

Missouri

Analysis

PLHIV and individuals living with serious infectious or communicable diseases face felony charges for exposing another person to the disease through conduct that carries a substantial risk of transmission.

Despite amendments to Missouri’s HIV criminal law in 2021, people living with HIV and other infectious diseases remain at risk for felony prosecution. Missouri law now defines a “serious infectious or communicable disease” as 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.”¹ This definition encompasses HIV, as well as other communicable illnesses which are potentially fatal or require long-term management such as some forms of viral hepatitis.

An individual diagnosed with HIV or a serious infectious disease who knowingly exposes another individual to the disease in a manner that poses a substantial risk of transmission is guilty of a class D felony punishable by up to seven years in prison and a fine of up to \$10,000 if transmission of the disease does not occur.² If transmission of the disease does occur as a result of the conduct in question, the defendant is guilty of a Class C felony punishable by three to ten years in prison and a fine of up to \$10,000.³

An individual diagnosed with HIV who recklessly exposes another person to the disease through conduct that creates a substantial risk of disease transmission is guilty of a class A misdemeanor. The seriousness and sentence for such a charge is the same regardless of whether transmission of the disease occurs.⁴

The determination of what conduct poses a substantial risk of transmission is based on medical testimony or epidemiological evidence.⁵ Consequently, evidence of condom use or consistent medical treatment with a low or undetectable viral load could serve as a defense to prosecution, despite the fact

¹ Mo. Rev. Stat. § 191.677 (2021)

² Mo. Rev. Stat. § 191.677 (2) (2021); Mo. Rev. Stat. § 558.011 (2018); Mo. Rev. Stat. § 560.011 (2018)

³ Mo. REV. STAT. § 191.677(3) (2021); Mo. REV. STAT. § 558.011 (2018); Mo. REV. STAT. § 560.011 (2021)

⁴ Mo. REV. STAT. § 191.677(2) (2021)

⁵ Id.

that the use of preventative measures as a defense to prosecution under the previous statutory scheme were repeatedly denied.⁶

PLHIV also may assert as a defense that the person claiming exposure was aware that the person accused was living with the health condition at issue and therefore effectively consented to the conduct.⁷ However, disclosure of HIV status before sexual intercourse is often difficult to prove retroactively.

PLHIV and individuals infected with serious infectious or communicable diseases cannot attempt to donate blood or other bodily tissue unless it is deemed medically appropriate.

Missouri law prohibits individuals diagnosed with an infectious communicable disease from donating or attempting to donate blood, sperm, organs, and other tissue unless a licensed physician has approved the donation as medically appropriate or necessary for future research.⁸

A violation of this law is considered a Class D felony punishable by up to seven years in prison and a fine of up to \$10,000 if transmission does not occur. If as a result of the person's donation another individual acquires a serious infectious disease, the associated charge is elevated to a Class C felony, which is punishable by between three and ten years in prison and a fine of \$10,000.⁹

Missouri courts can compel infectious disease testing of a person charged with knowingly or recklessly exposing another person to a serious disease.

The attorney prosecuting a case involving knowing or reckless exposure to a serious infectious disease can file a motion for the court to require the accused individual to undergo testing for HIV, hepatitis B, hepatitis C, syphilis, gonorrhea, and chlamydia.¹⁰ To secure a court order, the prosecuting attorney must present good cause and give notice to the defendant's defense attorney.¹¹

The results of this testing will be shared with the person alleging exposure, the prosecuting attorney, and the defense attorney. Test results, the motion to compel testing and any associated court order will them be sealed in the court file.¹²

Sex workers may receive enhanced sentences for the offense of prostitution if they know they are living with HIV.

The offense of prostitution is generally a class B misdemeanor, punishable by six months' imprisonment and a \$1,000 fine.¹³ However, if the defendant is a PLHIV and knows their HIV status, the

⁶ *State v. Wilson*, 256 S.W.3d 58, 64 (Mo. 2008); *State v. Yonts*, 84 S.W.3d 516, 517 (Mo. Ct. App. 2002).

⁷ Mo. REV. STAT. § 191.677(4) (2021).

