Administrator in any tax appeals

**As the elected County Attorney shall be responsible for the day-to-day provision of civil services to the respective recipients, you as an assistant, shall be responsible only for prosecutorial services unless the elected county attorney is unavailable and/or incapable of performing an exigent and immediate civil duty.**

**II. FUNDING OF THE COUNTY ATTONREY’S OFFICE**

In Kentucky, County Attorneys’ Offices are not given budgets to cover operating expenses. Rather, all are funded in the same ways through a fee-based system along with salary contributions from the state and local governments served. Funds are derived from the following sources:

1. Salary Contributions from the respective County government;
2. Salary contributions from the Commonwealth of Kentucky, Prosecutor’s Advisory Council;
3. Fees authorized by KRS 514.040(5) for Theft by Deception enforcement;
4. Percentages paid via private contract with the Kentucky Department of Revenue for the enforcement of delinquent taxes as authorized by KRS 134.504;
5. Fees authorized by KRS 186.574(c)(1) for operation of a Traffic Safety Program.
6. Child support collection and enforcement is funded via state and federal guidelines and directly through a grant administered by the Kentucky Department of Community Based Services. The County writes the initial paychecks for the Child Support Division and calculates withholdings. The Child Support Division then reimburses the County in full and adds a 2% fee for the administrative work by the County.

As you can see both above, public funds are utilized by County Attorney’s Offices for partial payment of salaries. However, all supplemental salary payments to employees and all operating expenses are funded via the revenue sources in c, d and e above.

Use of funds obtained via the revenue sources in c, d and e above for salary supplements of county attorney’s office personnel has been evaluated by the Kentucky Attorney General and has been determined to be an appropriate and lawful use of such funds. OAG 85-17; OAG 90-133.

**AT THE END OF THE DAY ITS LIKE THIS:**

* **People steal and we make them repay the victims. For that we get funding.**
* **People evade taxes and we make them pay. For that we get funding.**
* **People violate traffic safety laws and we make them complete an educational program. For that we get funding.**

**The Following Statutes Strictly Limit the Use of Fees Collected by County Attorneys for the Sole Purpose of Funding County Attorney Operating Expenses:**

**(1) Delinquent Tax Collection/Enforcement**

**KRS 134.545 –** “Moneys paid to the county attorney under an agreement entered into pursuant to KRS 134.504 ***shall be used only*** for payment of county attorney office operating expenses.”

* The Supreme Court of Kentucky provided in ***Boyle v. Campbell***, 450 S.W.2d 265 (Ky. 1970), that it is a fundamental principle that local ordinances that conflict with state statutes are universally held invalid.
* Because the state legislature has expressly limited the use of moneys paid to county attorney for delinquent tax enforcement, any local ordinance, order or resolution requiring a different use (turning over to the fiscal court to fund county government operations) would be held invalid.
* Accordingly, the fiscal court has no authority to require any such funds be transferred by the county attorney at the end of the year and the county attorney has no duty to do so. In fact, such use of funds would be unlawful.
* For additional clarification on the specific allowable expenses regarding county attorney fees, please see **Exhibit F** attached hereto.

**(2) County Attorney Traffic Safety Programs**

**KRS 186.574(6)(c) –** “A county attorney that operates a traffic safety program may charge a reasonable fee to program participants, ***which shall only be used for*** payment of county attorney office operating expenses…”

* Again, the Supreme Court of Kentucky provided in ***Boyle v. Campbell***, 450 S.W.2d 265 (Ky. 1970), that it is a fundamental principle that local ordinances that conflict with state statutes are universally held invalid.
* Because the state legislature has expressly limited the use of moneys paid to county attorneys for participating in a county attorney traffic safety program, any local ordinance, order or resolution requiring a different use (turning over to the fiscal court to fund county government operations) would be held invalid.
* Accordingly, the fiscal court has no authority to require any such funds be transferred by the county attorney at the end of the year and the county attorney has no duty to do so. In fact, such use of funds would be unlawful.
* For additional clarification on the specific allowable expenses regarding county attorney fees, please see **Exhibit F** attached hereto.

**(3) Theft By Deception Enforcement**

**KRS 514.040 –** “If a county attorney issues a notice to a maker that a drawee has refused to honor an instrument due to a lack of funds … the county attorney may charge a fee to the maker of fifty dollars ($50), if the instrument is paid. Money paid to the county attorney pursuant to this section ***shall be used only for*** the payment of county attorney operating expenses. ***Excess fees held by the county attorney on June 30 of each year shall be turned over to the county treasurer*** before the end of the next fiscal year for use by the fiscal court of the county.”

* Obviously, KRS 514.040 grants a right to the fiscal court and a duty upon the county attorney to pay excess TBD enforcement fees to the county. However, this right and duty are only triggered if excess fees remain on June 30.
* The reality is that most people now use debit cards. This has significantly cut the amount of money county attorneys receive through TBD enforcement. In fact, the McCracken County Attorney’s Office has created an $8,100.00 per paralegal supplemental payment “floor” to ensure that they still are paid what they used to when TBD money was a reliable revenue stream. Now, the entire amount of check money is utilized to supplement our paralegals and then the general operating fund pays them additional sums (up to the point the employee receives $8,100.00 from both sources) to make up for the TBD enforcement deficit.
* **At the end of the year, there is no surplus, so the fiscal court receives no money.**

**III. OFFICE SERVICES AND PROGRAMS**

**BAD CHECK ENFORCEMENT**

Each year merchants lose millions of dollars due to receiving bad checks. Over 8,000 bad checks are written per day in Kentucky. This loss to businesses pushes the cost of goods and services higher.

In an effort to address this problem, the McCracken County Attorney’s Office administers a bad check enforcement program. It is a restitution driven program. Those that won’t pay will be vigorously prosecuted. Collecting on bad checks are a problem for most businesses because of the time and cost involved outweigh the benefit of having the debt paid.  However, the McCracken County Attorney’s Office is here to help.

**How the Bad Check Enforcement Program Works**

If you are unable to collect on a bad check someone gives you, you may bring the check to the McCracken County Attorney’s Office at the McCracken County Courthouse, 301 South 6th Street, Paducah, Kentucky, between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday and we will attempt to collect on that check for you.

You should have a valid street address and be able to identify the maker of the check. If we issue criminal charges, the Sheriff cannot serve the defendant at a P. O. Box address. Also if criminal charges are necessary, we will need a date of birth, social security number, or driver’s license number for the Defendant.

After you come to our office we will then send a letter notifying the party that they have ten (10) business days within which to make the check good. The writer of the check will receive a letter from our office along demanding payment for the amount of the check, plus fees which include an additional $50 to you the merchant and a $50 fee to the County Attorney’s Office for administering the program.

If the individual does not make the check good within ten (10) business days, our office will call the merchant to come in to sign criminal charges for THEFT BY DECEPTION. Once the criminal complaint is signed, the defendant will receive a summons to appear in Court. You will not need to be present for the arraignment. If the person pleads guilty at the arraignment, the court will make sure that the defendant is required to pay off the bad check. If the defendant pleads not guilty, the case will be set for a trial and you will likely be subpoenaed. It is rare that a trial is ever necessary.

We encourage you to bring bad checks to our office as soon as possible after your efforts to collect. The sooner we pursue collection, the better the results.  You should not use this service if someone stops payment on a check to you because of a dispute over the quality or quantity of work done for you. We will not issue criminal charges for this type of a civil dispute.

We presently handle hundreds of bad check cases every month for many businesses and individuals in McCracken County. We encourage those not presently using this service to begin doing so. As mentioned above, this is a **free service** provided by this office so that you can receive payment on your bad checks.

**Why Use the McCracken County Attorney’s Office to Collect On Bad Checks?**

 1. There is **no cost to you**.

 2. We collect the face amount of the check, but we also collect an additional merchant fee of $50 for you for each check.

 3. Only this office can prosecute bad check writers. Collection agencies and check service companies cannot use the criminal court system to collect checks.

 4. As a law enforcement agency our databases are more extensive and current than check collection agencies and check service companies' resources.

**INVOLUNTARY DRUG & ALCOHOL TREATMENT**

**“CASEY’S LAW”**

Casey’s law is the common name given to involuntary treatment for alcohol and drug abuse in Kentucky. Casey’s Law provides a means of intervention with someone who is unable to recognize his or her needs for treatment due to their addiction. Casey’s Law allows parents, relatives, and/or friends to petition the court for treatment on behalf of the person who is abusing alcohol and/or drugs.

 The treatment options available under the law can vary depending on circumstances of each individual case. **The person seeking the involuntary treatment is obligated to pay all costs incurred in the process as well as all cost of treatment and must sign a guaranty of payment**. Costs incurred can be extensive, something the person seeking involuntary treatment should be aware of before signing the guaranty of payment.

Under Casey’s law, a person suffering from drug or alcohol abuse will not be ordered to undergo involuntary treatment unless that person presents an imminent threat of danger to their self, family or others as a result of alcohol or drug abuse, or there exists a substantial likelihood of such a threat of danger in the near future. Additionally, it must also be determined that the person can reasonably benefit from the treatment.

**Process to Obtain Treatment**

 1. Complete Petition, AOC Form 700A and have petitioner’s signature notarized. Petition can be filed for a 72-hour hold, 60 day treatment or 360 day treatment. Petition can be obtained at the McCracken County Clerk’s Office.

 2. File Petition with the McCracken County District Court Clerk at the McCracken County Courthouse, 301 South 6th Street, Paducah, Kentucky.

 3. Between the time the petition is filed and the first court appearance, the petitioner MUST set a time for both a physician and a qualified mental health professional to evaluate the respondent. The date, time and identity of these professionals must be known so that the court can order the respondent to report to this evaluation if probable cause is found.

 4. District Court will give Petitioner (Person filing the petition) a copy of Petition, will mail a copy to Respondent and have the Sheriff serve the Respondent. After the Court reviews the allegations in the petition, the Court will determine whether there is probable cause. If probable cause is established, the Court will order the Respondent to be evaluated by the two named Qualified Health Professionals and set the matter for a hearing within fourteen (14) days.

 5. Respondent will go to be examined by the Physician and the Qualified Health Professional petitioner identified to District Court Clerk at least 24 hours prior to hearing date.

 6. The Physician and the Qualified Health Professional will either file the report with District Court Clerk or give the report to Petitioner to file with District Court Clerk at least 24 hours prior to the hearing date.

 7. After filing the petition but before the hearing date, Petitioner should contact treatment facilities to arrange for treatment as prescribed by the Qualified Health Professionals and requested in the petition.

 8. At the final hearing, the County Attorney will submit the reports to the Court and Court will decide whether the Respondent presents an imminent threat of danger as a result of alcohol/drug abuse and if the Respondent can reasonably benefit from treatment. If Court finds that is true for the Respondent, then the Court will order treatment as prescribed by the Qualified Health Care Professionals.

 9. **The Petitioner will be responsible for obtaining treatment services and transporting the Respondent to the treatment facility**.

**To assist Petitioners in this process, we have developed the following 2 documents:**

**Document 1 – Casey’s Law, Responsibilities as Petitioner:**

**CASEY’S LAW**

**RESPONSIBILITIES AS PETITIONER**

(1) You **MUST PAY FOR** the treatment program eventually ordered.

(2) You must file the petition with the district court clerk’s office – the district clerk will set the 1st court date within a few days.

**THERE WILL BE 2 COURT DATES**

(3) Between your filing of the petition and the 1st court date set **YOU MUST** schedule an evaluation with a Physician **AND** a qualified mental health professional on a certain date and at a certain time.

* These evaluations **MUST** be on the **SAME DATE**.

(4) When you come to the first court appearance you **MUST** have these evaluations scheduled. The judge will then order that the respondent attend these evaluations.

* If respondent doesn’t attend the evaluations as ordered = **CONTEMPT OF COURT** You **MUST INFORM THE COUNTY ATTORNEY’S OFFICE** that Respondent didn’t attend and they will be arrested and imprisoned until they attend.

(5) At the 1st hearing, the court will also set a 2nd court hearing that will be within 24 hours of the evaluations you have scheduled. This strict timeline is required by statute.

(6) Between the 1st hearing and the 2nd hearing, you **MUST** find a treatment facility and set a bed date/report date for the respondent.

* This is required so that the judge can order a specific date and time for the respondent to report.

(7) At the 2nd court appearance, the judge will consider the recommendations of the evaluators and follow their recommendations.

* The judge will order that the respondent report to treatment at the facility you’ve found at the date and time you have set up.

If Respondent does not = **CONTEMPT OF COURT.** You **MUST INFORM THE COUNTY ATTORNEY’S OFFICE** that Respondent didn’t report to treatment and they will be arrested and imprisoned until they attend.

