~ By Order Of The Court ~

A comprehensive review of the Missouri Department of Corrections, our prison mental health system; and the criminalization of mental illness, from the viewpoint of a legal Guardian of an adult incarcerated in prison

Presented To:

Missouri Supreme Court Judge William Ray Price Jr.
Missouri Governor Jay Nixon
Senate President Pro Tem Rob Mayer
State House Speaker Steven Tilley
Rep. Linda Black, Chairwoman of the Committee on Corrections
Missouri Work Group on Sentencing and Corrections
Pew Center on the States
Members of the General Public
Representatives of the Media
Social Justice Organizations

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While the hallmark of acting in accord with the philosophy of evidence based practice in corrections and reentry is using research and data in an objective and balanced way to inform the manner in which we approach our work, make decisions, collaborate with our partners and develop our organizations, another major component of successful offender reentry is having the resources available to provide necessary treatment to offenders while incarcerated, while on community supervision and after completion of their sentence.

Director George Lombardi
Missouri Department of Corrections
2010 Report to Governor Jay Nixon

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COMMENTS BY THE AUTHOR

On August 24, 2011, Missouri Governor Jay Nixon announced the creation of the Missouri Work Group on Sentencing and Corrections, task force, for the purpose of examining our state criminal justice and correctional systems to determine and implement needed reforms.

Whenever state officials want to reform systems of government the voices of people with disabilities is rarely heard, and, even more rare is their willingness to act on what is said, in positive ways. This report seeks to help bridge those gaps insofar as one person can do, in hopes of giving insight into the difficulties that people with disabilities face when they are involved in our state correctional system of government.

There is no denying that crime adversely effects everyone but in the quest to address the issues we have not achieved any significant positive ground. I believe there are three primary things that will enhance our ability to do so and empower us to find the opportunities to achieve successful solutions.

First, the typical approach used by government officials is to listen to only a narrow selected group of people, most often those who are of the same class or beliefs. If we want to gain headway in solving the issues then we need to apply a genuine effort to proactively listen to all viewpoints offered no matter how politically unpopular the speech might be perceived.

Second, we commonly believe that if we focus on the beginning and the end of the problems then we will solve all of the issues existing. While these are important factors to examine we cannot ignore the truth, nor the harsh realities of what goes on in the middle because often times what happens after a court imposes a sentence and before a person begins probation or parole is far more important and debilitating in terms of their ability to achieve future successes.

Third, many people have unrealistic expectations for people with disabilities to magically succeed in society once they are released from prison. But this will not happen when society and those in government continue to impose incredible odds by depriving this class of critical community resources that genuinely help them beat the odds that are imposed against them.

Unfortunately, we customarily use '*reactionary'* approaches for people with disabilities in our criminal justice, correctional and mental health systems and forget that in being '*proactive'* we have a far greater opportunity to prevent crimes from occurring in the first place. This does not mean we need to, nor should we go from one extreme to another by locking everyone up who has a disability. It simply means we need to ensure this class of citizens have the community resources available that they need.

Prisons and jails should only be used as the last resort for people with disabilities and not as the first choice. In the 1980's and early 1990's there were many successful programs available in communities that helped divert this class away from jails and prisons, and helped prevent crimes from occurring in the first place. However, because of the 1999 U.S. Supreme Court ruling state governments have turned to utilizing jails and prisons as the first choice, and to the point that they have been transformed into '*extermination factories*'.

This report is based on my own viewpoints, experiences and research, as a legal Guardian, and I hope my report serves well in any genuine quest to truly reform the two most major systems of government in our state for the betterment of everyone and not just a selected few.

Respectfully submitted,

FORWARD

Prior to 1999 it was widely accepted by government officials and general society alike that utilizing state mental institutions was the preferred choice to warehouse people with mental, developmental, brain, and neurological disabilities to eradicate this class of people from mainstream society on the widespread belief that society was reserved only for those who are "normal" and contribute to their communities.

In 1998, the Bureau of Justice Statistics reported an estimated 283,000 inmates were in prisons and jails who suffered from mental health disabilities. In 1999, the United States Supreme Court issued a ruling [1] that people with mental and developmental disabilities had a right, under the Americans with Disabilities Act, to live in community settings if they were capable of doing so. Subsequently, between 2000 to 2006 the number of people with mental and developmental disabilities imprisoned in jails and prisons quadrupled with an estimated 1.3 million people. By the end of 2009, the Bureau of Justice Statistics estimated there were 2, 292,133 adults with disabilities incarcerated in prisons and jails throughout our nation.

In 2004, the U.S. Supreme Court pointed out [2] that Congress enacted Title II of the Americans with Disabilities Act because states, just like private entities, are known to discriminate against people with disabilities in state services, programs, and activities. In support of the overwhelming need for the Act to be passed into law, Congress pointed out that [3] ". . . . individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions. . . ."

In 2005, the Public Broadcasting System published a report [4] discussing deinstitutionalization efforts and pointing out that "*Deinstitutionalization* is the name given to the policy of moving severely mentally ill people out of large state institutions and then closing part or all of those institutions." On May 14, 2005, the Public Broadcasting System published its second report [5] calling modern day prisons "*The New Asylums*" because they have become the new state mental institutions to eliminate this class from society.

In 2010 and again in 2011, officials with the Missouri Department of Corrections convinced Missouri legislators to sponsor legislative Bills [6] to permit state courts to utilize prisons as a mental institutions under the guise of providing mental health treatment to determine if and when a person with disabilities should be granted probation. Although the legislative Bills were defeated both years, it nevertheless demonstrates the Missouri Department of Corrections ongoing efforts to use our state prisons to effectively exterminate people with disabilities from society under the false guise of it being done for therapeutic purposes.

Whether we call prisons the new asylums or the new age concentration camps is immaterial to the fact we have surpassed merely "*warehousing*" people with disabilities in prisons, as we have turned prisons into being *extermination factories* to eliminate people with disabilities from society by periods of long-term incarceration and by civilly committing them. This is allowed to occur because state officials do not ensure there are community residential and non-residential services that would greatly help prevent criminal acts being committed and recidivism rates occurring in the first place.

Once in prison, the atrocities that are inflicted against people with disabilities is unconscionable and shocks the conscience. Imprisonment guarantees correctional employees and contract vendors the means and opportunity to abuse this class with very little, if any risk of being held accountable. And while the only internal defense disabled prisoners have against the tyrannical victimization is to file grievances, they are frequently hindered or barred from doing so because of their disabilities and grievance procedures that are themselves designed and intended to favor the determination of state officials to not be held accountable.

Attorneys proclaim The Rule of Law is a business like Justice Inc., and it theirs to own and sell for financial profit to the highest bidder; but just not to the common man and certainly not to prisoners. To the common man and prisoners alike The Rule of Law is more like a game of Russian Roulette. Will my public defender defend me right? Will the truth be told? Will a guard or prisoner rape or beat me today? These are the questions that defendants ask and prisoners wonder about because for them The Rule of Law is an abstract idea.

'*The Rule of Law*' is commonly defined to provide that no person is above the law. Moreover, that it refutes the belief and practice that a leader is above the law, which is a cornerstone feature of Roman and Nazi laws. And in the United States we use the words "*The Rule of Law*" as if such actually means equality and justice for everyone to presuppose that we are a civilized society that believes in individual liberty. But for the common man and for prisoners alike, these words have no meaning.

For those in jails and prisons The Rule of Law means whatever some guard says it is that day. In jails and prisons The Rule of Law is an arbitrary phrase, and even in the courts where a prisoner litigant is involved. Likewise, they are arbitrary words to family members and others involved with prisoners because they too are frequently treated as if they committed a crime because they associate with the prisoner.

Year after year we do studies upon studies upon more studies and yet we consistently fail or refuse to apply what we have learned. We prove over and over again that innocent people are arrested, charged and incarcerated, but still we do not change anything. And we routinely show that people with disabilities are often preyed upon by officials who coerce, threaten, or intimidate them, but still we do not protect them.

So, the Rule of Law is the rich man's claim, a politician's slogan, and an attorney's so-called Bible, but for the common man and prisoner alike, The Rule of Law is a distant thing; too far away for it to mean anything. For these people, The Rule of Law, is an abstract idea rarely seen inside jails and prisons because correctional officials do not want The Rule of Law to apply to them.

At the end of 2009 there were 7, 225, 800 people in the United States who were under correctional supervision one way or another, and they are still waiting for The Rule of Law to mean something.

CHAPTER ONE
[By Order Of The Court]

I first met my ward of guardianship, whom I will call Brad, in early February 2009. Brad was financially broke, unemployed, and homeless. He was on parole for writing bad checks and unbeknownst to me he had warrants for his arrest. Brad did not have a single positive direction in his life and no healthy self-identity to his name. He believed this was as good as it gets; that he would never be more than he was at that moment in time. But I saw a spark of life in Brad; a seed just beginning to sprout to life.

I have worked with many people like Brad, so to me Brad's story was all too familiar. But when I looked at Brad; the person inside, I saw a spark of life in him that told me without a single doubt Brad will succeed! Brad will beat the odds! Oh sure, not without trials and tribulations, but when all is said and done, Brad will be more than he was at that moment in time!

Brad still has a great deal to learn; things that he has never been taught before because everyone was too busy using band-aid solutions to pass Brad along. But every day Brad tries and tries, and then tries some more. Sometimes Brad gets it and sometimes it takes him a while, but Brad has really worked hard these past two years. Sometimes it just takes believing in the person and helping them along the way, for them to find the courage to succeed.

On July 13, 2009 Brad was arrested. This time for a far more serious crime than merely writing bad checks. This time it was for a sex offense with a female of legal age to consent. I spent a great deal of time going over what the Deputy Sheriffs said and reading witness statements. Everything I learned about the case caused me to seriously question the truthfulness of the allegations and the credibility of his accuser.

In August 2009, Brad asked me to become his Guardian. It was nothing short of a major milestone achieved. Brad has literally grown up flip-flopping from one institution after another so suffice to say, Brad has had a very difficult and troubled life with a laundry list of diagnosed mental health, developmental, neurological, brain, and medical disabilities that eventually led Brad to being abandoned by everyone. Not a soul around to care if he was alive or dead.

Prior to my petitioning for guardianship I spent four months thoroughly researching his entire life; speaking with numerous people who know him to gain insight into who Brad was and the things he would need. I also read all of Brad's psychiatric, medical, educational and criminal records; learning all I could to understand who Brad really is.

From the time Brad was born his birth foretold he would have a very difficult life; a life plagued with one disability after another. A life of very severe long term abuse in multiple forms. A life of deep painful loneliness and aloneness; of profound uncertainty and extreme chaos. A life of routine ineffective band-aid solutions. A life of endless self-serving excuses used by the professional community to seemingly justify their failures to help Brad. A life of ongoing abandonment, distrust, and betrayals by everyone.

It isn't that Brad did not do his fair share to harm himself because he did, but Brad is not the only one to blame. At every turn in his life there was not anyone who did not fail him - the courts, his family, mental health, and even Brad himself; everyone played a part. And while it was common knowledge Brad was being severely abused at home, those in authority ignored what was going on, and when another crisis would arise they blamed Brad to avoid being blamed.

In December 2009, I petitioned for and received full guardianship of Brad and there was not one in his family that objected and his Mother even advocated with legal counsel for this to occur. I petitioned for guardianship because everything told me it was the right thing to do; that it was genuinely needed and would benefit Brad. I did so because Brad's life was out of control, and because it was all too clear that unless someone makes the buck stop here Brad will continue dealing with those who simply do not care.

There has never been a single day that Brad has caused me to regret taking guardianship of him. I am extremely proud of Brad for the work he has done and the successes he has achieved; successes that nobody ever thought he would achieve, but then nobody looked for the person in Brad that I have seen.

The prosecuting attorney threatened to charge Brad with a class A felony unless Brad pled guilty to a class C felony instead. Threatening people with mental and developmental disabilities to plead guilty is wrong even if the courts say it is legal. Studies show that people with disabilities are extremely vulnerable to giving false confessions to crimes when they are threatened, intimidated or coerced and when they are being deprived their freedom. They are easy prey for a guaranteed conviction.

The first public defender refused to conduct an investigation into the allegations against Brad, and while I found evidence relevant to the claims made the public defender refused to retrieve the evidence, which would only be surrendered to him. This public defender was eventually removed from the case.

The second public defender admitted she is a victim advocate for women who have been raped and she was reprimanded for feeling on Brad's thigh to harass and intimidate him. She would only advocate for Brad to go to prison; she refused to allow a witness to testify and destroyed the tape recorded statement that absolved Brad of guilt. And I had to warn her I would file for an *ex parte* order because she made it clear she was going to continue having contact with Brad when his case was over.

The Judge who signed the guardianship papers was also the Judge who sentenced Brad to prison just two months later, in February 2010. Brad's public defender told Brad exactly what to tell the Judge to ensure that the Judge found him guilty. And while the Judge endorsed me to testify at Brad's sentencing hearing, the Judge tried to bypass my doing so and refused to allow the second witness to testify.

There were three other defendants before this Judge in unrelated separate cases from Brad's, but around the same time frame. One defendant was a Minister who was found guilty of molesting a child belonging to his congregation - he was given five years probation. One defendant went to trial and lost, and refused to show any remorse - he too was given five years probation. The third defendant pled guilty and also received five years probation. But for Brad - the Judge sentenced him to five years in prison - he was the only known defendant who had severe disabilities.

The Judge also recused himself later from presiding over the guardianship; purporting that he all of a sudden now had a conflict of interest since he sentenced Brad to prison. I have to wonder why did he not have any conscience about sentencing Brad to prison while giving the others probation? It was like he sentenced Brad to prison because of Brad's disabilities. It was obvious that it was not because of Brad's crime since the Judge was all too willing to give the other defendants probation for very similar crimes.

Although Brad was first sentenced to the one hundred twenty day sex offender evaluation program he was only given twelve days instead, and despite that prison mental health staff were required to send me forms to sign for them to obtain Brad's records to include in their evaluation they never did, and the Judge subsequently wrote that it would be an abuse of discretion to give Brad probation.

At every turn Brad was railroaded by the judicial system; by public defenders who refused to do their job in their clients best interest; by a prosecuting attorney who exploited Brad's disabilities to threaten him into pleading guilty, and by a Judge who sentenced Brad to prison but gave the other defendants probation for similar crimes. There was nothing "fair and impartial" in how Brad and his case were handled; everyone involved was preoccupied with turning their blind eyes and once again Brad paid the price for the prejudices and inadequacies of the criminal so-called "justice" system.

I think what angered me the most about our criminal justice system is that nobody is willing to listen; not the Judge, not the prosecutor, and certainly not the public defenders. I suppose it's easy for others to think nobody would ever be railroaded in our judicial system or falsely confess to crimes not committed, but the reality is these things do happen. And the media rarely reports about such things because they are not seen as "newsworthy," especially when it involves someone convicted of a sex crime. The trouble is, when it comes to people with disabilities it happens far more than the public is ever told.

The first time Brad was in prison, it was for writing bad checks but nobody ever bothered to mention that Brad is diagnosed with developmental disabilities in reading, writing, arithmetic, and comprehension, and lacks the ability to balance a checkbook; that the Social Security Administration mandates Brad to have a payee because he is totally incapable of managing his own money. But nobody in a position of authority; the so-called professionals, ever listened and Brad paid the heavy price.

