

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 477

90TH GENERAL ASSEMBLY

Reported from the Committee on Civil and Criminal Jurisprudence, March 10, 1999, with recommendation that the Senate Committee Substitute do pass and be placed on the Consent Calendar.

S1456.02C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal section 191.659, RSMo 1994, and sections 191.656 and 191.663, RSMo Supp. 1998, relating to disclosure of HIV information, and to enact in lieu thereof three new sections relating to the same subject.

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

Section A. Section 191.659, RSMo 1994, and sections 191.656 and 191.663, RSMo Supp. 1998, are repealed and three new sections enacted in lieu thereof, to be known as sections 191.656, 191.659 and 191.663, to read as follows:

191.656. 1. (1) All information known to, and records containing any information held or maintained by, any person, or by any agency, department, or political subdivision of the state concerning an individual's HIV infection status or the results of any individual's HIV testing shall be strictly confidential and shall not be disclosed except to:

(a) Public employees within the agency, department, or political subdivision who need to know to perform their public duties;

(b) Public employees of other agencies, departments, or political subdivisions who need to know to perform their public duties;

(c) **Peace officers, as defined in section 590.100, RSMo, and prosecuting attorneys as defined in chapter 56, RSMo, who possess a compelling need for disclosure of the information for the investigation of and adjudication of a criminal proceeding;**

(d) Persons other than public employees who are entrusted with the regular care of those under the care and custody of a state agency, including but not limited to operators of day care facilities, group homes, residential care facilities and adoptive or foster parents;

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

[(d)] (e) As authorized by subsection 2 of this section;

(2) Further disclosure by public employees shall be governed by subsections 2 and 3 of this section;

(3) Disclosure by a public employee or any other person in violation of this section may be subject to civil actions brought under subsection 6 of this section, unless otherwise required by chapter 330, 332, 334 or 335, RSMo, pursuant to discipline taken by a state licensing board.

2. (1) Unless the person acted in bad faith or with conscious disregard, no person shall be liable for violating any duty or right of confidentiality established by law for disclosing the results of an individual's HIV testing:

(a) To the department of health;

(b) To health care personnel working directly with the infected individual who have a reasonable need to know the results for the purpose of providing direct patient health care;

(c) Pursuant to the written authorization of the subject of the test result or results;

(d) To the spouse of the subject of the test result or results;

(e) To the subject of the test result or results;

(f) To the parent or legal guardian or custodian of the subject of the testing, if he is an unemancipated minor;

(g) To the victim of any sexual offense defined in chapter 566, RSMo, which includes sexual intercourse as an element of the crime;

(h) To employees of a state licensing board in the execution of their duties under chapter 330, 332, 334 or 335, RSMo, pursuant to discipline taken by a state licensing board;

(2) Paragraphs (b) and (d) of subdivision (1) of this subsection shall not be construed in any court to impose any duty on a person to disclose the results of an individual's HIV testing to a spouse or health care professional or other potentially exposed person, parent or guardian;

(3) No person to whom the results of an individual's HIV testing has been disclosed pursuant to paragraphs (b) and (c) of subdivision (1) of this subsection shall further disclose such results;

(4) When the results of HIV testing, disclosed pursuant to paragraph (b) of subdivision (1) of this subsection, are included in the medical record of the patient who is subject to the test, the inclusion is not a disclosure for purposes of such paragraph so long as such medical record is afforded the same confidentiality protection afforded other medical records.

3. All communications between the subject of HIV testing and a physician, hospital, or other person authorized by the department of health who performs or conducts HIV sampling shall be privileged communications.

4. The identity of any individual participating in a research project approved by an institutional review board shall not be reported to the department of health by the physician conducting the research project.

5. The subject of HIV testing who is found to have HIV infection shall disclose such information to any health care professional from whom such person receives health care services. Said notification shall be made prior to receiving services from such health care professional.

