

Probation: Back to Basics

Bail Revocation

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Lila Statom
Andy Brigham

Part 1: Probation

Back to Basics

Probation: What is it?

- “A court-imposed criminal sentence that, subject to stated conditions, releases a convicted person into the community instead of sending the criminal to jail or prison.”
- Black’s Law Dictionary, *Probation* (9th Edition).

Sentencing

- 40-35-104(a)
- “A defendant convicted of a felony or a misdemeanor in this state shall be sentenced in accordance with this chapter”

Sentencing Alternatives

- 40-35-104(c)
- “The following sentencing alternatives in any appropriate combination are authorized for defendants otherwise eligible under this chapter:
 - (1) Payment of a fine either alone or in addition to any other sentence authorized by this subsection (c);
 - (2) Payment of restitution to the victim...either alone or in addition to any other sentence authorized by this subsection (c);
 - (3) **A sentence of confinement that is suspended upon a term of probation supervision that may include community service or restitution, or both;**

Sentencing Alternatives, cont.

- (4) A sentence of periodic confinement that may be served in a local jail or workhouse **in conjunction with a term of probation**;
- (5) A sentence of continuous confinement to be served in a local jail or workhouse **in conjunction with a term of probation**;
- (6) A sentence of continuous confinement in a local jail or workhouse;
- (7) Work release in accordance with 40-35-315;
- ...
- (9) A community-based alternative to incarceration **as a condition of probation**, such as participation in a day reporting center program, a recovery and treatment program, or another appropriate community-based program. A defendant may be ordered to participate in a recovery and treatment program only if such a program is indicated by the results of a clinical assessment.

Sentencing Alternatives, cont.

- 40-35-104(d)
- “This chapter does not deprive a court of any authority conferred by law, including, but not limited to, 40-35-313 [judicial diversion], to decree a forfeiture of property, suspend or cancel a license, remove a person from office or impose costs and other monetary obligations if specifically authorized by law.”

Sentencing - Sessions

- Misdemeanor sentencing – State v. Powers, 2002 WL 1000273, 2002 Tenn. Crim. App. LEXIS 437 (Tenn. Crim. App. 2002) – good discussion
- Main principles:
 - 1. Misdemeanant not entitled to presumption of minimum sentence;
 - 2. Sentencing hearing is permissible but not mandatory;
 - 3. Not necessary for court to place sentencing findings on the record;
 - 4. Rigid compliance with enhancement and mitigating factors not required;
 - 5. Court has discretion in determining sentence.

Restitution

- 40-35-304 (probation condition); 40-35-104(c)(2) (part of sentence)
- Restitution allowed – must be reasonable
- Court is to specify the amount and time of payment at sentencing
- Defendant may make installment payments
- Court may consider financial resources and future ability to pay
- Amount is “pecuniary loss” – special damages plus reasonable out-of-pocket expenses
- Procedure to convert to civil judgment

Entitled to Probation?

- State v. Fletcher, 805 S.W.2d 785, 1991 Tenn. Crim. App. LEXIS 54 (Tenn. Crim. App. 1991)
- Case held: Probation must be automatically considered in sentencing but defendant is not automatically entitled to probation.
- See also: 40-35-303(b): “... probation shall be automatically considered by the court as a sentencing alternative for eligible defendants....”

Probation: When?

- 40-35-302(e)
- “The court has authority to place the defendant on probation either:
 - (1) After service of a portion of the sentence in periodic confinement or continuous confinement; or
 - (2) Immediately after sentencing”
- Comment: Most charges in Sessions are resolved with an agreement with the State, including the sentence

Probation: Who with? Not the State.

- 40-35-302(f)(1)
- “The general sessions courts shall not place a defendant who is convicted of a misdemeanor on probation under the supervision of the state department of correction.”

Probation: Who with, then?

