

# HOUSE BILL NO. 1692

## 100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MCCREERY.

4237H.011

DANA RADEMAN MILLER, Chief Clerk

### AN ACT

To repeal sections 191.677, 567.020, 575.155, and 575.157, RSMo, and to enact in lieu thereof two 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Section A. Sections 191.677, 567.020, 575.155, and 575.157, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 191.677 and 567.020, to read as follows:

191.677. 1. **For the purposes of this section, the following terms mean:**

(1) **"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) **"Practical measures to prevent transmission", good-faith employment of any method, device, behavior, or activity demonstrated scientifically to measurably limit or reduce the risk of transmission of a serious infectious or communicable disease including, but not limited to, the use of a condom, barrier protection, or other prophylactic device or compliance with a medical treatment regimen prescribed by a health care provider for a serious infectious or communicable disease;**

(3) **"Serious infectious or communicable disease", a nonairborne disease that is transmitted from person to person and determined to have significant, long-term implications on physical health or life activities.**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

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

18 ~~———— (1) Be or attempt to be a blood, blood products, organ, sperm or tissue donor except as~~  
19 ~~deemed necessary for medical research;————~~

20 ~~———— (2) Act in a reckless manner by exposing another person to HIV without the knowledge~~  
21 ~~and consent of that person to be exposed to HIV, in one of the following manners:~~

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

24 ~~———— (b) By the sharing of needles; or~~

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

28

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

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

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

39 ~~———— c. Another person provides evidence of sexual contact with the HIV-infected person after~~  
40 ~~a diagnosis of an HIV status] , with the specific purpose of transmitting the serious infectious~~  
41 **or communicable disease, expose another person to that disease through an activity that**  
42 **has a substantial risk of disease transmission as determined by the Centers for Disease**  
43 **Control and Prevention or other epidemiological evidence.**

44           ~~[2.]~~ 3. Violation of the provisions of ~~[subdivision (1) or (2) of]~~ subsection ~~[1]~~ 2 of this  
45 section is a class B ~~[felony unless the victim contracts HIV from the contact in which case it is~~  
46 ~~a class A felony]~~ **misdemeanor, unless disease transmission occurs, in which case it is a class**  
47 **A misdemeanor.**

48           ~~[3.]~~ 4. ~~[The department of health and senior services or local law enforcement agency;~~  
49 ~~victim or others may file a complaint with the prosecuting attorney or circuit attorney of a court~~  
50 ~~of competent jurisdiction alleging that a person has violated a provision of subsection 1 of this~~  
51 ~~section.— The department of health and senior services shall assist the prosecutor or circuit~~

52 ~~attorney in preparing such case, and upon request, turn over to peace officers, police officers, the~~  
53 ~~prosecuting attorney or circuit attorney, or the attorney general records concerning that person's~~  
54 ~~HHV-infected status, testing information, counseling received, and the identity and available~~  
55 ~~contact information for individuals with whom that person had sexual intercourse or deviate~~  
56 ~~sexual intercourse and those individuals' test results]~~ **A defendant shall not be considered to**  
57 **act with the purpose required under subsection 2 of this section if the defendant takes or**  
58 **attempts to take practical measures to prevent transmission. Failure to take practical**  
59 **measures to prevent transmission is insufficient on its own to establish the purpose**  
60 **required under subsection 2 of this section.**

61 [4.] **5. [The use of condoms is not a defense to a violation of paragraph (a) of subdivision**  
62 **(2) of subsection 1 of this section] For the purposes of this section:**

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

69 **(2) Unless the person exposed requests otherwise, all court decisions, orders,**  
70 **pleadings, and other documents, including motions and papers filed by the parties, shall**  
71 **be worded so as to protect the name or other identifying characteristics of the exposed**  
72 **person from public disclosure;**

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

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

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

567.020. 1. A person commits the offense of prostitution if he or she engages in or offers or agrees to engage in sexual conduct with another person in return for something of value to be received by any person.

2. The offense of prostitution is a class B misdemeanor ~~[unless the person knew prior to performing the act of prostitution that he or she was infected with HIV in which case prostitution is a class B felony. The use of condoms is not a defense to this offense.~~

~~3. As used in this section, "HIV" means the human immunodeficiency virus that causes acquired immunodeficiency syndrome].~~

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

~~[5.] 4.~~ In addition to the affirmative defense provided in subsection 2 of section 566.223, it shall be an affirmative defense to prosecution pursuant to this section that the defendant was under the age of eighteen and was acting under the coercion, as defined in section 566.200, of an agent at the time of the offense charged. In such cases where the defendant was under the age of eighteen, the defendant shall be classified as a victim of abuse, as defined under section 210.110, and such abuse shall be reported, as required under section 210.115.

~~[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.~~

~~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~~

17 ~~misdemeanor. If an offender or prisoner is knowingly infected with the human~~  
 18 ~~immunodeficiency virus (HIV), hepatitis B or hepatitis C and exposes another~~  
 19 ~~person to HIV or hepatitis B or hepatitis C by committing the offense of~~  
 20 ~~endangering a corrections employee, a visitor to a correctional center, county or~~  
 21 ~~city jail, or another offender or prisoner, it is a class D felony.]~~  
 22

~~[575.157. 1. An offender commits the offense of endangering a~~  
 2 ~~department of mental health employee, a visitor or other person at a secure~~  
 3 ~~facility, or another offender if he or she attempts to cause or knowingly causes~~  
 4 ~~such individual to come into contact with blood, seminal fluid, urine, feces, or~~  
 5 ~~saliva.~~

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

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

12 ~~(2) "Offender", persons ordered to the department of mental health after~~  
 13 ~~a determination by the court that such persons may meet the definition of a~~  
 14 ~~sexually violent predator, persons ordered to the department of mental health~~  
 15 ~~after a finding of probable cause under section 632.489, and persons committed~~  
 16 ~~for control, care, and treatment by the department of mental health under sections~~  
 17 ~~632.480 to 632.513;~~

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

21 ~~3. The offense of endangering a department of mental health employee,~~  
 22 ~~a visitor or other person at a secure facility, or another offender is a class E~~  
 23 ~~felony. If an offender is knowingly infected with the human immunodeficiency~~  
 24 ~~virus (HIV), hepatitis B, or hepatitis C and exposes another individual to HIV or~~  
 25 ~~hepatitis B or hepatitis C by committing the offense of endangering a department~~  
 26 ~~of mental health employee, a visitor or other person at a mental health facility, or~~  
 27 ~~another offender, the offense is a class D felony.]~~

✓