# Case Law Update

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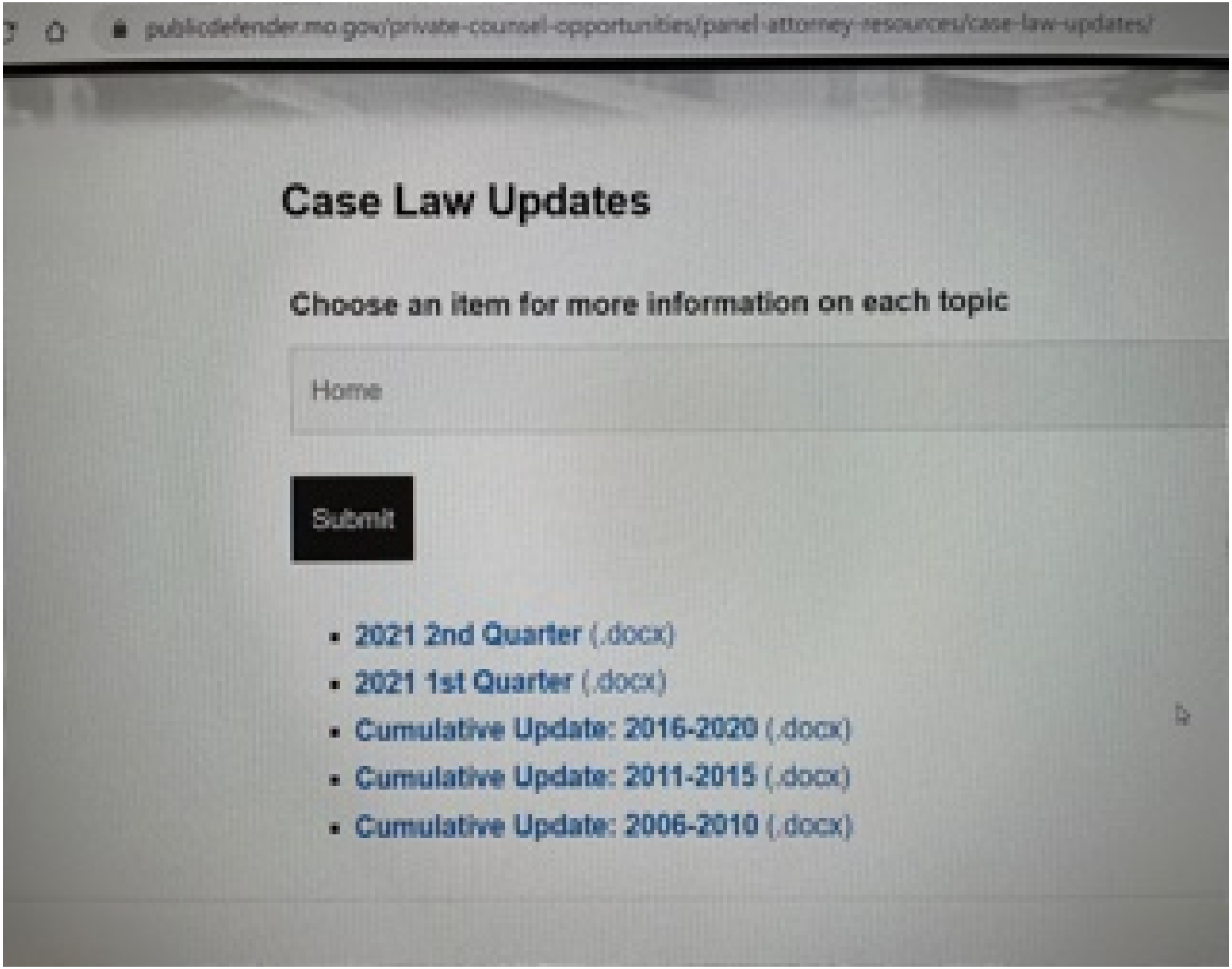
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# Quarterly Case Law Updates …

1. Postconviction
2. Expungement
3. Sex Registration
4. DWI License Suspension
5. U.S. Supreme Court
6. Federal and Foreign-State

CONFRONTATION!