- County probation service
- Public probation service
- Private probation company

- 40-35-302(f):
- “Nothing in this subsection (f) is intended to restrict the use, where necessary, of any county or public probation service or private probation company established for the purpose of supervising defendants convicted of misdemeanors....”

Private Companies - Requirements

- Quarterly reports to the clerk
 - Provide an application form approved by the judge
 - Supervise only pursuant to an order of probation
 - Keep appropriate records, for 3 years after case closes
 - Any additional duties specified by the judge
 - Liability insurance and performance bond
 - Background checks of all employees
-
- 40-35-302(g)

Private Companies - Education

- CEO – bachelor's degree in criminal justice, administration, social work or the behavioral sciences AND two years of experience in criminal justice or social work
- Exception to bachelor's degree requirement: 4 years of experience with an entity providing criminal justice or social work services
- 40-35-302(g)(1)(B)(i)

Private Companies - Education

- Any employee supervising defendants must have 4 years of experience or a bachelor's or associate's degree (any field)
- 40-35-302(g)(1)(B)(ii)

Terms of Supervised Probation

- Terms must be specified
- 40-35-303(d): “Whenever a court sentences an offender to supervised probation, the court shall specify the terms of the supervision....”

What about Unsupervised Probation?

- Most case law involving unsupervised probation deals with new offenses or absconding
- State v. Owens, 2022 Tenn. Crim. App. LEXIS 305 (Tenn. Ct. Crim. App. 2022) (new charges and absconding from treatment – revocation included both supervised and unsupervised probation).
- State v. Martin, 2011 Tenn. Crim. App. LEXIS 873 (Tenn. Ct. Crim. App. 2011) (pleaded guilty to new offense).
- State v. Booker, 2018 Tenn. Crim. App. LEXIS 532 (Tenn. Ct. Crim. App. 2018) (multiple new charges)
- State v. Vance, 1989 Tenn. Crim. App. LEXIS 258 (Tenn. Ct. Crim. App. 1989) (failure to do public service work, pay restitution)

Unsupervised Probation Terms – Best Practice

- Specify in writing (signed by defendant) the terms of the probation
- Defendant still entitled to notice and a hearing before revocation

Supervised Probation - Terms Allowed – 40-35-303(d)

- (1) Meet the offender's family responsibilities;
- (2) Devote the offender to a specific employment or occupation;
- (3) Perform, without compensation, services in the community for charitable or governmental agencies;
- (4) Undergo available medical or psychiatric treatment and enter and remain in a specified institution whenever required for that purpose by voluntary self-admission to the institution pursuant to 33-6-201;
- (5) Pursue a prescribed secular course of study or vocational training;

Terms, cont.

- (6) Refrain from possessing a firearm or other dangerous weapon;
- (7) Remain within prescribed geographical boundaries and notify the court or the probation officer of any change in the offender's address or employment;
- (8) Submit to supervision by an appropriate agency or person and report as directed by the court;
- (9) Satisfy any other conditions reasonably related to the purpose of the offender's sentence and not unduly restrictive of the offender's liberty or incompatible with the offender's freedom of conscience, or otherwise prohibited by this chapter;

Terms, cont.

- (10) Make appropriate and reasonable restitution to the victim or the family of the victim involved pursuant to 40-35-304;
- (11) Undergo an alcohol and drug assessment or treatment, or both...if the court deems it appropriate and licensed treatment service is available;
- (12) Use a transdermal monitoring device or other alternative monitoring device...;
- (13) Participate in a day reporting program, recovery and treatment program, or another appropriate community-based program.

Terms: What about Going to California?

Spent my days with a woman unkind

Smoked my stuff and drank all my wine

Made up my mind to make a new start

Going to California with an aching in my heart

Robert Plant, Led Zeppelin

Nope or Maybe

- 40-35-303(h)
- “No probationer shall be allowed to leave the jurisdiction of the probationer’s probation officer without the express permission of the trial judge.”

What is our geographical jurisdiction?

