

# UCLA

## Other Recent Work

### Title

The Criminalization of HIV and Hepatitis B and C in Missouri

### Permalink

<https://escholarship.org/uc/item/90m611n3>

### Authors

Sears, Brad  
Goldberg, Shoshana K.  
Mallory, Christy

### Publication Date

2020-02-01

### Data Availability

The data associated with this publication are not available for this reason: Licensing Restrictions

RESEARCH THAT MATTERS

---

# THE CRIMINALIZATION OF HIV AND HEPATITIS B AND C IN MISSOURI

An Analysis of  
Enforcement Data  
From 1990 to 2019

February 2020

---

Brad Sears  
Shoshana K. Goldberg  
Christy Mallory

# TABLE OF CONTENTS

EXECUTIVE SUMMARY ..... 3

LEGAL BACKGROUND..... 8

    HIV AND HEPATITIS CRIMINALIZATION LAWS IN MISSOURI ..... 8

    HISTORY OF HIV/HEPATITIS CRIMINALIZATION LAWS IN MISSOURI ..... 10

    LEGAL CHALLENGES TO MISSOURI'S HIV/HEPATITIS  
    CRIMINALIZATION LAWS..... 11

    MODERNIZATION EFFORTS ACROSS THE US ..... 12

METHODOLOGY ..... 15

    STUDY OBJECTIVES ..... 15

    ANALYTIC APPROACH ..... 15

    CODING AND TERMINOLOGY ..... 16

FINDINGS ..... 18

    FREQUENCY OF ENFORCEMENT OF MISSOURI'S HIV/HEPATITIS CRIMES ..... 19

    POST-ARREST OUTCOMES ..... 22

    SENTENCING ..... 28

    TIMING OF THE ENFORCEMENT OF MISSOURI'S HIV/HEPATITIS LAWS ..... 31

    LOCATION OF ENFORCEMENT ..... 34

    ENFORCEMENT AGENCIES ..... 40

    PEOPLE IMPACTED BY MISSOURI'S HIV/HEPATITIS CRIMINAL LAWS ..... 43

LIMITATIONS ..... 51

CONCLUSION ..... 52

AUTHORS ..... 53

    ACKNOWLEDGMENTS..... 53

    FUNDERS..... 53

APPENDIX A ..... 54

    CLEANING AND MERGING THE THREE SETS OF RECORDS: ARREST, PROSECUTION, COURT..... 54

APPENDIX B ..... 55

    ALTERNATIVE METHOD FOR COMPUTING SENTENCE LENGTHS ..... 55

APPENDIX C ..... 56

    SENTENCING DATA FROM THE MISSOURI SENTENCING ADVISORY COMMISSION (MOSAC)..... 56

APPENDIX D ..... 57

APPENDIX E..... 59

APPENDIX F..... 60

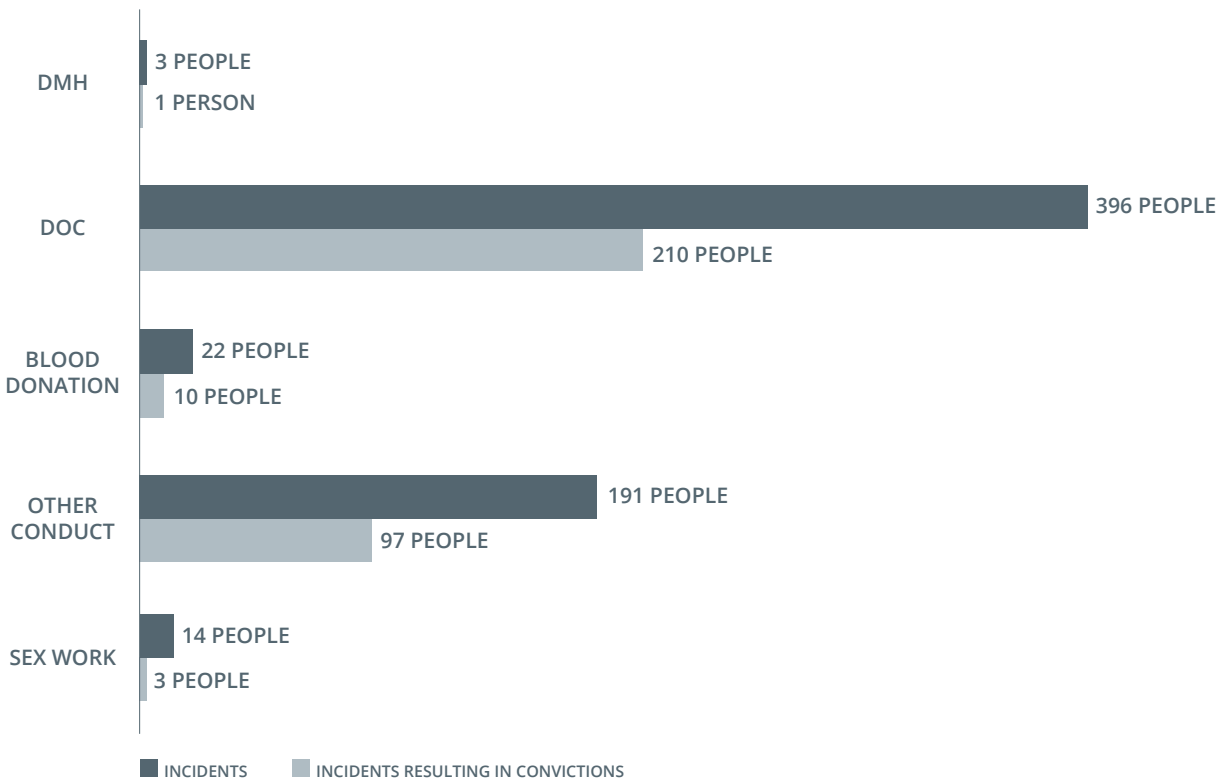
ENDNOTES..... 62

# EXECUTIVE SUMMARY

## INTRODUCTION

This study examines enforcement of laws that criminalize exposing others to HIV or hepatitis B or C using data from the Missouri State Highway Patrol – Criminal Justice Information Services. Between 1990 and October of 2019, at least 593 people have been arrested in Missouri for at least one of its HIV/hepatitis crimes. This includes 318 people who have been convicted for these crimes.

**People in Missouri with HIV/hepatitis incidents, and incidents with convictions, by crime charged, 1990-2019**



For those convicted, average sentences range from 2.9 to 10 years depending on the type of crime, with the longest sentences extending up to 30 years. A conservative estimate of the cost of incarceration related to these crimes, to date, is \$17.7 million. This does not include any other related costs, including those for arrests, prosecutions, parole, or probation. While there has been enforcement of these laws in 70 of Missouri’s 114 counties, enforcement is heavily concentrated in a smaller subset of counties. Further, enforcement data suggest that these crimes are disproportionately enforced on the basis of race and sex, with Black men being the most likely to be arrested and convicted.

Missouri enacted its first law criminalizing HIV in 1988, when less was commonly known about the virus and before the development of effective methods for treatment and prevention. Today, Missouri laws criminalize five (5) different types of exposures:

- **HIV crimes:** The first three laws apply only to those who are HIV positive. They criminalize people living with HIV (PLWH) who
  - 1) donate blood or organs,
  - 2) engage in commercial sex work, or
  - 3) expose others to bodily fluids through sex, sharing needles, biting, or in other ways.
- **Department of Corrections and Mental Health crimes (DOC/DMH crimes):** The next two laws focus on defendants who expose employees and others involved with either
  - 4) the Department of Corrections or
  - 5) the Department of Mental Health to bodily fluids.

While the DOC/DMH crimes also have enhanced penalties for those who have HIV or hepatitis B or C, available data do not allow us to determine which virus defendants charged with these enhancements were alleged to have.

Violations of the laws criminalizing these five types of exposures are all felonies that do not require that the defendant actually infect anyone or have the intent to infect anyone. Each includes criminalization of behaviors that pose no risk or an extremely remote risk of transmission.