**Document 2 - Casey’s Law Letter to 4Rivers Requesting Assistance:**

Insert Date

FOUR RIVERS BEHAVIORAL HEALTH

425 BROADWAY

PADUCAH, KENTUCKY 42001

***Re: Request for Assistance in Scheduling Evaluations***

 ***And Facility Placement In Casey’s Law Proceeding.***

To Whom It May Concern:

Please know that the undersigned has conducted a personal consultation with insert name of petitioner(s) regarding the legal and procedural specifics of the process for obtaining an order for involuntary substance abuse treatment under Casey’s Law. The purpose of this correspondence is to respectfully request that Four Rivers Behavioral Health assist this petitioner in securing the following items that are critical to the success of the Casey’s Law proceeding:

 1. The scheduling of a substance abuse assessment for the Respondent by a **licensed physician** with the physician being identified by name and the date, time and location of the evaluation being specifically identified and on the same day as the evaluation by a Qualified Mental Health Professional; and

 2. The scheduling of a substance abuse assessment for the Respondent by a **Qualified Mental Health Professional** with the QMHP being identified by name and the date, time and location of the evaluation being specifically identified and on the same day as the evaluation by a licensed physician; and

 3. The identification of and necessary contact information for a suitable long- term residential substance abuse treatment facility into which Petitioner can arrange a particularly identified intake date for Respondent to undergo treatment.

Please know that the specific mandates of Casey’s Law require the Petitioner to make arrangement for all 3 of the above items. The assistance the Four Rivers Behavioral Health can lend to the Petitioner in satisfying these requirements is extremely beneficial to this important matter and extremely appreciated by the undersigned and all others involved

Respectfully,

SAM CLYMER

McCracken County Attorney

**CHILD SUPPORT ENFORCEMENT**

The McCracken County Attorney’s Office, Child Support Division, processes over 3,000 cases and over 6.2 million dollars in collections annually.  Through the Kentucky Cabinet for Families and Children, the Child Support Division offers a variety of services. The following services are available:

* **Establishment of paternity of unmarried parents\***
* **Establishment of financial and medical support**
* **Enforcement and collection of support payments**
* **Review and modification of support orders\***

*\*Either parent can request these actions. To provide these services the child support program works closely with federal, state and local agencies as well as employers.*

Who is eligible for services?

Anyone who has custody of a child and needs help establishing who the father of the child is, establishing a child support order, or collecting current or past-due child support payments is eligible to receive child support services. You do not have to be the child’s parent to qualify for child support services. If you think you may be the father of a child you may request establishment of paternity and we’ll do a DNA test.

Families who receive public assistance receive child support services automatically. (Child support payments collected for families receiving public assistance go to the state and federal governments as repayment for public assistance.)

Families who do not receive public assistance may apply for child support services by completing an application online. To apply for child support services please visit the visit: <https://csws.chfs.ky.gov/csws>

What is paternity and why is it important to establish paternity?

Paternity means fatherhood. Fatherhood creates the legal duty to support a child. Both parents have the right to know and to contribute to the success of their child’s future. Even when a father and mother are unmarried, they both must support their child until he/she becomes an adult. By establishing paternity, the father is providing the child with certain rights and privileges, which may include the following:

* Support: Both parents are required by law to support their child.
* Identity: Knowing one’s family history is important to everyone. Children have the right to the sense of belonging that comes from knowing both parents.
* Medical History: Children need to know if they inherited any special health problems.
* Benefits: A child has the right to receive benefits from both parents. These may include, but are not limited to Social Security benefits, insurance benefits, inheritance rights and Veterans’ benefits

How is Child Support Calculated?

The monthly support obligation is set based on the Kentucky Child Support Guidelines found in KRS 403.212. The Guidelines use the parents’ gross monthly income or potential income. The Guidelines are based on the principle that both parents are financially responsible for the support of their children.

**Child Support Modification**

Once the child support amount is established by Court Order, it can only be modified under certain circumstances. KRS 403.213 sets forth the criteria for modifying a support order. KRS 403.213 states that the child support obligation can only be modified if there is a “material change in circumstance that is substantial and continuing” which results in at least a 15% change in the amount of monthly support.

What enforcement methods can be used to collect support?

There are various enforcement remedies we can use to collect current or past-due child support obligations from the noncustodial parent. Some examples include, but are not limited to, the following: withhold income directly from paycheck, deny, revoke, suspend a driver’s or professional license or certificate; place a lien on personal or real property, deny or revoke a passport, furnish the noncustodial parent’s name for publication in a local newspaper, seize lottery winnings or funds held by a bank or other financial institution, and intercept federal and state tax refunds.

What if the noncustodial parent lives in another state?

The same location resources and services are available in all states, although interstate cases are more difficult and generally take longer.

Will the CHFS attorney represent me in court?

They are contracted to provided child support services and to represent the best interests of the children in McCracken County. They do not represent either parent in Court. There are times when a custodial parent does not agree with the course of action they choose for a case. That parent may close his/her case with the office and pursue collection independently or through a private attorney.

**What child support related services are not provided?**

By law, the Child Support Office cannotaddress other problems that are often associated with establishing and/or enforcing child support such as divorce, property settlements, visitation and custody, establish or modify spousal support, or provide legal advice or counsel.

How do you contact the McCracken County Attorney’s Child Support Office?

Our office is located at 325 South 8th Street in Paducah (across the street from the Courthouse) or you may call us at (270) 444-7573.

**CITIZEN’S CRIMINAL COMPLAINT PROCEDURE**

**“PRESSING CHARGES”**

**INITIAL CITIZEN CONTACT**

* The purpose of these procedures is to streamline the criminal intake procedure to **(1)** avoid unnecessary waste of a citizen’s time by requiring them to sit and wait to talk to a prosecutor **AND (2)** to avoid hasty decision-making regarding the taking of criminal charges. **Further**, we seek to avoid inundating the courts with prosecutions that our necessary complaining witnesses do not exhibit an interest in pursuing.

**Administrative Professionals MUST Do the Following:**

* Ensure that the citizen has the necessary evidence and witness information required in paragraph 2 of the Criminal/Domestic Violence Charge Intake Form. If they do not, they must return with this information before ANY action can be taken.
* When the citizen has the necessary information, ensure he/she reads, fully completes, signs and dates the Criminal/Domestic Violence Charge Intake Form.
* Make sure to call their attention to the requirement that they make contact with Tom Emery in ten (10) business days to follow up on the status of their case and write in a call back date that is 10 business days from the day they drop off their documents.
* Make a copy of the completed Criminal/Domestic Violence Charge Intake Form for the citizen to take with them.
* Because there will be no initial attorney or detective consultation, a citizen can drop off their report and supporting information and begin the charging procedure ANY day of the week.

**EVALUATION OF CITIZEN COMPLAINT**

* Please bring EACH AND EVERY completed Criminal/Domestic Violence Charge Intake Form and supporting evidence directly to the assistant handling criminal/DV court.
* The assistant handling criminal/DV court will initially evaluate the charge and decide whether further investigation is needed or if action can be taken without investigation.
* In evaluating a complete file, the criminal/DV prosecutor can elect: (1) a criminal warrant; (2) a criminal summons; (3) a pre-trial diversion or deferred prosecution order; (4) a cease and desist letter to the accused; (5) a no prosecution decision; or (6) that additional investigation is needed.
* **NO INVESTIGATIVE OR OTHER ACTION SHALL BE TAKEN ON A CASE UNTIL THE COMPLAINING PARTY FOLLOWS UP WITH OUR INVESTIGATOR BY THEIR ASSIGNED CALL BACK DATE.**
* **FILES AWAITING CALL BACK SHALL BE KEPT IN THE “INVESTIGATION PENDING” DRAWER IN THE VAULT.**

**INVESTIGATION OF CITIZEN COMPLAINTS**

* **IF A COMPLAINING PARTY CALLS BACK, HE SHALL TALK TO THE INVESTIGATOR. INVESTIGATOR SHALL INFORM THEM THAT THE FILE HAS BEEN RECEIVED AND UNDER INVESTIGATION/EVALUATION.**
* **INVESTIGATOR WILL ADVISE THE ATTORNEY HANDLING THE CASE VIA EMAIL, THAT A CALL BACK HAS OCCCURED AND THE ACTIONS BELOW WILL BE TAKEN.**
* If after initial review, the assistant handling criminal/DV court determines additional investigation is needed, he will briefly state in writing the additional evidence needed and forward the file to the investigator.
* Investigator will work up the file and deliver back to the assistant handling criminal/DV prosecutions within 10 business days.
* The assistant handling criminal/DV prosecutions will make a decision on how the matter will be handled based upon **(1)** the nature of the evidence **AND (2)** the complaining witness’ willingness to assist in the prosecution as exhibited by his/her following up on the case as required and informed of on the Criminal/Domestic Violence Charge Intake Form.
* If after investigation, it is determined that a criminal summons or warrant **WILL NOT** be taken, the investigator will notify the complaining witness by telephone of the action this office will take provided that the complaining witness has exhibited a legitimate interest in assisting in the matter as required on the Criminal Charge Intake Form.

**PUBLIC CONSULTATIONS & APPOINTMENTS FOR CRIMINAL PROSECUTOR**

* Given the labor intensive nature of properly investigating and evaluating the many criminal allegations this office receives, it is necessary that the assistant handling criminal prosecutions has one (1) day a week dedicated solely to these duties.
* **EVERY FRIDAY** (assuming no JT is scheduled) shall be reserved and dedicated evaluating criminal files for a charge determination & the execution of whatever action the criminal prosecutor deems proper in the case (drafting charging documents, cease and desist letters, PTD orders etc…)

**ADMINISTRATIVE PROFESSIONALS SHALL NOT SCHEDULE APPOINTMENTS OR WALK-IN CONSULTATIONS OF ANY KIND FOR THE CRIMINAL PROSECUTOR ON FRIDAYS WITH THE EXCEPTION OF MEETINGS WITH DEFENSE ATTORNEYS.**

**GUARDIANSHIP**

Guardianship and Conservatorships over another person are available when that person is unable to take care of their personal and financial affairs.

**What is a guardianship?**

A guardianship provides the guardian with decision-making authority and responsibility over the protected person’s personal affairs. Limited guardianship gives the guardian decision-making authority and responsibility over only selected areas that the protected person has been determined unable to manage by him/herself; for example, a limited guardianship may only apply to healthcare decisions.

**What is a conservatorship?**

A conservatorship is similar to guardianship in that it is a legal relationship between a protected person and one or more individuals appointed by the court to make decisions on behalf of the protected person. However, while a guardianship may encompass all personal affairs (support, care, health, rehabilitation, therapeutic treatment, and if not inconsistent with an order of commitment or custody, the residence) of a protected person, a conservatorship is limited to the management of the property and financial affairs of a protected person. As with guardianship, a conservatorship may be full, limited, temporary, or joint.

**Who can be a guardian/conservator?**

A family member or other interested individual may petition for the appointment of guardian/conservator for a protected person. However, when a relative or other appropriate person is not qualified or willing to act in this capacity, the McCracken County Office of the Public Guardian may be authorized to act as guardian/conservator for persons under their care.

**What are the duties of a guardian/conservator?**

A guardian/conservator must maintain regular and frequent contact with the protected person to become familiar with the protected person’s needs and limitations, and only exercise their decision-making authority to the extent required by those limitations. The guardian/conservator must respect the fact that their relationship with the protected person is a confidential one, and should encourage the person’s participation in decision-making to the extent possible. Obviously, the guardian/conservator must always act in the best interest of the protected person, and never become involved in a situation that might give the appearance of a conflict of interest. Finally, the court does require that the guardian/conservator provide some information to the court, including information pertaining to the protected person’s finances and personal inventory, and an annual personal status report.

**Process to Determine Disability and Obtain Guardianship/Conservatorship:**

 1. Any person concerned with the welfare of the Respondent may file the petition. Come to the McCracken County Attorney’s Office to get information about what is required to initiate the process through our office.

 2. When ready to proceed with the filing of a guardianship petition, return to the County Attorney’s Office with a “letter of need” for guardianship on the respondent’s treating physician’s letterhead stating why guardianship is needed. You **MUST** also tender an AOC Form 765, Report of Interdisciplinary Team, completed by the respondent’s treating physician.

 3. At the same time the petition is filed, an application for emergency appointment, AOC Form 745, may be filed if necessary along with an application of appointment to fiduciary for disabled person, AOC Form 747, must also be filed by the person intending to be guardian or conservator of the Respondent.

 4. If the Respondent does not have an attorney, the Court will appoint an attorney to provide representation. The County will pay the lawyer’s fees if the Court determines the respondent is unable to do so. The County Attorney will represent the Commonwealth in this proceeding. The Petitioner is not required to have an attorney but may choose to do so.