6. Any individual aggrieved by a violation of this section or regulations promulgated by the department of health may bring a civil action for damages. If it is found in a civil action that:

(1) A person has negligently violated this section, the person is liable, for each violation, for:

(a) The greater of actual damages or liquidated damages of one thousand dollars; and

(b) Court costs and reasonable attorney's fees incurred by the person bringing the action;

and

(c) Such other relief, including injunctive relief, as the court may deem appropriate; or

(2) A person has willfully or intentionally or recklessly violated this section, the person is liable, for each violation, for:

(a) The greater of actual damages or liquidated damages of five thousand dollars; and

(b) Exemplary damages; and

(c) Court costs and reasonable attorney's fees incurred by the person bringing the action;

and

(d) Such other relief, including injunctive relief, as the court may deem appropriate.

7. No civil liability shall accrue to any health care provider as a result of making a good faith report to the department of health about a person reasonably believed to be infected with HIV, or cooperating in good faith with the department in an investigation determining whether a court order directing an individual to undergo HIV testing will be sought, or in participating in good faith in any judicial proceeding resulting from such a report or investigations; and any person making such a report, or cooperating with such an investigation or participating in such a judicial proceeding, shall be immune from civil liability as a result of such actions so long as taken in good faith.

191.659. 1. Except as provided in subsection 2 of this section, all individuals who are delivered to the department of corrections and all individuals who are released or discharged from any correctional facility operated by the department of corrections, before such individuals are released or discharged, shall undergo HIV testing without the right of refusal. In addition, the department of corrections may perform or conduct HIV testing on all individuals required to undergo annual or biannual physical examinations by the department of corrections at the time of such examinations.

2. The department of corrections shall not perform HIV testing on an individual delivered to the department if similar HIV testing has been performed on the individual subsequent to trial and if the department is able to obtain the results of the prior HIV test.

3. The department shall inform the victim of any sexual offense defined in chapter 566, RSMo, which includes sexual intercourse as an element of the crime, of any confirmed positive results of HIV testing on an offender within the custody of the department. **If the victim is an unemancipated minor, the department shall also inform the minor's parents or custodian, if any.**

191.663. 1. As used in this section and section 191.659, the term "HIV testing" means serological test or other test upon a biological specimen to determine the presence of the human immunodeficiency virus that causes acquired immunodeficiency syndrome or its antibodies in the specimen.

2. Any person who is convicted or who pleads guilty or nolo contendere to any sexual offense defined in chapter 566, RSMo, or any juvenile who is adjudicated pursuant to subsection 3 of section 211.181, RSMo, for an offense which would have been a sexual offense defined in chapter 566, RSMo, if committed by an adult, which includes, in accordance with subsection (f) of 42 U.S.C. 3756, a sexual act as defined in subparagraphs (A) and (B) of paragraph (2) of 18 U.S.C. 2245 as an element of the offense, shall be ordered by the court to undergo HIV testing prior to incarceration without the right of refusal.

3. Costs of such HIV testing shall be taxed to the defendant as costs in the criminal proceeding. Such testing costs may be retained by the court from the bond filed by the defendant under subsection 4 of this section. Costs of such HIV testing for juveniles may be collected as provided for in section 211.281, RSMo.

4. Any defendant charged in a court of general jurisdiction with a sexual offense defined in chapter 566, RSMo, which includes, in accordance with subsection (f) of 42 U.S.C. 3756, a sexual act as defined in subparagraphs (A) and (B) of paragraph (2) of 18 U.S.C. 2245 as an element of the crime, shall be required to post a minimum bond amount for his release prior to trial. The minimum bond amount shall be sufficient to cover the cost of any post-trial HIV testing ordered by the court.

5. Notwithstanding any provision of section 191.656, or any other law to the contrary, the victim of any crime defined in chapter 566, RSMo, which includes, in accordance with subsection (f) of 42 U.S.C. 3756, a sexual act as defined in subparagraphs (A) and (B) of paragraph (2) of 18 U.S.C. 2245 as an element, shall have a right to access to the results of any HIV testing performed pursuant to the provisions of this section, and the victim shall be informed of any confirmed positive results of the HIV testing. **If the victim is an unemancipated minor, the minor's parents or custodian, if any, shall also be informed.** The administrator of the jail or correctional facility in which the defendant is confined shall also have access to the test results.

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