⁸ Mo. REV. STAT. § 191.677(2) (2021)

⁹ Mo. REV. STAT. § 191.677(3) (2021); Mo. REV. STAT. § 558.011 (2018); Mo. REV. STAT. § 560.011 (2021)

¹⁰ Mo. REV. STAT. § 545.940 (2021)

¹¹ *Id.*

¹² *Id.*

¹³ Mo. REV. STAT. §§ 567.020(2), 558.011.1(7), 558.002.1(3) (2018).

offense is a class B felony, punishable by five to 15 years' imprisonment.¹⁴ The use of condoms is expressly not a defense to this sentence enhancement.¹⁵

The sentence enhancement applies even for conduct posing little or no risk of HIV transmission. The offense of prostitution applies broadly to “sexual conduct,”¹⁶ which includes oral sex; anal or vaginal penetration by a finger or other object; and any touching of the genitals or anus of another person or breasts of a female person, including through clothing.¹⁷ Of these, only oral sex carries even a theoretical risk of HIV transmission. Moreover, the offense of prostitution includes merely offering or agreeing to engage in sexual conduct with another person in return for something of value, meaning no physical contact of any kind is required for the application of the felony enhancement.¹⁸

There is an additional sentencing differentiation for sex workers living with HIV. For a class B misdemeanor offense, upon successful completion of a court-ordered drug and alcohol treatment program, the court may, at its discretion, allow the defendant to withdraw the guilty plea or reverse the verdict and enter a judgment of not guilty.¹⁹ This option is denied a defendant convicted of a class B felony (a sex worker who knows their HIV status).²⁰ However, the court has discretion to take into consideration successful completion of such a program when sentencing.²¹

It is a crime to expose prison guards, prison visitors, and other prisoners, as well as mental health employees, visitors, or other offenders at secure department of mental health facilities to HIV or hepatitis through bodily fluids.

In Missouri, it is a class E felony, punishable by up to four years in prison,²² for a person in confinement to attempt to cause or knowingly cause a correctional employee, visitor to a correctional facility, or fellow prisoner to come into contact with their blood, semen, urine, feces, or saliva.²³ A violation of this statute becomes a class D felony, punishable by up to seven years in prison if the offender is diagnosed with HIV or a serious communicable disease and knowingly exposes a corrections officer, visitor, or prisoner to bodily fluids in a manner that possibly could transmit the disease.²⁴

A similar statute exists for those in secure mental health facilities.²⁵ The offense is a class E felony, unless the offender knows they are infected with a serious communicable disease and the nature of the

¹⁴ Mo. REV. STAT. §§ 567.020(2), 558.011.1(2) (2018).

¹⁵ Mo. REV. STAT. § 567.020(2) (2018).

¹⁶ Mo. REV. STAT. § 567.020(1) (2018).

¹⁷ Mo. REV. STAT. § 567.010 (2018).

¹⁸ Mo. REV. STAT. § 567.020(1) (2018).

¹⁹ Mo. REV. STAT. § 567.020(4) (2018).

²⁰ *Id.*

²¹ *Id.*

²² Mo. REV. STAT. § 558.011.1(5) (2018).

²³ Mo. REV. STAT. § 575.155.1 (2021)(stating that a “corrections employee” is a person “who is an employee . . . 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 [such locations].”).

²⁴ Mo. REV. STAT. § 575.155.3 (2021)

²⁵ Mo. REV. STAT. § 575.157 (2021).

exposure is a possible mode of transmission,²⁶ In this case the offense is a class D felony, shifting the sentence from a maximum of four years' imprisonment to a possible seven years' imprisonment.²⁷

These “endangerment” statutes impose specific penalties for offenders living with HIV, and require neither the intent to transmit HIV nor actual transmission in order for prosecution to proceed. The inclusion of a standard based on scientific understanding of disease transmission would presumably prevent incidents involving certain fluids such as urine and saliva from triggering these enhanced sentences, as these fluids are not a means of disease transmission.²⁸ However, the statutory requires only the possibility of transmission, rather than a significant likelihood of transmission.²⁹

Under these statutes, people may also face prosecution if they are injured and bleed during an altercation and a complainant claims they were intentionally exposed to the blood. Facts surrounding such events may be hard to determine, and this statute could impose additional sentences for inmates with communicable diseases who accidentally expose others to their blood due to an injury. This may be especially so if juries consider the testimony of those with stigmatized communicable diseases less credible than testimony from complainants.