**State v. Smith, 636 S.W.3d 576 (Mo. banc 2022):**

*Where trial court allowed DNA Examiner to testify at trial via two-way video link without making any finding that Examiner was unavailable, this violated Defendant's Sixth Amendment right to face-to-face confrontation.*

**In the Interest of C.A.R.A. v. Jackson County Juvenile Office, 637 S.W.3d 50 (Mo. banc 2022):**

*Where trial court allowed Victim, Victim's Mother, and Victim's Babysitter to testify via two-way video as a COVID-19 safety measure, this violated Defendant's Sixth Amendment right to face-to-face confrontation.*

**In the Interest of J.A.T. v. Jackson Cnty. Juvenile Office, 637 S.W.3d 1 (Mo. banc 2022):**

*Where -- as a COVID precaution -- trial court required Defendant-Child to participate in his trial from the jail via two-way video link while all other witnesses and parties were in the courtroom, this violated Defendant's Sixth and Fourteenth Amendment rights to due process and confrontation to be personally present at trial to confront witnesses.*

**In the Interest of L.I.B. v. Juvenile Officer, 2022 WL 677876 (Mo. App. W.D. March 8, 2022):**

*Where trial court required Defendant-Juvenile to attend adjudication hearing (trial) remotely from jail while all other Witnesses were present in the courtroom, this violated Defendant's constitutional rights to Confrontation and Due Process because Defendants have right to confront witnesses face-to-face and to be personally present at all stages of trial.*

**<u>State v. Buechting</u>, 633 S.W.3d 367 (Mo. App. E.D. 2021):**

Even tho Defendant was charged with killing Victim (with whom he lived) by hitting her and she later died, trial court erred in ruling that Victim's statements to others about her relationship with Defendant were admissible under under *"forfeiture by wrongdoing" exception to hearsay and 6th Amendment Confrontation Clause, because there was no evidence that Defendant killed Victim with the intent to prevent her from reporting him to police* for domestic violence or testifying against him in some proceeding (tho harmless here).

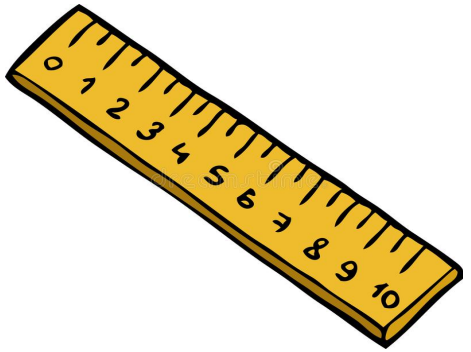
# “Hearsay” is not “Confrontation”

**State v. Kleeschulte, 618 S.W.3d 246 (Mo. App. S.D. 2021):**

(1) Even tho Defendant filed a general pretrial motion to "federalize" or "constitutionalize" his trial objections, unless such pretrial motion explains why a specific ground requires a trial court to take a specific course of action, the motion adds nothing to the trial objection and preserves nothing for appeal.

(2) Where Defendant objected on "hearsay" grounds at trial, the pretrial motion to "federalize" or "constitutionalize" did not provide the level of specificity necessary to inform the trial court this was also an objection based on the Confrontation Clause, so that issue is not preserved for appeal.

**<u>U.S. v. Oliver</u>, 987 F.3d 794 (8th Cir. 2021):**
Even tho Officers who gave input into a map showing drugs were sold less than 1,000 from school testified at trial subject to cross-examination, *the computer-generated map showing the distance from school was not admissible and did not fall under any recognized hearsay exception*; the map was offered to prove the truth of the matter asserted therein, i.e., the sales took place within 1,000 feet.

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**Fox v. State, 2022 WL 789330 (Mo. banc March 15, 2022):**

*Sec. 595.201, which requires defense attorneys to give certain notification of rights to victims in sex cases prior to interviewing them, is unconstitutional as applied to defense attorneys, because the statute violates the attorneys' freedom of speech.*

**State v. Vaughn, 2021 WL 6121847 (Mo. App. E.D. Dec. 28, 2021):**

*The "Good Samaritan Law," Sec. 195.205, applies to Defendants whose actions occur before the law's effective date in August 2017; thus, trial court did not err in dismissing possession charges against Defendant, who was the subject of a medical emergency call and was found unconscious with a syringe in April 2017.*

**State v. Gates, 635 S.W.3d 854 (Mo. banc 2021):**

*Where in felony-murder case trial court prohibited Defendant from testifying to his exculpatory version of events about the underlying robbery on grounds self-defense cannot be asserted as a defense to felony-murder, trial court denied Defendant his Sixth and Fourteenth Amendment rights to present a "complete defense;" self-defense is an available justification when the criminal act being prosecuted is the defendant's use of force, and Sec. 563.031.1(3) does not prohibit a defendant from arguing he used physical force for a purpose other than committing the forcible felony he is charged with.*

**State v. Whitaker, 636 S.W.3d 569 (Mo. banc 2022):**

*Where substantial evidence supported that Defendant shot Victim in order to prevent an arson, trial court erred in refusing Defendant's self-defense instruction that he used force to prevent arson.*


# Search & Seizure

**State v. Bales, 630 S.W.3d 754 (Mo. banc 2021):**

(1) Where a search warrant commanded Officers to search a cell phone at a particular address (Defendant's home address), but Officers seized it from Defendant when he came to the sheriff's office with his attorney for an interview, the seizure at the sheriff's office was outside the scope of the warrant, so the evidence was not validly seized.

