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FACT SHEET

A Side-by-Side Comparison of the Proposed Bills to Reform Missouri's HIV Criminal Laws

On December 3, 2018, Missouri State Representatives Tracy McCreery (D-88) and Holly Rehder (R-148) both filed bills proposing changes to Missouri's HIV criminal laws. On April 15, 2019, a House Committee Substitute (HCS) bill was submitted for a vote to the House Health and Mental Health Policy Committee. The bills attempt to correct problematic features of Missouri's laws, but they differ in their approach and specific terms. A close examination of each bill is useful to advocates considering different paths to reform HIV criminal exposure statutes in their states.

HB 166	HB 167	House Committee Substitute (HCS)
<p>Filed by Representative McCreery, HB 166 closely reflects the priorities and advocacy of the Missouri HIV Justice Coalition.</p>	<p>Filed by Representative Rehder, HB 167 represents some of the Coalition's priorities, but with several differences from HB 166, some of which are problematic.</p>	<p>HCS is an amended version of HB 167. The bill has additional amendments that shift away from the Coalition's priorities.</p>
<p style="text-align: center;">Required State of Mind (<i>mens rea</i>)</p> <p>Currently, Missouri Rev. Stat. §191.677¹ requires only that a PLHIV knows their status and "recklessly" exposes someone else via sex, sharing needles, or biting/causing some other kind of contact with bodily fluids, regardless of whether the contact poses a significant risk of transmission. Also, a person acts "knowingly" when they are aware of the nature of their conduct or they are aware that their conduct is practically certain to cause a particular result (Mo. Rev. Stat. § 562.016).</p>		
<p>HB 166 adds the requirement that someone acts "with the specific purpose of transmitting a serious infectious or communicable disease" in order for prosecution to occur.</p> <p>¹ The statutes are posted on our website along with related cases and analysis. See also CHLP's HIV Criminalization in the United States: A Sourcebook on State and Federal HIV Criminal Law and Practice, The Center for HIV Law and Policy (2017).</p>	<p>HB 167 alters the language of the current law to require that a person "knowingly" expose someone else to a substantial risk of transmission for application of the most severe penalty. "Reckless" conduct that does not result in transmission can also still be punished as a Class A misdemeanor. These changes allow for the prosecution of a larger number of PLHIV than acting with the "specific purpose" of transmission under HB 167.</p>	<p>HCS has the same <i>mens rea</i> requirement that is currently proposed in HB 167.</p>

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HB 166	HB 167	House Committee Substitute (HCS)
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Penalty Level: Misdemeanor vs. Felony

Missouri's criminal exposure statute [currently imposes](#) a Class A or B felony (depending on whether transmission occurred) punishable by 30 or 15 years of incarceration, respectively. Engaging in activities that pose no real risk of transmission, and which do not result in transmission, can still result in up to 15 years of prison time.

HB 166 downgrades punishment from a felony to a misdemeanor. It proposes misdemeanor penalties for intentional transmission or attempted transmission of a serious infectious or communicable disease. Where transmission occurs, a Class A misdemeanor is imposed, punishable by up to one year of incarceration. Where transmission does not occur, a Class B misdemeanor is imposed, punishable by up to six months imprisonment. These penalties represent a much more proportionate response to the harm of intentional disease transmission.

HB 167 proposes penalties that are somewhat less harsh than current law but keeps felony punishments, which have a long-term negative impact on a person's life opportunities, including employment. It proposes felony penalties for "knowing exposure," even when there is no transmission. Knowing exposure that results in transmission is a Class B felony, punishable by up to 15 years of imprisonment. Knowing exposure that does not result in transmission is a Class C felony, punishable by up to seven years of incarceration. These penalties represent approximately half the severity level that someone could face for similar conduct under [current law](#). HB 167 also adds a Class A misdemeanor penalty for "reckless exposure" that does not result in transmission (up to one year of jail time).

HCS has the same proposed penalties as in HB 167.

Risk of Transmission

[Under current law](#), even activities that do not pose a significant risk of disease transmission can be severely punished as a felony, such as oral sex, sex with a condom or while on effective therapy, and biting.

HB 166 would limit prosecution to those who intend to transmit and engage in an "activity that has a substantial risk of disease transmission as determined by the Centers for Disease Control and Prevention or other epidemiological evidence."

HB 167 also limits prosecution to "knowingly" or "recklessly" exposing someone through an "activity that creates a substantial risk of transmission" in order for prosecution to occur. The bill does not specifically refer to the Centers for Disease Control and Prevention as an authority—rather, the assessment of "substantial risk" is to be made using "competent medical or epidemiological evidence." (This would presumably include standards from the CDC).

HCS has the requirement proposed in HB 167 that someone engage in an "activity that creates a substantial risk of transmission" for prosecution.

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Risk Reduction Measures

Current Missouri law specifically excludes condom use as a defense to prosecution.

<p>HB 166 includes risk reduction measures as a defense. Under this bill, a person does not act with the purpose of transmitting a disease if they “take or attempt to take practical measures to prevent transmission.” This means a good faith effort to do anything that is “demonstrated scientifically to measurably limit or reduce the risk of transmission,” whether that is using a condom, taking medication, or using other forms of protection. Importantly, not taking any kind of risk reduction measure cannot be the sole basis of establishing that a person acted with the specific purpose of transmitting disease.</p>	<p>HB 167 also includes the defense of risk reduction measures and it proposes that a person cannot be found to have acted knowingly if they “take or attempt to take practical measures to prevent transmission.” This means a good faith effort to do anything that is “demonstrated scientifically to measurably limit or reduce the risk of transmission,” whether that is using a condom, taking medication, or other forms of prophylaxis.</p>	<p>HCS does not include risk reduction measures as a defense to prosecution.</p>
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HIV Exceptionalism

Current Missouri law singles out HIV.

