

SECOND REGULAR SESSION

SENATE BILL NO. 774

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR LEMBKE.

Read 1st time January 13, 2010, and ordered printed.

TERRY L. SPIELER, Secretary.

4370S.01I

AN ACT

To repeal section 630.170, RSMo, and to enact in lieu thereof two new sections relating to department of mental health protection measures, with penalty provisions.

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

Section A. Section 630.170, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 565.086 and 630.170, to read as follows:

565.086. 1. An offender commits the crime of endangering a department of mental health employee, a visitor or other person at a secure facility, or another offender if he or she attempts to cause or knowingly causes such individual to come into contact with blood, seminal fluid, urine, feces, or saliva.

2. For purposes of this section, the following terms mean:

(1) "Department of mental health employee", a person who is an employee of the department of mental health, an employee or contracted employee of a subcontractor of the department of mental health, or an employee or contracted employee of a subcontractor of an entity responsible for confining offenders as authorized by section 632.495;

(2) "Offender", persons ordered to the department of mental health after a determination by the court that such persons may meet the definition of a sexually violent predator, persons ordered to the department of mental health after a finding of probable cause under section 632.489, and persons committed for control, care, and treatment by the department of mental health under sections 632.480 to 632.513;

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 **(3) "Secure facility", a facility operated by the department of**
20 **mental health or an entity responsible for confining offenders as**
21 **authorized by section 632.495.**

22 **3. Endangering a department of mental health employee, a**
23 **visitor or other person at a secure facility, or another offender is a**
24 **class D felony unless the substance is unidentified, in which case it is**
25 **a class A misdemeanor. If an offender is knowingly infected with the**
26 **human immunodeficiency virus (HIV), hepatitis B, or hepatitis C and**
27 **exposes another individual to HIV or hepatitis B or hepatitis C by**
28 **committing the crime of endangering a department of mental health**
29 **employee, a visitor or other person at a mental health facility, or**
30 **another offender, it is a class C felony.**

630.170. 1. A person who is listed on the department of mental health
2 disqualification registry pursuant to this section, who is listed on the department
3 of social services or the department of health and senior services employee
4 disqualification list pursuant to section 660.315, RSMo, or who has been
5 **[convicted] found guilty** of or **[pled] pleaded** guilty or nolo contendere to any
6 crime pursuant to section 565.210, 565.212, or 565.214, RSMo, or section 630.155
7 or 630.160 shall be disqualified from holding any position in any public or private
8 facility or day program operated, funded or licensed by the department or in any
9 mental health facility or mental health program in which people are admitted on
10 a voluntary or involuntary basis or are civilly detained pursuant to chapter 632,
11 RSMo.

12 2. A person who has been **[convicted] found guilty** of or **[pled] pleaded**
13 **guilty or nolo contendere to any felony offense as defined in chapter 195,**
14 **; any felony offense against persons as defined in chapter 565, RSMo; any felony**
15 **[sexual] offense as defined in chapter 566, RSMo; any felony offense defined in**
16 **section 568.020, 568.045, 568.050, 568.060, 568.175, 569.020, 569.025, 569.030,**
17 **569.035, 569.040, 569.050, 569.070, [or] 569.160, 570.030, 570.040, 570.090,**
18 **570.145, 570.223, 575.230, or 576.080, RSMo, or of an equivalent felony offense,**
19 **or who has been [convicted] found guilty** of or **[pled] pleaded** guilty or nolo
20 **contendere to any violation of subsection 3 of section 198.070, RSMo, or who has**
21 **been found guilty of or pleaded guilty or nolo contendere to a violation**
22 **of section 577.010 or section 577.012 and who is alleged and found by**
23 **the court to be an aggravated or chronic offender under section**
24 **577.023, or has been [convicted] found guilty** of or **[pled] pleaded** guilty or
25 **nolo contendere to any offense requiring registration under section 589.400,**
26 **RSMo, shall be disqualified from holding any direct-care position in any public**

27 or private facility, day program, residential facility or specialized service
28 operated, funded or licensed by the department or any mental health facility or
29 mental health program in which people are admitted on a voluntary basis or are
30 civilly detained pursuant to chapter 632, RSMo.

