



HIV is NOT a CRIME

Modernize Missouri's HIV-specific criminal statutes.

OVERVIEW & PURPOSE

Medical professionals know that much has changed in our understanding and treatment of HIV and AIDS since the 1980s when Missouri's HIV laws were first written. An HIV diagnosis is no longer a death sentence; far more is now understood about transmission and risk. We need to update our laws to reflect advances in medical science, conform to best practices for public health, and remove the HIV-related stigma that is codified in Missouri law.

WHY DOES THIS MATTER?

1. The original intention of the law was to reduce transmission of HIV, but these laws backfired by incentivizing ignorance of one's HIV status (avoiding testing/diagnosis), which creates a significant public health issue. **States with HIV criminalization do not have lower transmission rates.** In fact, not a single study or peer-reviewed paper-- nor any credentialed public health expert-- asserts HIV criminalization has actually reduced HIV transmission in any jurisdiction where it exists.
2. There have been incredible medical advances in treating HIV. Persons living with HIV (PLHIV) can take one pill a day and suppress their viral load to undetectable levels. **If you have an undetectable viral load, HIV is untransmittable.** Current criminal statutes do not take this into consideration and treat all PLHIV as if they are a public health risk, which increases stigma and discrimination.
3. HIV criminalization laws exacerbate the already overwhelming social stigma that accompanies an HIV diagnosis, which experts agree is one of the biggest obstacles to ending the HIV epidemic. Forced disclosure of HIV status carries significant risks, including potential intimate partner violence, loss of housing or custody of children, threats to employment status, and potential rejection by community members.
4. The American Medical Association, American Nursing Association, National Alliance of State and Territorial AIDS Directors, HIV Medicine Association, Association of Nurses in AIDS Care, Presidential Advisory Council on HIV/AIDS, U.S. Conference of Mayors, American Psychological Association, and the U.S. Department of Justice have all called for an end to HIV criminalization laws.



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HOW DO SB 65 AND HB 755 HELP MODERNIZE MO LAW

1. In the current law, HIV is named and singled out for particularly punitive treatment. Proposed laws replace “HIV” in the statute with “serious infectious or communicable disease,” which is defined as, “a non-airborne disease spread from person to person that is fatal or causes disabling long-term consequences in the absence of lifelong treatment and management.”
2. Under the current law, it is illegal for someone who knows they have HIV to donate blood, organs, sperm, or tissue unless it is for medical research. Proposed laws add the exception, “or as deemed medically appropriate by a licensed physician,” which creates better opportunities for medical treatment for PLHIV (for example if a PLHIV needs a kidney transplant).
3. The current law has a list of activities that are considered “exposure” opportunities that can be criminally prosecuted, some of which are medically inaccurate. The proposed law would change the definition of “exposure” to “activities that create a substantial risk of disease transmission as determined by competent medical or epidemiological evidence,” which will ensure that cases have a medical/scientific basis for prosecution.
4. Under the current law, using preventative measures does not reduce your liability. In fact, the law explicitly says that use of a condom is not a defense (even though condoms are 90-95% effective at preventing the transmission of HIV). Under the proposed law, preventative measures that eliminate the risk of transmission could be used to show that there was no exposure, and our bill would remove the “condom is not a defense” provision.
5. Perhaps the most significant and important change in the bill is related to mens rea, or the state of mind that is necessary in order for a crime to have been committed. Under current law, it is only necessary to prove that one acted “in a reckless manner” in order to be convicted. If you are convicted of “recklessly exposing” someone to HIV, **even if they do not contract HIV**, you can be charged with a Class B Felony carrying a sentence of 5 to 15 years in prison. The proposed bill increases the level of mens rea required to “knowingly” in order to be charged with a felony, meaning that a PLHIV would have to know that engaging in particular activity would result in transmission. Though the Missouri HIV Justice Coalition firmly believes that an intent to transmit should be necessary to convict, this is a step in the right direction. Knowingly exposing someone resulting in transmission becomes a Class C felony, knowingly exposing someone without transmission becomes a Class D felony, and recklessly exposing someone becomes a misdemeanor, punishable by up to one year in prison or a \$2000 fine. This is a major and appropriate reduction in penalty from up to 30 years in prison to less than one year in prison for reckless exposure. While the Missouri HIV Coalition ultimately intends to fight for no felony charges associated with HIV exposure, this is a huge step in the right direction.