And…

(2) Good faith exception to the exclusionary rule does not apply because it was not objectively reasonable for Officer to seize the cell phone at the sheriff's office contrary to the clear direction of the search warrant to seize it at a particular address.

**State v. Branson, 639 S.W.3d 556 (Mo. App. S.D. 2022):**

(1) Even tho State claimed the warrantless search of Defendant's backpack (where drugs were found) was "incident to arrest" because Defendant was being arrested on a warrant, where Officer had already handcuffed Defendant so that Defendant could not gain access to the backpack, the backpack could not be searched without a warrant because it was not within Defendant's immediate control.

And…
(2) Even tho State claimed backpack would have been searched as an "inventory search" at police station so "inevitable discovery" exception applied, the trial court was not required to believe Officer's testimony that backpack would have been searched and State didn't introduce any written policy or other documents demonstrating inventory search procedures.

**State v. Anderson, 629 S.W.3d 39 (Mo. App. W.D. 2021):**

*Trial court plainly erred in denying motion to suppress that was based on information unlawfully obtained during several warrantless searches.*

*When the illegally obtained evidence was excluded from the warrant affidavit, the remaining evidence did not support probable cause, and since the State's only evidence at trial turned on evidence which should have been suppressed, manifest injustice occurred.*

**State v. Crum, 617 S.W.3d 504 (Mo. App. W.D. 2021):**

*(1) Where trial court denied Defendant's motion to suppress on grounds that Defendant "presented no evidence of his own" and did "not persuade the court" that consent to search was not given, this erroneously placed the burden of producing evidence and persuasion on Defendant.*

*(2) On a motion to suppress, State bears both the burden of producing evidence and persuading the trial court by preponderance of the evidence to overrule the motion, Sec. 542.296.6.*

**State v. Utech, 631 S.W.3d 600 (Mo. App. E.D. 2021):**

*(1) Even tho Defendant claimed trial court's grant of motion to suppress must be affirmed because trial court had made credibility determinations regarding Officer's testimony, trial court could not have made credibility determinations where Defendant had essentially agreed with the facts and presented the issue to the trial court as one of law only.*

*(2) Defendant's cross-examination of Officer did not seek to challenge his credibility or otherwise undermine his factual representations.*

*And…*

*(3) Officer's testimony that a "computer check" showed Defendant had expired license plate created reasonable suspicion for traffic stop, even though it turned out that Defendant's plates were not, in fact, expired.*

# Interrogation Issues

**State v. Ybarra, 637 S.W.3d 644 (Mo. App. E.D. 2021):**

(1) Where Officer, during traffic stop, had passengers get out car, and Officer questioned Defendant-Passenger about whether he had drugs (and Defendant answered yes, and produced drugs), trial court erred in suppressing Defendant's statement and drugs because Defendant was not "in custody" at that time (because he was free to leave), and, thus, wasn't entitled to *Miranda* warnings …

(2) Where Officer allowed other officers to drive Defendant-Passenger to a hotel, but told them not to let Defendant leave, and then Officer showed up at hotel and questioned Defendant about whether he owned a backpack (with drugs) that was found in the car, trial court did not err in suppressing Defendant's statements at the hotel, because Defendant was then "in custody" (not free to leave) and was subject to "interrogation" when Officer questioned him there without giving *Miranda* warnings.

**Otwell v. Treasurer of Mo. as Custodian of Second Injury Fund, 634 S.W.3d 850 (Mo. App. E.D. 2021):**

*Even tho Expert testified in pretrial deposition that he "relied" on another doctor's report (which was by a non-testifying doctor), trial court erred in excluding Expert's entire testimony because Sec. 490.065.2 allows an Expert to rely on facts or data "reasonably relied upon by experts in the field in forming opinions"; the non-testifying doctor's report was just one of several medical records that Expert had reviewed in forming his opinion.*

**John Doe 122 v. Marianist Province of the U.S., 620 S.W.3d 73 (Mo. banc 2021):**

Priest was qualified through knowledge, experience and education to testify as an Expert as to the meaning of various words used in personnel documents and whether these were “code” words indicating sexual abuse.