31 3. A person who has received a suspended imposition of sentence or a
32 suspended execution of sentence following a plea of guilty to any of the
33 disqualifying crimes listed in subsection 1 or 2 of this section shall remain
34 disqualified.

35 4. Any person disqualified pursuant to the provisions of subsection 1 or
36 2 of this section may seek an exception to the disqualification from the director
37 of the department or the director's designee. The request shall be written and
38 may not be made more than once every twelve months. The request may be
39 granted by the director or designee if in the judgment of the director or designee
40 a clear showing has been made by written submission only, that the person will
41 not commit any additional acts for which the person had originally been
42 disqualified for or any other acts that would be harmful to a patient, resident or
43 client of a facility, program or service. The director or designee may grant an
44 exception subject to any conditions deemed appropriate and failure to comply with
45 such terms may result in the person again being disqualified. Decisions by the
46 director or designee pursuant to the provisions of this subsection shall not be
47 subject to appeal. The right to request an exception pursuant to this subsection
48 shall not apply to persons who are disqualified due to being listed on the
49 department of social services or department of health and senior services
50 employee disqualification list pursuant to section 660.315, RSMo, nor to persons
51 disqualified from employment due to any crime pursuant to the provisions of
52 chapter 566, RSMo, or section 565.020, 565.021, 568.020, 568.060, 569.025, or
53 569.070, RSMo.

54 5. An applicant for a direct care position in any public or private facility,
55 day program, residential facility, or specialized service operated, funded, or
56 licensed by the department or any mental health facility or mental health
57 program in which people are admitted on a voluntary basis or are civilly detained
58 pursuant to chapter 632, RSMo, shall:

59 (1) Sign a consent form as required [by] **under** section 43.540, RSMo, to
60 provide written consent for a criminal record review;

61 (2) Disclose the applicant's criminal history. For the purposes of this
62 subdivision "criminal history" includes any suspended imposition of sentence, any
63 suspended execution of sentence, or any period of probation or parole; and

64 (3) Disclose if the applicant is listed on the employee disqualification list

65 as provided in section 660.315, RSMo, or the department of mental health
66 disqualification registry as provided for in this section.

67 6. Any person who has received a good cause waiver issued by the division
68 of senior services or its predecessor under subsection 9 of section 660.317, RSMo,
69 shall not require an additional exception under this section in order to be
70 employed in a long-term care facility licensed under chapter 198, RSMo.

71 7. Any public or private residential facility, day program, or specialized
72 service licensed, certified, or funded by the department shall, not later than two
73 working days after hiring any person for a full-time, part-time, or temporary
74 position that will have contact with clients, residents, or patients:

75 (1) Request a criminal background check as provided in section 43.540,
76 RSMo;

77 (2) Make an inquiry to the department of social services and department
78 of health and senior services to determine whether the person is listed on the
79 employee disqualification list as provided in section 660.315, RSMo; and

80 (3) Make an inquiry to the department of mental health to determine
81 whether the person is listed on the disqualification registry as provided in this
82 section.

83 8. An applicant who knowingly fails to disclose his or her criminal history
84 as required in subsection 5 of this section is guilty of a class A misdemeanor. A
85 provider is guilty of a class A misdemeanor if the provider hires a person to hold
86 a direct-care position knowing that such person has been disqualified pursuant
87 to the provisions of subsection 1 or 2 of this section.

88 9. The department may maintain a disqualification registry and place on
89 the registry the names of any persons who have been finally determined by the
90 department to be disqualified pursuant to this section, or who have had
91 administrative substantiations made against them for abuse or neglect pursuant
92 to department rule. Such list shall reflect that the person is barred from holding
93 any position in any public or private facility or day program operated, funded or
94 licensed by the department, or any mental health facility or mental health
95 program in which persons are admitted on a voluntary basis or are civilly
96 detained pursuant to chapter 632, RSMo.

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