



THE MISSOURI BAR

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DATE: February 24, 2009

TO: Representative Ward Franz

FROM: The Missouri Bar

RE: House Bill 404

Recently, The Missouri Bar Executive Committee met to review legislation. The Executive Committee consists of the officers of the bar and three additional members annually elected by the Board of Governors. The members of this year's committee are Thomas M. Burke, President; H.A. "Skip" Walther, President-Elect; John S. Johnston, Vice-President; Charlie J. Harris, Jr., Immediate Past-President; Carol Chazen Friedman, Patrick B. Starke, and Deanna K. Scott. The committee has authority to act on behalf of the Board of Governors during the legislative session. In reviewing legislation, the Executive Committee considers comments received from various Missouri Bar legislative review subcommittees. All positions taken by the Executive Committee are communicated to the full Board as soon as possible after they are taken.

Recently, the Missouri Bar Executive Committee reviewed House Bill 404. This legislation would allow an additional assessment on certain traffic cases to be paid to the County Law Enforcement Restitution Fund in counties that have established an inmate work and service program. Money in the fund could be used to support such programs. The bill further provides:

"Every person, organization, and agency, and each employee thereof who supervises a person under the provisions of the restorative justice program, or who benefits from any services performed under these sections, shall be immune from any suit by the person or prisoner performing services under this section, or a person deriving any cause of action from such person, if such cause of action arises from the supervision of the prisoner's performance of services under this section, and if such cause of action does not arise from intentional or any wanton, willful, or malicious conduct. A person performing services under the restorative justice program shall not be deemed an employee within the meaning of the provisions of Missouri law."

The Executive Committee found House Bill 404 to be within the legislative scope of The Missouri Bar. The Committee supports the concept of an inmate work and service program. The bar opposes funding such programs though additional court costs. As noted by Criminal Law Legislative Review Subcommittee member Charlie Rogers:

"The notion of inmate work programs is a good one and should be encouraged. However, such programs should be either self-funding or should be funded from regular revenues rather than adding another 'assessment' to traffic tickets. As it now stands, the 'court costs' exceed the fines assessed in most cases. Traffic tickets have become a revenue enhancement mechanism, not a way of enhancing public safety."

The Executive Committee also opposes the provision of Section 221.175.7. The immunity provisions, cited above, are too broad and deny access to justice.

Thank you for considering the bar's position regarding House Bill 404.