**<u>State v. Antle</u>, 2021 WL 1880945 (Mo. App. W.D. May 11, 2021):**

*Trial court did not abuse discretion in excluding defense Expert to testify that improper child interview questions "contaminated" the results and that the interviewer's questions had a poor "coding score."*

*This went beyond explaining proper interview techniques (which is admissible) to invading the province of the jury by offering opinions on the State interviewer's credibility.*


CAUTION

**State v. Antle, 2021 WL 1880945 (Mo. App. W.D. May 11, 2021):**

*Trial court did not abuse discretion in excluding defense Expert to testify that improper child interview questions "contaminated" the results and that the interviewer's questions had a poor "coding score."*

*This went beyond explaining proper interview techniques (which is admissible) to invading the province of the jury by offering opinions on the State interviewer's credibility.*

**State v. Mills, 623 S.W.3d 717 (Mo. App. E.D. 2021):**
(1) Trial court did not err in granting State's motion in limine to preclude Defendant from cross-examining State's toolmark and firearms expert with the National Academy of Sciences report (2009) and Presidential Council of Advisors on Science Technology report (2015) about "false positives" in toolmark examination, where State's expert didn't concede these reports were "authoritative," Defendant did not present expert testimony of their "authoritativeness," and court was not required to take judicial notice of this. …

And…
(2) Trial court did not err in denying a formal *Daubert* hearing on toolmark examination, where court considered issues regarding reliability and admissibility of the evidence informally through the motion in limine hearing.

**Gebhardt v. American Honda Motor Co., Inc., 627 S.W.3d 37 (Mo. App. W.D. 2021):**

Even tho Expert in all-terrain vehicle accident case had a Ph.D. in mechanical engineering and a certificate in accident reconstruction, trial court did not abuse discretion in excluding him as expert where he did not thoroughly explain his methodology or point to prior studies, tests, publications, or other support for his findings.

Sec. 490.065.1 requires that testimony of experts be the produce of reliable principles and methods.


# Case Law Roulette…
# or Significant Cases that Don’t Fit Anywhere Else

**State v. Andrews, 2022 WL 789331 (Mo. banc March 15, 2022):**

*Prosecution, in a single proceeding, of unlawful use of a weapon while in possession of a controlled substance, Sec. 571.030(11), and possession of a controlled substance, Sec. 579.015, does not violate Double Jeopardy.*

But…

Court does not decide whether the legislature intended drug possession and UUW-possession to be subject to cumulative punishments.

**State v. Deroy, 623 S.W.3d 778 (Mo. App. E.D. 2021):**

**Holding:** Conviction for both stealing, Sec. 570.030, based on "possessing" a car, and first-degree tampering, Sec. 569.080, based on "operating" the car does not violate Double Jeopardy since the elements of the offenses are different.

**State v. Borst, 2022 WL 287305 (Mo. App. W.D. Feb. 1, 2022):**

Where Defendant was charged with second-degree murder for "knowingly causing the death of Victim by shooting him," but instruction allowed jury to convict for "it was Defendant's purpose to cause serious physical injury to Victim," this was a fatal variance from the original charge

**State v. Shegog, 633 S.W.3d 362 (Mo. banc 2021):**

*Where (1) Defendant's trial ended in hung jury; (2) trial court scheduled Defendant's new trial within the next term of court, but (3) trial court, on State's motion, later continued trial beyond that term, there was no violation of Mo.Const. Art. I, Sec. 19, because the trial was scheduled within the next term of court; court Rules authorize continuances; and Rule 20.01(c) provides that a court's authority to act is not affected by expiration of a term of court.*

**In the Interest of J.R., 633 S.W.3d 899 (Mo. App. E.D. 2021):**

*Even tho (1) Witness who saw shooting was not the person who made a neighborhood camera video of shooting; (2) the video showed a different angle of view than where Witness was; and (3) an Officer testified the quality of the video was not good, trial court erred in excluding the video (when offered by Defendant) on grounds that a proper foundation could not be established; all that is required for admission of video is for the proponent to show that the video is an accurate representation of what it depicts, which can be done through any witness familiar with the subject matter of the video through their personal observation.*

**State v. Thomas, 628 S.W.3d 686 (Mo. App. E.D. 2021):**

Trial court erred in murder trial in admitting uncharged, bad act evidence that Defendant had an unrelated altercation with a different person about two miles from the murder scene the night of murder, because the probative value of this was outweighed by its risk of prejudice, confusion of issues, and misleading the jury (but harmless here).

**State v. Brown, 619 S.W.3d 586 (Mo. App. E.D. 2021):**

Prosecutor improperly asked Witness if Victim was "making up" his story; witnesses may not be asked to give their opinion on the truth or veracity of another witness, or asked if another witness is lying.

Asked Witness, "So if Victim is telling us that, he's just making that up?" and "So…he's making that up, too?"

**State v. Schmidt, 630 S.W.3d 802 (Mo. App. E.D. 2021):**

Trial court plainly erred in allowing State's Witnesses to testify that they "believed" Defendant had committed the charged murder which he had confessed to them.