- “The jurisdiction of general sessions courts, when not otherwise provided, is geographically coextensive with the limits of their respective counties.”
- 16-15-503
- Notice: the county not the state

Terms – DV Offenders

- Offenders convicted of stalking, aggravated stalking, especially aggravated stalking, or domestic violence:
- “...the court shall consider the safety and protection of the victim of the offense and of any other member of the victim’s family or household.”

40-35-303(m)

Terms – DV Offenders, cont.

- Additional potential terms for such offenders:
 - 1. Enjoining offender from committing or threatening violent acts against the victim or other household members
 - 2. Prohibiting offender from harassing, annoying, telephoning, contacting or otherwise communicating with victim
 - 3. Requiring offender to stay away from residence, school, place of employment or specified place frequented by victim or household member
 - 4. Prohibiting alcohol, controlled substances
 - 5. Prohibiting firearm or other weapon

Terms Allowed

- Requiring defendant to speak to 10th, 11th, and 12th grade students three times per year allowed (vehicular homicide conviction). State v. Oxendine, 2020 Tenn. Crim. App. LEXIS 85 (Tenn. Crim. App. 2020).
- 250 hours community service allowed. State v. Frye, 2021 Tenn. Crim. App. LEXIS 221 (Tenn. Crim. App. 2021).

Can we make the defendant pay up front?

- Nope
- “The trial judge shall not have the authority to require that the defendant either secure or pay the costs accrued in the case ... as a condition of conducting a hearing on the defendant’s request for suspension of sentence and probation.”
- 40-35-303(f)

Which judge? What about newly-elected judges?

- “The powers granted in this section shall be exercised by the judge of the trial court presiding at the trial of original conviction or by any successor judge holding court in that jurisdiction.”
- 40-35-303(g)

Probation No-Nos

- Cannot require a probationer to place a sign in his front yard stating: “Warning, all children. Defendant is an admitted and convicted child molester. Parents beware.” State v. Burdin, 924 S.W.2d 82 (Tenn. 1996).
- Cannot require a defendant to legitimate his daughter – is not part of meeting “the offender’s family responsibilities” or other probation terms. State v. Mathes, 114 S.W.3d 915, 2003 Tenn. LEXIS 724 (Tenn. 2003).

Probation No-Nos

- Probation requirements that restrict employment are closely scrutinized.
- Three prong test: the restriction must:
 - Reasonably relate to rehabilitation
 - Be related to the crime
 - Be related to present criminal conduct or future criminality

State v. Robinson, 139 S.W.3d 661, 2004 Tenn. Crim. App. LEXIS 82 (Tenn. Crim. App. 2004) (restriction of employment as a pharmacist not allowed).

Probation No-Nos

- Court could not require defendant to relocate from home of 30 years to a location more than one mile from victim.
- Court held probation order was too broad as it did not specify it was to be effective only during the defendant's probationary term.
- Court held such term was not rehabilitative nor a deterrent.
- Court rejected trial court's goal of protecting the victim.
- State v. Pressinell, 2009 WL 321215, 2009 Tenn. Crim. App. LEXIS 15 (Tenn. Crim. App. 2009).

Modification of Probation

- The court may, on its own motion, or on application of PO, DA, or defendant:
- Modify a condition
- Remove a condition, or
- Release defendant from further supervision (defendant shall remain within court's jurisdiction until sentence expires)
- 40-35-308(a)

Modification - Caveat

- A court may not make the conditions “more onerous” than originally imposed
 - Except pursuant to a revocation proceeding
 - 40-35-308(b)
-
- Court may extend probation, but only after revocation hearing
 - 40-35-308(c)(1)

Furloughs – 40-35-316

- Sentencing court may grant furlough “for any medical, penological, rehabilitative or humane reason....”
- Court may set conditions.
- Proper condition: defendant not entitled to credit against sentence for a rehabilitation furlough unless successfully completes rehab.
- State v. Bogle, No. W2011-01706-CCA-R3-CD (Tenn. Ct. Crim. App. 2012).