The greatest irony is that despite the so-called professionals characterizing Brad as lacking the ability to go more than a week without some type of violent or aggressive behavior even while being locked up, Brad has had zero - zero - violent and aggressive behaviors for over two years now. When I asked Brad why this is, Brad told me that it is because for the very first time in his entire life he believes someone finally cares about him and will protect him - for the first time in his life Brad feels safe.

It's not that the courts have not known these things because virtually every Judge in the circuit has an extensive history with Brad dating back to his early childhood. But rather than ensuring people are not punished for having disabilities we simply turn blind eyes, throwing fairness and impartiality out the window, and use jails and prisons to exterminate them from society instead ~ **By Order Of The Court**

CHAPTER TWO
[Forensic Guardianship]

The term, "*Forensic Guardianship*" applies to a guardianship of an individual, regardless of his or her age, who has mental, developmental, brain, or neurological disabilities and are either at substantial risk of, or, have a chronic history of engaging in criminal acts, and whose disability necessitates their having a limited or full Guardian. The term *forensic guardianship* spawns from the term "*forensic client*."

Forensic guardianships present very unique challenges for both the ward and the Guardian when the ward is receiving services, programs, or activities provided by a state or a private corporation operating under contract with the state, and when the ward is actively involved in the criminal justice or correctional systems. Therefore, forensic guardianships cannot be seen, nor treated, as being a run of the mill typical guardianship because they are far more complex and encompass more duties and responsibilities.

In 1983, the Missouri General Assembly passed a Bill [7] that revised the state guardianship laws, which was the result of ten years of work and avocation by Jackson County Circuit Court Commissioner John Borron, members of the Missouri Bar Association, and members of various community social groups concerned about the rights and care of people with disabilities and the elderly.

The idea was to ensure that individuals needing a Guardian were being given one based on their actual needs, limitations, and abilities, rather than just rubber stamping them with a Guardian in areas that the individual is capable of providing their own self-care and management. However, the Bill fell short of addressing the needs of forensic clients; not only in terms of their disabilities and resulting limitations, needs, and abilities, but also that these individuals are at high risk of being involved in the criminal justice and correctional systems.

In general, when a person receives a Guardian he or she loses legal rights; it may be only losing the right to sign contracts or drive, or it may entail a broader range of things like the right to make mental health and medical decisions. For wards involved in a forensic guardianship it also requires the Guardian to strategically maneuver around sometimes complex and certainly cumbersome bureaucratic government systems for and on behalf of their ward.

The role of a Guardian is to act in the best interest of one person, i.e., the ward. While the primary role and mandate of every Guardian is to act in the best interest of the ward and to protect the ward, it does not mean allowing the ward to evade *legitimate* accountability for his or her behaviors, just as it also does not mean giving state officials, mental health staff, and medical personnel *rubber stamp* approval to act with free rain with the ward. What it does mean is that when the ward is incarcerated the Guardian plays both *substantial* and *critical* roles in things like offender management, mental health and psychiatric services, medical and dental care, and in discharge planning and reentry processes.

The role of the Missouri Department of Corrections is to act in the best interest of its citizens. The Department achieves this role by criminal incarceration, probation and parole, and associated services and programs with the ultimate purpose of protecting public safety and the safety of those individuals whom it incarcerates. The Department is not and cannot be a Guardian of anyone, nor can any of its Divisions, employees or contract vendors [8] because only a probate court can appoint a Guardian, and in terms of state agencies, only a social service agency can be a Guardian, which excludes the Missouri Department of Corrections because it is not a social service agency.

Moreover, because neither the Department, its Divisions, nor its employees can serve two masters at the same time, i.e. the best interest of the ward and best interest of the people. To allow the Department of Corrections to be a Guardian is a major conflict of interest that guarantees the ward will suffer very serious irreparable harms and damages. For example, the Department cannot incarcerate the ward yet assure the ward lives in the least restrictive environment at the same time, when incarceration is, by its very nature and effect, the most restrictive environment.

The role of Probation and Parole is also to act in the best interest of the citizens of Missouri and, thus, a probation or parole officer cannot be a Guardian because it is a conflict of interest and also violates state law. One example is that if a parole officer arrests [9] or causes the arrest of a ward (probationer or parolee) the ward has a right [10] to have their Guardian present during questioning, just as the state's Code of State Regulations [11] gives the ward a right to have their Guardian represent them during any probation or parole hearing. A parole or probation officer cannot arrest the ward but then be a reprehensive of the ward.

In several ways the probation and parole officer and Guardian share jurisdiction and authority over the ward. For example, like a probation and parole officer who has statutory authority to have the ward confined to a jail, the Guardian has statutory authority to have the ward confined to a mental health facility. Additionally, like a probation and parole officer, who has the authority to order the ward to receive mental health treatment, the Guardian also has the same authority. But where the probation and parole officer has the authority to order mental health treatment, and for the ward to become employed, it will not occur unless and until the Guardian consents to such because the Guardian has to sign the required documents.

However, a Guardian also has the statutory authority and mandate [12] to go against an order by a probation / parole officer if and when the Guardian (1) reasonably believes the order is illegal or unlawful, (2) the ward or Guardian are incapable of complying with or fulfilling the order, and (3) the order endangers the wards life, safety, welfare, health, care, habilitation, or treatment. And while the probation and parole officer may effect the arrest of the ward and request the criminal court hear the issue, it does not release the Guardian from his or her primary statutory mandate to protect their ward.

The primary duties of a legal Guardian are mandated to penetrate prison walls [13] which includes [14] (1) Assuring that the ward resides in the best and least restrictive setting reasonably available; (2) Assuring that the ward receives medical care and other services that are needed; (3) Promoting and protecting the care, comfort, safety, health, and welfare of the ward; (4) Providing consents on behalf of the ward; and (5) To exercise all powers and discharge all duties necessary or proper to implement the provisions of this section. However, while these are the primary duties of a Guardian, the Guardian will also have many other duties depending on the specific needs, limitations, and disabilities of their ward, where the ward resides, and what services, programs, and activities are available. Additionally, in cases where the ward is receiving any mental health treatment the Guardian is required to approve and sign the treatment plan.

Some state courts [15] have imposed the duty on Guardians to exhaust administrative remedies, i.e. grievances, about prison conditions, services, programs, and activities for and on behalf of their ward. And while no federal court has issued this kind of ruling, the Eighth Circuit Court of Appeals has ruled [16] that prisoners with disabilities have a right under the Americans with Disabilities Act [17] to receive the third party assistance they need and not what the Department dictates, and the Americans with Disabilities Act does apply to state prisons [18] and its conditions, services, programs, and activities. Therefore, it is reasonable to believe "third party assistance" includes the assistance from a Guardian by the very nature that they are required to act for and on behalf of their ward; to protect their ward, to sign legal documents for the ward, and to discharge whatever duties and exercise whatever powers necessary or proper.

Some of the benefits that come when a Guardian is involved are: (1) increasing successful offender, probationer, and parolee management outcomes; (2) increasing offender, probationer, and parolee successes in therapeutic programs, services and activities; (3) eliminating frivolous grievances and those filed due to a lack of understanding about protocols; (4) ensuring necessary mental health, psychiatric, medical, dental, and pharmacology services exist; (5) eliminating the headaches and hassles probation and parole officers experience in supervision matters; (6) ensuring legitimate probation and parole orders are followed in a timely manner; (7) increases the support system for the offender, probationer, and parolee that eliminates recidivism; (8) increases crisis intervention in a timely manner with statutory authority to protect the ward and others; and (9) increases learning opportunities by behavior management techniques from someone the ward trusts

Therefore, when Department employees and employees of the Departments contract vendors work with a Guardian it is a powerful team with the potential and opportunity to reshape the wards life in positive ways that can greatly assist the ward in not reoffending. Unfortunately because the Department does not have, nor does it mandate its employees and those of contract vendors be properly trained and supervised in what to do and not do when an adult ward has a Guardian, the Department acts in ways that is extremely counterproductive to the public's interest and the welfare, safety, health, habilitation, and treatment of the ward by creating ongoing adversarial roles, profound uncertainty, and great chaos for the ward and their future opportunities for successes.

For all practical, common sense, and legal purposes the Missouri Department of Corrections, its Divisions and employees, and contract vendors should be zeroing in on prisoners, probationers, and parolees who have a Guardian because they have a guaranteed support system and stand the absolute best chance in not reoffending. However, the reality is the Missouri Department of Corrections makes no effort at all to partner with Guardians, as even Department regulations only half heartedly and periodically include a Guardian in decisions to be made even though the Guardian acts with statutory authority. So, neither the Department, its Divisions, employees, nor its contract vendors are doing all they can to protect public safety and reduce recidivism rates.

Governor Jay Nixon's announcement [19] holds that: "Under George Lombardi's leadership, we have taken important steps over the past two years to reduce recidivism, promote successful re-entry into the community, and protect public safety, all while operating efficiently and effectively during challenging economic times. . . " Governor Nixon's announcement also points out "The Department of Corrections has over 30,000 incarcerated inmates, 97 percent of whom will return home to our communities throughout the state. Each year there are approximately 20,000 inmates released back into the community."

Despite the rhetoric in the announcement, there are two things contradicting these claims. The first is that if the Department has over 30,000 prisoners every year and it releases 20,000 prisoners each year how is it recidivism rates are being lowered when we keep releasing the same number of people every year while at the same time retaining the same number of people in prison every year? Either we have very high rates of recidivism in this state, or practically every citizen in Missouri is a completely lawless individual.

The second is that on April 13, 2010 I sent George Lombardi an email requesting for him to develop a training manual that ensures Department employees are properly trained and supervised in what to do and not do when an adult offender has a Guardian because of the ongoing issues I have encountered But George Lombardi blew me off; never once responding to my email directly or through someone else and, thus, one is right to question how it is that such great efforts are being made to reduce recidivism when he flat out refused to ensure his employees are properly trained and abide by laws relevant to guardianships?

CHAPTER THREE
[When Government Fails]

It is generally accepted that government exists to protect the people from the people and to protect the people from the government by enacting laws to ensure clear guidance exists in what is and is not allowed so we do not have total chaos whereby people, as well as government officials, can do whatever they want to do. However, history testifies to the fact that government officials are sometimes perpetrators of crimes, and frequently work against people with disabilities and prisoners because this class typically has no voice that others are willing to listen to, and politicians can benefit from.

The 13th Amendment to the United States Constitution, while abolishing slavery, permits federal, state, and local governments to use inmates in prisons and jails to perform slave labor. Private sector manufacturers subcontract through inmate work programs in 38 states, with companies such as Victoria's Secret, CMT Blues, Eurofish, and the Target Corporation having used and financially benefited from slave labor. This raises the question that if states are contracting prisoners out to private corporations for slave labor does the state become an agent of the private corporation, moreover, does the state no longer serve the interest of the pubic, but rather the financial interests of the corporation and its stakeholders.

One example is the prisoner rights case rising out of the Arizona Department of Corrections [20] whereby on July 27, 2008, prison officials under the directorship of Dora Schriro contracted a prisoner, William Castle, out to perform manual labor for Eurofresh, which is a for profit agriculture business, in an employee capacity and thereby placing Mr. Castle under the protection of Title I and II of the Americans with Disabilities Act because of his qualified disabilities. However, prison officials did not require Eurofresh to provide reasonable accommodations to a prisoner with disabilities that is in the custody of the Arizona Department of Corrections, but who was contracted out by prison officials to serve in an employee capacity for a private for profit business, to perform slave labor.

Between 1913 to 1951, Dr. Leo Stanley, who was the chief surgeon at the San Quentin Prison, surgically removed the testicles from prisoners who were executed and he transplanted them into living prisoners. Dr. Stanley also transplanted testicles from rams, goats, and boars into living prisoners, just as he performed forced sterilizations on prisoners, and selective breading by prisoners. Stanley's belief was that by doing these things he could rejuvenate old men, control crime, and prevent sexual reproduction.[21]

In 1975, Congress began investigating a CIA project, MKULTRA, by its Office of Scientific Intelligence, which involved conducting barbaric experiments on hundreds of people with mental illness by a Scottish Doctor, Ewan Cameron, who became one of the world's leading psychiatrists, and developed techniques used by Nazi scientists to wipe out their existing personalities. On the Senate floor, in 1997, Senator Ted Kennedy said [22] "The Deputy Director of the CIA revealed that over thirty Universities and institutions involved in an "extensive testing and experimentation" program which included covert drug tests on unwitting citizens."

In 1996, the Missouri Department of Corrections was slow to react to the widespread physical abuse by prison guards of Missouri prisoners that were being housed in Texas prisons [23] because of overcrowding in Missouri prisons. According to the videotape of and reports about the incidents, "prison guards forced dozens of prisoners to crawl naked along prison floors while guards kicked and beat them, zapped their backsides and genitals with stun guns, and had guard dogs bite prisoners. There were 415 Missouri prisoners housed at the Brazoria Detention Center in Brazoria, Texas where the incidents occurred."

In 1997, 1999 and 2001, the Eighth Circuit Court of Appeals heard the case of Ronnie Randolph [24] who is legally deaf and successfully sued the Director, Dora Schriro, of the Missouri Department of Corrections under the American's with Disabilities Act for the refusal by Department officials to provide him a sign language interpreter so he would be able to participate in a disciplinary hearing and have the ability to defend himself. Department officials argued they had no obligation to give Mr. Randolph a sign language interpreter and even if they did, they had Eleventh Amendment immunity but the federal court disagreed.

In February 2003, the P.A.T.R.I.C.K Crusade Organization published a report [25] about the efforts of the Missouri Prison Labor Union to better the living and working conditions in Missouri prisons. The Missouri Prison Labor Union was created by prisoners and outside supporters and was subsequently recognized by the Missouri Secretary of State on August 3, 1998. According to the report, members have been subjected to all forms of abuse and harassment by Department employees at the Potosi Correctional Center, Jefferson City Correctional Center, and Crossroads Correctional Center.

In 2004, a class action lawsuit was filed against Mental Health Management Correctional Services, Inc., and several of its' employees, [26] as well as Alabama prison officials, which was ultimately settled by two four-year settlement agreements, in part, for their systemic failures in the delivery of mental health, psychiatric and pharmaceutical services and programs. This is the same private for-profit corporation that provides mental health, psychiatric, and pharmaceutical services, programs, and activities to prisoners under contract with the state of Missouri.

In 2006, the Commission on Safety and Abuse in America's Prisons published its' report [27] that points out "What happens inside jails and prisons does not stay inside jails and prisons. It comes home with prisoners after they are released." The Commission also pointed out that "People are sentenced to prison as punishment, not for punishment, and Corrections staff should be the very best people prisoners encounter." However, "There is disturbing evidence of individual assaults and patterns of violence.. . . Former prisoners recounted gang violence, rape, beatings by officers, and a pattern of illegal and humiliating strip-searches. . . . And former Florida Warden Ron McAndrew described small groups of officers operating as "goon squads" to abuse prisoners and intimidate other staff." [28]

In March 2011, the St. Louis Division of Corrections, Commissioner Eugene Stubblefield defended the decision to downgrade the classification of lawyers for the American Civil Liberties Union from professional to social shortly after the ACLU filed two lawsuits in 2010, against the city; citing substandard medical conditions, and physical abuse of prisoners by guards. Commissioner Stubblefield claimed that the classification downgrade was necessary because ACLU lawyers were speaking with too many prisoners and this caused so-called safety concerns.