Witnesses cannot comment directly on whether they think Defendant is innocent or guilty, and cannot give an opinion on an ultimate issue the jury is to determine.

**State v. Antle, 2021 WL 1880945 (Mo. App. W.D. May 11, 2021):**

*In child sex case, trial court applied wrong legal standard under Sec. 491.075 in determining whether statements Child-Victim made to others were admissible; court applied test of whether Witnesses were accurately recounting what child said, rather than correct test of whether under totality of circumstances, the evidence is reliable.*

*Remedy is remand for court to apply correct test in first instance, and grant new trial or not.*

**State v. Minor, No. WD83298 (Mo. App. W.D. Dec. 21, 2021):** *Even tho it would not have been an abuse of discretion under Art. I, Sec. 18(c) to admit in child sex case as "propensity evidence" the testimony of a prior Victim, where the State spent a full day presenting testimony of the prior Victim and her Brother and Mother, this was an abuse of discretion because the danger of unfair prejudice (from the Brother's and Mother's testimony) substantially outweighed its probative value.*

But W.D. *transfers case* to Supreme Court due to general interest and importance.

The concurring opinion would hold that Brother and Mother's testimony wasn't even propensity evidence but was inadmissible corroboration testimony; "Permitting the State to use evidence under Sec. 18(c) that merely corroborates true propensity evidence, rather than independently demonstrating actual propensity, allows the exception [to evidence of prior bad acts] that is Sec. 18(c) to swallow the rule generally banning propensity evidence due to its tendency to confuse the issues."

# Sentencing, Revocation, & Related Issues

**State ex rel. Barnes v. Philley, 624 S.W.3d 372 (Mo. App. W.D. 2021):**

*Even tho (1) Defendant was arrested for a new offense, and (2) as a result, the trial court "suspended" Defendant's probation seven days before it was to expire and set an appearance for after the expiration, trial court did not affirmatively manifest an intent to conduct a revocation hearing before expiration, Sec. 559.036.8, so could not revoke later.*

**State ex rel. Hunt v. Seay, 622 S.W.3d 184 (Mo. App. S.D. 2021):**

*Trial court abused discretion in denying release on probation under Sec. 559.115 where Defendant had successfully completed DOC program; trial court's reliance on severity of crime and Defendant's failure to successfully complete probation in past did not support denial of release, since this was pre-sentencing evidence, which does not, by itself, make a defendant unfit for probation.*

**Hefley v. State, 626 S.W.3d 244 (Mo. banc 2021):**

*(1) Defendant-24.035 Movant was denied effective counsel where he pleaded guilty in an open guilty plea after his counsel told him he "could" be placed in a long-term treatment program, but Defendant-Movant was, in fact, legally ineligible for such a program.*

*(2) Sec. 217.362.2 requires that judges considering sentencing a defendant to long-term treatment notify DOC in advance of sentencing; screening for eligibility after sentencing is not appropriate.*

**State v. Shepherd, 630 S.W.3d 896 (Mo. App. S.D. 2021):**

Where Defendant was convicted of second degree kidnapping, Sec. 565.120, without any finding by the jury that the offense was committed for sexual motivation (and the jury acquitted Defendant attempted first degree rape), trial court erred ordering Defendant to register as a sex offender as part of the oral pronouncement of sentence.

**State v. McDonald, 626 S.W.3d 708 (Mo. App. W.D. 2021):**

**Holding:** Where the State charged Defendant with several counts of child sex offenses which occurred over several years, Defendant could be sentenced as a predatory sexual offender under Sec. 558.018.5(2) based on Count I having occurred before the other charged Counts in the case.

Sec. 558.018.5(2) does not require that the sexual conduct which was "previously committed" be before the instant charged case.

**Burns v. State, 627 S.W.3d 613 (Mo. App. S.D. 2021):**

Even though Defendant/Movant had two previous convictions for assault, this did not support finding him to be a prior assault offender (with enhanced range of punishment) under Sec. 565.079 because the previous assault offenses occurred more than 5 years before the charged assault offense.

**Sims v. State, 637 S.W.3d 425 (Mo. App. W.D. 2021):** Even tho U.S. District Judge ordered Defendant's federal sentence run concurrently with this State sentence, where (1) Defendant was not sentenced to his State sentence until after the federal sentence (though he pleaded guilty before the federal sentence), and (2) Missouri DOC refused to accept custody of Defendant while he was serving his federal sentence in federal prison, the District Judge's concurrent pronouncement was not binding or controlling on State sentence.