## HIV CRIMES

Of the four states that the Williams Institute has analyzed (Missouri, Georgia, Florida, and California), Missouri has the most enforcement of its HIV-specific laws. When using the most comparable data, Missouri has one arrest for an HIV crime for every 60 PLWH currently living in the state, compared to one arrest for every 370 PLWH currently living in Florida and one arrest for every 2,000 PLWH currently living in California.

More specifically, in Missouri, 209 people have been arrested for the following three HIV crimes in 263 separate incidents. This includes 107 people who have been convicted for these crimes.

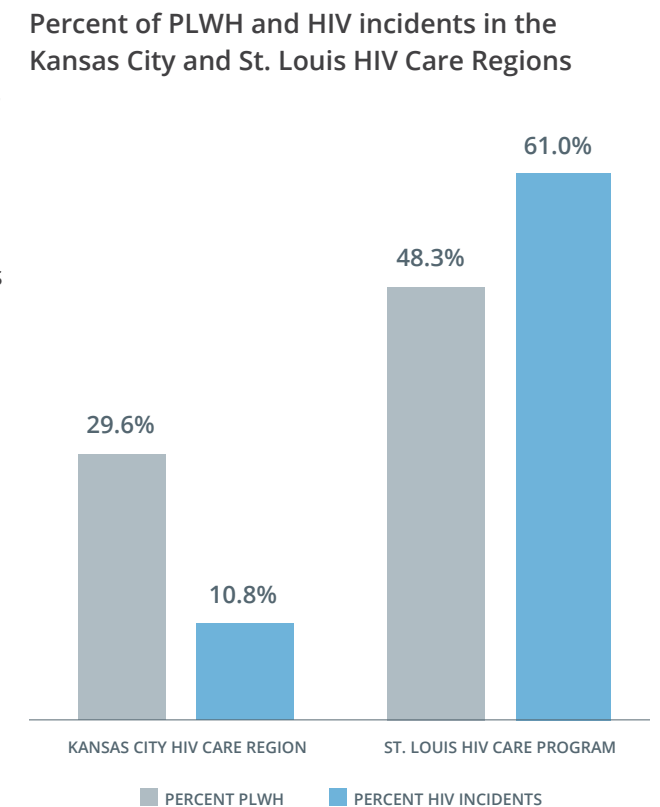
- **Blood Donation:** Only 10 people have been convicted of this crime since it was enacted in 1988. The last conviction was in 2009. Further, the data at least raises a question about whether half of these 10 convictions are the result of miscoding and the convictions were for the HIV Other Conduct crime (see below). On average, these people received unsuspended sentences of confinement of 4.2 years. The scarcity of convictions for this crime is consistent with long standing and effective protections of the blood and organ supply that make the risk of transmission extremely remote. There have been no such transmissions in the U.S. for over a decade.
- **Sex Work:** Since this law was enacted in 2002, only 14 people have been charged with Missouri’s crime for PLWH who engage in commercial sex work; only three people have ever been convicted and all three received unsuspended sentences of confinement of 5 years. The last conviction was in 2017.

- **Other Conduct:** Over 90% of the people who have been arrested (191/209 people) or convicted (97/107 people) for an HIV crime in Missouri have been convicted of the crime of recklessly exposing another person to HIV through sex, sharing needles, biting, or other conduct. On average, they received unsuspended sentences of confinement of 7.5 years.

Since this crime covers a range of behaviors, we examined other charges in the same incidents with convictions to see if we could infer anything about the underlying conduct that created a risk of transmission: 42% did not have any such charges; 29% had charges that indicated that the underlying risk behavior was sex; 6% also had an HIV Blood Donation Charge (see above); and 23% had charges that indicated that the risk was the result of an altercation with another person, with 16% having charges clearly indicating that the altercation was with a law enforcement officer (assault or resisting arrest).

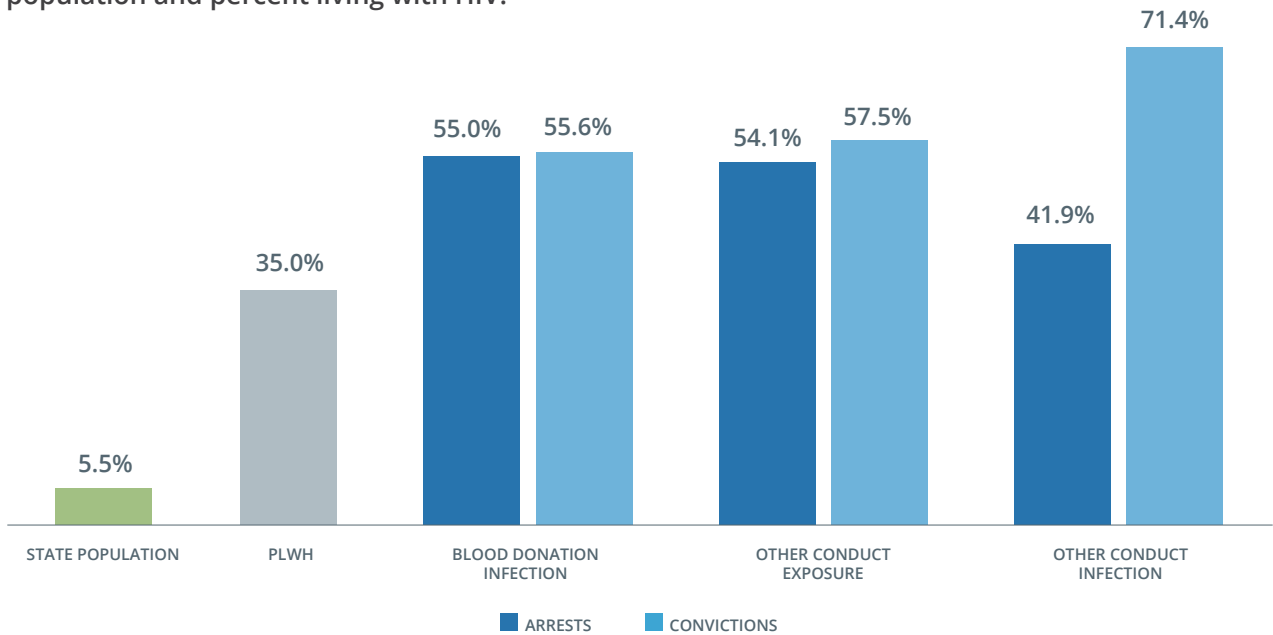
There is evidence that these HIV crimes are bringing people into the criminal justice system who otherwise would not be there. One out of six people with an HIV incident (17.2%) had no other criminal records in Missouri. For over one in four (28.7%), their HIV incident was their first contact with Missouri criminal justice system.

- **Cost:** We estimate that the total cost of incarceration for sentences under Missouri’s HIV crimes laws is \$10.2 million, with the Other Conduct crime alone costing \$9.4 million.
- **Location:** HIV crimes appear to be disproportionately enforced in the Saint Louis HIV Care Region, and, in particular, in St. Louis City and St. Louis counties. This is not just because there are more people living with HIV in this area. While the St. Louis HIV Care region has 48.3% of PLWH in Missouri, it has 61.0% of all HIV criminal incidents. This in contrast to the Kansas City HIV Care region, which has 29.6% of all PLWH in the state, but only 10.8% of HIV incidents.
- **Age:** While the average age of those impacted by Missouri’s HIV crimes was 35.5, those impacted ranged from 17.7 to 65.5 years old. Looking more broadly at their criminal history, 37.8% had their first contact with the Missouri criminal justice system before the age of 21.
- **Gender:** Thirteen percent of people with an HIV criminal incident in Missouri are women, as compared to 17.6% of PLWH in the state.
- **Race:** While Black people comprise 11.8% of Missouri’s population, they comprise 46% of those who are living with HIV, 56.5% of those with an HIV criminal incident, and 60.8% of those who have been convicted of an HIV crime.