The 2011 Missouri Department of Corrections list of strategic goals [29] reported having substantiated prisoner complaints that are significant enough in numbers to make the list of strategic goals to work on, involving incidents of staff-on-prisoner sex and staff sexually harassing prisoners, and while it is a class C felony for correctional employees to have sex with prisoners, [30] I have not found any publications showing Missouri correctional employees are prosecuted by a state that purports to take sex crimes very serious.

These are just a few of the many gruesome examples of what happens when government officials fail to protect the people and the resulting abuse occurring on the belief and claim that they are entitled to do what they want even when the law is clear enough to prohibit their conduct. And while time and again many who work in government have proved themselves to be barbaric and malicious individuals, examples continue to come forth showing that prison administrators and correctional employees often use their power over other human beings for their own sadistic self-gratification.

CHAPTER FOUR
[Grievances and Lawsuits]

The Prison Litigation Reform Act of 1996 was enacted into law by the United States Congress and amends and supplements the U.S. Code in a number of ways in order to restrict and discourage litigation by prisoners. However, in the years since the Prison Litigation Reform Act was enacted it has become the primary mechanism that prison administrators and correctional employees use to evade accountability for their illegal acts, which violate the clearly established rights of prisoners.

The popular claim is that the Prison Litigation Reform Act was enacted into federal law to prevent frivolous lawsuits being litigated by prisoners. However, this lacks sense and practicality because there are numerous doctrines and laws that extend immunity to prison administrators and correctional employees to prevent frivolous suits from proceeding. Moreover, this claim is further eroded by specific provisions that shows the Act has the intent to purposefully silence the voices of prisoners from sounding alarms about their prison conditions and the illegal acts occurring inside prisons.

Since the Prison Litigation Reform Act passed numerous supporters have come forward to advocate repealing various provisions. Some of the supporters include the Bazelon Center for Mental Health Law; the American Bar Association; Private Corrections Institute, the Washington Lawyers' Committee for Civil Rights and Urban Affairs, DC Prisoners' Project; Human Rights Watch; CURE International; the former Director of the Colorado and Washington Department of Corrections, Chase Riveland; the former Director of the Pennsylvania, Maine and Washington Dept. of Corrections, Joseph Lehman, and the Chairman of the American Conservative Union, David Keene.

Both the First and the Fourteenth Amendments to the United States Constitution guarantee every citizen the fundamental right to access the courts to redress grievances. However, the Prison Litigation Reform Act contains a provision [31] to discourage private attorneys representing prisoners because it makes it increasingly difficult to recover attorney fees. But, because attorney's are prohibited from filing suits that are frivolous there is a natural check and balance system built in and thus, the Acts' provision only serves to ensure that prisoners are not able to secure legal representation.

Another barrier faced by prisoners to correct and prevent illegal acts occurring in prisons comes by a provision [32] that prevents permanent consent decrees and settlement agreements being imposed against prison administrators. One example is the lawsuit filed by prisoners in Alabama [33] against prison officials and the prison mental health contractor whereby prisoners received two four-year settlement agreements but not permanent settlement agreements that bar such acts from occurring ever again. This means once the settlement agreements expire or a motion is filed to terminate them, those working in prisons are free to once again violate the same laws. Therefore, this provision serves no substantial purpose except to merely delay the same illegal acts being committed and thereby perpetuates the vicious cycle of abuse and illegal acts.

One example of this is a case out of Maricopa County in Phoenix, Arizona [34] whereby county and jail officials were sued in class action, in 1995, for dangerous and life-threatening conditions in the jail. The parties entered into a consent decree but in September 2001, officials filed a motion to terminate the consent degree, which put an automatic stay on the consent decree under the provisions of the Prison Litigation Reform Act. Five years later the court still had not ruled on the motion. The result allowed jail and county officials to continue engaging in the same conduct that caused dangerous and life-threatening jail conditions to occur in the first place.

Likewise, the provision that prevents prisoners from receiving damages for emotional and mental harm without showing an actual "physical" injury [35] first, only permits prison administrators and correctional employees to engage in illegal acts without accountability. Courts [36] interpret this to mean that a prisoner is not only required to prove that they suffered a prior physical injury because of the illegal act inflicted against them but also that the injury was serious in order to then recover damages for mental or emotional distress. This only ensures correctional employees are permitted to harass prisoners and inflict emotional distress so long as they do not inflict a serious physical injury.

Furthermore, the Prison Litigation Reform Act uses a provision [37] to bar prisoners the right to file a federal lawsuit or appeal if they have filed three suits that courts decide are frivolous. This provision means that if prisoner is transferred to a different prison they cannot proceed in their suit because once transferred the suit becomes moot if it does not name the Director of the Department of Corrections himself or herself as a defendant.

This also means that this provision encourages and rewards prison administrators and correctional employees for acts constituting harassment, obstructing justice and retaliation by ensuring they are not held accountable for their illegal or unlawful acts to prevent or stop a lawsuit against them. In doing this, the Prison Litigation Reform Act serves to completely bar The Rule of Law from existing inside prisons by ensuring that those who work in prisons are held above the law.

One example of this is the case involving two prisoners who were in the process of drafting a lawsuit with another prisoner for excessive force by prison guards. [38] One prisoner was subsequently transferred to another prison with prison guards taking his legal papers to prevent his participating in the lawsuit. The second prisoner filed the suit on his own behalf but did not sign the complaint. Realizing the technical error, the prisoner then field a second "signed" copy but not within the time frame allowed to file the suit and the Fifth Circuit Court dismissed his lawsuit on the basis that it was now frivolous because of a technical error.

Perhaps the most damaging provision of the Prison Litigation Reform Act that creates barriers for a prisoner is the requirement that prisoners exhaust available internal administrative remedies [39] before being permitted to file a lawsuit in federal court. This provision creates exceptional barriers for prisoners with disabilities to exercise their constitutional right to redress courts for violations of law committed against them because of the often cumbersome prison grievance procedures, and the trickery used to assist prison administrators and correctional employees to avoid being held accountable.

To determine if the Departments regulations are constitutional, the United States Supreme Court heard a case [40] involving the Missouri Department of Corrections. The court held that ". . . relevant factors include (a) whether there is a "valid, rational connection" between the regulation and a legitimate and neutral governmental interest put forward to justify it, which connection cannot be so remote as to render the regulation arbitrary or irrational; (b) whether there are alternative means of exercising the asserted constitutional right that remain open to inmates, which alternatives, if they exist, will require a measure of judicial deference to the corrections officials' expertise; (c) whether and the extent to which accommodation of the asserted right will have an impact on prison staff, on inmates' liberty, and on the allocation of limited prison resources, which impact, if substantial, will require particular deference to corrections officials; and (d) whether the regulation represents an "exaggerated response" to prison concerns, the existence of a ready alternative that fully accommodates the prisoner's rights at *de minimis* costs to valid penological interests being evidence of unreasonableness."

Missouri Department of Corrections regulation D5-3.2 is the institutional grievance procedure that prisoners are required to exhaust before they are permitted to file a federal lawsuit against prison administrators and correctional employees. However, the regulation deliberately prejudices prisoners by giving them only a narrow window of opportunity to file a grievance all the while giving lavish time frames for prison administrators to respond, and by imposing other rather cumbersome processes and limitations, especially against prisoners with disabilities.

Another problem with the Missouri Department of Corrections grievance regulation is found in § III L at ¶ 13, which considers grievances abandoned if the prisoner does not sign the grievance form. However, because grievances are federally mandated [41] and are therefore legal documents, prisoners who have a Guardian are exempt from this requirement [42] because it is the statutory duty and the legal authority of a Guardian [43] to sign all legal documents for and on behalf of the ward. Therefore, the Department is prohibited from requiring a prisoner with a legal Guardian to sign legal documents, as a condition of being allowed to file grievances and thereby fulfill their federal mandate.

Moreover, this right is further established in the American's with Disabilities Act [44] which holds "It shall be unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this chapter." In other words, the Department is prohibited from preventing the Guardian from filing grievances for their ward because it aids their ward in exercising their rights and fulfilling their federal mandates.

The only provision in regulation D5-3.2 that opens the door for the assistance of a Guardian is in § III L at ¶ 6, which holds that "The grievance officer shall assist or arrange assistance for those offenders who cannot complete the forms themselves." Under this provision, the grievance officer must elicit the assistance of a Guardian for their ward to file grievances because prison administrators and correctional employees are statutorily prohibited [45] from restricting or preventing the ability of a Guardian to discharge their duties and exercise their authority. However, prison officials [46] contend a prisoner who is adjudicated totally incapacitated and totally disabled, without exception, is not permitted at all to have any assistance from their Guardian to file grievances, which is flatly contrary to clearly established state and federal laws.

Additionally, § III A at ¶ 5 holds that "Each superintendent shall ensure that the procedure is accessible to all offenders as specified in standard operating procedures" and yet, some prisons require prisoners to file a written request to receive assistance if they are incapable of completing the grievance forms themselves. This of course begs the question of how exactly is a prisoner to obtain assistance if they are not capable of writing because of their disabilities. It is a catch 22 that is intentionally created to trap the prisoner in limbo and discourage or prevent them from filing grievances.

Furthermore, § III E at ¶ 10 gives a prisoner 15 calendar days from the date they are transferred to another prison to file a grievance involving issues occurring at the previous prison, but § III E at ¶ 11 gives the prisoner 15 calendar days from the date the grievance officer gives the prisoner the grievance form, to file their grievance. The two sections are in conflict and sets the stage for correctional officials to deny a grievance based on § III E at ¶ 10 even though § III E at ¶ 11 restarts the clock in the time frame for the prisoner to file a grievance once they are transferred to a new prison.

Complicating matters more is that according to the office of Dave Dormie, who is the new Director of Adult Institutions, prisoners are no longer permitted to have free access to the Standard Operating Procedures for the prisons. Rather, prisoners must now file a special request with the warden to read them and then wait until their caseworker can arrange the time for this to occur, which unduly delays or denies a prisoner's ability to file grievances within the narrow window of opportunity allowed to file grievances.

Insofar as the grievance procedure for the mental health contract vendor, § 2.1.13 of the contract requires it to have procedures for family members and third parties to file grievances about the delivery of mental health care and treatment given to prisoners. However, neither Missouri Department of Corrections regulation D5-3.2, § III K 6 at ¶¶ c, 1 - 5, nor Mental Health Management Correctional Services, Inc., have any pre-written procedures for family members and anyone who is a Guardian to file grievances about the delivery of mental health services, programs and activities for prisoners, and family members and legal Guardians are not provided written notice of any formalized procedure(s) that they are required to follow.

Moreover, because a Guardian has official duties to perform and acts with statutory authority, having formalized grievance procedures is particularly important because if a Guardian is restricted or prevented in their ability to discharge their duties and exercise their statutory authority it simultaneously and automatically delays, denies, or interferes with their ward receiving mental health services, programs, or activities in the required timely manner.

Presently three state courts have issued rulings [47] in Arizona, Tennessee and Louisiana that require anyone who is a legal Guardian to file grievances and exhaust administrative remedies for and on behalf of their ward because a Guardian is statutorily required to act for an on behalf of their ward. The fact neither the Missouri Department of Corrections, nor Mental Health Management Correctional Services, Inc., have formalized pre-written grievance procedures for a Guardian to follow serves no substantial purpose other than to restrict or prevent a Guardian from discharging their duties and exercising their authority, as well as to prejudice the ward by illegal discriminatory practices.

Suffice to say, the subject of exhausting administrative remedies has been a topic of great debate in the federal courts but what is a comforting surprise is that several courts recognize that we cannot have a one size fits all governing rule here because extenuating circumstances can and many times do exist that obstruct or prevent a prisoner's ability to comply with administrative regulations that are often designed and intended to cause prisoners to fail. The Second Circuit Court of Appeals has the most robust viewpoint of this by holding that "'special circumstances' may excuse a prisoner's failure to exhaust." [48]

Several Circuit Courts, including the Eighth Circuit Court of Appeals, which handles cases rising out of Missouri have ruled that exhaustion is satisfied where the prison officials' conduct make procedures effectively unusable. [49] The Eighth Circuit Court specifically held that "[A] remedy that prison officials prevent a prisoner from 'utilizing is not an 'available' remedy under § 1997e(a) . . . ." and because of this, exhaustion is satisfied when prison officials restrict or prevent a Guardian from discharging their duties and exercising their authority to aid their ward in having equal access and participation in grievance procedures.

In 2006, the United States Supreme Court heard a case [50] involving a challenge to prison grievance procedures based on the time limit prison officials give prisoners to file their grievances. One of the things the court pointed out is that "technicalities are particularly inappropriate in a statutory scheme in which laymen, unassisted by trained lawyers, initiate the process." Moreover, the court also expressly deferred the question of whether incapacitated prisoners are to be held to the stringent requirements of prison grievance procedures that their non-disabled counterparts are required to abide by and exhaust. [51]

In 2003, the Fifth Circuit Court of Appeals, which is considered a rather conservative court held [52] that "[O]ne's personal ability to access the grievance system could render the system unavailable." Moreover, the court in <u>Whitington</u> [53] held that a prisoner who was transferred from prison to a state hospital because they were "'mentally incompetent' and 'psychotic'" might be incapable of grieving and therefore have no available procedures to exhaust."

CHAPTER FIVE
[Americans With Disabilities Act]

In 1990, the United States Congress passed into law the Americans with Disabilities Act, which at the time was considered to be a milestone achieved for people with disabilities to have equality in life, in justice, and equal access to and participation in government services, programs, and activities. However, several federal courts amended the Act by imposing stringent burdens on people with disabilities, which Congress openly dissented against when it amended the Act in 2008, to restore the original intent.

The necessity and Congressional intent for the Act is spelled out in eight areas by Congress [54] in its findings and purpose section. As a result, Congress testifies to the fact that not only has general society greatly discriminated against this class of people but also the fact that government officials have done no less the same, and thereby failed or refused to protect the people from the government.

The United States Congress found that "physical or mental disabilities in no way diminish a person's right to fully participate in all aspects of society, yet many people with physical or mental disabilities have been precluded from doing so because of discrimination; others who have a record of a disability or are regarded as having a disability also have been subjected to discrimination." Moreover, that "historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem."

Congress also found that "discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services." And "individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities."

In 1998, the United States Supreme Court held [55] that the Americans with Disabilities Act applies to state prisons and because of this, prison administrators, correctional employees and private corporations acting under contract with the state in prisons are all prohibited from discriminating against prisoners with disabilities in services, programs, and activities, and they are also prohibited from interfering with the ability of a Guardian to discharge their duties and exercise their authority for and on behalf of their ward in prison services, programs, and activities.

However, in 2000. the now former Director of the Missouri Department of Corrections, Dora Schriro, who has a Justice Degree, wrote [56] that correctional employees are required to look at and treat prisoners who have disabilities, as inanimate objects (not endowed with life), i.e. "blocks" [sic]. So it is certainly no surprise that despite the findings of Congress, prison administrators fight against the Act being applied to prison conditions, services, programs and activities, because it means correctional employees and prison administrators must stop depriving or abridging the rights of prisoners with disabilities.