Probation Revocation

- Revocation has been described:
- Not part of the original criminal prosecution, rather it is “remedial rather than punitive.” State v. Hayes, 190 S.W.3d 665, 669 (Tenn. Ct. Crim. App. 2005).
- A violation is not a crime but is a “mechanism which may trigger the revocation of a previously granted probation.” State v. Jackson, 60 S.W.3d 738, 743 (Tenn. 2001).
- Revocation deprives the defendant of “the conditional liberty” provided in the terms of probation. Hayes, *infra.*, at 669.

Probation Revocation – Procedural Steps

- Governed by 40-35-311
- First step: issuance of warrant
- “When it comes to the attention of the trial judge that a defendant...has been guilty of a breach of the laws of this state or has violated the conditions of probation, the trial judge shall have the power to cause to be issued...a warrant for the arrest of the defendant....”
- “...as in any other criminal case.” – bond is required
- Criminal summons or citation is not available – Tenn. Atty. Gen. Op. 04-054

Revocation Procedure, cont.

- Judge must issue the warrant, not a clerk or magistrate
- Tenn. Atty Gen. Op. 04-054
- Issuance of warrant governed by VOP statute, not Crim. Pro. Rules 3 and 4
- State v. Chisam, No. 85-194-III, 1985 WL 4474 (Tenn. Crim. App. 1985)
- 5 year time limit on misdemeanor warrants (40-6-206) not applicable to probation violation warrants
- Tenn. Atty Gen. Op. 02-126

Revocation Procedure, cont.

- The warrant must give notice of the basis for the VOP
- State v. Stewart, No. W2019-02158-CCA-R3-CD (Tenn. Ct. Crim. App. (2020) (“Minimum due process requires that written notice of claimed violations of probation be disclosed to a probationer.”)
- Warrant must be filed within the period of probation.
- State v. Poole, 36 TAM 10-28 (Tenn. Ct. Crim. App. 2011).
- VOP warrant (not a report) tolls the statute of limitations.
- State v. Bogle, No. W2011-01706-CCA-R3-CD (Tenn. Ct. Crim. App. 2012).

Revocation Procedure, cont.

- Second step : Have a hearing
- “Whenever a person is arrested [for a VOP]...the trial judge ...shall, at the earliest practicable time, inquire into the charges and determine whether or not a violation has occurred....”
- 40-11-311(b)

Revocation – Hearing Attributes

- Statutory attributes of hearing:
- 40-35-311(b):
- Defendant entitled:
 - Be present for hearing
 - Represented by counsel
 - Right to introduce testimony

Revocation – Hearing Attributes, cont.

- Attributes of hearing: What not to do:
- State v. Davis, 34 TAM 12-23 (Tenn. Ct. Crim. App. 2009)
- VOP hearing improper:
 - Parties thought hearing was concerning a different matter (improper notice)
 - No counsel
 - Defendant not sworn in
 - Defendant not allowed to testify, present witnesses, or introduce documentary evidence
 - Court relied on probation report
 - No other evidence admitted

Revocation – Hearing Attributes, cont.

- Case law attributes of hearing: Gagnon v. Scarpelli, 411 U.S. 778 (1973) (cited with approval in State v. Cox, 2010 Tenn. Ct. Crim. App. LEXIS 27 (Tenn. Ct. Crim. App. 2010)).
- Probationer's due process rights include:
 - 1. Written notice of basis of VOP
 - 2. Disclosure of evidence to probationer
 - 3. Opportunity to be heard, present witnesses and documentary evidence
 - 4. Right of confrontation (sort of – reliable hearsay ok), cross-examination
 - 5. Neutral and detached hearing body
 - 6. Written findings

Revocation – Hearing Attributes, cont.