- Race and Gender:** Black men are the most disproportionately impacted by both HIV disease and the enforcement of HIV criminal laws in Missouri. While Black men make up 5.5% of the state's population, they are 35% of PLWH in the state. They make up over half of those with an HIV incident (50.2%) or conviction (54.2%). Put differently, there has been one arrest of a Black man for an HIV crime in Missouri for every 43 Black men currently living with HIV in the state today.

Arrests and convictions of Black men in Missouri for select HIV crimes, compared to state population and percent living with HIV.



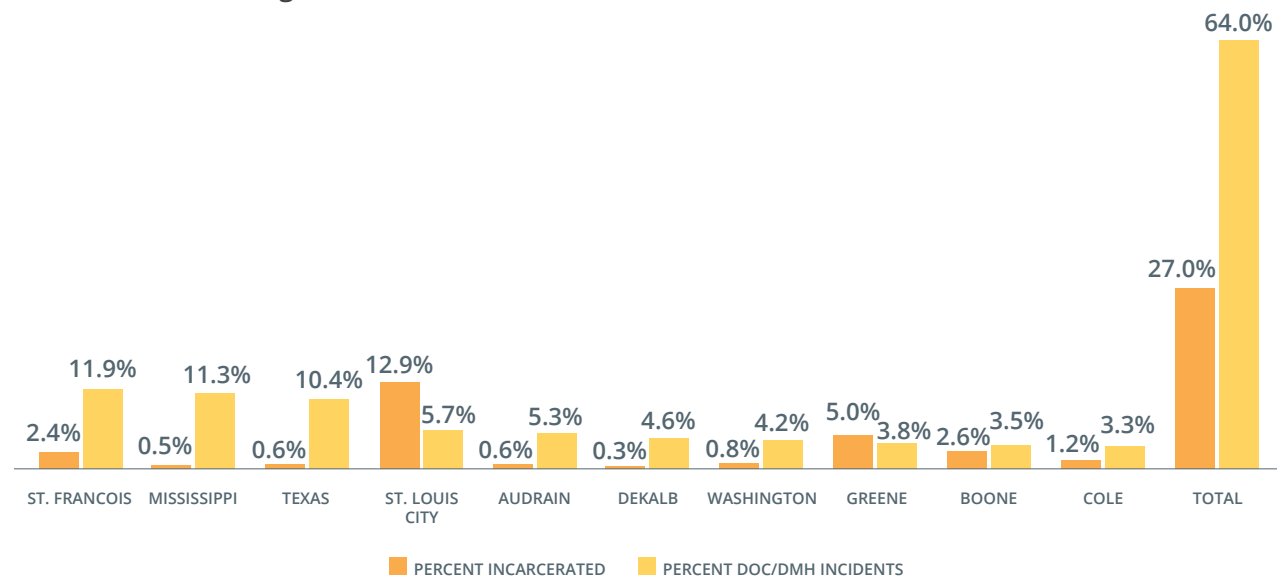
## DEPARTMENT OF CORRECTIONS/DEPARTMENT OF MENTAL HEALTH CRIMES (DOC/DMH CRIMES)

Although more recently enacted, today enforcement of laws criminalizing the exposure of state employees to bodily fluids significantly outpaces the enforcement of the HIV crimes laws described above. Of all people arrested for HIV or DOC/DMH crimes in Missouri, over two-thirds (66.8%) were arrested for the Department of Corrections Crime. More specifically, 396 people have been arrested for DOC crimes in 466 separate incidents. This includes 210 people who have been convicted of this crime.

- Department of Corrections:** Over ninety-nine percent (99.5%) of all 398 people arrested for a DOC/DMH crime, 396 people were arrested for exposing an employee or someone else connected with the Department of Corrections to bodily fluids. Further, 210 people have been convicted of this crime. On average, those convicted received unsuspended sentences of confinement of 2.9 years
  - Of these, 48 people have been charged with the enhanced penalty for when the person has HIV or hepatitis B or C, but only 12 people have been convicted of this crime. On average, they have received unsuspended sentences of confinement of 5.2 years.
- Department of Mental Health:** This crime has been rarely enforced since it was enacted in 2010: only three people have ever been charged with it and only one person has ever been convicted. No one has even received the enhanced penalty under this crime that applies if the defendant has HIV or hepatitis B or C.

- **Cost:** We estimate that, to date, the total cost of incarceration for Missouri’s DOC/DMH crimes is \$7.4 million.
- **Location:** The enforcement of DOC/DMH crimes appears to be disproportionately concentrated in just a few counties. For example, 33.6% of these incidents are in just St. Francois, Mississippi, and Texas counties. However, these three counties have only 3.6% of the state’s incarcerated populations. This could indicate that DOC/DMH crimes are enforced differently by different law enforcement agencies, are tied more to conduct by defendants at arrest than during incarceration, or both.

Percent of Missouri’s incarcerated population and DOC/DMH incidents in the 10 counties in Missouri with the largest number of DOC/DMH incidents



- **Age:** While the average age of those impacted by Missouri’s DOC/DMH crimes was 31.4, those impacted ranged from 17.6 to 76.8 years old. More broadly, 68.8% had their first contact with the Missouri criminal justice system before the age of 21.
- **Gender:** While fifteen percent of people (15.3%) with a DOC/DMH criminal incident are women, women comprise only 10.4% of incarcerated people in Missouri.
- **Race:** While Black people comprise 11.8% of Missouri’s population, they comprise 33.4% of those who are incarcerated in the state, 46% of those with a DOC/DMH criminal incident, and 48.3% of those who have been convicted of such these crimes.
- **Race and Gender:** While Black men make up 5.5% of the state’s population, they are 32% of those who are incarcerated in the state, 41.7% of those with a DOC/DMH criminal incident, and 45% of those who have been convicted of these crimes.

This research shows that almost 600 people (593) have been directly impacted by Missouri’s HIV/hepatitis criminal laws. While three of these laws are infrequently enforced, the other two laws continue to be enforced with frequency up through the fall of 2019. Further research is needed to explore why enforcement rates differ so greatly by county in Missouri, and why there is disproportionate enforcement on the basis of race and gender.

## LEGAL BACKGROUND

### HIV AND HEPATITIS CRIMINALIZATION LAWS IN MISSOURI

HIV criminalization is a term used to describe statutes that either criminalize otherwise legal conduct or that increase the penalties for illegal conduct based upon a person’s HIV-positive status. While there is only one federal HIV criminalization law,<sup>1</sup> more than two-thirds of states and territories across the U.S. have enacted HIV criminal laws. In recent years, 13 states have expanded their HIV criminal laws, or enacted new laws, to include other diseases, including hepatitis B and C.<sup>2</sup>

Most HIV criminal laws do not require actual transmission of HIV or an intent to transmit HIV. In many cases, these laws criminalize conduct that poses no actual risk of transmission, such as spitting or biting.<sup>3</sup> Most laws criminalizing HIV were passed in the early years of the epidemic,<sup>4</sup> long before there were effective tests for the virus,<sup>5</sup> treatments that allow people living with HIV (PLWH) to live normal lifespans in good health,<sup>6</sup> and extremely effective methods for preventing transmission of the virus.<sup>7</sup>

Missouri has four statutes (See Table 1) that criminalize exposure or potential exposure to HIV and hepatitis B or C. Since one of these four statutes covers potential exposures through two very different sets of behaviors (donating blood and organs, as opposed to sex, needle sharing, biting, or other activities) we treat these four statutes as creating five different types of crimes for the purpose of our analysis.

All five types of HIV and hepatitis B and C crimes (hereinafter HIV/hepatitis crimes) are felonies, carrying sentences of up to 30 years. None require actual transmission of HIV or hepatitis B or C.<sup>8</sup> In addition, none require the specific intent of a person to infect another person, or take into account the use of condoms, adherence to effective medications, or any other efforts taken to reduce transmission of HIV.<sup>9</sup> All of these laws were passed by the Missouri legislature before modern medical research has conclusively shown that 1) individuals living with HIV can completely prevent transmission of HIV to others through effective treatment that suppresses the virus in their blood to undetectable levels, and 2) HIV-negative individuals can avoid acquiring HIV by taking HIV medication as pre-exposure prophylaxis (PrEP).<sup>10</sup>

In addition to the five types of HIV/hepatitis felonies summarized in Table 1, Missouri has two misdemeanors related to HIV. The Missouri Department of Health & Senior Services has the authority to quarantine persons with certain communicable diseases, including HIV.<sup>11</sup> Violation of such a quarantine may result in a misdemeanor.<sup>12</sup> Further, under limited circumstances, disclosure of someone’s HIV-status by a healthcare worker can be a misdemeanor.<sup>13</sup> Although we requested records related to these two misdemeanors, none were identified or produced.

