

SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 65

AN ACT

To repeal sections 191.677, 545.940, 575.155, and 575.157, RSMo, and to enact in lieu thereof four new sections relating to actions by persons knowingly infected with communicable diseases, with penalty provisions.

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

Section A. Sections 191.677, 545.940, 575.155, and 575.157, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 191.677, 545.940, 575.155, and 575.157, to read as follows: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 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 2 [1] of this section is a class [B] D felony unless the victim contracts [HIV] a serious infectious or communicable disease from the contact, in which case it is a class [A] C felony.

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

[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]

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 race 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 or other identifying characteristics of the exposed person.

(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 any 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 exposed person.

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.

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.