



THE MISSOURI BAR

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DATE: April 8, 2014

TO: Senator Dan W. Brown

FROM: The Missouri Bar Executive Committee

RE: Senate Bill 945

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 P. John Brady, President; Reuben Shelton, President-elect; Erik Bergmanis, Vice President; Patrick Starke, Immediate Past President; Thomas Bender, J.B. Lasater, Wendy Garrison. 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.

The Executive Committee reviewed Senate Bill 945 at its meeting on March 19, 2014. Senate Bill 945 modifies procedures in death penalty cases in which the defendant kidnapped the victim before causing the victim's death. Section 546.380 of the bill enacts special rules for criminal cases in which a sentence of death has been imposed and the defendant kidnapped the victim before causing the victim's death. Subsection (1) specifies conditions under which an extension of time may be granted for filing of the record on appeal and certain briefs and prohibits extensions under certain circumstances. Subsection (2) provides that such cases "shall take precedence over all other appeals before the court" and also prohibits the Court from allowing an exception to current rules that specify limitations on the length of briefs. Subsection (3) specifies a time limit for scheduling of oral argument and issuing of a written decision by the Court in such cases. The Committee found this legislation to be within the bar's legislative scope.

Following are comments from bar members who reviewed Senate Bill 945:

- While I can certainly appreciate the sponsor's concerns, this bill raises too many due process red flags. We have to have a reason to tighten due process for these offenders as compared to others. The fact that the crime is heinous is not enough as that should be the case in every death penalty case. I would rather see an expedited process in cases where guilt is not contested. *Honorable David Mason, Division of Judicial Administration*

- Subsection 2 notes the failure to file federal habeas corpus but does not address the failure to file [for] postconviction relief...The rules of practice and procedure for all cases are within the jurisdiction of the supreme court under Mo. Const. art. V, sec. 5. Contrary statutes are not effective unless the specific procedure for amendment of the rules is followed...*Name undisclosed, Division of Judicial Administration*
- Because the proposed procedures significantly impact the post-conviction rights of the defendant, a question may be raised whether the fact that “a defendant kidnapped a victim before causing the victim’s death” is one that would have to be submitted to and found by the jury beyond a reasonable doubt (pursuant to the reasoning of the *Apprendi* line of cases.) In any event the proposed legislation does not clarify how the fact of kidnapping is to be established for purposes of this bill. *Honorable Karl DeMarce, Chair, Legislative Committee*

Because of these concerns, with respect to the provisions proposed by Senate Bill 945, the Executive Committee voted to **oppose eliminating judicial discretion and usurping the Supreme Court’s constitutional rule-making authority.**