As an indirect response to Dora Schriro's subsequent description about how prisoners with disabilities are treated, the Eighth Circuit Court of Appeals for the District of Missouri made its final ruling in the case of Ronnie Randolph [57] that Dora Schriro could be sued by a prisoner under the court doctrine "*Ex parte* Young" to enforce the provisions in Title II of the Americans with Disabilities Act in order to have equal access to and participation in all prison services, programs, and activities.

The importance in applying Title II of the Act to prison conditions, services, programs, and activities comes because, as the United States Supreme Court pointed out [58] in 2002, "persons with intellectual disabilities have diminished capacities to understand and process information, to communicate, to engage in logical reasoning, and to understand the reactions of others. . ." Therefore, it is of particular importance that prisoners with disabilities not be discriminated against in prison services, programs, and activities, which includes grievance procedures, so they can successfully reintegrate back into society.

Moreover, as the United States Congress pointed out [59] in 2008, "In addition, mentally ill offenders can be affected psychologically by incarceration differently than general population offenders." And it is precisely because of this that the Americans with Disabilities Act becomes all that more important in prisons conditions, services, programs, and activities, and for prison administrators to abide by the provisions of this Act rather than looking for ways to undermine or circumvent the Act because they see the law as being inconvenient to their agenda's to do whatever they want, and to control everyone and everything.

Perhaps the two most important provisions of the Americans with Disabilities Act [60] for prisoners who have qualified disabilities is that "No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this chapter or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter." And that "It shall be unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this chapter."

For prisoners who have a legal Guardian, these provisions are exceptionally important as they not only ensure the prisoner has equal access to and participation in prison services, programs, and activities, but also that prison administrators, correctional employees, and private corporations acting under contract with state's do not restrict or prevent the Guardian from discharging their duties and exercising their authority [61] for and on behalf of their ward so that, and in the course of, a prisoner with disabilities having and maintaining equal access to and participation in prison services, programs, and activities.

However, despite the overt clarity of existing federal laws, the epitome of the mindset and intent that prison administrators have to discriminate against prisoners with disabilities comes from the case involving Ronnie Randolph because that case clearly represents a basic common sense need to provide a legally deaf prisoner with the means to understand and defend himself against allegations of wrongdoing, but the blatant refusal by prison administrators on the claim that a legally deaf prisoner has no right to understand and defend against allegations made against him, and prison administrators are immune from prosecution for violating clearly established laws.

Even though that case occurred several years ago, the mindset of prison administrators in the Missouri Department of Corrections, under the directorship of George Lombardi, continues to exist by the very fact that legal counsel for the Department claims that a prisoner who has a legal Guardian has no right whatsoever to receive third party assistance from their Guardian to have equal access and participation in prison grievance procedures. But this is flatly contrary to the entire point of the Eighth Circuit Courts ruling in the case of Ronnie Randolph, and the Americans with Disabilities Act, as both show prisoners with disabilities do in fact have a protected right to receive the third party assistance they need and therefore, not what prison administrators want to dictate they will have.

CHAPTER SIX
[Criminalizing Mental Health Disabilities]

In 1992, The Public Citizen's Health Research Group released a report, entitled *Criminalizing the Seriously Mentally Ill: The Abuse of Jails as Mental Hospitals*, that discussed significantly high numbers of people with mental illness being incarcerated in jails across our nation, for minor misdemeanors associated with their disabilities and for minor non-violent felonies.

In 2010, the National Alliance on Mental Illness reported that about two million people with serious mental illness are booked into local jails each year; that about 30% of female and 15% of male inmates in local jails have serious mental illness such as schizophrenia or bipolar disorder. Most are jailed for minor, non-violent offenses; that an estimated 70,000 prisoners suffer from psychosis on any given day, and that about 50% of people with mental illness who have previously been in prison are rearrested and returned to prison not because they have committed new offenses, but because they have been unable to comply with conditions of probation or parole—often because of mental illness.

In nearly twenty years things have not gotten better, to the contrary, as they increasingly continue to get worse and if Missouri legislators do ever pass a Bill to turn Missouri prisons into mental institutions we will inevitably see a skyrocketing boom in the number of people with mental, developmental, neurological, and brain dysfunction disabilities being put in our jails and prisons.

According to the National Sheriffs' Association [62] "Over the last few decades, the nation's jails have become the largest mental health hospitals." And Right On Crime [63] which is a conservative organization points out "A seriously mentally ill person in the United States is three times more likely to be incarcerated than hospitalized. And since jails and prisons are not created to be *de facto* mental hospitals, there are a number of problems associated with placing people with serious mental illness into jails and prisons. In particular, mentally ill inmates cost much more. In Texas prisons, for example, the average prisoner costs the state about $22,000 per year, but prisoners with mental illness cost between $30,000 to $50,000."

In 2010, Dr. Kirk Newring, Ph.D. pointed out [64] that "*Individuals with intellectual deficits and challenges are often severely disadvantaged and even victimized by the normal operational procedures and expectations of our justice system*." Dr. Newring is a licensed clinical psychologist in the states of Nebraska, Iowa and Washington. Dr. Newring was also the clinical psychologist supervisor of the Nebraska Department of Correctional Services inpatient Healthy Lives Sex Offender Treatment Program at the Lincoln Correctional Center.

Dr. Newring pointed out further that "*the involvement of persons with disabling conditions within the criminal justice system is an issue that warrants serious attention by our society and its gatekeepers who are charged with both insuring the public safety and accommodating the needs of persons experiencing such conditions. Currently, this challenge is not being met with any acceptable degree of either competence or fairness*."

As pointed out in the "Forward": In 1998, the Bureau of Justice Statistics reported there were an estimated 283,000 prison and jail inmates who suffered from mental and developmental disabilities. In 1999, the United States Supreme Court issued a ruling that people with disabilities had a legal right under the Americans' with Disabilities Act not to be forced to live in state institutions. Subsequently, from 2000 to 2006, the number of people with disabilities incarcerated in jails and prisons quadrupled. And the Bureau of Justice Statistics estimated that by the end of 2009 there were 2, 292,133 adults with disabilities in our prisons and jails. So, state's have turned to using jails and prisons as extermination factories to circumvent the U.S. Supreme Court ruling, on the belief that society is reserved only for those who are "normal."

In 2010 and again in 2011, the Missouri Department of Corrections engaged in legislative initiatives to have Bills passed into law [65] to permit state courts to send people with disabilities to prison for alleged mental health treatment, which effectively puts the decision of whether a person is given probation into the hands of a private for profit corporation based entirely on the treatment, or the lack thereof, that it provides.

According Executive Director, Linda Baker, for the Missouri Governor's Council on Disability, the Council did not provide the Missouri Senate Judiciary and Criminal and Civil Jurisprudence Committee any testimony for or against Senate Bill 352, even though the Council is supposed to be advocating for every person with disabilities including those involved in the criminal justice and correctional systems.

Although the Missouri Constitution holds [66] that it is the Missouri Department of Mental Health that is to provide mental health treatment to Missouri citizens in state institutions, which encompasses prisons, we use a private for profit corporation to provide the serves that our state Constitution exclusively requires the state to provide instead and we have eliminated independent oversight of the private corporation.

According to the Missouri Department of Mental Health, currently there are no community residential programs in Missouri that take on forensic clients released from prison, to provide in-depth habilitation and supervision services. At best, forensic clients reentering society from prison receive limited and often times only sporadic outpatient treatment, and are many times forced into homelessness or are otherwise housed at boarding homes that do not provide any habilitation and treatment services and programs.

Although mental health court programs have existed for several years and have shown successes, according to the Missouri Courts [67] there are only five mental health courts in Missouri. And while efforts were made in 2010, in St. Joseph, Missouri to develop a mental health court, local government officials stated their strong opposition and refusal to allow the general public, family members of people convicted of crimes, and persons convicted of crimes to have any say in the development process.

On March 12, 2011, the Columbia Missourian reported [68] that the "The Missouri Coalition . . . put the annual cost to house one person in prison at $12,998.00;" however, the Missouri Department of Corrections publicizes the annual cost of housing one prisoner is $16, 458.00 per-year. And according to the Columbia Missourian report, the Missouri Coalition estimates that it costs $5,042.00 to put one person though the Missouri Drug Court. The same dollar amount would likely also apply to put one person though a Missouri Mental Health Court but rather than doing so, Missouri prefers to send this class to prison instead.

In 2010, the American Psychological Association pointed out [69] that people with mental illness, learning disabilities, developmental disabilities and certain personality traits are exceptionally prone to manufacturing false confessions when his or her liberty interests are being or are at risk of being deprived or abridged, when there is a real, perceived, or implied threat made, and when the individual is lured to believe they will obtain a reward of some kind if they confess to a crime. And the Journal of Law & Social Challenges also pointed out [70] that those with mental illness are more prone to manufacturing false confessions involving murder and sexual offenses when their liberty interests are at stake because of their disabilities, which makes them extremely vulnerable to threats, intimidation, and coercion tactics.

According to Richard Ofshe, who is a Sociologist at the University of California, Berkeley, "*people with disabilities and in particular, those with developmental disabilities, get through life by being accommodating whenever there is a disagreement. They've learned that they are often wrong; for them, agreeing is a way of surviving. Consequently, because of their excessive desire to please, especially with authority figures, getting a person with mental or developmental disabilities to confess to a crime is easy to do, especially when they are being threatened with a deprivation of their substantial liberty interests or are being lured to believe they will be rewarded if they discuss details of an uncharged crime and thereby obtain a confession from them*."

Saul M. Kassin, Gisli H. Gudjonsson, and Bruce A. Robinson, who are leading experts in the phenomenon of people making false confessions of crimes, all point out [71] that *Compliant False Confessions* and *Internalized False Confessions* are the end result of the [offender's] desire and effort to either avoid a bad situation, or a real, perceived, or an implied threat, or to gain some kind of personal reward. These confessions are given because the underlining reasons for the confession is so powerful as to compel [the offender] to give false confessions.

Steven A. Drizin, Esq., and Richard A. Leo, Esq., who are attorneys that conducted a comprehensive study involving court cases of people confessing to crimes pointed out in their subsequent article [72] that 125 proven cases involving individuals convicted of a crime gave false confessions; that twenty-six percent (26%) falsely confessed to sexual offenses; that nearly all false confessions given involved inflicting a deprivation on their liberty, and twenty-eight (28) of the 125 cases involved people with disabilities who made false confessions. They also pointed out that the unique vulnerability of offenders with disabilities and the techniques used to obtain their confessions, place this population at a high risk of manufacturing false confessions commonly resulting in wrongful arrest, prosecution, conviction, and incarceration, which is prevalent among those with learning and developmental disabilities. [73]

In recent years there has been great debate among attorney's and within courts, about the First Amendment rights of attorney's to place television and radio advertisements to solicit business from the general public. Proponents of this right contend that the justice system is a business; no different than any other business in the United States, and attorney's have a protected First Amendment right to run it as a business in order to make a profit; just as all other businesses are entitled to make financial profits. This mindset and practice presupposes that "clients" are commodities and admits that so-called justice is for sale, which means people with disabilities are the very last people in line to ever receive equality in justice.

In 2010, the National Association on Mental Illness and the National Sheriffs' Association asserted [74] that there are more people with disabilities in jails and prisons than there are in hospitals where they can get the help they need. The National Association on Mental Illness also estimates there are two million people in local jails who have mental health disabilities. Therefore, since the 1999 ruling by the United States Supreme Court [75] that required states to release people with disabilities from state run institutions, local jails and state prisons have fast become utilized as *new age concentration camps*; no longer to merely "*warehouse*" this class of people but rather to "*exterminate*" them from society by criminalizing mental, developmental, neurological, and brain damage disabilities.

In the United States we call ourselves a "*civilized society*." A civilized society is defined as (1) having a highly developed society and culture; (2) showing evidence of moral and intellectual advancement; and being humane, ethical, and reasonable, and (3) marked by refinement in taste, manners, and culture. But these things cannot and never will exist so long as we use jails and prisons as mental institutions to exterminate people with disabilities from society. It is barbaric and sadistic what we do to this class of people in the name of so-called justice by an alleged civilized society that many who practice law argue is a business for sale. This constitutes neither equality in justice, nor being a civilized society.

Insofar as sex offenders with mental illness, there are conflicting opinions within the psychiatric community [76] as to whether pedophilia is actually a mental disorder that requires a person to be civilly committed for the rest of their life. The question presented by the psychiatric community is if pedophilia is not a mental disorder, or if it is not treatable, then why are states civilly committing people for the rest of their lives? But states get around this by having a psychiatrist diagnose someone with Anti-Social Personality Disorder or Intermittent Explosive Disorder, to seemingly justify and rationalize civilly committing them for the rest of their life. And it is certainly entirely possible that these kinds of diagnoses may be given falsely on behalf of the state with knowing and deliberate purpose to prejudice [maliciously or otherwise] the person whom the state overzealously wants to civilly commit.

State's, like Missouri, argue that civil commitment is not a punitive measure that is barred by laws prohibiting double jeopardy but rather, it is a therapeutic program that works, to further their argument and courts have sided with these arguments. But if it is a therapeutic program that works, why are state's civilly committing people for their rest of their lives if it is not being used as a punitive measure instead?

Moreover, since there is no conclusive evidence proving that sex offender programs actually work then how can state's claim that these programs work while at the same civilly committing someone for the rest of their life on the claim that the person cannot be treated? It is a clear contradiction in the states argument; a have your cake and eat it to scenario, so the state can bypass having to comply with double jeopardy laws, and the 1999 U.S. Supreme Court ruling that bars them from forcing someone to live in state mental institutions.

If state's were genuinely interested in helping someone who is convicted of a sex crime then state legislators would make sure every county in Missouri has appropriate community *residential* programs that specifically take on forensic clients and this includes convicted sex offenders, to prevent the crimes in the first place. But rather than doing this, the state wastes money and destroys both lives and opportunities for someone to actually get help and thereby prevent the crimes from being committed in the first place.

Moreover, legislators would amend state sex laws to exempt all community residential programs and boarding homes from the law that prohibits sex offenders from living within 1000 feet of a daycare and school, when there is 24 hour awake staff onsite or security measures in place in a private residence. But again, the state is not interested in ensuring that forensic clients and those convicted of sex offenses have secure places to live and can receive treatment that would prevent crimes from being committed in the first place because state officials are only interested in exterminating people with disabilities from society.

Additionally, if state's were genuinely interested in reducing recidivism rates they would ensure there are sufficient community residential and non-residential services, programs, and activities available to every person with disabilities. However, as plainly evident by Senate Bill 995 (2010), Senate Bill 352 (2011), House Bill 154 (2011) and House Bill 302 (2011) Missouri legislators prefer instead to file legislation that turns prisons into mental institutions under the false guise that they will receive mental health treatment by a private for profit corporation that the media reports does not provide prisoners with disabilities counseling.

People with disabilities are collectively perceived to be dangerous because society and government officials make them out to be so based on their stereotypical preconceived notions, hate, prejudices and intolerance for this entire class of people. Yes, some do commit violent crimes but then some who have no disabilities also commit violent crimes. And some who have disabilities commit crimes because they have no community resources to help prevent the crimes in the first place by helping this class of citizens.