Sexually violent predator statutes have been applied to PLHIV based solely on their HIV status.

In the Missouri Court of Appeals case, *In re Coffel*, HIV status was a factor in the three-year civil confinement of a PLHIV as a sexually violent predator.³⁰ Missouri defines a sexually violent predator as “any person who suffers from a mental abnormality which makes the person more likely than not to engage in predatory acts of sexual violence if not confined in a secure facility and who [...] has pled guilty or been found guilty [...] of a sexually violent offense.”³¹

On a dare, Coffel, then 18 years old, placed the penises of an 11-year-old and 13-year-old boy briefly in her mouth.³² The boys later discovered her HIV status and reported the incident to their mother.³³ Coffel pled guilty to sodomy and was sentenced to five years' imprisonment. Although her pre-sentencing report said she was not a sexual predator, her end-of-confinement evaluation determined, due to her lack of remorse or concern about the possibility of infecting others with HIV, she was more likely than not to re-offend and should be considered a sexually violent predator.³⁴ The Missouri Court of Appeals noted that the report was prepared by an individual unqualified to diagnose or testify in the state.³⁵

²⁶ MO. REV. STAT. § 575.157.3 (2021).

²⁷ MO. REV. STAT. §§ 575.157(3), 558.011.1 (4), (5) (2021).

²⁸ CTR. FOR DISEASE CONTROL & PREVENTION, *HIV Transmission, Can I get HIV from being spit on or scratched by an HIV-infected person?*, (March 16, 2018) available at <http://www.cdc.gov/hiv/basics/transmission.html> (last visited July 8, 2021).

²⁹ MO. REV. STAT. § 575.157.3 (2021).

³⁰ *In re Coffel*, 117 S.W.3d 116, 118 (Mo. Ct. App. 2003).

³¹ MO. REV. STAT. § 632.480(5) (2018).

³² *Id.* at 117-18.

³³ *Id.* at 118.

³⁴ *Id.*

³⁵ *Id.*

At trial, a multidisciplinary team as well as a psychologist determined that Coffel was not a sexual predator.³⁶ In particular, the psychologist noted that the end-of-confinement report was based in large part on the erroneous assumption that Coffel's saliva could have transmitted HIV during the acts of sodomy.³⁷ The trial court, despite this evidence, ordered her to be confined "until such time as her mental abnormality has so changed that she is safe to be at large."³⁸

On appeal, the Missouri Court of Appeals found only two out of 10 of the State's witnesses addressed whether Coffel was likely to commit the crime again, and that the expert testimonies did not base their opinions on psychological theories but rather on private, subjective, untested, unsupported analysis.³⁹ Based on this evidence, the court ordered Coffel's release because the state failed to meet its burden, but only after she had already been civilly committed for three years.⁴⁰ Moreover, *Coffel* was reversed because the state presented no evidence to meet its burden. Future cases might still consider a defendant's HIV status as part of the sexually violent predator determination so long as other evidence is presented as well.

Subsequent cases seem to follow *Coffel*'s proposition that, without reliable evidence, a finding that someone is more likely than not to reoffend cannot be made.⁴¹ However, one case from the Supreme Court of Missouri has limited the reversal in *Coffel* to sexually violent predator determinations in which the offender is a woman, seemingly because of the lack of data about recidivism for female sex offenders.⁴² Thus, *Coffel* highlights the extent to which a person's HIV status can be erroneously relied upon in determining sexually violent predator status for the purpose of civil confinement.

Important note: *While we have made an effort to ensure that this information is current, the law is always changing and we cannot guarantee the accuracy of the information provided. This information may or may not be applicable to your specific situation and, as such, should not be used as a substitute for legal advice.*

³⁶ *Id.* at 118-19.

³⁷ *Id.* at 120.

³⁸ *Id.* at 127.

³⁹ *Id.* at 127-29.

⁴⁰ *Id.* at 129.

⁴¹ See, e.g., *In re Kapprelian*, 168 S.W.3d 708, 715 (Mo. Ct. App. 2005).

⁴² *In re Norton*, 123 S.W. 3d 170, 177 (Mo. 2003).