 5. After the Court reviews the petition and applications, the Court will designate an Interdisciplinary Team consisting of a Doctor, Psychologist, and Social Worker. Each member of this team will meet with Respondent and file a report consisting of their respective opinions.

 6. Once the Court receives all three reports, the matter will be schedule for a jury trial in the District Court. **If all interdisciplinary team reports unanimously recommend guardianship and/or conservatorship and the appointment of a guardian and or conservator is not contested, the matter can be tried via bench trial.** The County Attorney, on behalf of the Commonwealth, and the Respondent’s attorney will present evidence from the reports. Upon conclusion of the trial, the jury will determine whether the Respondent is fully or partially disabled in personal and/or financial affairs.

 7. If the Jury/judge finds that the Respondent is partially or fully disabled in either their personal or financial affairs, the Court will decide who will be the Respondent’s guardian or conservator. Upon selection the Court will file an order outlining the constraints of the guardian or conservator, if any. The court order will be filed with the court but must also be indexed in the county clerk’s office.

**DOMESTIC VIOLENCE RESOURCES**

Kentucky law has long allowed a person who is the victim of “domestic violence” to seek a protective order.  This order can require the “abuser” to vacate a shared residence, to have no contact with the “victim”, to restrict the places the abuser can visit and place the offender on a global positioning device.

This protection has been available for many years to family members, members of a married or formerly married couple, members of an unmarried couple who currently live together or formerly lived together, or have a child in common.

**Emergency Protective Orders Eligibility Criteria**

Kentucky law allows the Court to issue a protective order against a named individual to protect you and/or your minor child from violence. Before the Court can issue an emergency order you must fulfill three (3) requirements:

1. You must be a resident of McCracken County or have fled to McCracken County as a safe place.
2. You must have a domestic relationship with the person from whom you are seeking protection. Kentucky law defines “domestic relationships” as follows:
	1. Spouse or former spouse
	2. Person with whom you live or formerly lived
	3. Person with whom you have an alleged child in common
	4. Person with whom you have a Dating Relationship
	5. Parent, Grandparent, Child or Step-child
	6. Any person living in the same household as a child if the child is the alleged victim.
3. There must be an immediate and present danger of Domestic Violence and

Abuse. This means physical injury, sexual abuse, assault or the threat or infliction of fear of imminent physical injury, sexual abuse or assault. This means you may qualify for a protective order if you or your minor child are actually physically injured, assaulted or sexually abused or if the person says or acts like he/she is going to physically injure, sexually abuse or assault you or your minor child.

If the Court finds that all three (3) of these requirements are met, it will issue an Emergency Protective order and give you a date to return for a hearing. You must return for this hearing. If the Court finds that there is not an immediate and present danger of domestic violence but you otherwise qualify for a protective order, the Court may issue a summons for a hearing date to determine if you will get a protective order. Again, you must return for this hearing.

**Interpersonal Protective Orders Eligibility Criteria**

Recently, the Kentucky General Assembly passed legislation expanding protective orders to include protection for victims of dating violence, victims of sexual assault, and victims of stalking.  In order to qualify for an Interpersonal Protective Order you must be a resident of McCracken County or have fled to McCracken County as a safe place, and either:

1. Be a victim of stalking (An actual criminal charge or conviction is not required to obtain an Interpersonal Protective Order for stalking); or
2. Be a victim of sexual assault (An actual criminal charge or conviction is not required to obtain an Interpersonal Protective Order for sexual assault); or
3. Be a victim of dating violence and abuse.

To facilitate notification of service or release from jail, you should register for VINE (Victim Information & Notification Everyday) by calling 1-800-511-1670 or going online at www.vinelink.com.

Those seeking assistance in obtaining an EPO/IPO may contact Tiffany Mills at 270-444-4709.

You may also wish to discuss the facts of your case with the local law enforcement and the McCracken County Attorney’s Office to pursue criminal charges.

**INVOLUNTARY MENTAL HEALTH TREATMENT**

**“MENTAL WARRANTS”**

**An individual suffering from mental illness can be involuntarily hospitalized if:**

 1. He or she presents a danger or threat of danger to self, family or others resulting from mental illness; AND

 2. He or she can reasonably benefit from treatment; AND

 3. Hospitalization is the least restrictive means of treatment presently available.

A person is considered "**mentally ill**" if he or she has serious problems with self-control, judgment or discretion in their personal affairs and social relations due to physiological, psychological or social factors.

"**Danger**" means actual or the threat of serious physical harm to self, family, or others. This includes any action that deprives self, family or others of the basic necessities (i.e. food, shelter, or clothing).

"**Least restrictive means**" indicates that the required treatment will provide a realistic opportunity to improve the mentally ill person’s level of functioning in the least confining setting possible under the circumstances.

**TEMPORARY COMMITMENT**

Initiated when a qualified medical professional, police officer, County or Commonwealth Attorney, spouse, relative, friend, guardian or other interested person files a petition for involuntary hospitalization of a mentally ill individual.

**IMMEDIATE DETENTION**

* Officer may immediately transport an individual believed to be mentally ill that presents a threat to self, family or others to a hospital or psychiatric facility.
* Individual must be evaluated within 18 hours of detention to determine whether involuntary hospitalization is necessary.

**EMERGENCY ADMISSION**

* Initiated by an authorized staff physician or health care provider.
* Involves admitting a mentally-ill individual, already present in a hospital, into a psychiatric care facility.
* The individual must not be held for longer than 72 hours.

**STEPS OF THE INVOLUNTARY HOSPITALIZATION HEARING PROCESS**

1. A petition for involuntary hospitalization must be filed by a family member or other concerned individual in the District Court of the county where the person to be hospitalized lives or is present at the time of filing.

**The Following Are Conducted By the Christian County Attorney in Christian County District Court When Respondent is Transferred to Western State For Treatment:**

1. The District Court of the county must set a preliminary hearing date within six (6) days of holding or examination.
2. Notice of the involuntary hospitalization hearing must be given to the mentally ill individual and, if applicable, to the individual’s guardian, spouse, parents, nearest relative or friend, if known.
3. The District Court will examine the person filing the petition [“petitioner”] under oath about why he or she believe it is necessary to involuntarily hospitalize the mentally ill individual.
4. If the Court finds probable cause to involuntarily hospitalize the mentally ill individual, the court will order the person to a facility and set a final hearing within twenty-one (21) days from the examination in the county where the individual is hospitalized.
5. After the final hearing, the court can involuntarily hospitalize the individual for a period of sixty (60) to three hundred sixty (360) consecutive days from date of the court order, depending on what was requested in the petition.

If the court finds that no probable cause exists to involuntarily hospitalize, the proceedings must be dismissed and the individual will be released.

There are no absolutes or predictability on who will be admitted.  “Imminent danger” can be subjective and dependent on the mental health provider’s judgment.   In addition, individuals may present in control of their self and deny allegations during an evaluation.  This makes it difficult to obtain an accurate assessment.

Being declined for admission and treatment can be very disheartening to family members.  This leaves them feeling helpless when their family member desperately needs treatment. The system and the laws focus on civil rights and not the hardship of the family or individual. If the individual is denied admission and risk remains, one is advised to file a petition again.  When mental health professionals see a history of petitions this may influence a future assessment.

**DELINQUENT TAX COLLECTION**

The McCracken County Attorney's Office has entered into an agreement with the Department of Revenue to assist in the collection of delinquent taxes. After property tax bills become delinquent and are transferred from the Sheriff to the County Clerk they become certificates of delinquency and are submitted to our office for collection.

Letters are then sent to the delinquent taxpayers advising them that the bills are subject to collection and addresses the possible results of non-payment, which ultimately include foreclosure. Once these bills are advertised and sold by the Clerk, third party investors have the opportunity to purchase them. Once purchased, there may be many additional fees added to the bills.

Taxpayers may be eligible to enter into installment payment agreements with this office. The terms and conditions of those agreements are determined by the County Attorney. If an agreement is entered into prior to the Clerk's sale and the taxpayer is current on the payments under the agreement, the underlying bills are not subject to be purchased by investors.

While we strive to have compassion for those that may be having financial difficulties which lead to the failure to pay, providing services such as schools, roads, health departments and other government service is costly. Everyone must pay their fair share.

**What is considered a delinquent real estate tax?**

A tax is considered “delinquent” when the due date of a specific real estate tax assessment has passed and by statute any appeal rights have expired. McCracken County real estate property tax notices are mailed out in late September or early October by the McCracken County Clerk’s Office and are payable to the County Sheriff’s Office beginning November 1. They become delinquent on January 1, following their due date and are maintained and collected in the McCracken County Sheriff’s office until April 15.  After April 15, delinquent taxes are transferred to and maintained by the McCracken County Clerk’s office, accruing penalties and interest of 1% per month until paid.

**Is a lien placed on my property when my taxes become delinquent?**

Yes. A lien is filed against real property you own in McCracken County. The lien is filed with the McCracken County Clerk’s Office and is a public record of the amount you owe. It could affect your ability to obtain credit or sell real estate. The cost of releasing the lien will be added to the delinquent tax account at the time the lien is filed.

**Can I make periodic payments on my delinquent tax bill?**

Yes.  The McCracken County Attorney’s office can create a payment plan for delinquent tax bills when payment in full cannot be made.  Delinquent tax bills on a compliant payment plan will be marked as “unavailable for sale” with the McCracken County Clerk’s office therefore removing the risk of the bill being purchased by a third-party purchaser.

**Who can lawfully purchase my delinquent tax bill?**

Kentucky law allows any individual or company to purchase taxpayers’ delinquent tax bills that have not been previously purchased by the state or sold and recorded in the McCracken County Clerk’s Office. The purchase can neither be anticipated nor prevented by the McCracken County Clerk or the McCracken County Attorney.  The McCracken County Clerk will hold an annual sale of delinquent tax bills.  A specific date is set on a yearly basis but the sale is normally held in October.

**What happens when someone buys my delinquent tax bill?**

The tax bill is converted to a “Certificate of Delinquency” which the buyer will receive from the County Clerk’s Office as a piece of paper or an electronic record. The buyer has fifty (50) days to give you notice he has bought your tax bill. Payment must be sent directly to the buyer, along with the associated penalties and interest assessed by the buyer. Once you pay the buyer, he will surrender the certificate to you, so that it may be presented to the County Clerk for lien release.

**How long do I have to pay the buyer?**

The buyer may institute a foreclosure action in court against you for the unpaid debt one (1) year after the creation of the certificate of delinquency. However, some buyers may be in no hurry to collect the debt, given the high interest rates charged, and may simply hold the certificate as long as your equity in the property exceeds the tax debt. The statute of limitations for the certificate of delinquency is 10 years.

**Are there other costs that may be added to my tax liability after it becomes delinquent?**

Yes. A delinquent tax collection fee and interest will be added to the total amount due when it becomes delinquent. Currently the fees are penalties, cost of advertising, lien filing fee, County Attorney fee, County Clerk fee. A third party purchaser may also add other costs to your bill.

**JUVENILE PROSECUTORIAL**

**AND PROTECTION DUTIES**

The jurisdiction of the juvenile court and family court includes three categories of youths:

* **Delinquents** - youths who commit acts that would be defined as criminal for an adult, including misdemeanors and felonies.
* **Status offenders** - youths who commit acts that would not be defined as criminal if committed by an adult (for example, truancy, running away from home, and curfew violations).

**Dependent and neglected children** - youths who are deprived and in need of support and supervision.

The County Attorney is required by statute to “attend to the prosecution in the juvenile session . . . held pursuant to petitions filed under KRS Chapter 610”. Under this requirement are all actions where a child is alleged to be “Dependent,” “Neglected,” or “Abused.” (“DNA”)

**Non-emergency DNA Action:**

A non-emergency DNA action is commenced with the filing of a Juvenile Dependency Neglect or Abuse Petition. The Affiant – the individual with knowledge about the facts involving the child – states the reasons in the petition why he or she thinks a child is dependent, neglected, or abused.

The Court will then schedule a hearing within 10 days to determine “whether there are reasonable grounds to believe that the child would be dependent, neglected, or abused if returned to, or left in the custody of his parent or other person exercising custodial control or supervision”.

**Emergency DNA Action/EMERGENCY CUSTODY:**

Emergency based DNA actions, including a Petition for Emergency Custody, are filed by the local Department of Community Based Services or by another individual with knowledge of the facts at the direction of the local Department of Community Based Services, after that agency has conducted an investigation into the facts giving rise to the emergency situation.