<p>HB 166 shifts away from “HIV exceptionalism” to intentional transmission of a “serious infectious or communicable disease[s],” and targeting conduct intended to transmit any “serious infectious or communicable disease” rather than singling out HIV. A serious infectious or communicable disease is defined as a “nonairborne disease that is transmitted from person to person and determined to have significant, long-term implications on physical health or life activities.” This definition excludes casually transmitted conditions, such as tuberculosis or measles, and makes the criminal law’s treatment of HIV consistent with the treatment of other serious health conditions.</p>	<p>HB 167 also shifts away from an HIV specific law to a “serious infectious or communicable disease.” Under this bill, a serious infectious or communicable disease is defined as 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.” Like HB 166, this definition excludes casually transmitted conditions but is further narrowed by the requirements that the condition is fatal or disabling for an individual absent lifelong clinical management. However, because current law does not treat exposure to other infectious diseases as a felony, this could expand the law’s scope and increase the number of people at risk for felony prosecution.</p>	<p>HCS mirrors HB 167 and also changes the HIV specific law to one that covers a “serious or infectious communicable disease.” HCS keeps the same definition of a serious or infectious communicable disease that is in HB 167 along with the potential to expand the law’s scope and increase the number of people at risk for felony prosecution.</p>
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Uniquely Harsh Punishment for Sex Workers Living with HIV

Currently, [Missouri Rev. Stat. § 567.020\(2\)](#) makes engaging in prostitution a Class B felony if you are a PLHIV, punishable by up to 15 years of incarceration. Prostitution is otherwise a Class B misdemeanor, punished with a maximum of six months in jail. This is a 30-fold disparity in punishment on the basis of HIV status alone.

HB 166 would eliminate this unfair and extreme penalty enhancement for sex workers living with HIV.

HB 167 does nothing to address uniquely harsh penalties for sex workers living with HIV. Evidence from some jurisdictions (see e.g., [California](#), [Florida](#), [Georgia](#)) shows that sex workers are disproportionately targeted by and incarcerated because of HIV exposure laws.

HCS mirrors HB 167 and does nothing to address uniquely harsh penalties for sex workers living with HIV.

The Role of Disclosure

Under current Missouri law, disclosure is not spelled out as a standalone affirmative defense.

HB 166 does not create an affirmative defense of disclosure.

HB 167 creates an affirmative defense of disclosure when the exposed person knew about the infectious or communicable disease and consented to exposure with that knowledge.

HCS creates an affirmative defense of disclosure when the exposed person knew about the infectious or communicable disease and consented to exposure with that knowledge.

Donation

Under current law, [Missouri Rev. Stat. § 191.677.1\(1\)](#), donation or attempted donation of blood, tissue, organs or sperm, unless deemed necessary for medical research, is a class B felony, or class A if transmission occurs.

HB 166 would eliminate the penalties for blood/organ/sperm/tissue donation by PLHIV, as rigorous screening methods address such concerns.

HB 167 does not eliminate penalties for blood/organ/sperm/tissue donations. However, it does include an additional criterion for allowing such donations. The bill allows donations “deemed medically appropriate by a licensed physician,” in addition to what is allowed under current law, donations “deemed necessary for medical research.”

HCS does not eliminate penalties for blood/organ/sperm/tissue donations. However, it does include an additional criterion for allowing such donations.

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Endangering a Mental Health or Correctional Employee

Under current law, Missouri Rev. Stats. §§ 575.155.1 and 575.157.1, HIV and viral hepatitis function to enhance penalties for exposing others to blood, semen, urine, feces, or saliva in correctional settings or in secure mental health facilities. While normally punished as a Class D felony, with a maximum of four years' imprisonment, HIV or viral hepatitis can be used to bump this up to a Class C felony, with a maximum of seven years' incarceration.

HB 166 would eliminate the offenses of endangering a correctional or mental health employee altogether, regardless of whether someone is living with HIV or viral hepatitis.

HB 167 does not eliminate the offenses of endangering a correctional or mental health employee via exposure to bodily fluids. In fact, the bill would expand penalties from applying only to HIV and viral hepatitis to include a "serious infectious or communicable disease," using the same definition as above. The bill expands criminalized exposure from blood, seminal fluid, urine, feces, or saliva, to "bodily fluid[s] that ha[ve] been scientifically shown to be a known means of transmission of a serious infectious or communicable disease."

HCS tracks HB 176 and keeps the offense of endangering a correctional or mental health employee. Enhanced penalties are no longer specific to HIV and viral hepatitis and would apply to "bodily fluid[s] that ha[ve] been scientifically shown to be a known means of transmission or a serious infectious or communicable disease."

Confidentiality

HB 166 does not address confidentiality and disclosure of the defendant's or complainant's name or other identifying characteristics.

HB 167 does not address confidentiality and disclosure of the defendant's or complainant's name or other identifying characteristics.

HCS creates a confidentiality section, which "unless the defendant requests otherwise," would require the court "at the earliest opportunity" to issue an order to prevent public disclosure of "the name or other identifying characteristics of the defendant." Requiring the court to issue an order "at the earliest opportunity" may still allow for public disclosure of the defendant's name or other identifying characteristics if the order is not granted when the complainant initiates charges against the defendant.