

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1756
91ST GENERAL ASSEMBLY

Reported from the Committee on Criminal Law, March 14, 2002, with recommendation that the House Committee Substitute for House Bill No. 1756 Do Pass.

TED WEDEL, Chief Clerk

2366L.02C

AN ACT

To repeal sections 191.656, 191.659, 191.677 and 567.020, RSMo, and to enact in lieu thereof five new sections relating to sexual offenders, with penalty provisions.

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

Section A. Sections 191.656, 191.659, 191.677 and 567.020, RSMo, are repealed and
2 five new sections enacted in lieu thereof, and to be known as sections 191.656, 191.659,
3 191.677, 566.135 and 567.020, to read as follows:

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

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

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

9 (c) Peace officers, as defined in section 590.100, RSMo, the attorney general or any
10 assistant attorneys general acting on his or her behalf, as defined in chapter 27, RSMo, and
11 prosecuting attorneys **or circuit attorneys** as defined in chapter 56, RSMo, and pursuant to
12 section 191.657, **or to prosecute cases pursuant to section 191.677 or 567.020, RSMo.**
13 **Prosecuting attorneys or circuit attorneys may obtain from the department of health the**
14 **contact information and test results of individuals with whom the HIV-infected individual**

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

15 **has had sexual intercourse or deviate sexual intercourse. Any prosecuting attorney or**
16 **circuit attorney who receives information from the department of health and senior**
17 **services pursuant to the provisions of this section shall use such information only for**
18 **investigative and prosecutorial purposes and such information shall be considered strictly**
19 **confidential and shall only be released as authorized by this section;**

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

23 (e) As authorized by subsection 2 of this section;

24 **(f) Prosecuting attorneys or circuit attorneys, in cases in which they have issued**
25 **charges, or representatives of the department of health and senior services may advise**
26 **victims of chapter 566, RSMo, offenses involving sexual intercourse or deviate sexual**
27 **intercourse, or pursuant to section 566.135, RSMo, in cases in which the court, for good**
28 **cause shown, orders the defendant to be tested for HIV, hepatitis B, hepatitis C, syphilis,**
29 **gonorrhea, or chlamydia, whether the defendant has tested positive for HIV;**

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

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

35 2. (1) Unless the person acted in bad faith or with conscious disregard, no person shall
36 be liable for violating any duty or right of confidentiality established by law for disclosing the
37 results of an individual's HIV testing:

38 (a) To the department of health and senior services;

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

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

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

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

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

46 (g) To the victim of any sexual offense defined in chapter 566, RSMo, which includes
47 **sexual intercourse or deviate sexual intercourse, as an element of the crime or to a victim of**
48 **a section 566.135, RSMo, offense, in which the court, for good cause shown, orders the**
49 **defendant to be tested for HIV, hepatitis B, hepatitis C, syphilis, gonorrhea, or chlamydia;**

50 (h) To employees of a state licensing board in the execution of their duties under chapter

51 330, 332, 334, or 335, RSMo, pursuant to discipline taken by a state licensing board;

52 **(i) The department of health and senior services and its employees shall not be held**
53 **liable for disclosing an HIV infected person's HIV status to individuals with whom that**
54 **person had sexual intercourse or deviate sexual intercourse;**

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

58 (3) No person to whom the results of an individual's HIV testing has been disclosed
59 pursuant to paragraphs (b) and (c) of subdivision (1) of this subsection shall further disclose such
60 results; **except that prosecuting attorneys or circuit attorneys may disclose such information**
61 **to defense attorneys defending actions pursuant to section 191.677 or 567.020, RSMo,**
62 **under the rules of discovery, or jurors or court personnel hearing cases pursuant to section**
63 **191.677 or 567.020, RSMo. Such information shall not be used or disclosed for any other**
64 **purpose;**

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

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

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

75 5. The subject of HIV testing who is found to have HIV infection **and is aware of his**
76 **or her HIV status** shall disclose such information to any health care professional from whom
77 such person receives health care services. Said notification shall be made prior to receiving
78 services from such health care professional **if the HIV infected person is medically capable**
79 **of conveying that information or as soon as he or she becomes capable of conveying that**
80 **information.**

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

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

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

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

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

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

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

93 (b) Exemplary damages; and

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

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

97 7. No civil liability shall accrue to any health care provider as a result of making a good
98 faith report to the department of health and senior services about a person reasonably believed
99 to be infected with HIV, or cooperating in good faith with the department in an investigation
100 determining whether a court order directing an individual to undergo HIV testing will be sought,
101 or in participating in good faith in any judicial proceeding resulting from such a report or
102 investigations; and any person making such a report, or cooperating with such an investigation
103 or participating in such a judicial proceeding, shall be immune from civil liability as a result of
104 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
2 delivered to the department of corrections and all individuals who are released or discharged
3 from any correctional facility operated by the department of corrections, before such individuals
4 are released or discharged, shall undergo HIV testing without the right of refusal. In addition,
5 the department of corrections may perform or conduct HIV testing on all individuals required
6 to undergo annual or biannual physical examinations by the department of corrections at the time
7 of such examinations.