The filing of an EMERGENCY CUSTODY petition is proper when the person exercising custody or supervision of the child is unable or unwilling to protect the child AND 1 or more of the following conditions exist:

 a. the child is in imminent danger of death, serious physical injury or sexual abuse;

 b. custodian/supervisory person has repeatedly inflicted or allowed to be inflicted physical injury or emotional injury;

 c. the child is in imminent danger due to the custodian/supervisory person’s failure or refusal to provide for the safety or needs of the child

A hearing shall be conducted within 72 hours of the granting of an emergency custody order to determine whether the removal should continue and to set the action for further proceedings.

**Subsequent Proceedings in BOTH Emergency & Non-emergency Actions:**

After the initial determinations listed above, the Court holds bifurcated hearings for the following purposes:

 1. an adjudication to “determine the truth or falsity of the allegations in the petition,” and

 2. a disposition to “determine the action to be taken by the court on behalf of, and in the best interest of, the child”.

The goal of the County Attorney’s office in these cases is the care and protection of the child. These proceedings are not criminal in nature and the goal of all DNA cases is, through the appropriate treatment and therapies, to reunify the child with the family.

**COUNTY ATTORNEY TRAFFIC SAFETY PROGRAM**

**“C.A.T.S.”**

The McCracken County Attorney Traffic Safety Program may allow your traffic citation to be DISMISSED upon successful completion of the program.

The program consists of the acclaimed traffic safety video program SMARTDRIVER: “Strategies For Survival.”  The video content can either be viewed over the internet or viewed by requesting a copy of the DVD; either can be completed in the comfort of your own home.  Following the video, you will be asked to complete a series of questions based on the content in the video.  Upon successful completion of the program, the violation will be DISMISSED.

Benefits of completion of the C.A.T.S. program in addition to DISMISSAL include:

* Avoid points against your license that may result in suspension
* Avoid penalties against your insurance policy including higher rates
* Avoid the time and costs of traditional traffic school
* Avoid having to spend hours in traffic court
* Program COSTS LESS than paying your citation
* Program can be completed at your convenience from the comfort of your own home

**If You Have Received A Letter About the C.A.T.S. Program:**

This means that your citation and traffic history have already been reviewed and you qualify for the program. Simply follow the instructions included in your letter and logon to the website identified using your username and password provided in your letter.

**If You Have Received A Postcard About the C.A.T.S. Program:**

This means that your citation and traffic history have already been reviewed and you MAY qualify for the program but further measures need to be verified to ensure your eligibility. Simply follow the instructions on the postcard by following up with my office to get the program started.

**IV. OFFICE PROCEDURES FOR ASSISTANTS**

**(1) Hours of Operation and Notice of Absence.**

CAO operates Monday – Friday from 8:30 am to 4:30 pm with a closure for lunch from 12:00 to 1:00.

We close the office for all state holidays posted on the bulletin board.

We try to maintain a flexible work environment for professional staff to attend to personal needs and engage in self-care as needed. When you anticipate being off, please be sure to have your duties on that day completed or make arrangement for another attorney to cover for you. Also, please note your absence on the main calendar and on your outlook calendar so all staff are aware.

**(2) Employee Benefits, Accrual of Paid Leave & Separation of Employment.**

You will receive the employee benefits available to you via the McCracken County policies and/or the Commonwealth of Kentucky Prosecutor’s Advisory Council (PAC) Policies. If you are both a state and county funded employee you must elect benefits through the County or PAC. When you decline benefits (health insurance) from one source, the other available source will provide you with a flexible spending account and debit card with monies provided for legitimate healthcare related usage.

Please know that PAC does not award or recognize unpaid leave in the form of vacation or sick days. The County however does. You will accumulate unpaid leave as designated in the County policies and procedures manual. Upon separation of employment, attorneys that are partially paid by the County will receive a payout for unused vacation days and have their unused sick days credited toward retirement. Please know that credit for unused paid time off shall be calculated at the current rate of your county salary rather than your combined total salary.

The service of Assistant County Attorneys is a practical and critical necessity in proper conduct of the CAO. In consideration of their public service to the CAO in its criminal and/or civil duties, employees separating from employment under specific qualifying circumstances shall be entitled to a separation salary supplement calculated as set forth below.

To ensure standard eligibility and calculation formula equally applicable to all attorneys, the CAO follows the separation supplement eligibility criteria applicable to federal employees pursuant to 5 CFR 550.704. As such, separating employees shall qualify if they meet the following 5 requirements:

 1. Worked in the CAO in a fulltime capacity;

 2. Obtained a salary supplement from CAO operational fund;

 3. Completed at least 24 months of service with CAO;

 4. Separated from employment with the CAO for a reason other than “for cause” **and** such reason was not a result of an employee exercising an option to resign rather than being terminated.

 5. Separation was not initiated by the employee in furtherance of pursuing other readily available employment opportunities.

The amount of the separation supplement shall be calculated by using the standard formula companies use for calculating same with regard to salaried employees. Please note that the employee salary utilized in the following calculation is the amount received **ONLY** as a salary supplement from the CAO operational fund **NOT** the employee’s total salary from all revenue streams.

Calculation Formula:

# of years with the CAO X 2 weeks regular pay rate = separation supplement amount

Example:

Worked CAO 5 years and got salary supplement of $15,000 yearly. $15,000/52 = $288 per week. $288 X 2 = $576 as the 2 week regular salary.

**5 X $576 = $2,880 separation supplement**

**(3) Office Consultations**

You are required to see attorneys representing defendants in furtherance of resolving a case. Attorneys do not have to make appointments to see you.

You are not required to see unrepresented defendants and are ethically prohibited from speaking to represented defendants outside the presence of their attorney.

You are free to see unrepresented defendants if you so choose. This can be done prior to or after arraignment at your discretion.

Any office consultations are by appointment only on one of the 2 days of the work week you designate as “appointment days”. Please let administrative staff what days these will be.

You are not expected to personally set appointments and manage your own calendar. You are free to do so, but its much more efficient for administrative staff to field the calls and/or walk-ins related to your docket and set appointments on your designated days.

**You are not permitted to speak to citizens regarding general legal advice as this is not a function an assistant county attorney is authorized to do by statute. Serious liability concerns can arise as a result of performing such unauthorized acts as delineated below.**

**V. CIVIL LIABILITY ISSUES**

There is no such thing as “prosecutorial immunity” specifically. Rather, prosecutors, as government officials are protected by sovereign immunity when sued in their official capacities and qualified immunity when sued in their individual capacities. These immunity doctrines are explained below.

**2 General Types of Allegations Giving Rise to Liability:**

1. Negligence & Claims for State Law Violations
2. Violation of Constitutional Rights (42 U.S.C.A. § 1983)

**(1) Government Entity & Government Official Liability for Negligence and State Law Claims NOT Constitutional Violations.**

* Actions for negligence will seek money damages for things such as: negligent hiring, negligent supervision, negligent failure to train, failure to properly perform duties, negligent failure to perform required duties, etc…

**Negligence - Plaintiff Must Prove:**

1. Office/Officer owed a duty of care to the plaintiff
2. Office/Officer breached that duty of care
3. Office/Officer’s breach of that duty resulted in injury to plaintiff

 **A. Sovereign Immunity**

**Sovereign Immunity** is the absolute immunity that precludes the maintaining of any suit against the state. A county is a political subdivision of the Commonwealth of Kentucky and is considered an arm of the state. As such, the county has sovereign immunity. As we are both county and state officers, we are covered by sovereign immunity on both sides.

**Sovereign Immunity Applies When:**

1. plaintiff sues the county and/or CAO as a public entity Under STATE LAW CLAIMS **NOT** CONSTITUTIONAL VIOLATIONS

1. plaintiff sues any McCracken County and/or state official in his/her “Official Capacity” because a suit against a public official in their official capacity is viewed as a suit against the public entity itself.

 **B. Qualified Immunity**

When a public official is sued in his “Individual Capacity” he does not enjoy absolute sovereign immunity, but only **qualified immunity.**

**Qualified Immunity Applies to Negligent Performance of:**

1. **discretionary** acts or functions - those involving discretion, personal deliberation, judgement;
2. performed in **good faith –** NOT willfully or maliciously intending to cause harm to the individual;
3. with such acts being within the scope of the official’s authority.

**“Shifting Burden” –** once an official proves that the challenged act was performed within the scope of his discretionary authority, then the burden shifts to the plaintiff to prove that the discretionary act was not performed in good faith.

**Qualified Immunity DOES NOT APPLY to Negligent Performance of:**

* **Ministerial acts =**  acts that require only obedience to the orders of others or when the officer’s duty is absolute, certain and imperative involving merely execution of a specific act

As county officials we are also protected by the following KRS section that has essentially codified the doctrine of qualified immunity and made it specifically applicable to certain local governmental functions:

**KRS Chapter 65.2003(b) Statutory Immunity From Tort Liability**

A local government (including officers and agents thereof) **SHALL NOT BE LIABLE** for injuries or losses resulting from:

1. Any claim by an employee of the local government which is covered by worker’s compensation;
2. Any claim in connection with the assessment or collection of taxes;
3. Any claim arising from the exercise of legislative or quasi-legislative functions or the judgment and discretion vested in the local government, which shall include but not be limited to:
4. Adoption or failure to adopt any ordinance, resolution, order, regulation or rule
5. Failure to enforce any law
6. The issuance, denial, suspension, revocation of or the failure or refusal to issue, deny, suspend or revoke any permit, license, certificate, approval, order or similar authorization;
7. The exercise of discretion when in the face of competing demands, the county determines whether and how to utilize or apply existing resources
8. Failure to make an inspection.

NOTE: statute specifies that nothing in this statute shall be construed to exempt liability for negligence arising out of acts or omissions of its employees in carrying out **ministerial** duties.

**(2) Government Entity & Officials’ Liability for CONSTITUTIONAL RIGHTS VIOLATIONS.**

**42 U.S.C.A. § 1983 AKA “1983 Suits” –** not a source of substantive rights itself, just a way created to allow people to sue for violations of constitutional rights by an actor acting under state law.

* Typically involves the deprivation of **federally guaranteed rights** of life, liberty, property or any of the enumerated rights in the bill of rights by a state actor operating under color of state law.

 **A. Limitation on Governmental/Municipal Liability**

A County’s or CAO’s liability in 1983 suits is limited to unconstitutional conduct that was carried out as a product of a policy statement, ordinance, regulation, or decision officially adopted and practiced by governmental officers or which results from a custom of the governmental entity. Essentially, it must be shown that the public entity had a policy, custom or practice of condoning or allowing the unconstitutional conduct at issue.

* Because the plaintiff must prove that the unconstitutional conduct was caused by a governmental policy or custom, a single incident of misconduct cannot be the basis for liability.

 **INCREDIBLY DIFFICULT TO PROVE!!!!**

**Municipal/Governmental Liability Limitation Applies When:**

1. plaintiff sues McCracken County or the CAO as a public entity

1. plaintiff sues any McCracken County or CAO official in his/her “Official Capacity” because a suit against a public official in their official capacity is viewed as a suit against the public entity itself.

 **B. Qualified Immunity**

When a public official is sued in his “Individual Capacity” for violating a constitutional right, he is entitled to **qualified immunity.**

**Qualified Immunity for Constitutional Violations Applies when:**

**2 Tiered Analysis for Qualified Immunity**

1. P has burden of proving that D actions violated a constitutionally protected right. *If a violation is proven = move to step 2*

 2. Was the right that was violated one that is “clearly established” meaning that a reasonable county official would have known that his conduct was violative of the right?

* Additionally, a plaintiff must prove an official acted knowingly or intentionally to violate his constitutional rights. Mere negligent or reckless conduct is not enough.

**SO LONG AS YOU STICK TO YOUR STATUTORY PROSECUTORIAL DUTIES AND CONDUCT ALL ACTIONS IN A NUETRAL FASHION AND IN COMPLIANCE WITH THE LAW YOU WILL BE PROTECTED.**

**VI. CRIMINAL PROSECUTION OFFERS/CONSIDERATIONS**

**YOU SHOULD APPROACH EACH INDIVIDUAL PROSECUTION WITH THE INITIAL QUESTION OF “WHAT IS THE ULTIMATE GOAL I’M TRYING TO ACCOMPLISH IN THIS CASE?” WHEN THIS IS DETERMINED, YOUR OFFER SHOULD BE CRAFTED ACCORDINGLY IN CONSIDERATION OF (1) THE DEFENDANT’S CRIMINAL HISTORY & (2) THE FACTS AND CIRCUMSTANCES OF THE CRIME.**

Many times, district court prosecutions allow a good prosecutor to get involved in a defendant’s life at an early stage in their “criminal career” and gives an opportunity to correct one’s behavior and/or outlook so as to put them “on the right track” and avoid future criminal conduct.