Table 1. HIV/hepatitis crimes in Missouri (2019)

STATUTE	CRIMINALIZED CONDUCT	TRANSMISSION REQUIRED?	INTENT TO TRANSMIT REQUIRED?	FELONY CLASSIFICATION AND STATUTORY SENTENCE	STUDY LABEL
Mo. Rev. Stat. § 191.677.1.1	Donating, or attempting to donate, blood, blood products, organs, sperm or tissue if HIV-positive	No	No	Class B (violent), 5 to 15 years If transmission occurs, Class A (violent), 10 to 30 years	Blood Donation Exposure Crime or Incident If actual infection alleged, then Blood Donation Infection Crime or Incident
Mo. Rev. Stat. § 191.677.1.2	Recklessly exposing another to HIV, including through sexual intercourse, sharing needles, biting, or other conduct	No	No	Class B (violent), 5 to 15 years If transmission occurs, Class A (violent), 10 to 30 years	Other Conduct Exposure Crime or Incident If actual infection alleged, then Other Conduct Crime or Incident
Mo. Rev. Stat. § 567.020	Prostitution while knowingly HIV positive	No	No	Class B (non-violent), 5 to 15 years	Sex Work Crime or Incident
Mo. Rev. Stat. § 575.155 <sup>14</sup>	Attempting to expose or exposing a corrections employee to blood, seminal fluid, urine, feces, or saliva	No	No	Class D (violent), up to 4 years If offender has HIV or hepatitis B or C, Class C (violent), up to 7 years	DOC Crime or Incident If defendant has HIV or hepatitis B or C, then DOC HIV/hepatitis Crime or Incident.
Mo. Rev. Stat. § 575.157 <sup>15</sup>	Attempting to expose or exposing a mental health employee to blood, seminal fluid, urine, feces, or saliva	No	No	Class D (violent), up to 4 years If offender has HIV or hepatitis B or C, Class C (violent), up to 7 years	DMH Crime or Incident If defendant has HIV or hepatitis B or C, then DMH HIV/hepatitis Crime or Incident.

## HISTORY OF HIV/HEPATITIS CRIMINALIZATION LAWS IN MISSOURI

### Blood Donation and Exposure Through Other Conduct

The first of Missouri’s HIV/hepatitis crimes, criminalizing two categories of behavior (Mo. Rev. Stat. § 191.677), was passed in 1988.<sup>16</sup> As enacted, this law prohibited people living with HIV from 1) being or attempting to be a blood, organ, sperm or tissue donor except as deemed necessary for medical research, and 2) deliberately creating “a grave and unjustifiable risk” of infecting another with HIV through sexual or other contact when an individual knows that he or she is deliberately creating that risk. Violation of the 1988 statute was a Class D felony, carrying a penalty of up to 7 years.<sup>17</sup>

This statute was first revised in 1997.<sup>18</sup> The revisions included adding “blood products” to the list of banned bodily donations in subsection (1) and changing subsection (2) to prohibit PLWH from “act[ing] in a reckless manner by exposing another person to HIV without the knowledge and consent of that person to be exposed to HIV, through contact with blood, semen or vaginal fluid in the course of oral, anal or vaginal sexual intercourse, or by the sharing of needles.”<sup>19</sup> The statute listed the types of evidence that could be used to prove that a person acted recklessly in creating such a risk.<sup>20</sup> The statute also specified that use of condoms is not a defense to this crime, and raised the penalty to a Class C felony, carrying a sentence of 3 to 10 years, when the person charged was over age 21 and the other person was under age 17.<sup>21</sup>

This statute was revised in 2002 to its current form.<sup>22</sup> This revision expanded the criminalized conduct to include biting or acting in another other manner that causes the HIV-infected person’s semen, vaginal secretions, or blood to come into contact with the mucous membranes or non-intact skin of another person.<sup>23</sup> The statute also increased the requisite penalties. For a violation of the law that did not result in transmission, the penalty increased from a Class D felony to a Class B felony, carrying a sentence of 5 to 15 years.<sup>24</sup> A violation resulting in transmission, which did not previously carry a separate penalty, was classified as a Class A felony, carrying a sentence of 10 to 30 years.<sup>25</sup> The separate penalty for proscribed conduct between people over age 21 and under age 17 was removed.<sup>26</sup>

In short, as our understanding of HIV disease and the availability of effective treatments has improved over the last three decades, the penalties under this statute have become harsher (evolving from a crime punishable by up to 7 years, to requiring sentences of 5 years to 30 years) and its scope has broadened to include conduct that has a remote, if any, risk of transmitting HIV.

### Prostitution

The 2002 bill also added HIV-specific language to the state’s prostitution law (Mo. Rev. Stat. § 567.020) creating the third type of HIV/hepatitis crime that we will examine in this study.<sup>27</sup> In Missouri, prostitution is defined as engaging, or offering or agreeing to engage, “in sexual conduct with another person in return for something of value.”<sup>28</sup> Notably, the arrest can be, and most often is, just based on a conversation (not actual sexual conduct) and “sexual conduct” is defined by statute to include many forms of sex that have effectively no risk of transmitting HIV including mutual masturbation, the use of sex toys, and oral sex.<sup>29</sup>



A prior Missouri law, passed in 1977, made it a Class B misdemeanor to engage in prostitution in general, punishable up to 6 months in jail or a \$1,000 fine.<sup>30</sup> The 2002 revisions increased the penalty for solicitation for a person who knows that he or she is HIV-positive to a Class B felony, carrying a sentence of 5 to 15 years.<sup>31</sup> The bill also specified that the use of condoms was not a defense.<sup>32</sup> Despite subsequent revisions to Missouri's solicitation law, the HIV-specific language remains in the current statute.<sup>33</sup>

### Department of Corrections Exposures

Missouri's third HIV/hepatitis criminalization law (Mo. Rev. Stat. § 575.155) was enacted in 2005.<sup>34</sup> This law criminalizes a person for knowingly exposing, or attempting to expose, other people related to the Department of Corrections (including corrections employees, visitors, and other incarcerated people at secure facilities) to blood, seminal fluid, urine, feces, or saliva. A general violation of the law was classified as a Class D felony.<sup>35</sup> The penalty increased to a Class C felony if the person knew he or she was living with HIV, hepatitis B, or hepatitis C.<sup>36</sup> The law was most recently revised in 2014, reclassifying the penalty for a general violation to a Class E felony, punishable by up to 4 years in prison; and reclassifying the HIV/hepatitis-specific penalty to a Class D felony, punishable by up to 7 years in prison.<sup>37</sup> However, the sentencing statutes were also revised in 2014, so the reclassification did not change the terms of imprisonment carried by the offenses.<sup>38</sup>

### Department of Mental Health Exposures

Missouri's most recent HIV/hepatitis criminalization law (Mo. Rev. Stat. § 575.157) was enacted in 2010.<sup>39</sup> The law, similar to the law related to the Department of Corrections, criminalizes people for exposing, or attempting to expose, people related to the Department of Mental Health (including employees of the Department of Mental Health, visitors, and others at secure facilities) to blood, seminal fluid, urine, feces, or saliva.<sup>40</sup> A general violation of the law was classified as a Class D felony.<sup>41</sup> The penalty increased to a Class C felony if the person knew he or she was living with HIV, hepatitis B, or hepatitis C.<sup>42</sup> The law was most recently revised in 2014, reclassifying the penalty for a general violation to a Class E felony and reclassifying the HIV/hepatitis-specific penalty to a Class D felony.<sup>43</sup> However, the sentencing statutes were also revised in 2014, so the reclassification did not change the terms of imprisonment carried by the offenses.<sup>44</sup>

## LEGAL CHALLENGES TO MISSOURI'S HIV/HEPATITIS CRIMINALIZATION LAWS

One of Missouri's HIV/hepatitis criminalization laws, the reckless exposure to HIV law (Mo. Rev. Stat. § 191.677), has been challenged on constitutional grounds. No cases were identified that involved legal challenges to Missouri's other three HIV/hepatitis criminalization laws.