Moreover, because people with disabilities have no political value to politicians; no usefulness to bureaucrats, and no human qualities to general society, we proactively look for ways to bamboozle courts into believing that people with disabilities are the leopards of society that must be exterminated from society by imprisoning them in jails, prisons and civil commitments. And we do this not because it is legitimately needed but to satisfy our own belief that society is reserved only for those who are "normal."

CHAPTER SEVEN
[Missouri Sex Offender Program]

The Missouri Sex Offender Program is divided into three phases. Phase one is the diagnostic stage that entails interviewing prospective participants and performing psychological evaluations to obtain a base-line. Phase two is the actual program, which is subdivided into four tiers to make it increasingly difficult for someone to graduate and virtually impossible for someone with severe disabilities to graduate. And phase three is the community program that occurs when a prisoner is released from prison.

The decision in whether my ward would participate in the Missouri Sex Offender Program was mine to make because I am his Guardian. Therefore, I spent a great deal of time thoroughly researching the Missouri Sex Offender Program and speaking to numerous people. What I learned caused me to become enormously concerned and seriously alarmed.

The first problem is that the institutional Missouri Sex Offender Program has no safeguards in place to ensure participants are not threatened, intimidated, or coerced by prison / mental health employees or other participants to give false confessions of guilt to criminal acts.

As a condition of participating in and graduating the program participants are required to waive their constitutional rights to due process, right of counsel, confronting their accuser, and defending themselves against allegations. They are required to confess guilt, not only to their existing convicted crime but also to any mere allegation made at any time in their life, even if they are 100% factually innocent.

The state provides no safeguards to ensure not one person is compelled to give false confessions of guilt to crimes they are factually innocent of committing. If a participant asserts their innocence they are accused of being in denial. If they continue to assert their innocence they are accused of being in denial about being in denial because the state will accept nothing less than a confession of guilt even when they are 100% factually innocent of committing a crime.

It is one thing to expect someone to take responsibility for crimes they have committed but it is a far cry from being a just government that acts in the best interest of the public and abides by The Rule of Law to force someone to confess guilt to crimes that they never committed and punish them if they fail or refuse to do so. But the state takes the position that a person is guilty simply and only because the state says so.

To entice participants to confess guilt, participants are deceitfully lured to believe they will receive parole or conditional release when they graduate but what they are not told is that the ultimate objective of the program is to cause as many participants as possible to fail, moreover, to weed out participants with disabilities from the participants the state declares to be "normal" by conducting witch hunts.

Should a participant confesses their guilt to mere allegations the participant is then subject to further criminal charges and civil commitment if they have disabilities. It creates a catch 22 scenario to guarantee that participants loose with the primary targeted group being prisoners with disabilities to exterminate them from society by being civilly committed for the rest of their life.

Courts claim [77] that because state's require convicted sex offenders to confess guilt to crimes that were never charged, prosecuted and producing a conviction it shows that state's are serious about holding the accused accountable for their sex crimes. This argument perpetuates the erroneous belief prisoners are guilty of mere allegations simply because a state says it is so even if they are factually innocent.

The irony here is that while the state of Missouri and its Department of Corrections purport to take sex crimes serious, the Department reports [78] there are large numbers of *substantiated* complaints against correctional employees for having sex with prisoners and sexually harassing prisoners and thus, committing sex crimes [79] but without being criminally prosecuted for their sex crimes against prisoners.

In effect, the state has taken what it purports to be a therapeutic program and turned it into a full out state sanctioned witch hunt to seemingly justify a tyrannical dictatorship that is comparable to Roman Law and Nazi Law, as the state has abolished substantive due process rights. the burden of proof requirements and the rules of evidence.

The second problem is that the sex offender program impinges upon Fifth Amendment rights by holding parole and conditional release hostage to compel participants to confess their guilt.

While the United States Supreme Court [80] rejected the plaintiff-prisoners argument that his Fifth Amendment rights were violated because he was punished administratively for refusing to admit to merely alleged sex crimes, the courts ruling did not address whether a state violates a prisoners Fifth Amendment rights by using parole, conditional release and good time credits to compel confessions of guilt to criminal acts. [81]

The emphasis of the court was that requiring a participant in a sex offender program to confess guilt must serve a "*legitimate*" penological interest. However, a legitimate penological interest *cannot* exist when those factually and truthfully innocent of even mere allegations are nevertheless forced to confess guilt by holding their parole, conditional release, and good time credits hostage.

To circumvent this the state created a catch 22 that guarantees participants are forced into a loose - loose scenario. If they want to participate in the prison sex offender program they are forced to sign their legal rights away, but in doing this they are then subject to being criminally charged or civilly committed for any confessions of guilt they give. And if they refuse to sign their rights away the state then falsely accuses the person of refusing to rehabilitate to seemingly justify civilly committing them anyway.

When you create a loose - loose scenario by refusing to have safeguards in place to protect anyone factually innocent of a conviction and even mere allegations, you disenfranchise participants from receiving a genuine therapeutic program that is legitimately focused on rehabilitating them rather than being used to merely and only gather intelligence for the state to use against them instead.

The problem faced by the state is that if it did have proper safeguards to protect those innocent of a crime or mere allegations, the safeguards showing innocence could then be used against the state to have convictions overturned, civil commitments denied, and defend against mere allegations. So, the state does nothing because in the Missouri Sex Offender Program participants are presumed guilty even if and when they are factually innocent.

The third problem is the presumption of guilt philosophy and practice used is in conflict with studies done that show innocent people are in fact arrested, convicted and incarcerated every year.

The Missouri Sex Offender Program operates on the philosophy and practice that participants are always guilty of their convicted crime, and, of every mere allegation made against them. This is shown by the fact that if a participants assert their innocence they are accused of being in denial and if they continue to assert their innocence they are accused of being in denial about being in denial. Another catch 22 used to trap the participant into guilt without having to actually prove such or recognize that sometimes innocent people are convicted of crimes they factually never committed in the first place.

Therefore, what becomes overwhelmingly clear is that the state and its Department of Corrections are extremely closed minded to even the mere possibility, let alone the fact, that someone can be factually and truthfully innocent of their existing convicted crime and of mere allegations made against them because to accept this means the state would have to accept that what it is doing is flat out unconscionably wrong.

However, the Ohio University [82] article pointed out: "About 10,000 people in the United States may be wrongfully convicted of serious crimes each year, a new study suggests." The article also pointed out that "The results are based on a survey of 188 judges, prosecuting attorneys, public defenders, sheriffs and police chiefs in Ohio and 41 state attorneys general."

Moreover, as Steven A. Drizin**,** Esq., and Richard A. Leo, Esq., pointed out [83] "*In recent years, numerous individuals who confessed to and were convicted of serious felony crimes have been released from prison -- some after many years of incarceration -- and declared factually innocent*." And they pointed out that "*recent studies identify false confessions as the leading or primary cause of wrongful conviction*" with a 26% risk that confessions to sex crimes are false confessions obtained by law enforcement and then used to wrongly prosecute, incarcerate, and detrimentally label these individuals.

Despite the fact innocent people are convicted of crimes and innocent people are forced into giving false confessions of guilt to a crime, the state and its Department of Corrections act unconscionably and turn blind eyes to force people to confess guilt even if and when they are factually innocent of criminal acts.

The fourth problem is courts have identified harmful effects being imposed because of sex offender programs, sex offender classifications, and sex offender registration requirements.

Some courts recognize [84] that state's use sex offender programs and reports to harm prisoners, for example, the Missouri Department of Corrections permits [85] its Division of Probation and Parole to require a prisoner to participate in and graduate the Missouri Sex Offender Program, as a condition of being paroled, even if the prisoner was never convicted of any sex crime or even accused of a sex crime.

Moreover, the Kansas State Supreme Court upheld the appeal court ruling that reversed the District Courts dismissal of the offenders suit. [86] In the El Dorado Correctional Facility an offender was classified as a sex offender by prison officials and placed in a sex offender treatment program without a hearing and without proof that he had ever been convicted of a sexually motivated crime.

The Kansas Supreme Court pointed out that: "*We conclude that Schuyler's classification as a sex offender calls for application of this "stigma plus" test to determine whether he has alleged facts in his petition which, if proven, establish that he has a liberty interest which was infringed without affording him due process of law*," which is to say, Department employees cannot just require a prisoner to confess guilt without due process of law and the state fulfilling its burden to prove guilt beyond a reasonable doubt in a court of law. But the Department does not endorse or operate according to rights of due process of law.

The Iowa Supreme Court pointed out [87] that "*[a] liberty interest is at stake whenever a sex offender risk assessment is conducted . . . .*" The court also held: *[A]fter completing the assessment and notifying an offender of the results, and pending limited appellate procedures, the individual's status as a convicted sex offender together with an additional classification of his risk to reoffend, can be transmitted, in varying extent and degree, to different members of the public. This entire process clearly implicates a liberty interest in that it threatens the impairment and foreclosure of the associational or employment opportunities of persons who may not truly pose the risk to the public that an errant risk assessment would indicate. Ultimately, we believe the Oregon Supreme Court best explained this concept in the course of its consideration of an issue similar to the one presented here*":

> When a government agency focuses its machinery on the task of determining whether a person should be labeled publicly as having a certain undesirable characteristic or belonging to a certain undesirable group, and that agency must, by law, gather and synthesize evidence outside the public record in making that determination, the interest of the person to be labeled goes beyond mere reputation. The interest cannot be captured in a single word or phrase. It is an interest in knowing when the government is moving against you and why it has singled you out for special attention. It is an interest in avoiding the secret machinations of a Star Chamber. Finally, and most importantly, it is an interest in avoiding the social ostracism, loss of employment opportunities, and significant likelihood of verbal and, perhaps, even physical harassment likely to follow from designation. In our view, that interest, when combined with the obvious reputational interest that is at stake, qualifies as a “liberty” interest within the meaning of the Due Process Clause.

In the 2010 report by Channel 5 News [88] “Dennis Conlin started Missouri Citizens for Reform. Conlin said the current system lumps all offenders together and brands everyone, even those arrested for streaking, with a lifetime scarlet letter.” The term “sex offender” encompasses a very broad definition that includes crimes having nothing to do with sex or being sexually motivated, e.g. streaking and urinating in public.[89] And the label “sex offender” automatically prejudices the public against the person by presuming everyone that is convicted of a sex offense is a child molester or a violent predator when it is not the case.

Hollida Wakefield pointed out in the Journal of Sexual Offender Civil Commitment: Science and the Law [90] that “Sex offenders are universally hated and despised and seen as dangerous sexual predators unless locked up and kept under surveillance. Following a number of highly publicized violent crimes, all states passed registration and notification laws and many passed civil commitment laws. Although these laws were passed as a means to decrease recidivism and promote public safety, the resulting stigmatization of sex offenders is likely to result in disruption of their relationships, loss of, or difficulties in finding jobs, difficulties in finding housing, and decreased psychological wellbeing, all factors that could increase their risk of recidivism.”

The fifth problem is that there is no sex offender treatment program in the United States that is conclusively proved to work and sex offender laws are not protecting public safety but rather are instead imposing undue hardships on those convicted of sex crimes and the general public.

State’s rely on the argument that sex offender programs provide therapeutic help to participants that serves a genuine public and legitimate penological interest to warrant spending the amount of tax revenue needed to use them, and to deny parole, conditional release, and good time credits for anyone that does not participate and graduate these programs.

If we assume for the sake of argument that sex offender programs work then why has the Division of Probation and Parole withheld money to treat sex offenders? According to the August 18, 2010 report by Leisa Zigman [91] “While the Department of Probation and Parole received $3,000,000 from the Inmate Revolving Fund for inmate reentry services, including sex offender treatment, only $42,000 had been spent on providing treatment, as of May 2010.

The report asked, if 400 offenders are violating the terms of their probation by not receiving critical treatment, why weren’t they back in prison. But this question erroneously presupposes probationers and parolees should be imprisoned because government employees are withholding money and thus, not doing their jobs, rather than because the individual actually did something themselves to violate their probation or parole to warrant being put in prison.

However, in 2008, Brett Trowbridge, Ph.D., J.D. pointed out [92] "*It is very difficult to conduct good research on the effectiveness of sex offender treatment. As a result, authorities seem to agree that at present there is little credible available evidence proving that a particular treatment is effective in reducing recidivism among sex offenders, although there is also no credible evidence that sex offender treatment does not work.*" If experts cannot conclusively say a program works then it is reasonable to believe they do not work, and it is wrong to deny parole on an unsubstantiated hope they might work.

The Human Rights Watch pointed out [93] "*Laws aimed at people convicted of sex offenses may not protect children from sex crimes but do lead to harassment, ostracism and even violence against former offenders because politicians didn't do their homework before enacting these sex offender laws. Instead they have perpetuated myths about sex offenders and failed to deal with the complex realities of sexual violence against children*."

Moreover, Hollida Wakefield also pointed out [94] that "*We cannot dismiss the possibility that some percentage of offenders will reoffend because of the stress and pressure imposed by a hostile, rejectionist community that has branded the offender as a pariah. Thus we may be unwittingly increasing the likelihood that some sex offenders reoffend. There is ample clinical evidence to suggest that maintenance in the community is the most difficult part of reducing reoffense risk. Most sex offenders, even those that are released from treatment programs, are returned to the community with few, if any, support systems and expected "to swim." Satisfactory reintegration and adjustment often poses the greatest challenge, even for the most well-intentioned ex-offender*. "

In Missouri, two federal suits came to a head in 2011. The first case, Timothy Nelson v. Martha Bellew-Smith involved staff members at the Missouri "Sex Offender Rehabilitation and Treatment Services" depriving Mr. Nelson mental health services after being raped by another resident. Moreover, the lawsuit points out that Martha Bellew-Smith told Mr. Nelson that, effectively, it was his own fault he was raped as such would not have occurred but not for his committing a sex crime that civilly committed him. In February 2011, the federal jury awarded Mr. Nelson $25,000.00. As a result of the suit, it was also discovered that the state of Missouri had imprisoned Mr. Nelson in civil commitment for five years without ever receiving the required civil commitment court order.

The second case, John Van Orden, et al., v. Harold Meyers, et al, involved a group of residents in the Sex Offender Rehabilitation and Treatment Services, being deprived proper mental health services by a sex offender treatment program. On October 3, 2011, the federal court certified the lawsuit as class action and sent it to an alternative resolution program. The state argued that it has a right to provide whatever sex offender treatment program it wants, even one the state knows does not work. The court did not agree for while the state can provide whatever treatment program it wants, it must provide a treatment program that is designed to rehabilitate residents so they can rejoin society if at all possible. As such, civil commitment is not meant to be a permanent fix but only a temporary solution, yet, the state uses is as a permanent fix to exterminate people with disabilities from society.

These two federal lawsuits give conclusive evidence that the state of Missouri is using sex offender treatments that it knows does not work to treat and rehabilitate those committing sex crimes, nor are they intended to work. Despite this, state officials continue to knowingly and intentionally deceive the general public by purporting that forcing individuals with disabilities into civil commitments will allow them to get the treatment they need.

CHAPTER EIGHT
[Civilly Committing The Disabled]

Throughout history 'mental illness' has been used by government officials to oppress, persecute, and exterminate people because of their disabilities. And history shows that governments have enacted laws in the name of so-called "public interest" when they have very little or nothing at all to do with such.