**Goals to Consider:**

* Education of the defendant as to the pitfalls of criminal conduct
* Require a defendant to better themselves by addressing issues contributing to their being charged with a crime = anger management; mental health eval and treatment; drug/alcohol abuse eval and treatment; parenting classes; checking account management classes; theft prevention classes; completion of drug related diversion program; completion of GED or vocational/technical program; restitution to crime victim

 **Not only do these programs help to educate a defendant but they also impart a sense of “punitive inconvenience” in their lives by being required to take the time to do something they ordinarily wouldn’t in the face of contempt sanctions if they fail.**

* Motivation of defendant not to reoffend = CD time on relevant conditions
* Motivation of defendant not to reoffend = jail time imposed with CD time on relevant conditions
* Protection of the crime victim = no contact order with looming CD time if violate
* Good Old Fashion Punishment for criminal conduct

**YOU ARE ENCOURAGED TO BE CREATIVE IN ACCOMPLISHING YOUR GOALS OF CRIMINAL PROSECUTION. THE FOLLOWING IS A MERELY GUIDE TO COMMON OFFERS FOR FREQUENTLY ENCOUNTERED CRIMINAL AND TRAFFIC OFFENSES.**

COMMON MISDEMEANOR

& TRAFFIC OFFERS

* The following offers assume a defendant has no active CD time. If a defendant should have active CD time, revoke some if circumstances dictate. The amount revoked is dependent on the individual’s record, the prior offense with CD time, the similarity between the prior offense and the present offense, facts and circumstances of present offense.
* All of the following offers are subject to change if necessary. Important considerations include: length of record; prior convictions for same or similar offenses; the facts and circumstances surrounding the individual case.
* The first sample offer assumes a defendant does not have a record or has a prior offense in the fairly distant past. Subsequent recommendations contemplate a criminal history.
* When jail service is appropriate based on facts and/or record, consider whether facts would allow Home incarceration. Ordinarily home incarceration is appropriate when medical proof is submitted showing that traditional incarceration would be detrimental to the treatment or recovery of a person’s physical or mental health ailment or if a dependent of the person would be put at risk. If so, double the amount of “in house” incarceration that would be acceptable. Also consider weekend service. If person is Employed and record allows weekends, give a few extra days and an even number of days.

# CRIMINAL COURT OFFENSES

1. **Possession of Marijuana/Controlled Substance Third Degree.**
	* Marijuana = $25 + CC, forfiet items siezed
	* 2 -4 days CD 2yrs NFO, $100, forfeit items seized.

**2) Possession of Drug Paraphernalia.**

* If the paraphernalia consists merely of the rolling paper the MJ is wrapped in or the baggie the MJ is kept in = DWOP
* If not - $25 + CC, forfiet items siezed

**3) Theft by Unlawful Taking u/500.**

* $500 fine and court order to stay out of establishment, TPC/CR. This max fine may be appropriate to show a defendant the monetary effect of stealing is much higher than simply paying for the item!
* 4 – 10 CD 2yrs NFO, stay out of establishment, TPC/CR, $500 (suspend 300). If person is young, recommend the resume writing and interview skills course w/ crossroads if person is not working and not in school.
* 14 - 30 2yrs NFO, stay out of establishment, TPC/CR, $500 (suspend 300). Same w/ interview course.

**4) Theft by Deception, Cold Checks, u/500.**

* 4 CD 2yrs nfo, restitution and administrative fees/CR, Checking account management class, possible drug abuse assessment and follow up treatment/CR
* 14-28 CD 2yrs nfo, restitution and administrative fees/CR, Check Classes/CR. If a long history of checks = substitute Check classes for “no more check writing” and require a drug and alcohol abuse assessment and follow up/CR

**5) Contempt of Court.**

* $100 and convert the cash bond (if posted) to cover underlying fees and costs. Must ask the court to directly order this.
* 2 - 10 CD 2yrs nfo, 100-150 and convert the cash bond (if posted) to cover underlying fees and costs.
* Multiple recent contempts = days to serve equal to # of contempt convictions last 2 years
* If for failure to appear and pay = can give days to serve in place of fine at $50 credit for each day served.

**6) Bail Jumping**

* Amend to Contempt of Court. 60 – 180 days, serve double what the sentence was they failed to appear to serve (ex = fta to serve 10 days = 20 to serve) consecutive to underlying sentence they failed to appear to serve (ex = the underlying 10), cd bal 2yrs nfo,

**7) Alcohol Intoxication 1st or 2nd.**

* $25
* up to $100 depending on prior AI and/or DUIs

**8) AI 3rd or more in 12 months & Public Intoxication of Controlled Substance.**

* 20 - 45 CD 2yrs nfo, drug and alcohol abuse assessment and F-up/CR, $250 (suspend 150)
* 60-90 CD 2yrs nfo, drug and alcohol abuse assessment and F-up/CR, $250 (suspend 100)

**9) Assault 4th.**

* 21-60 CD 2yrs nfo, nfc with complaining witness, restitution/CR, anger management assessment f-up/CR, $500 (susp 300)
* 90 – 6 months CD 2yrs nfo, nfc with complaining witness, restitution/CR, anger management assessment f-up/CR, $500 (susp 200)
* Always a possibility to amend a weak assault or one w/out physical injury/pain/redness to **Harassment with physical contact**.

**10) Assault 4th Domestic Violence.**

* 21-60 CD 2yrs nfo, nfc with complaining witness, restitution/CR, Domestic violence assessment f-up/CR or Anger Management assessment f-up/CR, $500 (susp 300)
* 90- 6 months CD 2yrs nfo, nfc with complaining witness, restitution/CR, Domestic violence assessment f-up/CR, $500 (susp 200)

**11) EPO/DVO Violation.**

* 21-60 CD 2yrs nfo, abide by EPO/DVO $500 (susp 300)
* 90-6months CD 2yrs nfo, abide by EPO/DVO $500 (susp 300)

**12) Terroristic Threatening.**

* 2 – 10 CD 2yrs nfo, nfc w/ cw $100
* 20 - 40 CD 2yrs nfo, nfc w/ cw $ 500 (susp 350)

**13) Harassment No Physical Contact.**

* $50-100, ask court to directly order NFC with victim
* $250, suspend a certain amount 2yrs, nfo, ask court to directly order nfc w/ v

**14) Unlawful Transaction w/ a Minor (absences/tardies).**

* Amend to Parent/Custodian failure to send child to school.
* 100, susp 50 2yr nfo, any child have custody of has no more than 3 unexcused absences or tardies
* 2nd offense = $200 fine + reinstate the prior suspended fine.
* 3rd Offense = Class B misdemeanor = 22, serve 2, cd bal 2yrs nfo, any child have custody of has no more than 3 unexcused absences or tardies

**15) Endangering the Welfare of a Minor**

* Amend to Wanton Endangerment 2nd b/c to be EW of M = must be prior adjudication of dependent, neglected or abused child. Never the case.
* 30-60 cd 2yrs, nfo, cooperate with and abide by prevention plan prepared by the Department of Community Based Services (DCBS), 500 (350 suspended same conditions)
* 45-90, serve 7 (consider possible Home Incarceration for “double time” = 14 days, or 8-10 days of weekend service in lieu of straight time), cooperate with and abide by prevention plan prepared by the Department of Community Based Services (DCBS), 500 (250 suspended same conditions)

**16) Harassment WITH Physical Contact**

* 14-35 cd 2yrs nfo, nfc with cw, anger management assmnt f-up/cr, restitution/cr, $250 (suspend 150)
* 21-60 cd 2yrs nfo, nfc with cw, anger management assmnt f-up/cr, restitution/cr, $250 (suspend 100)

**17) Menacing**

* 14-35 cd 2yrs nfo, nfc with cw, anger management assmnt f-up/cr, restitution/cr, $250 (suspend 150)
* 21-60 cd 2yrs nfo, nfc with cw, anger management assmnt f-up/cr, restitution/cr, $250 (suspend 100)

**18) Criminal Mischief 3rd Degree**

* 4 - 10 cd 2yrs nfo, nfc w/ cw, restitution/cr, letter of apology to cw, $250 (susp 150)
* 10 - 20 cd 2yrs nfo, nfc w/ cw, restitution/cr, letter of apology to cw, $250 (susp 100)

**19) Criminal Mischief 2nd Degree**

* similar to 3rd Degree but with elevated CD time.

**20) Criminal Tresspass 3rd Degree**

* $250 (suspend 150) 2yrs nfo, stay of Paducah housing authority property (or cw’s property).

**21) Criminal Trespass 2nd & 1st**

* 14-60 cd 2yrs nfo, stay off property, maximum fine w/ ½ suspended.

# TRAFFIC COURT OFFENSES

1. **Failure to Maintain Liability Insurance 1st**
* $500 (suspend $250), request direct court order to show 6 months proof of insurance to CR OR sign sworn statement of no driving
	+ 7cd 2yrs nfo, show proof to cr 6 months of insurance OR sign sworn statement that will not drive automobile, $500 (suspend 400)
1. **Failure to Maintain Liability Insuarance 2nd**
* 14-21
* cd 2yrs nfo, show proof to cr 6 months of insurance OR sign sworn statement that will not drive automobile, $1000 (susp 800)

 **While not required, it is a good practice to inform D of the DOT administrative suspensions related to no insurance convictions:**

1st Offense = 6 month suspension BUT the suspension is “suspended” by DOT

 2nd Offense = 6 month suspension is imposed AND the previous 6 month suspended suspension is instated consecutively for a total of a 12 month suspension.

1. **Failure of NON Owner to Maintain Liability Insurance**
* Amend to **failure to produce insurance card** = $25
1. **Leaving the Scene of an Accident**
* 7-21 cd 2yrs nfo, restitution/cr, $500 (susp 350)
1. **Speeding**
* Fine in the amount of double the mph over the limit. Ex = 15 over is a $30 fine.
* Above 20 over – double the mph over with second digits added.
* Ex = 21 over – 21 + 21 = 42 + 2 = $44 fine
1. **Speeding in a School Zone**
* Double the fine in an ordinary speeding case. Ex = 15 over is a $60 fine.
1. **Driving on Suspended Operators License**
* Ask person WHY license suspended. If was an “administrative suspension” and not for DUI, Speeding ect. = allow them a chance to pay the reinstatement fee and avoid a conviction = dismiss on compliance. IF NOT
* $50 - $250 fine
* 2 – 6 cd 2yrs nfo, 250 (suspend 150)

 **While not required, it is a good practice to inform D that their license will be administratively suspended for a consecutive 6 month period by DOT upon conviction.**

1. **Open Alocoholic Beverage Container in a MV**
* $35
1. **One headlight (Anything characterized as Improper Equipment)**
* $10 if D has not shown proof of fixing the issue.
1. **Disregarding traffic control device, Failure to/improper signal, Expired Registration, Failure to produce insurance card, Failure to Notify DOT of Address Change, License to be in Possession**
* $25
* On expired registration, failure to produce insurance card, failure to notify DOT of address change, license to be in possession = as person if they have NOW done so. If so = DOC (dismiss on compliance)
1. **Reckless Driving**
* $100 suspend $50, nfo, no further traffic violations

**SUMMARY OF STATUTES AND**

**CASE LAW PERTAINING TO RESTITUTION**

**This document contains summaries of the provisions of statutes and holdings of judicial opinions related to the imposition of restitution on a criminal defendant. See the full text of the statutes and judicial opinions for further details.**