In *State v. Mahan*,<sup>45</sup> decided by the Missouri Supreme Court in 1998, two individuals challenged Missouri's reckless exposure on constitutional grounds, arguing that it was vague and overbroad because it "criminalize[d] certain conduct that [could be] constitutionally protected."<sup>46</sup> The Missouri Supreme Court held that the statute was constitutional as applied to these particular individuals<sup>47</sup> and that they did not have standing to assert the claim on behalf of others.<sup>48</sup> One of the defendants also argued that the statute was unconstitutionally vague because a person living with HIV would

have no way of knowing if his or her conduct created a "grave and unjustifiable risk," since the risk of transmission was quantitatively unknown to scientists at the time.<sup>49</sup> The court disagreed, as applied to the facts of the case. The "grave and unjustifiable risk" language was changed to its current form after this case.<sup>50</sup> The "grave and unjustifiable risk" language was changed to its current form after this case.<sup>51</sup>

In *State v. Newlon*,<sup>52</sup> decided by a Missouri court of appeals in 2007, the defendant similarly argued that the statute was unconstitutionally overbroad and that the trial court's jury instruction on the crime violated his constitutional due process rights. The court did not consider the overbreadth challenge because the defendant failed to raise the challenge at the trial court level.<sup>53</sup> While the defendant argued that the jury instruction was unconstitutional for several reasons,<sup>54</sup> the court found all of these arguments to be without merit.<sup>55</sup>

In *State v. S.F.*,<sup>56</sup> decided by the Missouri Supreme Court in 2016, a woman convicted under the reckless exposure law argued that the statute infringed on her constitutional rights to free speech and privacy by forcing her to disclose her HIV status. Upholding the statute,<sup>57</sup> the court found that the statute was aimed at regulating conduct and had only an incidental burden on speech.<sup>58</sup> Further, the court found that the right to privacy does not extend so broadly as to permit individuals to expose others to HIV without their knowledge and consent.<sup>59</sup>

In another 2016 case, *State v. Johnson*,<sup>60</sup> a student athlete convicted under the reckless exposure law argued that the statute's sentencing requirements violated the Eighth Amendment's protection against cruel and unusual punishment. The man had been sentenced to 30 years in prison.<sup>61</sup> The Missouri court of appeal did not consider the constitutional argument because it remanded the case to the trial court for procedural reasons.<sup>62</sup> The issue was ultimately not litigated because the defendant entered a no-contest plea and accepted a 10-year sentence.<sup>63</sup> He was released on parole in 2019.<sup>64</sup>

## MODERNIZATION EFFORTS ACROSS THE US

The U.S. has the highest number of reported HIV-related criminal convictions of any country.<sup>65</sup> During the past decade, there has been an increasing amount of attention towards repealing or modernizing HIV/hepatitis criminal laws based on our current understanding of the disease.

### Federal Modernization Efforts

A number of federal agencies have called for modernizing HIV criminalization laws. For example:

- In February 2013, the Presidential Advisory Council on HIV/AIDS (PACHA) approved a resolution calling for federal action against HIV criminalization.<sup>66</sup>
- In March 2014, the U.S. Department of Justice and Centers for Disease Control and Prevention published a joint paper reviewing the existing HIV criminal laws throughout the U.S. and recommended that states, "assess the laws' alignment with current evidence regarding HIV transmission risk and consider whether current laws are the best vehicle to achieve their intended purposes."<sup>67</sup>
- In July 2014, the U.S. Department of Justice released guidance to states on how best to reform HIV-related criminal laws to align with current scientific knowledge.<sup>68</sup>

- In addition, the National HIV/AIDS Strategy for the United States, which was revised and released in July 2015, called for reform based on “scientific evidence about routes of HIV transmission and effective measures of HIV prevention.”<sup>69</sup>

Additionally, in the past several Congresses, lawmakers introduced the Repeal Existing Policies that Encourage and Allow Legal (REPEAL) HIV Discrimination Act.<sup>70</sup> The REPEAL Act would encourage state and federal legislators to work together to modernize outdated laws relating to HIV, bringing them in line with the federal and state nondiscrimination laws that protect people from discrimination on the basis of disabilities, including HIV and hepatitis B and C.<sup>71</sup>

### State Modernization Efforts

In the past few years, several states have enacted legislation to modernize their HIV criminalization laws. For example, in 2014, the Iowa legislature passed a bill amending the state’s HIV criminalization law.<sup>72</sup> The changes included reducing the penalty for cases in which there was no transmission, providing a defense for those charged who took “practical means to prevent transmission,” and eliminating the sex offender registration requirement for those convicted under the law.<sup>73</sup> However, critiques of the new Iowa legislation include that it continues to impose lengthy sentences of confinement for HIV crimes (up to 25 years), and resulted in criminalizing additional stigmatized conditions beyond HIV, such as hepatitis, meningococcal disease, and tuberculosis, that had not previously been criminalized.<sup>74</sup>

In 2016, California repealed its law that criminalized donating blood, organs, or tissue if living with HIV.<sup>75</sup> In 2017, it passed a bill modernizing most of the state’s other HIV criminalization laws. Today, HIV is treated the same as any other communicable disease and exposure and transmission are no longer felonies.<sup>76</sup> In order for an individual to be prosecuted under the current misdemeanor statute, they must know their HIV status, act with “specific intent” to transmit the disease, engage in conduct that “poses a substantial risk of transmission,” and expose the disease to someone who did not know that they had it.<sup>77</sup> The maximum sentence for the misdemeanor is 90 days if there is no transmission and six months if transmission occurs.<sup>78</sup> The law also allows the defendant to use evidence of precautions taken to prevent transmission to prove that they did not have the specific intent to transmit a disease.<sup>79</sup> The California legislature also eliminated the felony penalty enhancement for engaging in commercial sex work while living with HIV.<sup>80</sup>

Also in 2017, North Carolina amended an agency rule that previously required people living with HIV to disclose their status to all sexual partners and to use a condom during sexual intercourse.<sup>81</sup> The new rule does not require people who have been virally suppressed for at least six months to disclose their status or to use a condom.<sup>82</sup> The rule is consistent with recent medical research finding that a person who maintains viral suppression cannot transmit HIV.<sup>83</sup>

In 2019, the Michigan legislature passed two bills revising the state’s HIV criminalization law.<sup>84</sup> The bills removed types of behavior unlikely to result in transmission (such as oral sex); provided that individuals who are virally suppressed due to treatment cannot be prosecuted; and reduced the penalty for those who do not, in fact, transmit the virus.

### Current Modernization Efforts in Missouri

Missouri, along with several other states, is currently considering legislation to modernize its HIV criminalization laws.<sup>85</sup> A bill introduced in 2020, HB 1691, would revise the state’s HIV criminalization laws.<sup>86</sup>

If passed, HB 1691 makes several revisions to Mo. Rev. Stat § 191.677. First, it would change the statute to require that the individual acted with the “specific intent” to transmit a communicable disease.<sup>87</sup> The bill would maintain the current law’s requirement that the individual “knowingly” expose another to HIV, but would require that the risk of transmission be substantial for the highest level penalty.<sup>88</sup> Conduct that is “reckless” and does not result in transmission would receive a lower penalty,<sup>89</sup> as would violations that result in transmission.<sup>90</sup> Further, HB 1691 includes risk reduction measures (such as using a condom or taking medication) as a defense.<sup>91</sup> The bill would also create an affirmative defense for disclosure of infection and consent to exposure.<sup>92</sup> The bill removes HIV-specific language from the statute and applies the provisions equally to any “serious or infectious communicable disease.”<sup>93</sup> HB 1691 would also create an exception to the crime of donating blood, tissue, or organs if the donation is “deemed medically appropriate by a licensed physician.”<sup>94</sup>

Further, HB 1691 would revise the provisions of Mo. Rev. Stat § 575.155 and § 575.157, the laws criminalizing exposure to blood and body fluids in correctional and institutional settings, to apply to any “bodily fluid that has been scientifically shown to be a known means of transmission of a serious infectious or communicable disease.”<sup>95</sup> The bill does not change Mo. Rev. Stat § 567.020, which enhances the penalties for solicitation by people who are living with HIV.