**State ex rel. Schmitt v. Crane, 2021 WL 6121707 (Mo. App. W.D. Dec. 28, 2021):**

Even though Defendant (who had a 40-year Missouri prison sentence) escaped from Missouri custody in 1978 and fled to California where he received a "concurrent" life prison sentence for murder, where (a) Defendant had sought since 1980 to be returned to Missouri DOC-custody via various administrative and court challenges but MDOC had always refused to "accept" Defendant back, and (b) MDOC only "accepted" Defendant back after he completed his California sentence in 2020, Defendant was entitled to a writ of habeas corpus ordering his release from MDOC because, under Missouri statutes at the time of his offense, his Missouri sentenced continued to run despite his escape and it had expired by 2020.

MDOC's refusal to "accept" Defendant until his California sentence expired essentially allowed MDOC – not a court – to determine whether Defendant's sentence would be concurrent or consecutive.


# Sufficiency of Evidence

**State v. Lehman, 617 S.W.3d 843 (Mo. banc 2021):**

Even tho police said Defendant was "near" a park, and surveillance video showed Defendant in a parking lot with some trees and grass in the distance, this evidence was insufficient to prove that he was within 500 feet of a public park in violation of Sec. 566.150.

**State v. McCord, 621 S.W.3d 496 (Mo. banc 2021):**

*The 1000 foot distance from schools mandated by Sec. 566.147 (2017) for persons convicted of sex offenses is measured from the school's property line, not the school building itself.*

Sec. 566.147 (2018) states distance "shall be measured from the edge of the offender's property nearest the public school … to the nearest edge of the public school."

**State v. Pitiya, 623 S.W.3d 217 (Mo. App. W.D. 2021):** Where Defendant was charged with resisting arrest because he "used physical force" by attempting to hit Officer's patrol car with his car, the evidence was insufficient to convict of felony resisting because when the alleged resistance involves use of physical force, the charge may be elevated to a felony only if the underlying arrest is for a felony; a warrant for failure to appear on a felony; or a warrant for a probation violation on a felony, Sec. 575.150.5, and the State failed to prove the nature of the underlying charge.

**State v. Umfleet, 621 S.W.3d 15 (Mo. App. E.D. 2021):**

*Evidence was insufficient to convict Defendant of attempted first-degree burglary where the State failed to charge or prove a specific object offense, i.e., where the State neither charged nor proved what offense Defendant was intending to commit inside the residence.*

*Defendant was opening a window at former girlfriend's house while she was home.*

**State v. Ray, 615 S.W.3d 439 (Mo. App. S.D. 2021):**

Even tho Defendant failed to appear in court and sought to escape capture by knocking on a neighborhood resident's door and begging to be let in, where jury subsequently convicted Defendant of attempted first degree burglary on theory that he was attempting to commit the offense of "failure to appear" by gaining entry to the house, trial court did not err in granting JNOV and convicting of the submitted lesser of attempted first-degree trespassing.

The "failure to appear" was complete when Defendant failed to appear in court, and thus, Defendant could not have been committing that offense "therein" the house.

**City of Center v. Andrews, 622 S.W.3d 211 (Mo. App. E.D. 2021):**

Even though Police Chief-Witness and prosecutor testified or argued that Defendant violated municipal ordinance for speeding, trial court plainly erred in entering conviction for speeding because the municipal ordinance was not introduced into evidence.

Municipal ordinances are not subject to judicial notice, so the State failed to prove Defendant's guilt by not introducing the ordinance at trial.

# Detainer Law

**State v. Burhop, 624 S.W.3d 186 (Mo. App. W.D. 2021):**

(1) *Even tho Prosecutor did not receive directly from Defendant a notice of disposition of detainer, where the Circuit Clerk received the document and Prosecutor received notice of it through Case.net, Rule 103.08 made the Case.net filing service on the Prosecutor, so trial court did not err in dismissing case under Interstate Agreement on Detainers for failure to try Defendant within 180 days. …*