**MOST CITED STATUTES PERTAINING TO RESTITUTION: KRS 431.200**

 **KRS 532.032 -034**

 **KRS 533.020-030**

1. **RESTITUTION RECOVERABLE**
* The actual victim of the offense whom was caused to suffer an ***out of pocket*** monetary loss due to property destruction or damage, medical bills, loss of earning, can recover the ***out of pocket*** amount paid due to the crime. ***Clayborn v. Commonwealth,*** 701 S.W.2d 413 (Ky. App. 1985).
* in ***Clayborn*** the court found an abuse of discretion in ordering a defendant to pay more restitution than what the victim actually paid out of pocket related to medical expenses.
1. **WHO MAY COLLECT RESTTITUTION**
* Only the “victim” (KRS 532 & 533) or the “person aggrieved” (KRS 431.200) may collect.
* ***Clayborn*** & OAG 94-57 = a private insurance carrier is not a reimbursable entity under the restitution statutes. Private insurance carrier is not a “victim” or an “aggrieved person” under the restitution statutes. No subrogation in the course of a criminal action.
* KRS 533.030(3) = exception to rule on only victims/persons aggrieved getting restitution = when victim incurs medical expenses as a direct result of criminal behavior and that amount is paid by the Cabinet for Health and Family Services, the Crime Victims Compensation Board or any other governmental entities, those 3 types of payors may collect restitution for their payments **after** the out of pocket expenses actually paid by the victim (if any) are collected.
1. **TIME LIMITATION FOR ORDER OF RESTITUTION**
* A court loses jurisdiction over a case 10 days after entry of a final judgement. If an individual pleads guilty and is sentenced, a final judgement has been entered. Even if restitution is mentioned in the plea, a valid restitution order has not been created unless all items required by KRS 532.033 are included in the order: victim payable, amount payable, rate of payment. If all items not included, then a restitution order was not created and restitution will be barred after 10 days from plea. ***Rollins v. Commonwealth***, 294 S.W.3d 463 (Ky. App. 2009).
1. **ARGUMENTS & METHODS TO SIDESTEP *ROLLINS’* 10 DAY LIMITATION**
2. **Distinguish *Rollins* =** rollins was rendered in the context of a defendant who was imprisoned. As such, he was not subject to the court’s broad authority related to probation and conditional discharge.
* When one is probated/CD, KRS 533.020 & 030 apply. They did not apply in Rollins b/c the D was imprisoned only. KRS 533.030(3) makes restitution mandatory as a condition of probation and/or CD. KRS 533.020 expressly gives the courts the authority to modify or enlarge the conditions set forth in KRS 533.030 at any time prior to the expiration of the probationary term.
* **Argument =** Rollins applies to imposition of restitution in context of a person who has been sentenced and not subject to probation/CD. When given the judicially discretionary benefit of probation/CD, the court’s authority to modify and enlarge any and all terms of probation/CD apply under KRS 533.020, including the ability to set/modify restitution obligations.
* **Argument =** the Rollins Court was motivated to remedy a more severe procedure foul b/c the trial court had retroactively ordered restitution **7 years** after final judgment. That policy motivation is not present in our cases due to the usually short amount of time between plea and restitution motion. These two arguments should be persuasive.
* **This argument/distinction was credited in Rollins** when the court stated in Foot note 5:

“We note that our result [barring restitution 10 days after sentencing] may have been different were we dealing with a case involving probation or an alternative sentence instead of imprisonment, as KRS 533.020 provides that a trial court can modify or enlarge the conditions of probation at any time prior to the expiration of the alternative sentence. Here, there was no such statutory language extending jurisdiction, and furthermore, Rollins had served out his sentence and was no longer in custody.”

* **Should the court disallow restitution under Rollins, proceed under KRS 431.200** which provides that any D convicted of a felony or misdemeanor for taking, injuring or destroying property shall restore such property or make reparation if not ordered by a valid restitution order. We must file a verified petition within 90 days of sentence. If D does not agree, there must be a fact finder impaneled (jury for adult cases, bench trial for JV) to find the correct amount.
* **If there are foreseeable difficulties in complying with Rollins time frame:**
1. Set restitution at a highest amount customary in similar cases. If the D agrees, great. We can later petition under KRS 533.020 for a lesser amount if need be. Ds seldom object to a decrease in their liability.
2. Set a TEP for final disposition of the case on a date and time wherein a restitution hearing can be held contemporaneously/directly after the plea.
3. **METHODS OF PROVING RESTITUTION DUE**
* ***Fields v. Commonwealth,*** 123 S.W. 3d 914 (Ky. App. 2003) makes clear that a D is entitled to adequate notice of a claim for restitution and an opportunity to controvert it. This procedure comes through a restitution hearing and the adequate notice of the claim was determined in Fields to be through an itemized breakdown of the actual out of pocket expenses paid directly by the victim with documentary support.
* **This documentation and itemization shall be collected and compiled by the victim’s advocate prior to final disposition of the case on any cases they have a duty to assist victims with.**

**DUI SAMPLE OFFERS AND**

**SUPPRESSION ISSUES**

**DUI 1st**   - 200 fine 375 Service fee 7 days cd for 2 yrs on condition, No further offenses, no refusals if investigated for a dui in the future, 30 day lic susp take ADE classes

**DUI 1st AGG**- 200 fine 375 svc 30 days serve 4 cd balance for 2 yrs ………. 30 day lic susp, 6 months ignition interlock device and ADE classes

**DUI 2nd**- 350 fine 375 svc 90 days serve 18 cd the balance 2yrs NFO, NO refusals, 18 month lic susp 12 months IID,  ADE

**2nd AGG**   - 90/s21  the rest is the same

**DUI 3rd** - 500 fine 375 svc 12 months serve 7-9 cd balance 2 yrs ……… 36 month lic susp 30 months IID take ADE

DUI SUPPRESSION CHECKLIST

1) INITIAL STOP = rea susp

2) ARREST = PC

3) MIRANDA = custodial interr. Temp detain, Qs on traditional traffic stop = NOT cusdody

4) TESTING REGULATIONS

1. Qualified Personnel
2. 20 Minute Observation Rule
3. Calibration Check of Intoxilyzer Prior to Test
4. 2 Hour Rule (*per se pros*)

(1) INITIAL STOP = officer had a reasonable and articulable suspicion D is committing an offense based upon the observations of the officer or other sufficiently reliable information. *Delaware v. Prouse, Collins v. Comm.*

* Articulable suspicion must be based on specific facts along w/ rational inferenced from those facts = NOT rumor, hunch, gut feeling

Police Bulletins = inherently trustworthy and generally a sufficient basis for stop. 3 step analysis = (1) issued from police source w/ rea/art suspicion of unlawful activity; (2) objectively reviewed by officers; (3) stop not significantly more restrictive that that ordinarily permitted by Dept. *U.S. v. Hensley.*

Informer’s Tips = anonymous tip by itself is not enough for stop. Independent corroboration required, but not much. *Raglin v. Comm.*

* BIG DISTINCTION b/n anonymous tip & Identified Caller tip. *Comm v. Kelly =* stop upheld despite no bad driving noticed when 2 waffle hut Eees called to report. Ct = their identities could easily be discovered

Stationary Vehicles = issue is whether officer’s initial encounter is constitutional. Initial intrusion must be justified by a rea susp of unlawful activity OR exigent circumstances

Roadblocks = sobriety checkpoints OK when conducted in substantial compliance w/ a systematic plan and that stops are not random or discretionary. *Kinslow v. Com., Steinback v. Com.*

* Test for Reasonableness of Roadblock = (1) parameters set by supervisor, (2) parameters are followed, (3) nature of block is readily apparent, (4) length of stop

(2) ARREST = must have probable cause to make arrest = whether facts and circs w/in officer’s knowledge and of which they had rea trustworth info were sufficient to warrant a prudent man to believe D committed or was committing a crime.

* KRS 431.005(1)(d) = officers can make a warrantless arrest for misdemeanors committed in their presence

(3) MIRANDA = D must be read Miranda rights prior to any custodial interrogation = questions initiated by law enforcement after one is taken into custody or otherwise deprived of freedom in a significant way.

* Persons temporarily detained pursuant to ordinary traffic stops are NOT “in custody” = on scene questioning incidental to ordinary traffic stop is not custodial interrogation. *Hourigan v. Com.*
* Miranda does not apply to the administration of alcohol tests. *Schmerber v. Cal; Com Tranp. Cabinet v. Cornell*
* Verbal aspects of field sobriety tests (unless used merely to display physical phenomenon such as slurred speech) are testimonial and subject to Miranda assuming D is in custody. *Hourigan v. Com.*

(4) COMPLIANCE WITH TESTING REGULATIONS

Breath Tests = Requires:

1. test administered by certified operator
2. test performed in accordance w/ manufacturer’s instructions
3. officer had person under observation at location of test for at least 20 min
4. *per se pros* = test must be given w/in 2 hours of operation
5. reading of implied consent

Qualified Personnel = 189A.103(3)(b) = breath tests must be admin by peace officer holding a certificate as an operator of the instrument

* Blood Tests= drawn only by physician, Regis nurse, phlebotomist, medical technician/technologist
* Urine Tests = collection must be in presence of officer or another at direction of officer who can authenticate sample

**20 Minute Observation Rule** = officer must observe D at the test sight for at least 20 min.

* Object = prevent oral or nasal intake, guard against burping/verping, regurgitation

* Eyeball to eyeball observation not necessary. ***Tipton v. Com.***
* Violation = by less than 20 or by interruption due to lack of observation, regurg, burping/verping, oral or nasal intake.
* Dentures, plates, dip/chew = now goes to weight of test, not admissibility.

**Calibration Check of Intoxilyzer =** check is run w/ each test. Sample solution attached to machine at .08 is run. Must be b/n .075 &.085 for test to be valid.

**2 Hour Rule =** in *adult and under 21 per se* prosecutions, a blood or breath sample must be collected w/in 2 hours of operation of vehicle.

* If beyond 2 hours = may be admissible in “underinfluence of alc or combo” BUT will likely need expert testimony.

**Previously, any implied consent violation was exploited by defense counsel and used to suppress the test results. The following authority makes clear that forensic tests obtained from a consenting D are not suppressible merely due to technical implied consent violation.**

* **1) Speers v. Comm.**, 828 S.W.2d 638 (Ky. 1992).  Defendant voluntarily consents to blood test then moves to suppress due to implied consent violation.  The court states that the legislative purpose of implied consent law is to create a presumption, in the absence of express consent, that BAC testing is lawful in a DUI case and those who refuse such a test may have their operators' license revoked administratively.
* The **Speers** court further states that D's argument that the test results should be suppressed due to an implied consent violation completely ignores the fact that where actual, express consent is had, there is no need whatever to address the fiction of implied consent.
* 2) **Beach v. Comm.**, 927 S.W.2d 826 (Ky. 1996).  Defendant voluntarily consents to blood test then moves to suppress due to implied consent violation. The court again notes that the purpose of implied consent is to facilitate obtaining evidence of DUI.
* The **Beach** court further clarified the suppression issue by holding that exclusion of evidence for violating the provisions of the implied consent statute is not mandated absent an explicit statutory directive or an actual violation of one's constitutional rights.  The court pointed out that there exists no statutory directive mandating exclusion in the statute and then cites to **Schmerber v. Cal.**, 384 U.S. 757 (1966), for the holding that a blood test does not violate the 4th, 5th or 6th Amendments.

**Outcome** = implied consent has no application at all when one expressly consents to forensic testing.  Even if we did reach an implied consent analysis, there is no suppression of evidence unless one's constitutional rights are violated.

**BELOW ARE SAMPLE DUI SUPPRESSION HEARING FACT SHEETS BASED ON THE NATURE OF THE CASE I.E. REFUSAL, BREATH GIVEN, BLOOD GIVEN. THESE ARE HELPFUL IN ALLOWING YOU TO HIT ALL POSSIBLE SUPPRESSION ALLEGATIONS QUICKLY WITHOUT SIGNIFICAN REVIEW PRIOR TO HEARING.**

**SUPPRESSION HEARING FACT SHEET**

**REFUSAL**

**Commonwealth v. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

1. **STOP Reasonable Suspicion.**
2. **FSTS Reasonable Suspicion of possible impairment.**
3. **STATEMENTS No Miranda necessary b/c D not in custody.**
4. **ARREST Probable cause based upon all facts and circumstances**
5. **IMPLIED CONSENT**
* **Read at the testing site**
* **Allow 10-15 minutes to contact atty**
* **Inform D that he has right to own test if takes yours**
* **Present sense observation at least 20 min**
* **Any burping, verping, chewing tobacco, ingestion of anything**
* **When offered test = response**

**SUPPRESSION HEARING FACT SHEET**

**BLOOD**

**Commonwealth v. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**1. STOP Reasonable Suspicion.**

**2. FSTS Reasonable Suspicion of possible impairment.**

**3. STATEMENTS No Miranda necessary b/c D not in custody.**

**4. ARREST Probable cause based upon all facts and circumstances**

**5. IMPLIED CONSENT**

* **Read at the testing site**
* **Allow 10-15 minutes to contact atty**
* **Inform D twice that he has right to own test if takes yours**
* **Test taken in your presence/at your direction**
* **Blood drawn by a medical tech, nurse, phlebotomist**
* **No ethanol used to clean skin**
* **Containers those sent to you by KSP forensic lab**
* **Viles labled with the following: name of D, date/time of collection, collecting person/agency, citation or case #**

**SUPPRESSION HEARING FACT SHEET**

**BREATH**

**Commonwealth v. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**1. STOP Reasonable Suspicion.**

**2. FSTS Reasonable Suspicion of possible impairment.**

**3. STATEMENTS No Miranda necessary b/c D not in custody.**

**4. ARREST Probable cause based upon all facts and circumstances**

**5. IMPLIED CONSENT**

* **Read at the testing site**
* **Have D under present sense observation for 20 min**
* **Allow D 10-15 minutes to contact atty**
* **You a certified operator of Intoxilyzer**
* **Run Intox through calibration sequence. In tolerance w/in 5 one-thousanths**
* **Offer test w/in 2 hours of cessation of operation/physical control**
* **Offer defendant his own test prior to (and after) test**

**JUVENILE PUBLIC &**

**DEPENDENCY, ABUSE, NEGLECT**

JUVENILE PUBLIC OFFENSE COURT GUIDELINES

**THESE GUIDELINES WERE PREPARED PRIOR TO PASSAGE OF SB 200. WHILE MOST STILL APPLY, DEVIATIONS WILL BE NECESSARY AS SET FORTH IN SB 200. SEE THE SB 200 SUMMARY APPEARING AFTER THIS SECTION.**

JUVENILE DETENTION HEARINGS

* Child can be detained upon initial pickup if judicially determined that crime is sufficiently serious, child may commit a crime dangerous to himself or the community prior to disposition.
* Child will be brought before court detention hearing for determination of probable cause that offense was committed and the child committed it and whether further detention is warranted in light of the 4 factors listed in KRS 610.280(b)
* Det hearing is conducted identically to preliminary hearing = no rules of evidence
* CFA typically 2 weeks after DH if not detained and on the next available Wed if detained.
* If risk of child meeting the four factors of KRS 610.280(b) is present, but not strongly applicable, child may be released on alternative to detention (ATD/ankle monitor). Also, child may be released on unsupervised home incarceration (see form).