In 2003, the Bureau of Justice Statistics Special Report showed sex offenders account for only 5.3% as to all crimes committed in the United States, and only 3.5% in new sex crimes committed while on probation or parole. However, in 2006 the Adam Walsh Act was passed into law and Senator Hatch stated [95] it is "the most comprehensive child crimes and protection bill in our Nation's history."

In the 2009 investigation conducted by the Missouri Lawyers Weekly involving the civil commitment processes it found that "not one resident at the state-run facility had successfully completed treatment and been released in the 10 years since the Missouri Legislature created the process." Missouri Lawyers Weekly conducted its investigation because of the suit filed by Timothy Nelson.

In 2006, the Eighth Circuit Court ruled [96] in favor of Timothy Nelson's allegations that staff at the Missouri Sexual Offender Treatment Center refused to provide him treatment after being raped by another sex offender, and being retaliated against by staff because he complained. In February 2011, the federal jury found in favor of Mr. Nelson.

In 2011, the District Court for the Eastern District of Missouri certified a class action suit filed [97] by sex offenders at the Sexual Offender Rehabilitation and Treatment Services for the state failing to provide sex offender treatment, the state using unlicensed or unqualified personnel to administer treatment, and the state charging sex offenders and family members money for services not provided. The court also referred the case to the Alternative Dispute Resolution program.

The entire process to determine if someone should be civilly committed is severely tilted to favor the state. First, only individuals who are pro-prosecution and pro-incarceration determine if a civil commitment should be pursued in court, which includes the prosecuting attorneys office that charged the person.

Second, the Adam Walsh Act does not permit federal grants for community placement and thereby creates the prejudicial incentive for state's to civilly commit sex offenders instead for the rest of their lives.

Third, although the Adam Walsh Act requires a finding that the person's mental illness presents a "*serious difficulty*" for them to refrain from engaging in violent sexual acts, Missouri courts apply the far less stringent standard of merely being "*more likely than not*" to reoffend because of their disability.

Fourth, while state's were originally held to a "beyond reasonable doubt" burden of proof to prevail in a civil commitment hearing, courts decided to lower the state's burden of proof because state's argued it is impossible to prove beyond a reasonable doubt a person will reoffend just because they have a disability.

Fifth, the sex offender, however, holds the *extraordinary* burden of proof to prove that they either do not have a disability, they are 'cured' of their disability, or their disability alone does not predispose them to reoffend, to knowingly prejudice the sex offender by imposing on them the extraordinary burden of proof..

Sixth, if a sex offender does not complete the Missouri Sex Offender Program they are accused of not being rehabilitated, yet, even if they do complete the program they are still subject to civil commitment on the basis that their disability alone predisposes them to reoffend. A guaranteed loose - loose scenario.

Seventh, sex offenders are prejudiced further by requiring them to pay for their own expert witness to testify that they do not have a disability, are 'cured' of their disability, or that their disability alone does not predispose them to reoffend, to virtually guarantee defendants cannot properly challenge the state in court since the vast majority of litigants are indigent or low income.

Although Missouri argues that civilly committing a person ensures that they are provided therapeutic help, once the person is civilly committed the state then argues the person cannot be treated to seemingly justify civilly committing them for the rest of their life. But Mr. Nelson's and Mr. Van Orden's cases give invaluable insight into the lack of interest and intent the state has to provide treatment to sex offenders.

Of much heated debate in our country is whether "civil commitments" constitute penal punishment in violation of double jeopardy laws. Courts contend it does not because state's call it a "civil commitment" to provide treatment, and thereby distinguishes civil commitments from being used for penal punishment, but this is not widely accepted, not even by the United States government.

In the December 13, 2007 letter obtained from the United States Department of Health and Human Services to the Missouri Department of Social Services, the Inspector General's Office points out that the State of Missouri misinterprets the definition of the term "*penal institution*" because it applies to those who are accused of committing crimes that are in the custody of the Missouri Department of Mental Health.

The Missouri Dept. of Social Services Director, Deborah Scott, claimed that: "*Unlike the Department of Corrections, where an individual is sentenced to a determinate number of years as punishment for a particular crime, an individual committed to the Missouri Department of Mental Health . . . may be returned to the community by the court when the individual no longer presents a danger as the result of a mental illness*." But the Regional Inspector General, Patrick Cogley, for the United States Department of Health and Human Services wrote in his response letter that: "*After reviewing the State's comments, we disagree with the State's interpretation of the terms "public institution" and "penal institution*."

The state's argument is that it is only when a person is cured of their 'mental abnormality' that they are entitled to regain their freedom. Putting it another way, on July 21, 2011, Missouri Attorney General Chris Koster said [98] "*It is critical that we keep those who could commit further violent sexual acts off the streets and away from those they could harm. It is important for individuals who are deemed sexually violent predators to get the help they need while the community is protected*."

However, the argument of Chris Koster erroneously presupposes two things: First, it presupposes that the state is entitled to civilly commit someone indefinitely based on some future hypothetical situation, which serves to inflame public hysteria, hate, and intolerance against people with disabilities to seemingly justify exterminating them from society by a death sentence imposed through lifetime civil commitment.

Second, it presupposes that the only possible place someone can be treated is in civil commitment settings. However, the fact government officials are indifferent does not mean that it is impossible to treat them in community settings. Rather it is that under the Adam Walsh Act state's do not get federal grants if they use community settings to treat sex offenders. And of course Chris Koster's statement fails to admit that his office just lost two federal lawsuits filed by sex offenders in civil commitment for not treating them.[99]

Therefore, "*while rehabilitating sex offenders is an admirable goal, more effective means of achieving rehabilitation exist. Missouri's sexually violent predator laws represent an example of legislatures needlessly restricting individual constitutional rights in order to implement larger policy objectives and establishing a dangerous precedent for future legislation*" (Laura Barnickol, J.D. (2000)).

CHAPTER NINE
[The Process Of Re-Criminalization]

Criminalization in criminology terms means "the process by which behaviors and individuals are transformed into crime and criminals." [100] In other words, sometimes government employees, systems and processes, and even laws themselves can take ordinary law abiding citizens and turn them into lawless people. And while an ex-offender once said that the process of reentry needs to begin the moment a person enters prison, which holds great merit, it is also in great conflict with existing prison philosophies and practices because they frequently condone and often literally create lawlessness people.

On August 24, 2011, Missouri Governor Jay Nixon announced the creation of a 13-member "Missouri Work Group on Sentencing and Corrections" to (1) Analyze the drivers of the prison population; (2) Audit state sentencing and corrections policy; (3) Consult criminal justice stakeholders; and (4) Develop policy recommendations. However, Governor Nixon's announcement holds in relevant part "A local task force, including representatives of counties, local prosecutors, sheriffs, municipalities, and victims advocates, also are participating in the process and will have input at every stage of the discussion."

It is a long standing prison philosophy that "stakeholder" means everyone except those who live and breath the correctional system every minute of every day for years on end, i.e. prisoners, parolees, and probationers, and their family members and Guardian's because this class of people have particular expertise that comes from direct involvement and firsthand knowledge, which those with some fancy title and plush office will never understand.

Stating it simply, our correctional system does not work, as it does not deter crime to any significant degree, it does not rehabilitate prisoners, it does not truly protect public safety by virtue of recidivism rates, it does not want external resources helping prisoners, it does not believe The Rule of Law applies on the inside, it does not believe it is wrong - ever, it does not want to hear criticisms, it does not believe prisoners are ever right or can be factually innocent, and it refuses to model the pro-social behaviors and respect that prisoners are demanded to always demonstrate.

Therefore, there is no conceivable, logical, or even a reasonable reason for any prisoner to obey the law, respect the rights of others, to work on improving themselves, and to believe that following the rules will bring any useful positive resolution to issues rising. The reason for this is that our state prison system teaches prisoners that they are inanimate objects (not endowed with life), that if you have power over someone you are entitled to beat, rape and extort them without being held accountable; to deprive them of critical needs and rights, and even to murder another person by acting negligently or even deliberately.

Our prison system teaches prisoners that family relationships are expendable, that they have no value in life, that they will never achieve anything more than what they are behind bars, that they can never be right about anything they say or do, that they must confess guilt even if and when they are innocent, that they are not human beings who deserve dignity, they are not entitled to think, that government employees will go unpunished for what they do, that they are always a liar, and they have no right to justice because The Rule of Law does not apply in prisons.

These are the lessons that are taught to people in prisons, and even to their family members, who are all too often treated as criminals by prison guards for no other reason than because they are a family member. All these lessons are then carried out into society, perpetuating lawlessness and victimization's upon an entire society and upon prisoners, probationers, and parolees themselves because we frequently use prison philosophies and practices to literally re-criminalize prisoners.

The prison philosophy and practices do nothing to “rehabilitate” a prisoner, and they do not motivate a person to want to obey the law and respect the rights of others. What they do instead is breed anger and defiance that is then carried out into society and victimizes others.

For prisoners with disabilities, the prison system preys on them and all too often makes them targets for other prisoners and guards to exploit, extort, rape, and beat. The prison philosophy targets prisoners with disabilities to serve more prison time than their non-disabled counterparts, sometimes up to 15 months longer, because the prison philosophy refuses to recognize the great difficulties prisoners with disabilities have in prison. It presupposes that prisoners with disabilities are less deserving to treated, educated, and paroled than their non-disabled counterparts because they have disabilities. And it creates intentional barriers for prisoners with disabilities to comply with prison rules and regulations, to have critical third party assistance, and to participate in prison services, programs, activities, and processes.

The prison philosophies and practices exclude Guardian’s; treating them like intrusive outsiders who are a threat to the power, ego’s, and control of prison employees because they have official duties and the statutory authority to act for and on behalf of their ward. The prison philosophy does not see a legal Guardian as a member of the medical and mental health treatment team, nor does it believe a legal Guardian should have any say in reentry processes, or the right to prevent those who work in prisons from doing whatever they want to do with their ward of guardianship.

If there is any class of prisoner, probationer, and parolee that stands the absolute best chance to not reoffend it is those who have a legal Guardian but rather than working with us, correctional employees, probation and parole officers, and prison mental health staff proactively work against us. It is flatly contrary to countervailing state and federal laws, the most elementary common sense, the public’s best interest, and the positive wellbeing of our wards.

As long as these things are the basis of prison philosophies and practices used then we will never “re-habilitate” anyone; we will only ensure that they are re-criminalized instead.

CHAPTER TEN
[Correctional Mental Health System]

It is widely accepted among law enforcement and mental health alike that prisons have been turned into the largest mental institutions throughout our country; once believed to merely "*warehouse*" people with disabilities, then turning into "*the new asylums*," to now being used as "*extermination factories*" to eliminate people from society because of their disabilities.

In 2010 and again in 2011, the Missouri Department of Corrections managed to convince Missouri Senator Jolie Justus [101] and Senator Kevin Engler [102] to file legislative Bills to permit state courts to send people convicted of crimes to prison because of their disabilities to determine if their disabilities entitle them to be free citizens, or if they should remain imprisoned [*because of*] their disabilities. It is a dangerous thing for government to imprison someone because of their disabilities even with the best of intentions.

Likewise in 2011 the Missouri Department of Corrections convinced State Representative Linda Black to sponsor two Bills [103] to also encourage state courts to send people with disabilities to prison for mental health assessments and treatments. But unlike the Senate Bill, this time the Missouri Department of Corrections sought to use trickery by having one of the Bills include provisions to create sex crime laws to help increase the likelihood the Bill would be enacted into law, though it too was eventually defeated.

While prison administrators purport that this provides an alternative to sentencing people to serve an actual prison term the reality is, it is being done to criminalize mental illness and other disabilities, so we can use jails and prisons to effect mental health holds, to avoid solving the real issues going on here, so we further perpetuate the belief that society is reserved only for those who are "normal," and therefore continue using prisons to exterminate people from society because of their disabilities.

The fact the Department of Corrections is a state institution [104] and the fact it is widely accepted among law enforcement, mental health, and public entities that prisons are used as state mental institutions raises the legitimate question of whether the Missouri Constitution legally authorizes a private corporation to operate under contract with the state to provide treatment, care, education, and training for persons suffering from mental illness or developmental disabilities in our state prison institutions.

The Missouri Constitution [105] holds: "The department shall provide treatment, care, education, and training for persons suffering from mental illness or retardation, shall have administrative control of the state hospitals and other institutions and centers established for these purposes and shall administer such other programs as provided by law." The "Department" refers to the Missouri Department of Mental Health.

This appears to suggest that under the Missouri Constitution, only the state Department of Mental Health is authorized by our state Constitution to provide mental health care and treatment in state prisons because the Department of Corrections is a state institution. Moreover, if a Bill is signed into law to permit using correctional centers (prisons) as authorized mental health treatment facilities then individual prisons themselves fall under the purview of the constitutional provision that holds "*centers established for these purposes*."

In 1981 Mental Health Management Services, Inc., was founded and in 1996 its' subsidiary, Mental Health Management Correctional Services, Inc., was founded. And on July 1, 2007, Mental Health Management Correctional Services, Inc., began its contract with the State of Missouri to provide mental health, psychiatric, and pharmaceutical programs and services in Missouri prisons and selective community centers for parolees.

According to the Missouri Accountability Portal, from July 1, 2007 to September 30, 2011, Mental Health Management Correctional Services, Inc., has been paid $ 101, 023, 468.86 in public tax revenue to provide mental health, psychiatric, and pharmaceutical services, programs, and activities inside our state prisons and selected community parole centers.

Mental Health Management Correctional Services, Inc., is not only responsible for providing general mental health care and treatment, but also individual counseling and group therapy, and to administer the Missouri Sex Offender Program to prisoners inside our state prisons.

Mental Health Management Correctional Services, Inc., and all its employees are required to comply with state and federal laws, the terms of the contract, and the national accreditation standards of practice, and all relevant court rulings. [106] And there are several key mandates having particular importance to determine if mental health staff are performing their duties in the best interest of their mental health clients and the public's best interest, since it is public tax revenue that pays for their services.

The Missouri Department of Corrections openly admits some adult prisoners have a legal Guardian and because the terms of the contract [107] and state law [108] prohibit restricting or preventing a Guardian from discharging their duties and exercising their authority, mental health personnel are required to be properly trained and supervised in what to do and not do when an adult (and a minor) offender has a legal Guardian.

Although Mental Health Management Correctional Services, Inc., began its contract in July 2007, it was not until January 2011 that it developed and published its first set of interaction guidelines for those who are a Guardian and its prison mental health personnel. Naturally one has to ask why it took four years to develop these guidelines and why did the Missouri Department of Corrections not ensure that they were created when the contract began?

However, according to the now former General Counsel of Mental Health Management Services, Inc., despite the guidelines being created, the guidelines were not meant to be a substitute for a program to train mental health personnel about guardianships. At the present time there is no known training program existing to ensure prison mental health personnel know what to do and not do when an adult prisoner has a legal Guardian.