*And…*

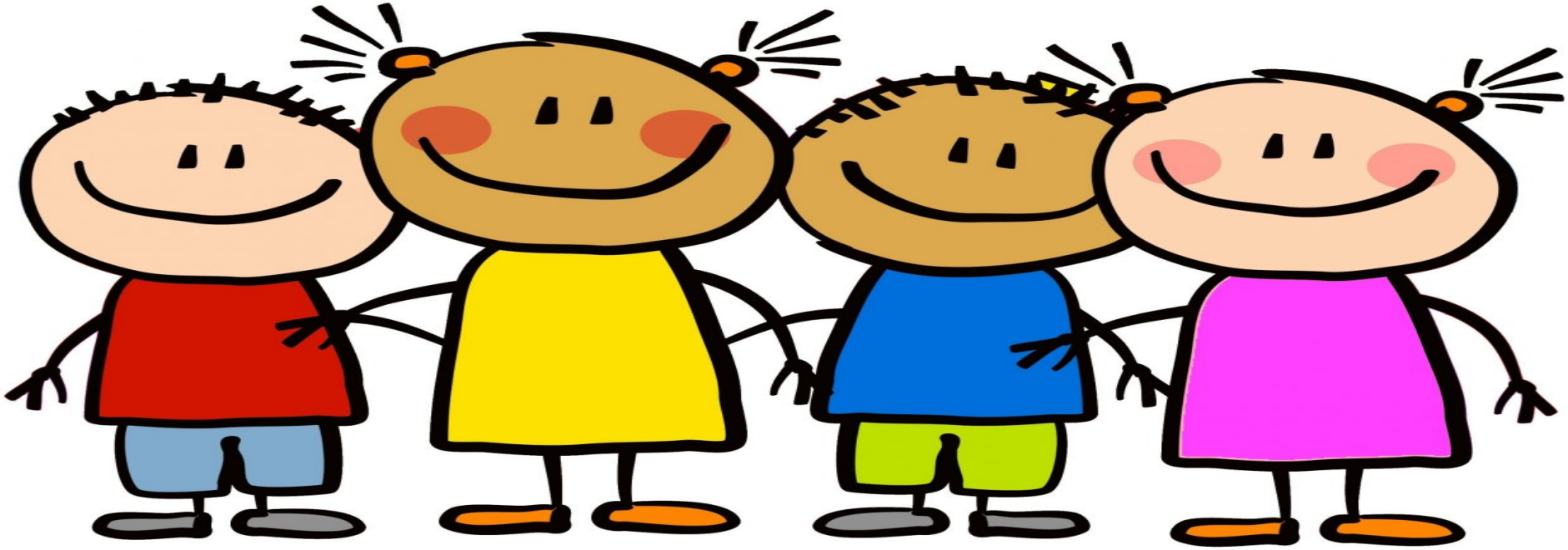
*(2) Even tho State disputed whether a detainer against Defendant was actually filed, where trial court made factual finding that there was such a detainer, appellate court defers to that.*

**State v. Stevenson, 624 S.W. 3d 420 (Mo. App. W.D. 2021):**

*(1) Even tho a disposition of detainer packet did not specifically state that Ray County had filed a detainer against Defendant, where Warden offered to deliver Defendant to Ray County for untried charges, trial court did not err in finding there was a detainer and dismissing charges under Interstate Agreement on Detainers for failure to try Defendant within 180 days. …*

*And…*

*(2) Even though Prosecutor did not receive directly from Defendant a notice of disposition of detainer and the document that was received by the Circuit Clerk was addressed to a different county's prosecutor "and all others," where the Circuit Clerk filed the document on Case.net and Ray County Prosecutor received notice of it through Case.net, Rule 103.08 made the Case.net filing service on the Ray County Prosecutor, so trial court did not err in dismissing charges.*



Juvenile

**<u>In the Interest of J.R.K. Juvenile Officer v. J.R.K.</u>, 2022 WL 774551 (Mo. App. W.D. March 15, 2022):**

*Sec. 544.665, which makes it a crime for defendants to fail to appear for a criminal proceeding, does not apply to juvenile proceedings.*

And…

Court questions whether Children can be charged today under Sec. 575.200 for escape from custody for “crimes,” since under Rule 127.01(b), Children are no longer arrested for “crimes.”

**State ex rel. T.J. v. Cundiff, 632 S.W.3d 353 (Mo. banc 2021):**

Where Defendant-Juvenile was 17 years old at time he was charged with committing felonies in January 2021, he was subject to the law in effect at the time of the offense which mandated that he be tried in adult court; the 2018 "Raise the Age" to 18 legislation did not become effective until July 1, 2021, when the legislature appropriate funds to expand juvenile division services.

**State v. R.J.G., 632 S.W.3d 359 (Mo. banc 2021):**
**Holding:** Where Defendant-Juvenile was 17 years old at time he allegedly committed felonies in October 2020 and was charged in January 2021, the law in effect at time of offense applied and he did not get benefit of "Raise the Age" legislation which became effective July 1, 2021, when legislature funded juvenile division services.

**In the Interest of T.D.S. Jr., 2021 WL 4955508 (Mo. App. E.D. Oct. 26, 2021):**

*In issue of first impression, Eastern District holds that hearsay – here, the written report of Deputy Juvenile Officer which contained hearsay – was admissible at child certification hearing.*

**In the Interest of J.N.W. v. Juvenile Officer, 2022 WL 453049 (Mo. App. W.D. Feb. 15, 2022):**

(1) Even though the juvenile's court's order dismissing Defendant-Juvenile from juvenile court's jurisdiction and certifying him to the trial court was not denominated a "judgment," the order was immediately appealable, because Rule 74.01(a)'s judgment denomination requirement is not applicable to Sec. 211.071 certification proceedings.