- Although the defendant is entitled to due process, the characteristics of the hearing can be more relaxed than a trial:
- “Accordingly, in determining revocation, the defendant is subject to ‘relaxed rules’ regarding evidence; the defendant is not entitled to a jury; and the defendant’s probation may be revoked on proof by a preponderance of the evidence....Because the revocation deprives the accused of only a conditional liberty ... ‘[p]robationers are not entitled to received the full range of due process rights.’”
- State v. Sarkissian, No. E2022-00059-CCA-R3-CD (Tenn. Ct. Crim. App. 2022).

Revocation – Hearing Attributes, cont.

- Other attributes of hearing:
- Reliable hearsay is admissible, subject to rebuttal.
- State v. Anderson, 1998 Tenn. Crim. App. LEXIS 494 (Tenn. Crim. App. 1998); Sarkissian, *infra* (“The trial court at a probation revocation hearing may consider documentary evidence that does not meet usual evidentiary requirements.”).
- Standard of proof is preponderance of the evidence.
- 40-35-311(d)(1).

Revocation – Hearing Attributes, cont.

- The exclusionary rule generally does not apply.
- State v. Hayes, 190 S.W.3d 665, 669 (Tenn. Ct. Crim. App. 2005).
- But:
- The exclusion of evidence obtained as a result of harassment or in a particularly offensive manner is required. Hayes, *infra.*, at 670-671.

Revocation – Hearing Attributes, cont.

- Laboratory report admissible when accompanied by proper affidavit
- 40-35-311(c)(1)
- Judge may order lab technician to testify, for good cause shown
- 40-35-311(c)(2)
- Crawford (testimonial hearsay statement not admissible unless subject to cross) – does not apply in VOP hearings
- State v. Walker, 307 S.W.3d 260, 2009 Tenn. Crim. App. LEXIS 644 (Tenn. Ct. Crim. App. 2009) (lab report meeting 40-35-311 admissible)

Revocation - Basis

- “A trial court may revoke probation and order the imposition of the original sentence upon a finding by a preponderance of the evidence that the defendant has violated a condition of his or her probation.” State v. Kendrick, 178 S.W.3d 734, 738 (Tenn. Ct. Crim. App. 2005) (citing State v. Mitchell, 810 S.W.2d 733, 735 (Tenn. Ct. Crim. App. 1991)).
- 40-35-311(a): VOP basis: “breach of the laws of this state or has violated the conditions of probation....”
- 40-35-311(d)(1): “...If the trial judge finds ... that the defendant has violated the conditions of probation...then the court may revoke the defendant’s probation and suspension of sentence, in full or in part....”

Revocation – Basis, cont.

- Several cases have held that one violation is sufficient to revoke the defendant's probation.
- See, e.g.: State v. Brown, 2008 WL 726566, 2008 Tenn. Crim. App. LEXIS 205 (Tenn. Ct. Crim. App. 2008) (the court noted that any one of the following rule violations by the defendant would constitute an appropriate basis to revoke probation: failure to report an arrest, changing residence without permission, failing to pay restitution, failure to seek alcohol and drug assessment); State v. Walker, 2009 WL 111642, 2009 Tenn. Crim. App. LEXIS 25 (Tenn. Ct. Crim. App. 2009) (revocation proper when defendant was arrested while on probation, failed to report the arrest, failed to report, and failed to pay court costs or probation fees).

Revocation – Basis, cont.

- Failure to report to PO
- Moving without notifying PO
- Failure to seek or obtain employment
- Failure to make court-ordered payments
- Failure to have A & D assessment
- State v. Paul, 2019 Tenn. Crim. App. LEXIS 653 (Tenn. Ct. Crim. App. 2019)

Revocation – Basis, cont.