On January 11, 2011, Mental Health Management Services, Inc., published its first set of *Interaction Guidelines For Guardians Of An Offender And Mental Health Services Personnel*. In section one it holds in relevant part that "Failure to abide by this "Communication Agreement" may result in a determination by the mental health team that a Guardian's actions are not in the best interest of the ward." This section restricts a Guardian from initiating contact with mental health except if the ward is a danger to others, but not if the ward is at risk of being harmed by someone else. Section five holds in relevant part "Failure to adhere to these expectations as provided herein, or repeated unwarranted refusals of treatment for the ward may give rise to the need for the mental health team to seek other remedies including, but not limited to, a legal challenge to a Guardian's status as guardian for the ward."

On January 14, 2011, the guidelines were amended to exclude the threat made in section one but it kept the threat made in section five. Although the threat in section one was, in and of itself removed, it still remained by the wording, effect, and implication of the threat in section five, in that of "failure to adhere to these expectations as provided herein. . ." and thus, removing the threat in section one appears to have done to patronize Guardians. As a Guardian what I see in these provisions is an effort to try to predispose a Guardian to act out of fear and forgo their statutory mandates for the benefit of mental health staff to do as they please. But the fact a Doctor prescribes treatment does not automatically impose upon a Guardian the obligation to give consent for the treatment to be administered to their ward.

State law [109] is very clear to prohibit administering medical treatment to a ward without the consent of the Guardian except in cases of a court order, or when there is a *bone fide* life and death emergency and the Guardian cannot be contacted. And as previously pointed out, state law [110] prohibits those working in our state prisons from restricting or preventing a Guardian from discharging their duties and exercising their authority. And both state law and federal laws [111] prohibit using threats, intimidation, or coercion tactics to influence or force a Guardian to act or not act when making decisions for and on behalf of their ward.

The words “repeated unwarranted” in the guidelines are overly broad and ambiguous since they fail to give proper notice to the Guardian if “repeated” means two, five, or a hundred times, and what exactly is meant by “unwarranted.” As such, when you take this into account and the fact threats have been made to take actions against the Guardian if they engage in “repeated unwarranted refusals of treatment,” the cause and effect reasonably appears to be one of trying to force a Guardian to make decisions about their ward out of fear or undue influence by mental health personnel.

Another problem that appears to exist is that the Missouri Department of Corrections reported [112] in 2007 it had a 14.6% recidivism rate amongst parolees with mental health disabilities but in 2010 it reported [113] that it had a 14.8% recidivism rate among parolees with mental health disabilities. This appears to show that since Mental Health Management Correctional Services, Inc., began its contract we have not seen any long-term decrease in recidivism rates among parolees with disabilities. If the reports from the Department are true then I believe the public is entitled to a full investigation to ensure public interest is protected and to determine why we are not seeing significant reductions in recidivism rates among those with disabilities after receiving treatment from employees of Mental Health Management Correctional Services, Inc.

Therefore, based on the aforesaid reports by the Department of Corrections the public is right to ask why it is not seeing a positive return on its financial investment ($ 101, 023,468.86 thus far) by reduced recidivism rates among those with disabilities. Moreover, because the Missouri Department of Corrections and Missouri legislators seek to turn our state prisons into mental institutions, the public has every right to see a positive return on its financial investment just like those with disabilities who are or will be in prison have a right to know they will receive proper treatment so they can successfully reintegrate into society.

Finely, in 1999, the Eighth Circuit Court of Appeals ruled [114] that the Americans with Disabilities Act requires those with disabilities to receive "meaningful access" to programs and activities in prison, and to ensure this occurs both the terms of the contract and national accreditation standards of practice [115] require prison mental health personnel to provide prisoners with specific treatment such as individual counseling.

However, on March 12, 2011, the Columbia Missourian newspaper reported **[116]** that “A former mental health provider who worked in the Missouri prison system, and asked not to be identified, said the prison system didn't really offer counseling.” And on July 13, 2011 I also had an Institutional Chief of Mental Health tell me and my ward “the contract does not allow that” [sic] in response to my ward asking that person provide him individual counseling.

Moreover, the report by Columbia Missourian also pointed out that prisoners receive only about five minutes of counseling. The Institutional Chief of Mental Health I spoke with informed me that the monthly chronic care evaluation meetings constitutes individual counseling, which last approximately five minutes depending on the prisoner involved. Therefore, it appears prisoners receive approximately five minutes of individual counseling only once a month and if true, it raises very serious questions about both the quality and the quantity of mental health care and treatment that prisoners are receiving in prison at the financial expense of the public.

A fundamental component of delivering successful therapeutic services and programs is individual counseling for those needing such. In prison, this is very important to help promote prosocial behaviors among individuals when they are in prison and when they are released from prison. [117] According to the research done by Richards, Campania, & Muse-Burke (2010) "*people who lack emotional expression lead to misfit behaviors. These behaviors are a direct reflection of their mental health. Self-destructive acts may take place to suppress emotions. Some of these acts include drug and alcohol abuse, physical fights or vandalism. Also without emotional support, mental health is at risk*."

According to the research study done by Strine, Chapman, Balluz, and, Mokdad (2008) [118] "*Inadequate social and emotional support is a major barrier to health relevant to the practice of psychiatry and medicine, because it is associated with adverse health behaviors, dissatisfaction with life, and disability." Moreover, by receiving emotional support your health can increase and prevent mental health disorders. Support systems are a valuable asset and those whom do not have social and emotional support are more likely to lead to disorders. This support can lead to "an increase personal competence, perceived control, sense of stability, and recognition of self-worth and can all have a positive effect on quality of life*."

In the Missouri Department of Corrections report to Governor Jay Nixon (2010) George Lombardi points out that 'An offender cannot successfully reenter society without treating the issues that relate to criminal behavior. These treatment options include substance abuse services, academic education, vocational education and mental health services" (p.9 at ¶ #2). Obviously delivering successful therapeutic programs, services, and activities to those in prison is a critical element to help reduce recidivism rates when they are released. However, as previously pointed out above, in 2007 the Department of Corrections cited a recidivism rate of 14.6% and in 2010 it reported there was a 14.8% recidivism rate among prisoners with disabilities.

Although Mental Health Management Correctional Services, Inc., has received $ 101, 023, 468.86 in public tax revenue for its services since July 1, 2007, it does not appear we are achieving positive results from the services it provides. If true, then either its contract needs to be terminated or it needs to make serious changes to improve both the quality and the quantity of services it provides to prisoners so when they are released from prison they are better suited to successfully integrate back into society. Of course this depends on whether the contract it operates under is not prohibited by the Missouri Constitution, which appears to require the Missouri Department of Mental Health to provide care, treatment, education, and training to prisoners in Missouri prisons and not private corporations.

Since the public is required to pay the amount of tax revenue that it takes for prisoners to receive mental health, psychiatric, and pharmaceutical services, programs, and activities it stands to logical reason that the public has a right to expect that all prisoners will receive meaningful access to prison mental health services, programs, and activities so when they do reintegrate back into society they are better prepared to do so successfully and without further endangering public safety. Therefore, perhaps we should spend less time trying to pass laws that turn prisons into mental institutions and spend more time ensuring that those in prison have the opportunities to develop skills they need to reintegrate back into society successfully.

I will say that based on my firsthand knowledge stemming from direct experience with prison mental health staff, I believe it is both necessary and prudent for an independent entity to conduct a full / complete investigation into the activities of our current mental health contract vendor. I personally have not found any evidence showing that prison mental health staff are trustworthy individuals who actually help prisoners with disabilities. Rather, what I have personally found is the habitual effort by mental health staff to consistently avoid abiding by state and federal laws, contract mandates, accreditation standards and court rulings.

CHAPTER ELEVEN
[Reforming Our Systems Of Government]

re·form verb \ri-form\

Definition of REFORM

transitive verb

1. a : to put or change into an improved form or condition;
   b : to amend or improve by change of form or removal of faults or abuses;

2 : to put an end to (an evil) by enforcing or introducing a better method or course of action;

3 : to induce or cause to abandon evil ways.

As previously pointed out, on August 24, 2011, Missouri Governor Jay Nixon announced on his Internet website that the Missouri Work Group on Sentencing and Corrections was formed for the purpose of examining our state criminal justice and correctional systems to determine needed reforms.

Governor Jay Nixon's report also holds that: "The Department of Corrections has over 30,000 incarcerated inmates, 97 percent of whom will return home to our communities throughout the state. Each year there are approximately 20,000 inmates released back into the community."

If this report is true then it means we consistently keep a prison population base of 10, 000 people in prison every year and simply recycle the other 20,000 people over and over again. So how is it that we are actually reducing recidivism rates?

Attorney General, Chris Koster is reported as stating "I hope this project will lead us toward consensus solutions related to training, education, monitoring, and post-incarceration job placement that will use our resources effectively and will return offenders back into our communities in a productive and safe manner." But this will never be achieved unless and until we change our attitudes and belief systems in the way those in prison, on probation and on parole are treated by Department employees and the courts

Reform is not just about creating programs and repealing laws but changing our attitudes and belief systems in what is acceptable conduct by Department employees and in Department philosophies. Is it acceptable for prison guards to rape, harass, exploit and beat prisoners but not be prosecuted for such? Is it acceptable to use grievance procedures that are intentionally designed to prejudice prisoners so prison officials can evade accountability? And is it acceptable for a prisoner to be forced to confess guilt to some crime or rule infraction that they are 100% factually innocent of committing? Or is it more acceptable that we model appropriate behaviors to reduce recidivism rates and prevent crimes in the first place?

While there are many reforms that need to occur, following are only a few of the suggestions that I have, which would better serve any genuine goal to reform our correctional system.

Missouri legislators need to stop trying to turn our state prisons into mental institutions and focus on ensuring that we have proper community residential and non-residential programs and services, and mental health courts, to ensure that people with disabilities have the opportunities to get help, and that prisons and jails are being used only as a last resort rather than as the first choice for this class of citizens.

Missouri legislators need to stop trying to label everyone as a sex offender because not every crime committed is a sex offense, nor is every crime sexually motivated just because it falls under sex crime laws or because the perpetrator has disabilities.

Missouri legislators need to utilize a three tier format in sex offender registration whereby those who are on the sex offender registry are classified appropriately and can eventually be removed off the list when they live a crime free life for the specified number of years that their tier requires, and create incentives for sex offenders to reduce their tier level by rewarding their pro-social behaviors.

Missouri legislators need to create exceptions to the laws requiring sex offender registration, being prohibited from living within 1000 feet of a school, daycare and church, and Halloween laws when the sex offender resides in a nursing home, residential program having 24 hour awake staff, and when they live in a private residence with proper security alarms, supervision, or other mechanisms in place.

Missouri legislators and prison administrators must ensure that any Department employee and any contract vendor employee who has sex with a prisoner, sexual contract, and anyone who sexually harasses a prisoner is held to strictly imposed mandated criminal prosecution for sex crimes.

Missouri legislators need to ensure the Department of Corrections, its' employees and all contract vendors comply with any and all state and federal laws in general and those that are relevant to legal guardianship's regardless, and ensure that Department employees and employees of contract vendors are properly trained and supervised in what to do and not do when any prisoner, regardless of age, has a legal Guardian.

Missouri legislators need to ensure the Department of Corrections, its' employees and all contract vendors are actively promoting involvement and support of family members and Guardians especially in the reentry processes, whenever such is possible, and that Guardians are proactively involved in any and all aspects of their wards care, treatment, habilitation, offender management, discharge planning and reentry processes.

Missouri legislators need to ensure that a prisoner is not loosing their Medicaid, Medicare, and other insurance when they are in jail or prison, and if a private corporation is to benefit from inmate labor while the person is in prison, the corporation does not have policies that prohibit their actually hiring someone with a felony criminal history.

Missouri legislators need to ensure no family member and Guardian is required to pay money owed by a prisoner by taking money from the prisoner that is put on their financial account by a family member or Guardian. This extorts family members and Guardians for money and sets the offender up to become a target for abuse, extortion, exploitation, rape, and beatings in prison.

Missouri legislators need to ensure we are using effective sex offender treatment programs that work and ensure that not one person is, or is at risk of being threatened, coerced, or intimidated into falsely confessing guilt to a crime and mere allegations of criminal activity.

Missouri legislators need to use civil commitments only for the most severe cases, and ensure that it also uses effective sex offender treatment programs that work, and that there is an impartial independent entity to decide if a civil commitment should be pursed in court.

Terminate the existing mental health contract vendor and abide by the Missouri Constitution. This is not to say state officials are guaranteed to do a better job but it does mean there are automatic safeguards and oversight in place to correctly deal with client abuse and neglect in a timely manner when it occurs.

CONCLUSION

"[I]f many of the people with mental illness received the services they needed, they would not end up under arrest, in jail, or facing charges in court . . . . [T]he ideal mechanism to prevent people with mental illness from entering the criminal justice system is the mental health system itself—if it can be counted on to function effectively." [119]

However, because legislators spend more time creating laws to turn prisons into mental institutions and far - far less time ensuring necessary community resources exist, people with disabilities are denied opportunities that would help prevent crimes and recidivism occurring in the first place. This practice is counterproductive and serves to perpetuate the vicious cycle of the *revolving door syndrome* for people with disabilities.

In terms of prison life "[M]entally ill prisoners, however, do not have the same capacity to comply with prison rules as do other prisoners. If they have schizophrenia or other serious "Axis I" disorders, psychotic symptoms, or other serious dysfunctions, inmates may suffer from delusions (false beliefs), hallucinations (erroneous perceptions of reality), chaotic thinking, or serious disruptions of consciousness, memory, and perception of the environment. They may experience debilitating fears or extreme and uncontrollable mood swings." [120]

However, because "[M]ost prison systems do not provide correctional officers with more than minimal mental health training. Officers typically do not understand the nature of mental illness and its behavioral impact. They cannot distinguish and may not even know a distinction exists between a frustrated or disgruntled inmate who "acts out" and one whose "acting out" reflects mental illness. They assume misconduct is volitional or manipulative" [121] and respond by imposing punitive measures that can and all too often does extend the time a person with disabilities serves in prison. [122]

The point being here is that we cannot realistically expect or demand someone change their way of thinking and their behaviors when we do not practice what we preach. Reform is not just a word but rather, it is an action. It requires government and society to face the truth and even the harsh realities of what truly goes on in our prisons and our criminal justice system no matter how unpopular or unpleasant the speech and truth is for us to face. It is an escapable truth that over two million people with disabilities face every day inside jails and prisons in our state and across our nation ~ **By Order Of The Court** ~

[1] Olmstead v. L.C., 527 U.S. 581 (1999)

[2] Tennessee v. Lane, 541 U.S. 509 (2004)

[3] 42 U. S. C. § 12101(a)(7)

[4] Deinstitutionalization: A Psychiatric 'Titanic"
http://www.pbs.org/wgbh/pages/frontline/shows/asylums/special/excerpt.html

[5] The New Asylums http://www.pbs.org/wgbh/pages/frontline/shows/asylums/view/#lower

[6] Senate Bill 995 (2010) sponsored by Sen. Jolie Justus, Senate Bill 352 (2011) sponsored by Sen. Kevin Engler, and House Bill 154 (2011) and House Bill 302 (2011) sponsored by House Representative Linda Black

[7] The Guardianship Revision Bill of 1983

[8] Mo. Rev. Stat. § 475.120.6

[9] Mo. Rev. Stat. § 544.180

[10] Mo. Rev. Stat. § 544.170.2

[11] Title 14 C.S.R. § 80-4.030(1)(F)

[12] Mo. Rev. Stat. § 475.120.2.3(3)(5)

[13] Mo. Rev. Stat.§ 217.535 Article IV, ¶ (i)

[14] Mo. Rev. Stat. § 475.120.2.3(1)(2)(3)(4)(5)

[15] Braswell v. Corrections Corp., of America, (M.D. Tenn. August 10, 2009), Moore v. Louisiana Dept of Public Safety and Corrections, (E.D. La., August 2, 2002) and Villescaz v. City of Eloy (D. Ariz., May 2, 2008).