(2) Time for filing such an appeal is 30 days after the dismissal (as with other civil judgments), because the juvenile court retains control over its judgment for 30 days after entry, Rules 75.01 and 81.04(a); judgment becomes final after 30 days, and then there is 10 days to file the notice of appeal.

(3) the standard of review for a certification appeal is whether the trial court abused its discretion in certifying, Sec. 211.071.1.

(4) Juvenile can raise on direct appeal his claim of ineffective assistance of counsel at his certification hearing where the record is sufficient to raise it on direct appeal.

(5) Mo. has not decided whether the *Strickland* standard applies to ineffective assistance claims, or the "meaningful hearing" standard applied in termination of parental rights cases.

(6) Since certification hearings are not adjudicatory, there is no authority for the general proposition that the rules of evidence apply to certification proceedings.

# Sunshine Law

**Glasgow School Dist. v. Howard County Coroner, 633 S.W.3d 822 (Mo. App. W.D. 2021):**

Even tho a Coroner's Officer may at times function as a "law enforcement agency," thus making its reports a closed investigative report under the Sunshine Law, Sec. 610.100.2, where Coroner's Office held a public inquest to determine the cause of death, the transcript of the public inquest was an open record under the Sunshine Law.

Transcript of a public event does not jeopardize any potential investigation and prosecution. …

But…

Coroner's Office was not required under Sunshine Law to provide copies of Exhibits used at the inquest, which Exhibits were in the possession of the separate Sheriff's Office; Coroner's Office did not have custody of the Exhibits.

**Starr v. Jackson County Prosecuting Attorney, 635 S.W.3d 185 (Mo. App. W.D. 2021):**

Even tho Sunshine Law Petitioner sent their records request to a staff member of the Jackson County Prosecuting Attorney (who had previously provided records), that person was not the official "records custodian" of the Prosecuting Attorney's Office, so this did not comply with Sec. 610.023.3 (so no error in not providing records).

Service on official "records custodian" is required in order to facilitate timely consistent compliance with Sunshine Law and guarantee that the government body is on notice of the records request.

**Gross v. Parson, 624 S.W.3d 877 (Mo. banc 2021):**

(1) Sec. 610.026.1 does not allow Agencies to charge for "attorney review time" in reviewing Sunshine Law requests.

(2) Sec. 610.023.3 requires Agencies to give a detailed explanation for delay in providing documents and a date certain records will be available; Agency cannot state records will be available X days after receiving payment; while Agency can require advance payment under 610.026.2, Agency cannot estimate time records will be available from date of payment, but must give exact date regardless of payment.


Little Tidbits
to Chew On

**Bangert v. Rees, 634 S.W.3d 658 (Mo. App. E.D. 2021):** Trial court erred in excluding on hearsay grounds medical records that were certified as business records under Sec. 490.680, since medical records that are properly certified under the statute are admissible as an exception to hearsay rule.

Altho such records are subject to specific objections such as irrelevancy, inadequate sources of information, being self-serving, going beyond the bounds of legitimate expert opinion, or other similar grounds, they are not inadmissible hearsay.

**Brown v. Chipotle Services LLC, 2022 WL 677881 (Mo. App. W.D. March 8, 2022):**

*28 U.S.C. Sec. 1746, which gives unnotarized declarations made under penalty of perjury the same effect as affidavits does not apply in Missouri state court proceedings; in state court proceedings, a valid "affidavit" is required to include an oath sworn to before someone (notary or other authorized person) authorized to administer the oath.*

**In the Matter of Crocker, 629 S.W.3d 846 (Mo. App. E.D. 2021):**

Where through no fault of Appellant a transcript of a Webex hearing could not be prepared due to computer malfunction, case remanded for new hearing because it's impossible to conduct meaningful appellate review.

"While we acknowledge the challenges in technology faced by trial courts and parties during the pandemic, it is necessary for parties to be afforded due process and a sufficient record of the underlying proceedings."

**State v. Hudson, 626 S.W.3d 800 (Mo. App. W.D. 2021):**

**Holding:** A Defendant who pleads guilty can take a direct appeal from a denial of a *presentencing* motion to withdraw guilty plea under Rule 29.07(d).

**State v. Stewart, 2022 WL 517304 (Mo. App. E.D. Feb. 22, 2022):**

*Where Defendant did not object to venue as to whether the crime was committed in the county where charged until his motion for judgment of acquittal at the close of the State's evidence, the issue was not preserved for appeal; objections to venue must be raised before trial.*


THE
END