Missouri Revised Statutes

*Note: Provisions imposing punitive restrictions or listing criminal sentences are denoted with ** and are generally listed first. Thereafter, provisions within a particular title are listed numerically.*

TITLE 12, PUBLIC HEALTH AND WELFARE

Mo. Rev. Stat. § 191.677 (2021) **

Prohibited acts, criminal penalties

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 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) Knowingly expose 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; 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.
3.
 - (1) Violation of the provisions of subdivision (1) or (2) of subsection 2 of this section is a class D felony unless the victim contracts the serious infectious or communicable disease from the contact, in which case it is a class C felony.
 - (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.

MO. REV. STAT. § 192.320 (2018) **

Violation of law or quarantine – penalty

Any person or persons violating any of the provisions of sections 192.010, 192.020 to 192.490, 192.600 to 192.620 or who shall leave any pesthouse, or isolation hospital, or quarantined house or place without the consent of the health officer having jurisdiction, or who evades or breaks quarantine or knowingly conceals a case of contagious, infectious, or communicable disease, or who removes, destroys, obstructs from view, or tears down any quarantine card, cloth or notice posted by the attending physician or by the health officer, or by direction of a proper health officer, shall be deemed guilty of a class A misdemeanor.

TITLE 37, CRIMINAL PROCEDURE

Mo. Rev. Stat. § 545.940 (2021)

Proceedings Before Trial

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 subdivision (2) or (3) of subsection 2 of section 191.677, knowingly or recklessly exposing a person to 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.

TITLE 38, CRIMES AND PUNISHMENT; PEACE OFFICERS AND PUBLIC DEFENDERS

*Mo. Rev. Stat. § 567.020 (2018) (effective until August 28, 2018) ***

Prostitution

1. A person commits the crime 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. 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.

MO. REV. STAT. § 575.155 (2021) **

Crime of endangering a corrections employee—definitions—penalty

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 a serious infectious or communicable disease and exposes another person to 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.

MO. REV. STAT. § 575.157 (2021) **

Endangering a mental health employee, visitor, or another offender, definitions, penalties

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.
 - (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 a serious infectious or communicable disease and exposes another individual to 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.

MO. REV. STAT. § 567.010 (2018)

Chapter definitions

As used in this chapter, the following terms mean:

- (1) "Deviate sexual intercourse", any sexual act involving the genitals of one person and the mouth, hand, tongue, or anus of another person; or any act involving the penetration, however slight, of the penis, the female genitalia, or the anus by a finger, instrument, or object done for the purpose of arousing or gratifying the sexual desire of any person or for the purpose of terrorizing the victim;
- (4) "Sexual conduct", sexual intercourse, deviate sexual intercourse, or sexual contact;
- (5) "Sexual intercourse", any penetration, however slight, of the female genitalia by the penis;
- (6) "Sexual contact", any touching of another person with the genitals or any touching of the genitals or anus of another person or the breast of a female person, or such touching through the clothing, for the purpose of arousing or gratifying sexual desire of any person or for the purpose of terrorizing the victim.

MO. REV. STAT. § 558.011 (2018) **

Sentence of imprisonment, terms—conditional release

1. The authorized terms of imprisonment, including both prison and conditional release terms, are:

- (1) For a class A felony, a term of years not less than ten years and not to exceed thirty years, or life imprisonment;
- (2) For a class B felony, a term of years not less than five years and not to exceed fifteen years;
- (3) For a class C felony, a term of years not less than three years and not to exceed ten years;
- (4) For a class D felony, a term of years not to exceed seven years;
- (5) For a class E felony, a term of years not to exceed four years;
- (6) For a class A misdemeanor, a term not to exceed one year;
- (7) For a class B misdemeanor, a term not to exceed six months;
- (8) For a class C misdemeanor, a term not to exceed fifteen days.

MO. REV. STAT. § 560.011 (2018) **

Fines for felonies

1. Except as otherwise provided for an offense outside this code, a person who has been convicted of an offense may be sentenced to pay a fine which does not exceed:

- (1) For a class C, D, or E felony, ten thousand dollars;
- (2) For a class A misdemeanor, two thousand dollars;

- (3) For a class B misdemeanor, one thousand dollars;
- (4) For a class C misdemeanor, seven hundred fifty dollars;
- (5) For a class D misdemeanor, five hundred dollars . . .