

SENATE COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 530

AND

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 292

AN ACT

To repeal sections 191.677, 455.010, 488.029, 545.940, 556.046, 565.003, 575.155, and 575.157, RSMo, and to enact in lieu thereof eight new sections relating to criminal offenses, with penalty provisions.

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

Section A. Sections 191.677, 455.010, 488.029, 545.940, 556.046, 565.003, 575.155, and 575.157, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as sections 191.677, 455.010, 488.029, 545.940, 556.046, 565.003, 575.155, and 575.157, to read as follows:

191.677. 1. For purposes of this section, the term "serious infectious or communicable disease" means a nonairborne or nonrespiratory disease spread from person to person that is fatal or causes disabling long-term consequences in the absence of lifelong treatment and management.

2. It shall be unlawful for any individual knowingly infected with **[HIV]** a serious infectious or communicable disease to:

(1) Be or attempt to be a blood, blood products, organ, sperm, or tissue donor except as deemed necessary for medical research or as deemed medically appropriate by a licensed physician;

(2) **[Act in a reckless manner by exposing]** Knowingly expose another person to **[HIV without the knowledge and consent of that person to be exposed to HIV,** in one of the following manners:

(a) Through contact with blood, semen or vaginal secretions in the course of oral, anal or vaginal sexual intercourse; or

(b) By the sharing of needles; or

(c) By biting another person or purposely acting in any other manner which causes the HIV-infected person's semen, vaginal secretions, or blood to come into contact with the mucous membranes or nonintact skin of another person.

Evidence that a person has acted recklessly in creating a risk of infecting another individual with HIV shall include, but is not limited to, the following:

a. The HIV-infected person knew of such infection before engaging in sexual activity with another person, sharing needles with another person, biting another person, or purposely causing his or her semen, vaginal secretions, or blood to come into contact with the mucous membranes or nonintact skin of another person, and such other person is unaware of the HIV-infected person's condition or does not consent to contact with blood, semen or vaginal fluid in the course of such activities;

b. The HIV-infected person has subsequently been infected with and tested positive to primary and secondary syphilis, or gonorrhea, or chlamydia; or

c. Another person provides evidence of sexual contact with the HIV-infected person after a diagnosis of an HIV status] such serious infectious or communicable disease through an activity that creates a substantial risk of

disease transmission as determined by competent medical or epidemiological evidence; or

(3) Act in a reckless manner by exposing another person to such serious infectious or communicable disease through an activity that creates a substantial risk of disease transmission as determined by competent medical or epidemiological evidence.

[2.] 3. (1) Violation of the provisions of subdivision (1) or (2) of subsection [1] 2 of this section is a class [B] D felony unless the victim contracts [HIV] the serious infectious or communicable disease from the contact, in which case it is a class [A] C felony.

[3. The department of health and senior services or local law enforcement agency, victim or others may file a complaint with the prosecuting attorney or circuit attorney of a court of competent jurisdiction alleging that a person has violated a provision of subsection 1 of this section. The department of health and senior services shall assist the prosecutor or circuit attorney in preparing such case, and upon request, turn over to peace officers, police officers, the prosecuting attorney or circuit attorney, or the attorney general records concerning that person's HIV-infected status, testing information, counseling received, and the identity and available contact information for individuals with whom that person had sexual intercourse or deviate sexual intercourse and those individuals' test results.

4. The use of condoms is not a defense to a violation of paragraph (a) of subdivision (2) of subsection 1 of this section.]

(2) Violation of the provisions of subdivision (3) of subsection 2 of this section is a class A misdemeanor.

4. It is an affirmative defense to a charge under this section if the person exposed to the serious infectious or communicable disease knew that the infected person was infected with the serious infectious or communicable disease at the time of the exposure and consented to the exposure with such knowledge.