- “No new offenses” or “obey law”: mere fact of arrest is insufficient – must have proof of crime.
- State v. Butler, No. M2008-01842-CCA-R3-CD (Tenn. Ct. Crim. App. 2009).
- Proof of crime may be established by officer testimony. State v. Lawson, No. M2014-00612-CCA-R3-CD (Tenn. Ct. Crim. App. 2104). Remember: POE standard.
- Subsequent dismissal of the new charges does not affect the validity of the VOP warrant. State v. Gabriel, 2004 WL 1562551, 2004 Tenn. Crim. App. LEXIS 628 (Tenn. Ct. Crim. App. 2004).
- Failure to pay costs, fees, and restitution must be willful. The court must ascertain the reason for non-payment. State v. Dye, 715 S.W.2d 36 (Tenn. 1986).
- **But see:** 40-24-105(a) – court costs are not deemed part of the penalty. See also, Tenn. Atty Gen. Op. 00-162 (“A criminal defendant may not have his probation revoked through a violation warrant for failing to pay costs assessed in a criminal action.”).

Revocation – Basis, cont.

- Pre-probation criminal offenses may be the basis for a VOP if the court was unaware of the conduct at sentencing. The key is that probation revocation proceedings may begin when the trial judge learns of the criminal conduct. 40-35-311 (“Whenever it comes to the attention of the trial judge....”).
- State v. Tyre, No. W2012-01458-CCA-R3-CD (Tenn. Ct. Crim. App. 2013) (citing State v. Stubblefield, 953 S.W.2d 223 (Tenn. Ct. Crim. App. 1997) – “the resolution of this case depends upon whether the trial court had knowledge of the defendant’s other criminal acts when it sentenced him to split confinement.”) **But see**, State v. Davis, 2008 WL 4682238, 2008 Tenn. Crim. App. LEXIS 842 (Tenn. Ct. Crim. App. 2008) (reliance on past criminal conduct is “problematic” – sentencing statutes contemplate VOP to be based upon conduct occurring subsequent to sentencing).

Revocation – Basis, cont.

- Failure to pay jailer's fees cannot be basis for VOP
- Tenn. Atty Gen. Op. 03-106.
- Failure to pay restitution may be basis (must be willful). State v. Ginther, 2020 Tenn. Crim. App. LEXIS 359 (Tenn. Ct. Crim. App. 2020).
- Testing positive cocaine, failing to report, failing to participate in required program. State v. Smith, 2020 Tenn. Crim. App. LEXIS 181 (Tenn. Ct. Crim. App. 2020).

Court Procedure in VOP Hearing: Two-Step Process

- State v. Dagnan, No. M2020-00152-SC-R11-CD (Tenn. 2021).
- Two step process in Tennessee
- **First step:** determine whether to revoke probation
- **Second step:** determine the appropriate consequence upon revocation
- So, two separate hearings? No, not necessarily.
- “This is not to say that the trial court, having conducted a revocation hearing, is then required to hold an additional or separate hearing to determine the appropriate consequence....Still, we emphasize that these are two distinct discretionary decisions....”

Court Procedure – After Dagnan

- During first step (determining whether a violation occurred), the alleged violation must be disclosed in the violation warrant.
- During the second step (determining the consequence of the violation), the court may consider behavior during probation **even if not specified in the violation warrant**
- Sarkissian, infra.:
- “Although not alleged in the warrant, this evidence presented during the consequence phase provided the trial court with information relevant to the violation and to the proper consequence to be imposed....Although the in-person contact was not alleged in the warrant, this evidence is relevant to the trial court’s determination of the appropriate consequence for the violation.”

Drug Courts and Revocation

- State v. Stewart, No. W2009-00980-CCA-R3-CD (Tenn. Ct. Crim. App. 2009).
- “After due consideration, we agree that the Due Process Clause requires that a defendant’s probation revocation be adjudicated by a judge who has not previously reviewed the same or related subject matter as part of the defendant’s drug court team.”
- VOP requires a “neutral and detached” hearing body
- “Yet, the role of a judge in the drug courts program is, by its very nature, almost the polar opposite of ‘neutral and detached.’”

Drug Courts and Revocation, cont.

