



THE MISSOURI BAR

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DATE: February 24, 2009
TO: Senator Matt Bartle
FROM: The Missouri Bar
RE: Senate Bill 181

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 Senate Bill 181 as introduced, which allows a judge presiding in a domestic assault case discretion to disclose information regarding the defendant, which could be used to identify the victim, to avoid protecting the defendant's identity.

This legislation is a response, in part, to the case of *State v. M. L. S.*, No. 68568, (Mo. App. W.D., October 21, 2008), in which a defendant who committed a violent offense used Section 566.226 RSMo to have his name redacted from his appeal case. In that case, a concurring opinion by Judge Ronald R. Holliger urged the legislature to make a change in Section 566.226, as proposed in Senate Bill 181.

House Bill 1898, introduced last session, presented another approach to addressing this problem. House Bill 177, introduced this session by Representative Stanley Cox, presents a third alternative. (*See enclosed copies*)

The Executive Committee found this legislation to be within the legislative scope of The Missouri Bar. The Committee agrees that a domestic assailant should not be the beneficiary of a law intended to protect the victim. The Committee voted to support the concept of Senate Bill 181. Member Pat Starke dissented from this position.

Among the comments received from Legislative Review Subcommittee members was a suggestion that the various versions of this legislation should be reconciled. The member who made this suggestion also believes that generally, sealing and redaction should be the exception not the rule.

The following additional question regarding Senate Bill 181 was also raised:

"If subsection 1 of this statute applies to 'sexual assault, domestic assault, stalking, or forcible rape' cases, why would this new subsection 3 apply only to "domestic assault" cases and not the others?"

The Executive Committee hopes this input is helpful as you work toward final passage of Senate Bill 181.

Enclosures

FIRST REGULAR SESSION

HOUSE BILL NO. 177

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE COX.

0599L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 566.226, RSMo, and to enact in lieu thereof one new section relating to court records for sexual offenses.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 566.226, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 566.226, to read as follows:

566.226. 1. After August 28, 2007, any information contained in any court record, whether written or published on the Internet, that could be used to identify or locate any victim of sexual assault, domestic assault, stalking, or forcible rape shall be closed and redacted from such record prior to disclosure to the public. Identifying information shall include the name, home or temporary address, telephone number, Social Security number or physical characteristics.

2. If the court determines that a person or entity who is requesting identifying information of a victim has a legitimate interest in obtaining such information, the court may allow access to the information, but only if the court determines that disclosure to the person or entity would not compromise the welfare or safety of such victim.

3. Nothing in this section shall be construed to permit or be the basis of permitting the identifying information of a perpetrator of a sexual assault, domestic assault, stalking, or forcible rape to be redacted from an otherwise public record.

SECOND REGULAR SESSION

HOUSE BILL NO. 1898

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES ROBB (Sponsor), NANCE, FLOOK,
CORCORAN AND HUGHES (Co-sponsors).

Read 1st time January 29, 2008 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

4298L.011

AN ACT

To repeal section 566.226, RSMo, and to enact in lieu thereof one new section relating to identifying information in certain court records.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 566.226, RSMo, is repealed and one new section enacted in lieu
2 thereof, to be known as section 566.226, to read as follows:

566.226. 1. After August 28, 2007, any information contained in any court record,
2 whether written or [published on the Internet] **in electronic format**, that could be used to
3 identify or locate any victim of sexual assault, domestic assault, stalking, or [forcible rape] **any**
4 **violation of this chapter or chapter 568, RSMo**, shall be [closed and] redacted from such
5 record prior to disclosure to the public. **After written request for information contained in**
6 **the court record, the court shall order the information to be redacted.** Identifying
7 information **of the victim** shall include the name, home or temporary address, telephone number,
8 Social Security number or physical characteristics **of any victim, but not the named party in**
9 **civil litigation.**

10 2. If the court determines that a person or entity who is requesting identifying
11 information of a victim has a legitimate interest in obtaining such information, the court may
12 allow access to the information, but only if the court determines that disclosure to the person or
13 entity would not compromise the welfare or safety of such victim.

14 3. **The Missouri supreme court shall approve procedural rules to implement this**
15 **policy.**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.