HB 1691 also includes privacy protections for defendants and those who have been exposed to a serious infectious or communicable disease.<sup>96</sup> In addition, the bill requires that defendants be assessed for placements in community-based programs before sentencing.<sup>97</sup>

## METHODOLOGY

### STUDY OBJECTIVES

In an effort to address gaps in research about the enforcement of HIV/hepatitis criminal laws in Missouri, the current project sought to answer the following questions:

- 1) Are Missouri's HIV/hepatitis criminal laws being enforced?
- 2) If so, which of these laws are being enforced and how frequently?
- 3) How many convictions have there been under these laws?
- 4) How recently have these laws been enforced?
- 5) Where are the laws being enforced and by which law enforcement agencies?
- 6) What are the demographic and other characteristics of the people these laws are being enforced against?
- 7) Is there any evidence of enforcement inequities on the basis of race or sex?

### ANALYTIC APPROACH

Williams Institute researchers obtained approval from the UCLA North Campus IRB<sup>98</sup> to conduct this study and submitted a request to the Missouri State Highway Patrol (MSHP) – Criminal Justice Information Services<sup>99</sup> to obtain de-identified data about anyone directly impacted by the enforcement of Missouri's HIV/hepatitis crimes. MSHP maintains data for any crime in its Central Repository in three separate sets of records: one for arrest (Arrest data), one for prosecution (Prosecution data), and one for court actions (Court data).

During 2018 and 2019, we requested data for any person who had ever been arrested, charged with, or had a court disposition for one of the HIV/hepatitis crimes, or their precursors, listed in Table 1 above. We did not date restrict the requests but the analyses that follow include incidents from 1990 (the arrest date in the earliest record produced) through October 2019—the time of the final data retrieval from MSHP.<sup>100</sup>

These requests provided us with a list of unique identifiers (called SIDS) for every person that had one of these crimes in either their Arrest, Prosecution, or Court data. We also received an event number, or OCN, that marked the event that included the HIV/hepatitis criminal charge, as well as any other charges. OCN numbers most often, but not always, correlated with a unique date of arrest (DOA).

For every person (SID) and event (OCN), we then asked MSHP for the following data:

- The Arrest, Prosecution, and Court records for each event with an HIV/hepatitis crime in at least one of those three data sets;
- Using the 2018-2019<sup>101</sup> and 2019-2020 Missouri Charge Code Manuals,<sup>102</sup> a specific set of data fields informed by the data forms that were used at the Arrest, Prosecution, and Court stages (Appendix D); and
- For every person, their complete criminal history – all records for that person for any event, whether or not those events contained a charge for an HIV/hepatitis crime.

The de-identified data we received from MSHP were cleaned, coded, and analyzed using Stata version 14.1. We merged the Arrest, Prosecution, and Court data so that for every HIV/hepatitis event, we had data about how the charges were handled at each stage of the criminal process. See Appendix A and D. As a result of our requests, we also had a complete criminal history for each person who had an HIV/hepatitis criminal charge.

### CODING AND TERMINOLOGY

The following terms both explain the substantive decisions we made when coding the data and serve as a glossary for the terms used in this report:

**Incident:** Incident refers to records for a cluster of related events leading to charges against a defendant. Each of these incidents is assigned a unique code (OCN) by the MSHP. A single incident may have multiple charges for different crimes and/or multiple charges for the same crime. We use “incidents” instead of “arrests” or “crimes” as a reminder that a defendant might have multiple charges, including for the same HIV/hepatitis crime, within the same incident.<sup>103</sup> A single person may have multiple incidents, most frequently with different dates of arrest.

**Incidents with conviction:** An incident with conviction refers to records for a cluster of related events leading to at least one conviction for a HIV/hepatitis crime. A single incident with conviction may have multiple convictions for different crimes and/or multiple convictions for the same HIV/hepatitis crime. A single person may have multiple incidents with convictions.

**HIV/hepatitis incident:** Any incident that includes at least one of the HIV crimes or one of the Department of Corrections (DOC) or Department of Mental Health (DMH) crimes described below.

- **HIV Incident:** Any incident involving any of the following three HIV crimes.
  - **Blood Donation Incident:**<sup>104</sup> Any incident involving at least one charge of the Blood Donation crime, either alleging exposure or infection. Although we have shortened this label to Blood Donation, this crime includes the donation of blood, blood products, organs, sperm, or tissue.
    - **Blood Donation Exposure Incident:**<sup>105</sup> Any incident involving at least one charge of the Blood Donation Exposure crime.
    - **Blood Donation Infection Incident:**<sup>106</sup> The subset of these incidents that include the element of actually infecting another person.

- **Sex Work Incident:** Any incident involving at least one charge of the Sex Work crime.
- **Other Conduct Incident:** Any incident involving at least one charge of the Other Conduct crime, either alleging exposure or infection. The conduct criminalized by these provisions includes anal, oral, and vaginal sex; sharing needles; biting; and any other nonconsensual, reckless exposure to another’s mucous membranes or non-intact skin of the defendant’s semen, vaginal secretions, or blood.
  - **Other Conduct Exposure Incident:**<sup>107</sup> Any incident involving at least one charge of the Other Conduct Exposure crime.
  - **Other Conduct Infection Incident:**<sup>108</sup> The subset of these incidents that include the element of actually infecting another person.
- **DOC/DMH Incident:** Any incident with at least one charge of the following two crimes involving the Department of Corrections or Department of Mental Health.
  - **DOC Incident:** Any incident with at least one charge of the DOC crimes below.
    - **DOC Bodily Fluids Incident:**<sup>109</sup> Any incident involving the crime of exposing someone employed or involved with the Department of Corrections to bodily fluids.
    - **DOC HIV/hepatitis Incident:**<sup>110</sup> Any incident involving the crime of exposing someone employed or involved with the Department of Corrections to bodily fluids where the defendant has HIV or hepatitis B or C.
  - **DMH Incident:** Any incident with at least one charge of the DMH crimes below.
    - **DMH Bodily Fluids Incident:**<sup>111</sup> Any incident involving the crime of exposing someone employed or involved with the Department of Mental health to bodily fluids.
    - **DMH HIV/hepatitis Incident:**<sup>112</sup> Any incident involving the crime of exposing someone employed or involved with the Department of Mental Health to bodily fluids where the defendant has HIV or hepatitis B or C.

In presenting our findings, we anchor most sections by presenting data for three categories: 1) all HIV/hepatitis incidents, 2) HIV incidents, and 3) DOC/DMH incidents. We then look more closely at the different crime types outlined above. We divide the crimes into these two major categories (HIV and DOC/DMH) because the three HIV crimes all require that the defendant be HIV-positive. The DOC/DMH crimes do not. As explored more fully below, most of the enforcement of DOC/DMH crimes (89.9%) are through charges that do not require the defendant to have HIV or hepatitis B or C. For the 11% of DOC/DMH incidents that do require the defendant to have either HIV or hepatitis B or C, we cannot conclusively determine whether the underlying health condition was HIV, hepatitis B, or hepatitis C.