# ARRAIGNMENTS

* All JVs are required to have counsel. This is done at ARR. Typically, no offers are made due to counsel having just been appointed.

# CONTINUED FIRST APPEARANCE/OFFERS

* First offense misdemeanors ONLY = review for potential to “refer back” to CDW for informal adjustment. This may be advisable when child has not already been through CDW on 2 prior occasions due to CDW’s ability to strictly supervise a child and craft a diversion to address a child’s issue/challenge more effectively than that of a formal disposition.
* First offense misdemeanors ONLY = review to determine if child qualifies for a pre-trial diversion through teen court. Child admits truth of the petition and goes through proceeding with teen prosecutor and defense attys. Court imposes penalty. If child successfully completes = charge is dismissed.
* Misdemeanors not qualifying for TC = Always left to discretion of prosecutor with consideration of history and circumstances. No fines. Typically include a detention sentence probated until child reaches 18 on any of the following conditions as they may apply to nature of case:
1. no further offenses of law of any kind
2. no further contact w/ co-Ds
3. payment of restitution
4. completion of Prime for life (drug education) through NECCO
5. random drug screening through NECCO
6. Anger management and follow-up through NECCO
7. Completion of some even # of CWS day through NECCO
8. Successful completion of terms of Unsupervised Probation
	* If child has CD time, revoke some if circumstances dictate. Typically seek to avoid detention sentences in excess of 30 days unless a longer sentence was given previously
	* If no CD time but history/circumstances indicate detention time is necessary = give it to them. Avoid sentences longer than 30 days unless the above applies. Some situations may be necessary for imposition of a detention sentence OR alternative to detention (ADT/ankle monitor) OR a combination of the two.
	* Violations = pre-trial diversion to Teen Court or CWS
	* Status Offenses = beyond parental control, habitual truant, habitual runaway, beyond control of school, possession of tobacco ect… If child has a public offense and a status offense pending = they both come to JV court. Typical status violations include putting the child on temporary rules similar to unsupervised probation rules while waiting for disposition hearing. If separate disposition is waived = child put on rules similar to unsupervised probation rules = no cd time and conditions. Child’s violation of these rules if punished by contempt proceedings.
* Felony Offenses = naturally, punishment will be greater than w/ misdemeanor but still consistent with the sentence length considerations and the condition considerations mentioned above w/ misdemeanors. MAIN DIFFERENCE = with felony = consider probation to DJJ for strict supervision.
* Violations of DJJ probation = typically request a recommendation from DJJ and follow that if determined commensurate w/ the facts/history.

# AGE BASED SENTENCE LIMITATIONS

* A child 13 or younger cannot be detained post disposition. Nor can they be given CD time. However, they may be detained pre-disposition if meet requirements of KRS 610.280(b).
* **A** child 14-15 may not be detained post disposition for longer than 45 days.
* A child 16-17 may not be detained post disposition for longer than 90 days.
* JV court maintains jurisdiction over those who commit offenses while under the age of 18 but whom have turned 18 during the pendency of the case. Problem = if jail time is necessary = cannot put an adult into JV DET center AND cannot put an adult into adult jail for a JV offense. This limits sanction to CD time and conditions listed above for a public offense.
* **HOWEVER** = these sentence limitations apply only to public offenses, not contempt. Therefore, if a charge is for violation of court order = unsupervised probation violation, revocation of CD time due to violation of “no further offenses” condition or other conditions = child can serve up to 6 months regardless of age. ***Comm. v. S.K.***, 253 S.W.3d 486 (Ky. 2008); ***Comm v. A.W.,*** 163 S.W.3d 4 (Ky. 2005). A JV will do this time in the JV DET center and an adult will do this time in the adult jail.

**SENTENCING PROCEDURE**

* A child will “admit the truth of the petition”. Upon doing so, the child has the right to a separate disposition hearing wherein the court will impose sentence/disposition in consideration of the findings in a pre-disposition report prepared by DJJ.
* Most commonly, the child will waive the right to a separate disposition and preparation of a pre-disposition report and proceed directly to sentencing.
* If not waived = a disposition hearing date will be set and a pre-disposition report will be prepared which includes a recommendation. Typically, the prosecutor will accept the PDR and waive presentation of collateral evidence and witness testimony.

The separate disposition procedure is a good tool for situations in which a disposition cannot be agreed upon by counsel. In such instances, a child can admit the truth of the petition and request a separate disposition and preparation of a PDR. At the hearing, the judge will consider the info in the report and impose sentence accordingly.

**JV TRANSFER PROCEDURE**

KRS 635.020 sets the factual criteria for transfer as follows:

**Prior to making motion to transfer, the county attorney must discuss the matter of transfer with the Commonwealth attorney and both agree that transfer best serves the interests of justice**

(1) if a juvenile has allegedly committed a capital offense, class A or B felony and has reached the age of 14 at the time of commission, the juvenile division of the district court shall, upon motion of the county attorney, proceed with the transfer process.; **or**

(2) if JV charged with class C or class D felony and has on at least 1 prior occasion been adjudicated a public offender on a felony case, and has reached 16 at the time of the commission; **or**

(3) **“Automatic Transfer” =** if JV is charged with a felony wherein a firearm, whether functional or not, was used in the commission of the felony and the JV has reach 14 at the time; **or**

(4) if JV was previously convicted as a YO is charged with another felony prior to his 18th birthday; **or**

(5) if a person is 18 or older is charged with a felony that occurred prior to his 18th birthday.

KRS 640.010(2)(a)&(b) – after the motion to transfer is made by the county attorney, the juvenile court shall conduct a preliminary hearing to determine wither probable cause exists to show that he juvenile committed the offense and that the juvenile meets the standards for transfer.

If the juvenile court finds that probable cause exists and that the juvenile meets criteria for transfer, the court then considers the following factors as a final determination as to whether transfer is proper:

 1. the seriousness of the offense

 2. whether the offense was against a person or property with more weight being given to offenses against persons

 3. the maturity of the juvenile as determined by his environment

 4. the juvenile’s prior criminal record

 5. the best interests of the juvenile and the community

 6. the prospects of adequate protection of the public

 7. the likelihood or reasonable rehabilitation of the Juvenile through resources of the juvenile justice system

If a juvenile is transferred to the circuit court to be tried as an adult and found guilty, then 640.030 controls the sentencing protocol.

KRS 640.030(2)(a)-(c) – when the juvenile is transferred and found guilty, he is then referred to as a “Youthful Offender”. Any sentenced imposed upon a youthful offender shall be served at a facility operated by the department of juvenile justice until the offender turns 18.

Upon reaching 18, the offender shall be returned to the circuit court that sentenced him for a determination as to whether he should be (1) probated; (2) sent through a residential treatment program or (3) incarcerated in an adult prison.

**KENTUCKY SAFE INFANT ACT**

The Kentucky safe infant act is focused on saving the lives of infants by guaranteeing that at parent will not be criminally prosecuted for abandoning an infant so long as the baby is taken to a “safe place” and has not been physically abused or neglected after birth.

Under the law an infant is considered left in a safe place if left with an officer at a police station; a firefighter at a fire station; an emergency medical provider or a hospital emergency room staff member.

A police officer, firefighter or EMS provider will arrange to have the infant taken to the nearest hospital for examination and any needed medical care. The hospital will also contact social services.

If the parent does not contact social services within 30 days after leaving the infant in a safe place, social services will begin the process of terminating the rights of the parent and making arrangements for the infant to be adopted.

**SUMMARY OF 2014 JUVENILE**

**JUSTICE SENATE BILL 200**

**PROVISIONS MOST APPLICABLE TO**

**PROSECUTORS AND DEFENSE ATTYS**

**VIOLATION OF UNSUPERVISED AND DJJ PROBATION**

* Maximum allowable sentence for violation of term of DJJ or unsupervised probation is **30 days**. KRS 635.055, KRS 635.060(2)(b). This is the case regardless of whether the charge for violation is designated as “contempt” or “probation violation”.
* **Regarding DJJ probation**, the court must include authorization for the imposition by DJJ of graduated sanctions. The court cannot impose a term of detention (max of 30 days) unless a finding is made that graduated sanctions have previously been used for prior violations. KRS 635.060(2)(b)(ii)

 **Exception –** court may impose term of detention (max of 30 days) absent use of graduated sanctions if a finding is made that clear and convincing evidence shows that no graduated sanctions are available that are appropriate for the JV AND that the JV is an immediate threat to himself or others. *Id.*

* Except where commitment has been probated under KRS 635.060(5), a JV may not be committed to DJJ for violation of probation. *Id.*

**LIMITATION OF TIME PERIOD ON UNSUPERVISED AND DJJ PROBATION**

1. **For a Violation –** maximum of 30 days. *Exception* = court may order up to 90 days supervision if court has ordered treatment that will take longer than 30 days to complete. KRS 635.060(2)(c)
2. **For a Misdemeanor –** maximum of 6 months. *Exception* = court may order up to 12 months of supervision if court has ordered treatment that will take longer than 6 months to complete. *Id.*
3. **For a Class D Felony** (not declared a JSO or involving deadly weapon) **–** maximum of 12 months. *Id.*
4. **For a felony other than a Class D OR an offense involving deadly weapon –** maximum of 12 months. *Id.*

**WHEN CAN ORDER JV COMMITTED TO DJJ** (in court’s discretion)

1. Adjudicated of a **Misdemeanor or Class D felony** AND JV has at least 3 prior adjudications, EXCLUDING priors for violations. KRS 635.060(4)(a).
2. Adjudicated of a **Misdemeanor or Class D felony** AND JV has at least 4 prior that were violations and each prior did not arise out of the same course of conduct. *Id.*
3. Adjudicated of an offense **involving a deadly weapon.** *Id.*
4. Adjudicated of an offense in which JV is **declared J.S.O. under KRS 635.510.** *Id.*
5. Adjudicated of a **felony other than a class D felony.** *Id.*
* The Court may order the commitment suspended or probated for a time period not to exceed the times specified for the particular class of offense in KRS 635.060(2). KRS 635.060(5)(a) & (b).
* If commitment is probated/suspended under KRS 635.060(5), the court can order the JV committed for any further violations of the conditions of probation/suspension. KRS 635.060(d)
* Any time a JV has spent time in out of home placement as a result of a violation of a condition of probation or suspension of commitment, he shall be credited that time toward the period of commitment. *Id.*

**LIMITATION OF TIME PERIOD IN DJJ COMMITMENT**

1. **For a Misdemeanor –** maximum of 12 months, including all time spent in treatment.
2. **For a Class D Felony** (not JSO and no deadly weapon) – maximum of 18 months, including all time spent in treatment.
3. **For a Felony other than Class D OR an offense involving a deadly weapon –** up to age 18
4. **For JSO** – commitment as provided in KRS 635.515.

**FAMILY COURT DNA**

**& STATUS COURT PROCEDURES**

**JUVENILE STATUS COURT**

**Status Offenses =** offenses merely due to the age of the perp. Include: Habitual Runaway, Beyond parental/school control, habitual truant, tobacco offenses, alcohol offenses.

**Detention of Status Offender =** a child is not to be detained merely b/c accused of/admits the truth of a status violation petition.