5. (1) For purposes of this subsection, the term "identifying characteristics" includes, but is not limited to, the name or any part of the name, address or any part of the address, city or unincorporated area of residence, age, marital status, place of employment, or racial or ethnic background of the defendant or the person exposed, or the relationship between the defendant and the person exposed.

(2) When alleging a violation of this section, the prosecuting attorney, the circuit attorney, or the grand jury shall substitute a pseudonym for the actual name of the person exposed to a serious infectious or communicable disease. The actual name and other identifying characteristics of the person exposed shall be revealed to the court only in camera unless the person exposed requests otherwise, and the court shall seal the information from further disclosure, except by counsel as part of discovery.

(3) Unless the person exposed requests otherwise, all court decisions, orders, pleadings, and other documents, including motions and papers filed by the parties, shall be worded so as to protect from public disclosure the name and other identifying characteristics of the person exposed.

(4) Unless the person exposed requests otherwise, a court in which a violation of this section is filed shall issue an order that prohibits counsel and their agents, law enforcement personnel, and court staff from making a public disclosure of the name or any other identifying characteristics of the person exposed.

(5) Unless the defendant requests otherwise, a court in which a violation of this section is filed shall issue an order that prohibits counsel and their agents, law enforcement personnel, and court staff, before a finding of guilt, from making a public disclosure of the name or other identifying characteristics of the defendant. In any public disclosure before a finding of guilt, a pseudonym shall be substituted for the actual name of the defendant.

(6) Before sentencing, a defendant shall be assessed for placement in one or more community-based programs that provide counseling, supervision, and education and that offer reasonable opportunity for the defendant to provide redress to the person exposed.

455.010. As used in this chapter, unless the context clearly indicates otherwise, the following terms shall mean:

(1) "Abuse" includes but is not limited to the occurrence of any of the following acts, attempts or threats against a person who may be protected pursuant to this chapter, except abuse shall not include abuse inflicted on a child by accidental means by an adult household member or discipline of a child, including spanking, in a reasonable manner:

(a) "Assault", purposely or knowingly placing or attempting to place another in fear of physical harm;

(b) "Battery", purposely or knowingly causing physical harm to another with or without a deadly weapon;

(c) "Coercion", compelling another by force or threat of force to engage in conduct from which the latter has a right to abstain or to abstain from conduct in which the person has a right to engage;

(d) "Harassment", engaging in a purposeful or knowing course of conduct involving more than one incident that alarms or causes distress to an adult or child and serves no

legitimate purpose. The course of conduct must be such as would cause a reasonable adult or child to suffer substantial emotional distress and must actually cause substantial emotional distress to the petitioner or child. Such conduct might include, but is not limited to:

- a. Following another about in a public place or places;
- b. Peering in the window or lingering outside the residence of another; but does not include constitutionally protected activity;

- (e) "Sexual assault", causing or attempting to cause another to engage involuntarily in any sexual act by force, threat of force, duress, or without that person's consent;

- (f) "Unlawful imprisonment", holding, confining, detaining or abducting another person against that person's will;

- (2) "Adult", any person seventeen years of age or older or otherwise emancipated;

- (3) "Child", any person under seventeen years of age unless otherwise emancipated;

- (4) "Court", the circuit or associate circuit judge or a family court commissioner;

- (5) "Domestic violence", abuse or stalking committed by a family or household member, as such terms are defined in this section;

- (6) "Ex parte order of protection", an order of protection issued by the court before the respondent has received notice of the petition or an opportunity to be heard on it;

- (7) "Family" or "household member", spouses, former spouses, any person related by blood or marriage, persons who are presently residing together or have resided together in the past, any person who is or has been in a continuing social relationship of a romantic or intimate nature with

the victim, and anyone who has a child in common regardless of whether they have been married or have resided together at any time;

(8) "Full order of protection", an order of protection issued after a hearing on the record where the respondent has received notice of the proceedings and has had an opportunity to be heard;

(9) "Order of protection", either an ex parte order of protection or a full order of protection;

(10) "Pending", exists or for which a hearing date has been set;