## FINDINGS

Table 2: Missouri HIV/hepatitis incidents and people with incidents, by statute and study label: 1990 to October 2019

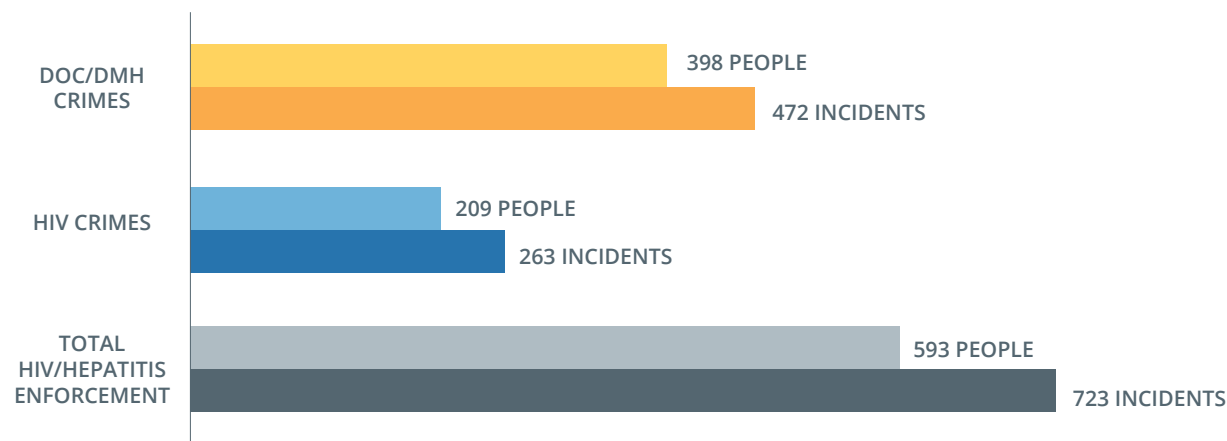
STATUTE	STUDY LABEL	TOTAL INCIDENTS	TOTAL PEOPLE WITH INCIDENTS	INCIDENTS WITH CONVICTIONS	PEOPLE WITH INCIDENTS WITH CONVICTIONS
Mo. Rev. Stat. § 191.677(1)(1)	Blood Donation Exposure	2	2	1	1
	Blood Donation Infection	21	20	9	9
	All Blood Donation Incidents*	23	22	10	10
Mo. Rev. Stat. § 191.677(1)(2)	Other Conduct Exposure	216	172	109	94
	Other Conduct Infection	43	43	7	7
	All Other Conduct Incidents*	239	191	112	97
Mo. Rev. Stat. § 567.020	Sex Work	17	14	5	3
	All HIV Incidents*	263	209	125	107
Mo. Rev. Stat. § 575.155	DOC Bodily Fluids	426	357	226	198
	DOC HIV/hepatitis	49	48	12	12
	All DOC Incidents*	466	396	238	210
Mo. Rev. Stat. § 575.157	DMH Bodily Fluids	6	2	3	1
	DMH HIV/hepatitis	3	2	0	0
	All DMH Incidents*	7	3	3	1
	All DOC/DMH Incidents	472	398	241	211
	All HIV/hepatitis Incidents*	723	593	366	318

\* The number of incidents and people indicated in subcategories in this paper will not always equal the totals provided because a single incident or person could have charges for multiple HIV/hepatitis crimes and thus be included in more than one subcategory

## FREQUENCY OF ENFORCEMENT OF MISSOURI'S HIV/HEPATITIS CRIMES

From 1990 through October 2019, 593 people were arrested in Missouri for an HIV/hepatitis incident. As described above, these are incidents where the defendant was charged with at least one felony for which having HIV or hepatitis B or C was an element of the crime and/or the felony was focused on behaviors assumed to be able to transmit these viruses. Since some people (16.2%) were arrested for more than one incident, there were more incidents than people per type of crime.<sup>113</sup> Across the 593 people arrested, there were 723 separate incidents that included at least one of charge of an HIV/hepatitis crime during this time period.

Figure 1. Enforcement of HIV/Hepatitis Crimes in Missouri 1990-2019

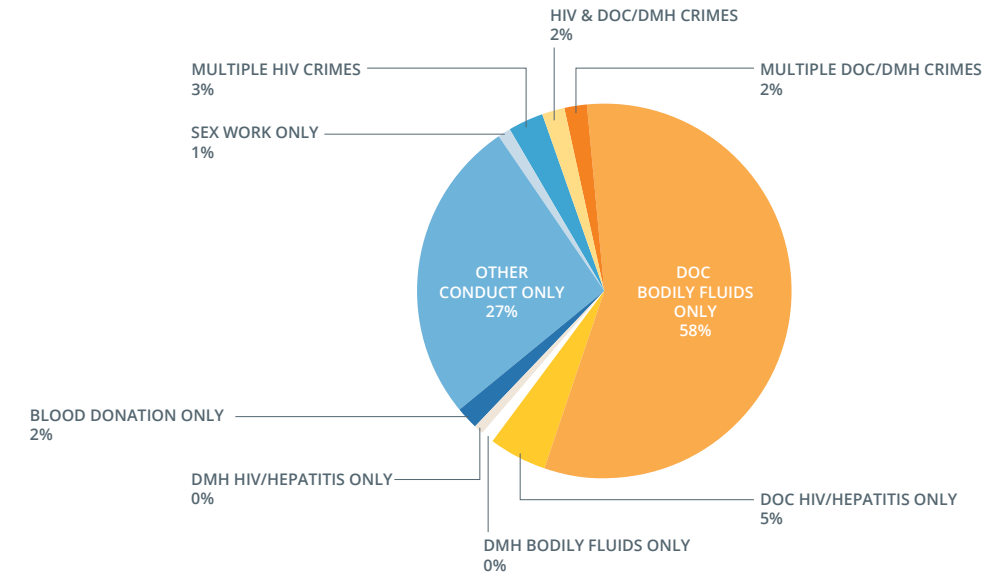


In a minority of HIV/hepatitis incidents (7%), the defendant was charged with more than one type of HIV/hepatitis crime. In the figures and tables in this paper, such an incident can be represented more than one time. For example, a person might have one incident involving both a charge for the Other Conduct crime and a charge for the Sex Work crime. If so, that incident would be included as a count of one (1) in the totals for each category in Table 2 above. However, this incident would be only represented one time in the row for the total of all three “HIV crimes.”

That said, over 93% of the people with HIV/hepatitis incidents only had charges for one type of crime in their history (552 people). The vast majority (85%) were impacted by only one of two types of HIV/hepatitis crimes: the DOC/DMH Bodily Fluids crime (58.4%, 346 people) and the HIV Other Conduct crime (27%, 160 people).

Further, only two percent of all people impacted by Missouri’s HIV/hepatitis crimes had charges for both an HIV crime and a DOC/DMH crime (14 people). In almost all of these cases (12),<sup>114</sup> the person was charged with a DOC Bodily Fluids crime at arrest, which was then later converted to an Other Conduct crime at the prosecution stage. No one in Missouri has been convicted of both an HIV crime and DOC/DMH crime in the same incident.