- Subsequent to Stewart, the Supreme Court adopted Rule 2.9, Comment 4, Code of Judicial Conduct
- If an ex parte communication becomes an issue during a VOP hearing, the judge shall either: (1) disqualify himself or herself if the judge gains personal knowledge of disputed facts, or if the judge's impartiality may reasonably be questioned; or (2) make disclosure subject to the waiver provisions
- "When serving on a mental health court or a drug court, judges may assume a more interactive role with parties...."
- Solomon v. State, 2022 Tenn. Crim. App. LEXIS 220 (Tenn. Ct. Crim. App. 2022).

Consequences of Revocation

- If the defendant's probation is revoked, the court may:
- Extend the probation period for one year (40-35-308)
- Order the defendant to serve the sentence in jail (40-35-310, 311) (court may, in its discretion, give credit for time successfully completed on probation, or a portion thereof)
- Reinstate the probation period, beginning anew or by giving credit for time successfully completed on probation (State v. Hunter, 1 S.W.3d 643, 647 (Tenn. 1999))
- Order the defendant to serve a portion of the sentence in jail with the remainder served on probation (40-11-311)
- Reinstate probation on modified conditions (State v. Dagnan, *infra*)

Consequences

- Dagnan (cited above) confirmed consequences of revocation:
- Jail for some period
- Execution of the original sentence
- Extension of probation
- Reinstate probation

Consequences – Street Time

- Defendant is not entitled to reduce the original sentence by pre-VOP “street time”
- State v. Siler, 2020 Tenn. Crim. App. LEXIS 684 (Tenn. Ct. Crim. App. 2020)

Appeal

- Defendant has right to appeal the revocation
- 40-35-311(e)(3)
- The appeal will be to Circuit court, which will hear the revocation matter de novo. Op. Tenn. Atty Gen. 01-079 (revised) (September 14, 2001) (“An appeal of a general sessions court’s revocation of probation to circuit court will be reviewed de novo.”) (citing Tenn. Code Ann. 27-5-108(c)).

Post Appeal

- If the de novo appeal fails (the revocation is upheld), the circuit court is to remand to sessions for continued supervision.
- State v. Hines, 2008 WL 1700221, 2008 Tenn. Crim. App. LEXIS 271 (Tenn. Ct. Crim. App. 2008) (Sessions court has appropriate jurisdiction over the defendant's probation because it was the court that accepted the original guilty plea.).
- *"Meet the new boss, same as the old boss." Pete Townsend, Won't Get Fooled Again*

Part II – Bail Revocation: Procedure

- 40-11-141(b) --- Revocation statute - Very broad
- “If after the defendant is released upon ... any ... bond approved by the court, the defendant **violates a condition of release, is charged with an offense committed during the defendant’s release, or engages in conduct which results in the obstruction of the orderly and expeditious progress of the trial or other proceedings**, then the court may revoke ... the defendant’s bond and order the defendant held without bail pending trial....”

State v. Burgins, 464 S.W.3d 298, 2015 Tenn. LEXIS 285 (Tenn. 2015).

- Court upheld statute and clarified procedures to follow in bond revocations
- Defendant entitled to evidentiary hearing
- Proceeding initiated by judge *sua sponte* or by State's written motion
- Defendant is entitled:
 - Written notice of alleged grounds and date, place, and time of hearing
 - Disclosure of evidence against him or her
 - Meaningful opportunity to be heard and present evidence
 - Right of confrontation and cross-examination
 - Right to make arguments in defense

Burgins, cont.

- Standard of proof: preponderance of evidence
- Corroboration of allegations required
- Reliable hearsay may be admitted
- Note: court did not address counsel (best practices-liberty is at stake-advise right to counsel)
- Disposition options:
 - Revoke bail and hold defendant until trial
 - Continue bail with possibility of additional conditions or increased bond amount
- Court must use factors in 40-11-116, 118 in determining disposition