(11) "Petitioner", a family or household member who has been a victim of domestic violence, or any person who has been the victim of stalking or sexual assault, or a person filing on behalf of a child pursuant to section 455.503 who has filed a verified petition pursuant to the provisions of section 455.020 or section 455.505;

(12) "Respondent", the family or household member alleged to have committed an act of domestic violence, or person alleged to have committed an act of stalking or sexual assault, against whom a verified petition has been filed or a person served on behalf of a child pursuant to section 455.503;

(13) "Sexual assault", as defined under subdivision (1) of this section;

(14) "Stalking" is when any person purposely engages in an unwanted course of conduct that causes alarm to another person, or a person who resides together in the same household with the person seeking the order of protection when it is reasonable in that person's situation to have been alarmed by the conduct. As used in this subdivision:

(a) "Alarm" means to cause fear of danger of physical harm; and

(b) "Course of conduct" means [a pattern of conduct composed of] two or more acts [over a period of time, however short,] that [serves] serve no legitimate purpose[. Such conduct may include, but is not limited to, following the other person or unwanted communication or unwanted contact] including, but not limited to, acts in which the stalker directly, indirectly, or through a third party follows, monitors, observes, surveils, threatens, or communicates to a person by any action, method, or device.

488.029. There shall be assessed and collected a surcharge of one hundred fifty dollars in all criminal cases for any violation of chapter [195] 579 in which a crime laboratory makes analysis of a controlled substance, but no such surcharge shall be assessed when the costs are waived or are to be paid by the state or when a criminal proceeding or the defendant has been dismissed by the court. The moneys collected by clerks of the courts pursuant to the provisions of this section shall be collected and disbursed as provided by sections 488.010 to 488.020. All such moneys shall be payable to the director of revenue, who shall deposit all amounts collected pursuant to this section to the credit of the state forensic laboratory account to be administered by the department of public safety pursuant to section 650.105.

545.940. 1. Pursuant to a motion filed by the prosecuting attorney or circuit attorney with notice given to the defense attorney and for good cause shown, in any criminal case in which a defendant has been charged by the prosecuting attorney's office or circuit attorney's office with any offense under chapter 566 or section 565.050, assault in the first degree; section 565.052 or 565.060, assault in the second degree; section 565.054 or 565.070, assault in the third degree; section 565.056, assault in the

fourth degree; section 565.072, domestic assault in the first degree; section 565.073, domestic assault in the second degree; section 565.074, domestic assault in the third degree; section 565.075, assault while on school property; section 565.076, domestic assault in the fourth degree; section 565.081, 565.082, or 565.083, assault of a law enforcement officer, corrections officer, emergency personnel, highway worker in a construction zone or work zone, utility worker, cable worker, or probation and parole officer in the first, second, or third degree; section 567.020, prostitution; section 568.045, endangering the welfare of a child in the first degree; section 568.050, endangering the welfare of a child in the second degree; section 568.060, abuse of a child; section 575.150, resisting or interfering with an arrest; or [paragraph (a), (b), or (c), of] subdivision (2) or (3) of subsection [1] 2 of section 191.677, knowingly or recklessly exposing a person to [HIV] a serious infectious or communicable disease, the court may order that the defendant be conveyed to a state-, city-, or county-operated HIV clinic for testing for HIV, hepatitis B, hepatitis C, syphilis, gonorrhea, and chlamydia. The results of such tests shall be released to the victim and his or her parent or legal guardian if the victim is a minor. The results of such tests shall also be released to the prosecuting attorney or circuit attorney and the defendant's attorney. The state's motion to obtain said testing, the court's order of the same, and the test results shall be sealed in the court file.

2. As used in this section, "HIV" means the human immunodeficiency virus that causes acquired immunodeficiency syndrome.

556.046. 1. A person may be convicted of an offense included in an offense charged in the indictment or information. An offense is so included when:

(1) It is established by [proof] evidence of the same or less than all the [facts] elements required to establish the commission of the offense charged; or

(2) It is specifically denominated by statute as a lesser degree of the offense charged; or

(3) It consists of an attempt to commit the offense charged or to commit an offense otherwise included therein.