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

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

191.677. 1. It shall be unlawful for any individual knowingly infected with HIV to:

2 (1) Be or attempt to be a blood, blood products, organ, sperm or tissue donor except as
3 deemed necessary for medical research; [or]

4 (2) **Fail to advise the department of health and senior services of the identity and**
5 **last known contact information of all individuals with whom that individual has engaged**
6 **in sexual intercourse or deviate sexual intercourse within five years preceding the HIV**
7 **infected individual's knowledge of his or her HIV status, in order to assist the department**
8 **of health and senior services in informing those individuals of his or her HIV infected**
9 **status;**

10 (3) **Fail to comply with any reasonable request from department of health and**
11 **senior services employees to assist them in contacting, attempting to contact, or attempting**
12 **to locate all individuals with whom he or she has had sexual intercourse or deviate sexual**
13 **intercourse within the five years preceding the HIV infected individual's knowledge of his**
14 **or her HIV status, in order to assist the department of health and senior services in**
15 **informing those individuals of his or her HIV infected status;**

16 (4) **Act in a reckless manner by exposing another person to HIV without the knowledge**
17 **and consent of that person to be exposed to HIV, in one of the following manners:**

18 (a) **Through contact with blood, semen or vaginal [fluid] secretions in the course of oral,**
19 **anal or vaginal sexual intercourse[.]; or**

20 (b) **By the sharing of needles; or**

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

24

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

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

33 [(b)] b. The HIV infected person has subsequently been infected with and tested positive
34 to primary and secondary syphilis, or gonorrhea, or chlamydia; or

35 [(c)] c. Another person provides [corroborated] evidence of sexual contact with the HIV
36 infected person after a diagnosis of an HIV status.

37 2. Violation of the provisions of **subdivision (1) or (4) of subsection 1 of this section**
38 **is a class [D] B felony unless the victim contracts HIV from the contact in which case it is**
39 **a class A felony. Violation of the provisions of subdivision (2) or (3) of subsection 1 of this**

40 **section is a class D felony.**

41 3. [Violation of the provisions of subsection 1 of this section with a person under the age
42 of seventeen is a class C felony if the actor is over the age of twenty-one.

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

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

566.135. 1. Pursuant to a motion filed by the prosecuting attorney or circuit
2 attorney with notice given to the defense attorney and for good cause shown, in any
3 criminal case in which a defendant has been charged by the prosecuting attorney's office
4 or circuit attorney's office with any sex offense under chapter 566, 565, or 568, RSMo, or
5 pursuant to section 575.150 or 567.020, RSMo, or paragraph (a),(b), or (c), of subdivision
6 (4) of subsection 1 of section 191.677, RSMo, the court may order that the defendant be
7 conveyed to a state, city, or county operated HIV clinic for testing for HIV, hepatitis B,
8 hepatitis C, syphilis, gonorrhea, and chlamydia. The results of the defendant's HIV,
9 hepatitis B, hepatitis C, syphilis, gonorrhea, and chlamydia tests shall be released to the
10 victim and his or her parent or legal guardian if the victim is a minor. The results of the
11 defendant's HIV, hepatitis B, hepatitis C, syphilis, gonorrhea, and chlamydia tests shall
12 also be released to the prosecuting attorney or circuit attorney and the defendant's
13 attorney. The state's motion to obtain said testing, the court's order of the same, and the
14 test results shall be sealed in the court file.

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

567.020. 1. A person commits the crime of prostitution if the person performs an act of
2 prostitution.

3 2. Prostitution is a class B misdemeanor **unless the person knew prior to performing**
4 **the act of prostitution that he or she was infected with HIV in which case prostitution is**
5 **a class B felony. The use of condoms is not a defense to this crime.**

6 **3. As used in this section, "HIV" means the human immunodeficiency virus that**
7 **causes acquired immunodeficiency syndrome.**

8 [3.] **4.** The judge may order a drug and alcohol abuse treatment program for any person
9 found guilty of prostitution, either after trial or upon a plea of guilty, before sentencing. **For the**
10 **class B misdemeanor offense**, upon the successful completion of such program by the
11 defendant, the court [shall] **may at its discretion** allow the defendant to withdraw the plea of
12 guilty or reverse the verdict and enter a judgment of not guilty. **For the class B felony offense,**
13 **the court shall not allow the defendant to withdraw the plea of guilty or reverse the verdict**
14 **and enter a judgment of not guilty. The judge, however, has discretion to take into**
15 **consideration successful completion of a drug or alcohol treatment program in determining**
16 **the defendant's sentence.**