* **Exception =** KRS 630.030 – a child may be picked up and detained on allegation of being habitual runaway.
* **Also =** status offender who has violated a valid status court rule order (or any other valid court order) may be picked up via petition for contempt and pickup order.
* **If a child is picked up and detained pursuant to the above =**  KRS 610.265 requires that a detention hearing must be held within 24 hours of detaining child. This 24 hour period is exclusive of weekends and holidays.

**Initiation of JV Status Case:**

All status cases originate in the CDW’s office. CDW will attempt to informally dispose of case and will submit all relevant info related to this attempt when a case is unsuccessfully diverted and sent to court.

**Status Court Arraignment:**

* Child will be read the complaint and rights and then given the chance to admit or deny allegations
* Many times the allegations will be admitted at arraignment and the judge will look to you for an offer

**Typical Status Court Offers:**

**First offense =** these are cases with an 001 trailer number. We will have an office maintained printout to show priors and what was done on disposition. Also review the CDW records showing efforts to divert and why not successful.

* If straight forward case with no egregious facts – offer probation to parents on permanent status offender rules. 2 – 6 days CWS is possible.
* If more significant issues present - offer probation to Cabinet on permanent status rules. This will get the cabinet involved and insure that action will be taken in the event of a breach of the rules

**Second Offense =** if the first offense was probated to parent (which most are), then the second offense, or a contempt, would typically be handled by upping the probation supervision by assigning probation to the cabinet, maintain rules, and CWS 4-8 days.

* Good thing to tell the offenders is that any failure to complete the WERC service will result in contempt and the amount of days outstanding will be converted to detention time

**Third Offense =** things getting more serious. The second offense was likely probated to cabinet. Now, depending on the severity of the facts, it is time to consider commitment to the cabinet OR probated commitment to the cabinet.

* If previously probated to cabinet, offer PROBATED COMMITMENT to the cabinet on permanent status rules and WERC service. With probated commitment, the idea is that probation to the cabinet remains, BUT upon the next violation, the child will be committed.
* If previously placed on probated commitment OR facts are egregious and showing that the parent/guardian cannot do anything with the child and/or the child is not getting an education (per school records), its time for COMMITMENT

**Regarding situations with unique facts and/or a complicated family or mental health dynamic, its advisable to ask the judge to order the cabinet to prepare a “Pre-D”. This is a pre-disposition investigation that will collect relevant facts and set forth a recommendation for disposition. If they flake out on a disposition, you will at least have good info to base your recommendation on.**

**Adjudication Hearings:**

On rare occasions, there will be an adjudication hearing in status court. This is merely a bench trial. Burden of proof is on the Commonwealth and the standard is beyond a reasonable doubt. Rules of Evidence apply.

**Issue** = simply whether or not it can be proven that the child committed the offense. Proof as to final disposition is not relevant and should not be brought in. An objection to the relevance of any such evidence as pertaining only to disposition is usually sustained.

Upon adjudication, the child has a right to a separate disposition and to request preparation of a predisposition investigation report. Often, these rights are waived and a recommendation is made consistent with the above considerations.

**Disposition Hearings:**

If a child invokes the right to a separate disposition, then a disposition hearing is scheduled. The cabinet will prepare a report giving the relevant facts of the case and a recommendation for disposition.

Simply adopt their recommendation or make your own based on the info provided.

**Reviews:**

Other than arraignments for status offenses or contempts, AH, D (disposition hearing) = most of the status docket will be various reviews. There will likely be a status report prepared by the cabinet. Just let them explain to the judge what the status is. They are familiar with the specifics of the case.

**Seeing the Public on Status Court Matters:**

Public interaction will typically be related to a child placed on rules who has now broken them.

Pull the file to verify the requirements on the order. Articulate a brief statement of the way the rules were broken on a JV Petition for contempt. Have the parent sign as affiant.

Contempt will be taken by petition/summons. Although a pickup order could be issued, Judge Sanderson does not like detaining a child for a status violation.

Sometimes a person will come to the office for advice on status violations. Simply refer them to CDW if a charges looks necessary.

**DEPENDENCY, ABUSE AND NEGLECT COURT**

**REVIEWS =** the majority of the DNA court docket consists of reviews. These are usually annual permanency reviews or some general form of review wherein the cabinet worker updates the court on the status of a child and tenders a report delineating the same.

* We typically have limited input on these unless some irregularity or significant fact is noted in the cabinet report that merits discussion.

* The Q&A will always be from the judge to the cabinet worker b/c they are intimately familiar with the case.
* While the cabinet worker will do most of the talking in briefing the court on the status of the case, feel free to address any issues or concerns that are not fully discussed or brought up in the report that may bear on courts action.

**MOST IMPORTANT ROLL FOR YOU IS TO BE FAMILIAR WITH THE HISTORY OF THE CASE AND CABINET REPORT AT ISSUE SO IN ORDER TO BRING TO THE ATTENTION OF THE COURT ANY FACTS OR CIRCUMSTANCES GERMAIN TO THE COURT’S DECISION ON THE CASE.**

**MOTION HOUR =** You will see a few of these on each docket. Many of these are motions brought by the Cabinet through our office. The cabinet used to file these themselves, but the court requires us to do them now to ensure all parties are notified.

* Most often it will be a motion for Review (see above).
* There can also be motions to modify custody previously ordered through a DNA action. You will likely take the movant on direct and ask questions revealing the movant’s relationship with the child (bonding), person qualifications for custody such as character, financial ability to care for child, mental stability, purpose for seeking custody etc… The cabinet can be called to testify if they have relevant info about the person seeking custody, their qualifications and the relevant issues pertaining to current custodian.

**GOAL CHANGE HEARING =** these are brought on motion of the cabinet and are a step in the adoption process prior to the termination of parental rights hearing (TPR)

* Ordinary goal of DNA court is family preservation & reunification of the removed child with their parent
* Goal change hearings typically arise after foster placement for 12 months and failure of parent to follow case plan
* **Call the social worker and determine**: age of child, how long in placement, if case plan was established to facilitate family preservation/reunification, the requirements of the case plan, how parent(s) failed to comply with each individual requirement, whether visitation has been exercised by parent, how child is adjusting/functioning in placement

**EMERGENCY CUSTODY HEARING**

Petition usually will be done after a DCBS investigation alleging child is dependent, abused or neglected. These 3 terms are defined in KRS 600.020.

For emergency custody to be appropriate, a child must be subject to imminent death, serious physical injury or sexual abuse if not immediately removed.

At the hearing, the court will determine this and whether continued placement is necessary to protect the child from suffering such consequences during the pendency of the action.

Hearing must be within 72 hours of emergency removal and hearsay is admissible. Burden of proof is on us and is by a preponderance of the evidence. Relevant evidence relates to emergency AT THE TIME OF REMOVAL and necessity of continued removal.

Evidence is given by testimony of the social worker or whomever the petitioner was.

**ADJUDICATION HEARING**

Must be held within 45 days after the emergency custody hearing (unless waived by respondent)

Rules of evidence apply. Burden is clear and convincing evidence.

Relevant evidence is whether the child was in fact dependent, neglected or abused AT THE TIME THE PETITION WAS TAKEN. Any evidence of subsequent events after removal or where the child should be placed after adjudication is irrelevant to the AH because it pertains to final disposition which will be determined at a later hearing.

**Handy Procedural Rule =** family court judges are now permitted to take judicial notice of prior findings in a particular DNA case. There will always be a finding of fact rendered after the initial removal hearing. Accordingly, there is always a piece of evidence supporting the allegation of DNA that the court can consider! Simply ask the court to take judicial notice of prior specific finding in case.

**DISPOSITION HEARING**

Happens after AH and child is found D, N, or A. purpose = to ascertain the proper placement of the child.

The social worker will have conducted a pre-disposition report including her recommendations. She will be the witness.

**SEEING THE PUBLIC ON DNA ISSUES**

* Most all meetings with the public will be about seeking emergency custody.
* The threshold for emergency custody is difficult to meet. It will ONLY be granted if it appears the child will be subjected to **imminent death, serious physical injury or sexual abuse if not immediately removed.**
* **As such** = if a child is ALREADY in the physical custody of the petitioner = EC not proper. This is the most common type of petitioner seeking EC

 **IF THIS IS THE CASE, THE WOULD BE PETITIONER MUST FILE A NON-EMERGENCY PETITION THAT WILL BE HEARD WITHIN 10 DAYS.**

* as the threshold is so stringent and the exparte remedy is so major, these cases must be referred to social services for investigation so that a petition may be completed in reliance on RELIABLE information
* **As Such =** the uncorroborated allegations of a potential petitioner are not acceptable. The case MUST be referred for investigation. People must be assured that if an emergency truly exists, the cabinet will and must take immediate action and their investigation helps to ensure success (unlike their uncorroborated allegation which ensures failure)
* **GUARDIANSHIP** will many times be the route to go to give the EC petitioner the custodial rights sought when EC will not apply. Guardianship allows the guardian to enroll a child in school, make medical decisions etc.
1. Guardianship can be **by agreement** of the parent of the child and the petitioner. Here, the parent and petitioner fill out AOC 352 & 353 forms giving a voluntary transfer of guardianship.
2. They can waive the notice requirements and the probate court will sign order for Gship and Gship will be established. It may be later recinded by petitioning the probate court to do so
3. This is the type of arrangement most done when a parent/parents are incarcerated
4. ALSO, Gship **may be without agreement** of parent and petitioner. KRS 387.025 sets forth the procedure. The petitioner fills out AOC 352 & 353 themselves. Ascertains the next probate court date, sends notice via certified mail return receipt requested to the parent at least 5 days prior to the hearing, then shows proof of the same to the clerk and the matter will be docketed.

**NON-EMERGENCY DNA PETITION**

* This can be an option where the threshold of emergency removal is not applicable. Here, the petition is filed but child is not removed. A hearing will be set within 10 days of the petition at which time the child may be removed.
* Goal here = get the cabinet involved and get services started. Also, removal of the child if necessary, but not until after the hearing.
* This type of situation must also be reported to the cabinet so an investigation by be launched.

**VII. MEDIA CONTACT GUIDELINES**

**MAIN IDEA = the media needs access to you in order to complete their stories and provide good info. We need the media to accurately report our statements in a way that makes us look knowledgeable and professional.**

**NEVER speak with the media on the substance of the issue upon their immediate contact with you. You need time to learn what the issue/angle is and to educate yourself on the topic = YOU WILL APPEAR KNOWLEDGEABLE AND PROFESSIONAL**

**OFF THE RECORD/ON THE RECORD** **= because they need access to you now and in the future, the media will respect your specific statement that a discussion section is “off the record”. Be specific when stating so. Also, be specific when stating that a discussion section is “back on the record”.**

**CONTACTS FROM NEWSPAPER**

Do not speak on substance of the matter upon initial contact.

IF THEY CALL YOU: **(1)** have them leave a voicemail detailing the matter and desired info **OR (2)** speak to them “off the record” in order to learn what the matter is and what info/angle they are seeking and ensure them you will contact them as soon as you can with info.

 **Option 1: Email Your Statement:**

* Take the time to familiarize yourself with the facts, law and procedure related to the issue/angle
* Take the time to email your statement to the reporter. Emailed statements are great because you control the narrative and have time to carefully craft your statement.
* Try to always have a “theme” to your statements. The theme should always be geared toward making you appear knowledgeable, professional, neutral and motivated by the just application of the law.
* When emailing statements, try to express your entire thought in one sentence. If in one sentence, the reporter cannot pick and choose sentences that are components of your thought that could be published in the paper conveying a thought different than you intended.

 **Option 2: Direct In-Person Interview:**

* In the event this has to happen, follow the same procedures set forth above regarding theme and one sentence expression of your point.
* Write down your carefully crafted, one sentence long, expressions of thoughts. This will be your “script”.
* Stick to the script and don’t go off on tangents. It may seem awkward to stick to the script, BUT think of it like a deposition = only the words conveyed are what matters when story is published – none of the in person exchange is ever known.
* If the reporter goes silent = **DON’T** feel you need to talk to fill the dead air. Going silent is a tactic to make you want to do just that. If you do, you inevitably go off script and lose control of the narrative.

**CONTACTS FROM WPSD**

Again, **DON’T** talk to them immediately upon contact. Essentially **follow all of the above rules** related to newspaper media contacts.

Sometimes, WPSD will just pop in with a reporter and video crew expecting to interview you on camera right then.

* Unfortunately you will always be “unavailable” at that time. Our staff will ensure that such is communicated.
* The reporter will leave a detailed voicemail as to the info and angle sought **OR** you can call them to get the info and angle
* Remember when your on the phone that you are currently tied up and just touching base very quickly and NO, you can’t go on camera in just a few minutes. You will contact them as soon as your schedule frees up. This gives you time to get familiar with the facts and the law as well as to develop your theme and prepare the script.