2. The court shall [not] be obligated to charge the jury with respect to an included offense [unless] only if:

(1) The offense is established by evidence of the same or less than all the elements required to establish the commission of the charged offense;

(2) There is a rational basis in the evidence for a verdict acquitting the person of the offense charged and convicting him or her of the included offense[.]; and

(3) Either party requests the court to charge the jury with respect to a specific included offense.

3. It shall be the trial court's duty to determine if a rational basis in the evidence for a verdict exists.

4. An offense is charged for purposes of this section if:

(1) It is in an indictment or information; or

(2) It is an offense submitted to the jury because there is a rational basis in the evidence for a verdict acquitting the person of the offense charged and convicting the person of the included offense.

[3. The court shall be obligated to instruct the jury with respect to a particular included offense only if there is a basis in the evidence for acquitting the person of the immediately higher included offense and there is a basis in

the evidence for convicting the person of that particular included offense.]

565.003. 1. (1) The culpable mental state necessary for a homicide offense may be found to exist if the only difference between what actually occurred and what was the object of the offender's state of mind is that a different person or persons were killed.

(2) It is no defense to a homicide charge that the identity of the person the offender intended to kill cannot be established. If the state proves beyond a reasonable doubt that the offender had the requisite mental state toward a specific person or a general class of persons who are not identified or who are not identifiable, such intent shall be transferred to a person who is killed by the offender while such mental state existed.

2. The length of time which transpires between conduct which results in a death and is the basis of a homicide offense and the event of such death is no defense to any charge of homicide.

575.155. 1. An offender or prisoner commits the offense of endangering a corrections employee, a visitor to a correctional center, county or city jail, or another offender or prisoner if he or she attempts to cause or knowingly causes such person to come into contact with blood, seminal fluid, urine, feces, or saliva.

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

(1) "Corrections employee", a person who is an employee, or contracted employee of a subcontractor, of a department or agency responsible for operating a jail, prison, correctional facility, or sexual offender treatment center or a person who is assigned to work in a jail,

prison, correctional facility, or sexual offender treatment center;

(2) "Offender", a person in the custody of the department of corrections;

(3) "Prisoner", a person confined in a county or city jail;

(4) "Serious infectious or communicable disease", the same meaning given to the term in section 191.677.

3. The offense of endangering a corrections employee, a visitor to a correctional center, county or city jail, or another offender or prisoner is a class E felony unless the substance is unidentified in which case it is a class A misdemeanor. If an offender or prisoner is knowingly infected with [the human immunodeficiency virus (HIV), hepatitis B or hepatitis C] a serious infectious or communicable disease and exposes another person to [HIV or hepatitis B or hepatitis C] such serious infectious or communicable disease by committing the offense of endangering a corrections employee, a visitor to a correctional center, county or city jail, or another offender or prisoner and the nature of the exposure to the bodily fluid has been scientifically shown to be a means of transmission of the serious infectious or communicable disease, it is a class D felony.

575.157. 1. An offender commits the offense 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;

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

(4) "Serious infectious or communicable disease", the same meaning given to the term in section 191.677.

3. The offense of endangering a department of mental health employee, a visitor or other person at a secure facility, or another offender is a class E felony. If an offender is knowingly infected with [the human immunodeficiency virus (HIV), hepatitis B, or hepatitis C] a serious infectious or communicable disease and exposes another individual to [HIV or hepatitis B or hepatitis C] such serious infectious or communicable disease by committing the offense of endangering a department of mental health employee, a visitor or other person at a mental health facility, or another offender and the nature of the exposure to the bodily fluid has been scientifically shown to be a means of transmission of the serious infectious or communicable disease, the offense is a class D felony.