[16] Randolph, v. Schriro, 253 F.3d 342 (8th Cir. 2001)

[17] 42 U.S.C. § 12203(b)

[18] Pennsylvania Dept. of Corrections v. Yeskey, 524 U.S. 206, 118 S.Ct. 1952, 141 L.Ed.2d 215 (1998)

[19] "Bipartisan, inter-branch initiative will build on recent successes by Missouri Department of Corrections" (Aug 24, 2011)

[20] Castle v. Schriro, et al., (Dist Ct., Arizona 2009)

[21] The Strange Career of Leo Stanley: Remaking Manhood and Medicine at San Quentin State Penitentiary, 1913-1951Ethan Blue, *Pacific Historical Review*, May 2009, Vol. 78, No. 2, pp. 210–241, DOI 10.1525/phr.2009.78.2.210 **^** Hornblum, 1998: p. 79

[22] Opening Remarks by Senator Ted Kennedy. *U.S. Senate Select Committee On Intelligence, and Subcommittee On Health And Scientific Research of the Committee On Human Resources*. 1977-08-03.

[23] Inmate Abuse Is Said To Be Worse Than Reported, Los Angeles Times, August 28, 1997

[24] Randolph v. Schriro, et al 980 F. Supp. 1051(8th Cir. 1997), 170 F.3d (8th Cir. 1999), and 253 F.3d 342 (8th Cir. 2001)

[25] MPLU Missouri Prison Labor Union By Sidney Williams, February 14, 2003, published by the Patrick Crusade organization

[26] Laube, et al., v. Campbell, et al., 333 F. Supp. 2d 1234 (2004)

[27] The Commission on Safety and Abuse in America's Prisons, *Confronting Confinement* (June 2006) by Commission Co-Chairs John J. Gibbons and Nicholas de B. Katzenbach.

[28] Id at Pp. 11 and 12 "Summary of Findings and Recommendations"

[29] Missouri Department of Corrections 2011, Strategic Plan Goals, Objectives & Measures, Fiscal Year 2011, Goal # 3A4 and 5, by Missouri Department of Corrections Director, George A. Lombardi

[30] Mo. Rev. Stat. § 217.405.1.2

[31] 42 U.S. C. § 1997e(d)

[32] 18 U.S.C. § 3626

[33] Laube, et al., v. Campbell, et al., 333 F. Supp. 2d 1234 - Dist. Court, MD Alabama 2004

[34] Hart v. Arpaio, No. CIV-77-479-PHX-EHC (D. Ariz.)

[35] 42 U.S. C. § 1997e(e)

[36] Betrand v. Department of Corrections, No. 4:CV-07-859, 2008 U.S. Dist. Lexis 28599 (M.D. Pa.); Samford v. Staples, No. 06-20717, 2007 U.S. App. Lexis 26851 (5th Cir.); Glosson v. Morales, No. 05-CV-707, 2007 U.S. Dist. Lexis 1603 (S.D. Cal.); Oliver v. Keller, #00-15849, 289 F.3d 623 (9th Cir. 2002) (Plaintiff prisoner must show more than minimal physical injury).

[37] 28 U.S. C. § 1915(g)

[38] Gonzales v. Wyatt, 157 F.3d 1016, 1019-22 (5th Cir. 1998)

[39] 42 U.S. C. § 1997e(a)

[40] Turner, et al., v. Safley, 482 U.S. 78 (1987)

[41] 42 U.S. C. § 1997e(a)

[42] Mo. Rev. Stat. § 475.078.2.3

[43] Mo. Rev. Stat. § 475.120.2.3(3)(4)(5)

[44] 42 U.S.C. § 12203(b)

[45] Article IV at ¶ (i) of Mo. Rev. Stat. § 217.535

[46] Mathew Briesacher, legal counsel for the Missouri Department of Corrections denying grievances filed by a Guardian on the claim that only department employees are permitted to assist prisoners in filing grievances despite § III L at ¶ 6 of regulation D5-3.2 holding that the grievance officer shall assist *or arrange assistance* for prisoners needing help to complete grievance forms and thereby authorizing a legal Guardian to assist under 42 U.S.C. § 12203(b).

[47] Braswell v. Corrections Corp., of America, (M.D. Tenn. August 10, 2009), Moore v. Louisiana Dept of Public Safety and Corrections, (E.D. La., August 2, 2002) and Villescaz v. City of Eloy (D. Ariz., May 2, 2008).

[48] Giano, 380 F.3d at 675 (quoting Berry v. Kerik, 366 F.3d 85, 88 (2d Cir. 2003)); see also Vega v. U.S. Dep't of Justice, No. 1:CV-04-02398, 2005 U.S. Dist. LEXIS 29740, at *16 (M.D. Pa. Nov. 4, 2005) (noting the special circumstances exception); Baker v. Andes, No. 6:04-343-DCR, 2005 U.S. Dist. LEXIS 43469, at *25–26 (E.D. Ky. May 12, 2005) (finding that "special circumstances" existed).

[49] Miller v. Norris, 247 F.3d 736, 740 (8th Cir. 2001), see also Giano v. Goord, 380 F.3d 670, 675 (2d Cir. 2004); see also Jernigan v. Stuchell, 304 F.3d 1030, 1032 (10th Cir. 2002); see also Boston, *supra* note 16, at 114–23

[50] Woodford v. NGO, 126 S. Ct. 2378 (2006) (citing Love v. Pullman, 404 U.S. 522, 526 (1972))

[51] Id, at 2392–93

[52] Days v. Johnson, 322 F.3d 863 (5th Cir. 2003) (per curiam) (applying special circumstances to prisoner whose hand was broken and therefore rendered administrative remedies (grievance procedure) unavailable to the prisoner)

[53] Whitington, 491 F. Supp. 2d at 1014–15

[54] 42 U.S.C. § 12101

[55] Pennsylvania Dept. of Corrections v. Yeskey, 524, U.S. 206 (1998)

[56] Correcting Corrections Missouri's Parallel Universe (2000)

[57] Randolph v. Schriro, et al 980 F. Supp. 253 F.3d 342 (8th Cir. 2001)

[58] Atkins vs. Virginia 536 U.S. 304 (2002)

[59] Mentally Ill Offender Treatment and Crime Reduction Reauthorization and Improvement Act of 2008

[60] 42 U.S.C. § 12203(a)(b)

[61] Article IV (i) Mo. Rev. Stat. § 217.535 (The parent, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any inmate shall not be deprived of or restricted in his exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

[62] National Sheriff's Association 2011 Legislative Priorities (December 1, 2010)

[63] "Prisons Are Becoming De Facto Holding Centers for the Mentally Ill" (April 13, 2011)

[64] *The Journal of Behavioral Analysis of Offender and Victim Treatment and Prevention*", Vol. 2, Issue 2 (2010)

[65] Senate Bill 995 (2010) and Senate Bill 352 (2011)

[66] Article IV § 37(a) (The department shall provide treatment, care, education and training for persons suffering from mental illness or retardation, shall have administrative control of the state hospitals and other institutions and centers established for these purposes and shall administer such other programs as provided by law)

[67] http://www.courts.mo.gov/page.jsp?id=310

[68] http://www.columbiamissourian.com/stories/2011/03/12/budget-cuts-force-jail-time-mentally-ill/

[69] Law and Human Behavior Journal (2010) 34:3–38

[70] Journal of Law & Social Challenges, 9 J.L. & Soc. Challenges 63

[71] True Crimes, False Confessions. Why Do Innocent People Confess to Crimes They Did Not Commit?" and "The Psychology of Confession Evidence," American Psychologist, Vol. 52, No. 3, and False confessions by Adults

[72] North Carolina Law Review in 2004

[73] "Judge overturns man's child rape conviction: (2010) Associated Press / MSNBC http://www.msnbc.msn.com/id/39385473/ns/us_news-crime_and_courts/t/judge-overturns-mans-child-rape-conviction/

[74] Treatment Advocacy Center and National Sheriffs' Association. (2010). "More Mentally Ill Persons Are in Jails and Prisons Than Hospitals: A Survey of the States," May 2010.

[75] Olmstead v. L.C., 527 U.S. 581 (1999)

[76] *Hendricks*, 521 U.S. 346 at 360 [FN3] For comparison, see Brief for American Psychiatric Association as Amicus Curiae 26 and Brief for Menninger Foundation et al. as Amici Curiae 22-25.

[77] e.g. McKune v. Lile, 536 U.S. 24 (2002) and Spenser v. State of Missouri, No. WD72100 (Mo. Sup. Ct. 2010)

[78] Strategic Plan Goals, Objectives & Measures Fiscal Year 2011 at § 3a ¶ 4 and 5 Mo. Dept., of Corrections

[79] Mo. Rev. Stat. § 217.405.1.2 (class C felony)

[80] McKune v. Lile, 536 U.S. 24 (2002) (Abigail E. Robinson, *Esq*., Washburn Law Journal (2003)), see Id *at* 2027.

[81] Id *at* 2027, see also Abigail E. Robinson, *Esq*., Washburn Law Journal (2003),

[82] "10,000 Innocent people convicted each year, study estimates" Ohio University study written by Tom Spring http://researchnews.osu.edu/archive/ronhuff.htm

[83] North Carolina Law Review Association (2004)

[84] Schuyler v. Roberts 175 P. 3d 259 (Kan: Sup Ct. 2008); Brummer v. Iowa Dept. of Corrections*,* 661 N.W.2d 167 (Ia. 2003); Noble v. Bd. of Parole & Post-Prison Supervision*,* 327 Or. 485, 964 P.2d 990, 995-96 (1998); Paul v. Davis, 424 U.S. at 693, 701, 710-711, S.Ct. 1155, 47 L.Ed.2d 405 (1976); Gunderson v. Hvass**,** 339 F.3d 639, 642 (8th Cir. 2003); Schuyler v. Roberts 175 P. 3d 259 (Kan: Sup Ct. 2008)

[85] Missouri Department of Corrections regulation D5-4.1 (2009)

[86] Schuyler v. Roberts 175 P. 3d 259 (Kan: Sup Ct. 2008)

[87] Brummer v. Iowa Dept. of Corrections*,* 661 N.W.2d 167 (Ia. 2003) (citing Noble v. Bd. of Parole & Post-Prison Supervision*,* 327 Or. 485, 964 P.2d 990, 995-96 (1998))

[88] Missouri sex offender registry includes those busted for public urination (Nov. 30, 2010) Channel 5 News http://www.ksdk.com/news/local/story.aspx?storyid=227852&catid=3

[89] Mo. Rev. Stat. § 566.093.1(1)

[90] Do Laws Targeting Sex Offenders Increase Recidivism and Sexual Violence? Institute for Psychological Therapies, Journal of Sexual Offender Civil Commitment: Science and the Law, 1, 141-149. (2006)

[91] Channel 5 News audit report: http://www.ksdk.com/news/investigative/story.aspx?storyid=212264&catid=70

[92] "Does Sex Offender Treatment Work?" (2008) By Brett Trowbridge, Ph.D., J.D.

[93] U.S. Sex Offender Laws May Do More Harm Than Good (September 2007)

[94] citing Prentky (1996) at p. 296

[95] 152 CONG. REC. S8012-02 (daily ed. July 20, 2006) (statement of Sen. Hatch).

[96] Timothy Nelson v. Martha Bellew-Smith, et al., 476 F.3d 635 (8th Cir. 2006)

[97] John Van Orden, et al., v. Harold Meyers, et al., No. 4:09-cv-00971-AGF (U.S. Dist. Ct., E.D. Mo. 2009)

[98] http://ago.mo.gov/newsreleases/2011/AG_Koster_camden_judge_commits_man_as_predator/

[99] John Van Orden, et al., v. Harold Meyers, et al., No. 4:09-cv-00971-AGF (U.S. Dist. Ct., E.D. Mo. 2009); see also Timothy Nelson v. Martha Bellew-Smith, et al., 476 F.3d 635 (8th Cir. 2006)

[100] Michalowski p. 6.

[101] Senate Bill 995 (2010), sponsored by Senator Jolie Justus

[102] Senate Bill 352 (2011), sponsored by Senator Kevin Engler

[103] HB 154 and HB 302 (HB 154 was pursued in lieu of HB 302)

[104] Title 14 CSR, § 20-1.010 (1. The Division of Adult Institutions is a statutorily established. . .); see also Mo. Rev. Stat. §217.015.2(2); see also Report to the Governor (2010) (Identifies prisons as "institutions" at Pp.3 and 6)

[105] Missouri Constitution, Article IV *at* § 37(a)

[106] See § 2.1.1 (requires compliance with contract and its amendments) § 2.1.2 (requires compliance with current and future court rulings as they may apply), § 2.1.6a, (requires compliance with all statutes, rules, regulations, and court rulings as they may apply) *§* 2.4.5 (requires compliance with National Accreditation Standards of Practice, see § P-G-04 at ¶ 2d (requires prisoners to have individual counseling)) and § 4.1.15 (requires prisoners to be provided individual counseling) of the Request For Proposal contract amendments (2006).

[107] § 2.1.1a, August 6, 2006 Request For Approval contract amendments;

[108] Mo. Rev. Stat. § 217.535 Article IV at ¶ (i)

[109] Mo. Rev. Stat. § 475.123

[110] Mo. Rev. Stat. § 217.535 at Article IV ¶ (i)

[111] Mo. Rev. Stat. § 565.090.1(6) and 42 U.S.C. § 12203(a)(b)

[112] "Boone County struggles to meet mental health care needs for inmates" (July 21, 2008) Columbia Missourian

[113] Missouri Reentry Process, Report to the Governor (2010)

[114] Randolph v. Schriro, et al., 170 F.3d 850 (8th Cir. 1999)

[115] § 4.1.15 of the 2006 contract amendments and § P-G-04 at ¶ 2d of the 2008 accreditation standards of practice

[116] "Budget cuts force jail time for mentally ill," Columbia Missourian (March 12, 2011 published article) http://www.columbiamissourian.com/stories/2011/03/12/budget-cuts-force-jail-time-mentally-ill/

[117] Richards, Campania, & Muse-Burke (2010) ("There is growing evidence that is showing emotional abilities are associated with prosocial behaviors")

[118] Strine, T.W.; Chapman, D.P., Balluz, L. Mokdad, A.H. (2010). "A systemic review: Students with mental health problems--a growing problem". International Journal Of Nursing Practice 16 (1): 1–6.

[119] Council of State Gov'ts, Criminal Justice/Mental Health Consensus Project 26 (2002)

[120] "A Corrections Quandary: Mental Illness and Prison Rules" Harvard Civil Rights-Civil Liberties Law Review [Vol. 41] p. 395

[121] Id at Pp. 397 and 398

[122] Coleman v. Wilson, 912 F. Supp. 1282, 1320 (E.D. Cal. 1995) (citations omitted)