Figure 2. Percentage of people by type of HIV/hepatitis crime charged, 1990-2019



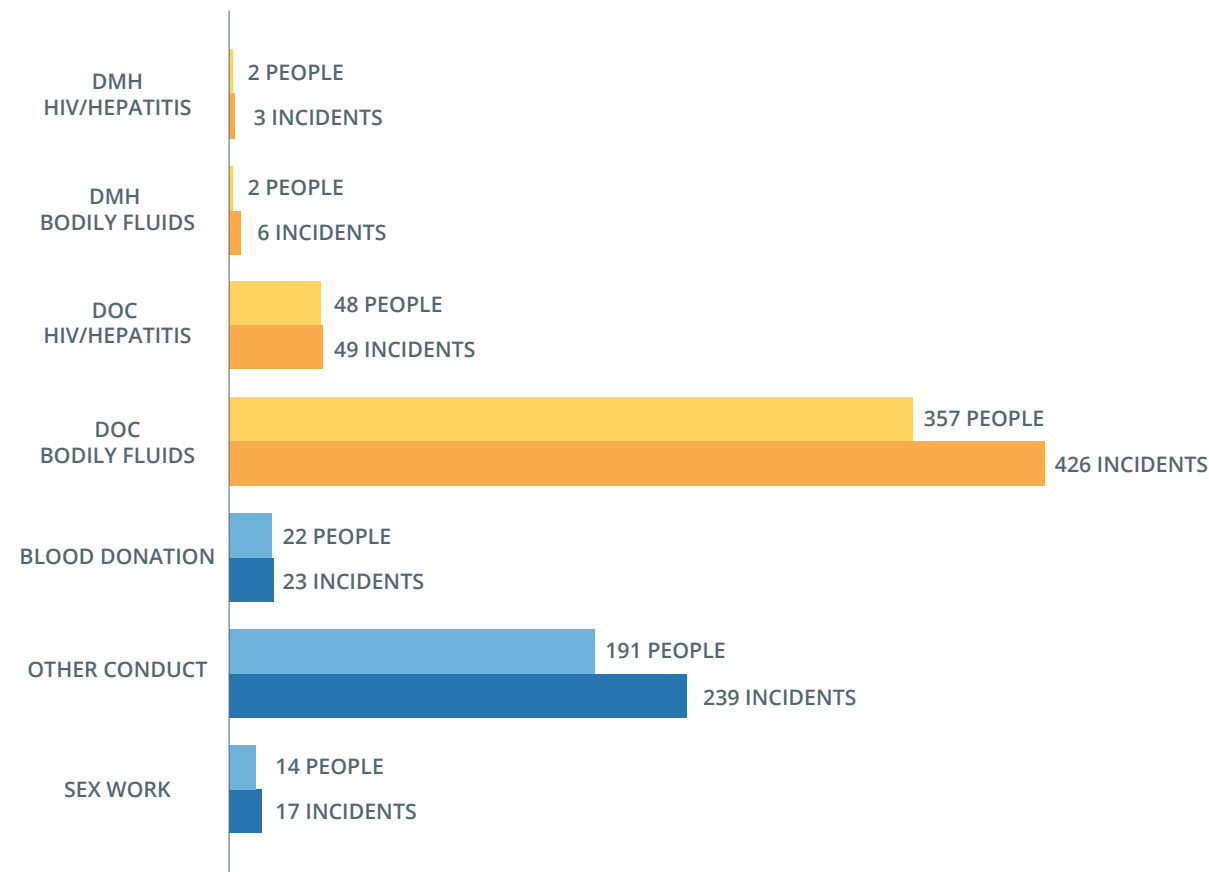
### DOC/DMH incidents

Of the 593 people arrested in Missouri for an HIV/hepatitis crime, 398 (67.1%) were arrested for at least one DOC/DMH crime. Since some people (12.6%) were arrested for a DOC/DMH crime in more than one incident, there were 472 separate DOC/DMH incidents during this time period.

Over 99.5% of people arrested for DOC/DMH crimes had at least one arrest for the crime of exposing, or attempting to expose, someone involved with the Department of Corrections to a bodily fluid. Only 3 people were arrested for the crime of exposing someone related to the Department of Mental Health with a bodily fluid (one person was arrested for both a DOC and a DMH crime).

The 472 DOC/DMH incidents can be divided into categories based on whether having HIV or hepatitis B or C was an element of the crime. Almost 90% of all DOC/DMH incidents (88.9%) were pursuant to the parts of the relevant statutes that do not require that the defendant have HIV or hepatitis B or C. Only 11% (n=52) of DOC/DMH incidents included a DOC/DMH crime where the defendant having HIV or hepatitis B or C was an element of the crime. For only 12 of these DOC/DMH HIV/hepatitis incidents (2.5% of all DOC/DMH incidents) did the defendant also have an additional charge of an HIV crime included in the same incident,<sup>115</sup> allowing for a reasonable inference that the underlying disease was, or included, HIV. The remaining 40 DOC/DMH HIV/hepatitis incidents lacked a co-occurring HIV crime, and thus we were unable to determine if the crime specifically involved exposure to HIV or hepatitis.

Figure 3. HIV/hepatitis incidents in Missouri by specific HIV/hepatitis crime charged, 1990-2019



### HIV Incidents

Of all those people arrested for an HIV/hepatitis incident in Missouri, 35.2% (209 people) were arrested for an offense where being HIV-positive was a required element of the crime (Blood Donation, Other Conduct, and/or Sex Work crimes). Since some people were arrested for more than one HIV incident, there were 263 separate HIV crime incidents between 1990 and 2019.

#### Other Conduct

Over 91% of people with HIV incidents (91.3%) were charged with exposing another person to HIV through sex, needles, biting, or another means (Other Conduct). The Other Conduct crime has enhanced penalties for actually infecting another person with HIV. Almost one in four people (22.5%, 43 people) with an Other Conduct crime incident were charged with actually infecting someone.

#### Blood Donation

Over 10% of people (10.5%) charged with any HIV-crime have been charged with exposing another person to HIV through donating blood or organs. This crime also has enhanced penalties for infecting someone; 90.9% of people charged with a Blood Donation crime were charged with actually infecting someone.

Based on our prior studies of similar state laws, this finding was not expected. For example, zero people in California had ever been arrested under its similar crime prohibiting blood and organ donations by PLWH.<sup>116</sup> Moreover, the chances of being infected with HIV through a blood donation are “extremely remote,”<sup>117</sup> less than 1 in 1.5 million.<sup>118</sup> There have been no reports of such transmissions since 2008 for blood transfusions<sup>119</sup> and 2009 for organ donations.<sup>120</sup> In fact, the last time anyone in Missouri was convicted for the Blood Donation crime was 2009 and when we examined the records of such incidents resulting in convictions, we have reason to believe that half or more could actually be the result of miscoding HIV Other Conduct crimes.<sup>121</sup>

#### Sex Work

Very few HIV incidents (6.5%) in Missouri include a charge for engaging in commercial sex work while “knowingly infected with HIV.”<sup>122</sup> As discussed further below,<sup>123</sup> only three people in the state have ever been convicted of this crime.

This lower level of enforcement for Sex Work crimes was not expected given our prior studies. For example, in California we found that 94.8% of all HIV incidents involved a Sex Work crime,<sup>124</sup> as did 60.4% of all HIV incidents in Florida.<sup>125</sup> To explore this finding further, we analyzed whether the other HIV crimes (Blood Donation and Other Conduct) were being enforced against sex workers instead. We found little evidence of this. Even when looking at the lifetime criminal history of everyone with an HIV incident the data suggest that only 11.0% (23 people) of the 209 people charged with an HIV crime in Missouri have also been charged with a prostitution-related crime.<sup>126</sup> Most of these are the fourteen people with an HIV Sex Work incident indicated in Figure 3. The rest are comprised of five additional people with an HIV incident who have a non-HIV prostitution related crime in their criminal history, and four others who only have charges of *patronizing* a sex worker in their criminal history.

#### Comparison with Other States

To provide some context for the level of Missouri’s enforcement of HIV crimes, the Williams Institute has done similar analysis for three other states: California,<sup>127</sup> Florida,<sup>128</sup> and Georgia.<sup>129</sup> If we define a state’s HIV crimes enforcement rate as the ratio of people who have been arrested for an HIV crime compared to its current population of PLWH,<sup>130</sup> Missouri has the highest enforcement rate of four states: 1.7% for Missouri compared with 1.1% for Georgia and 0.6% for California and Florida. However, as noted above, Missouri differs dramatically from the other states because its enforcement efforts are not as directed against sex workers. When we exclude Sex Work incidents for each state, Missouri’s HIV criminalization enforcement rate remains 1.7% while California’s falls to 0.1% and Florida’s to 0.3%.<sup>131</sup> Put differently, when excluding Sex Work incidents, Missouri has 1 arrest for an HIV crime for every 60 PLWH; Florida has 1 arrest for every 370 PLWH; California has 1 arrest for every 2,000 PLWH.

#### POST-ARREST OUTCOMES

The findings presented so far have included any incident where there was an HIV/hepatitis charge in the arrest, prosecution, or court record of the incident. This section considers final outcomes for these incidents.

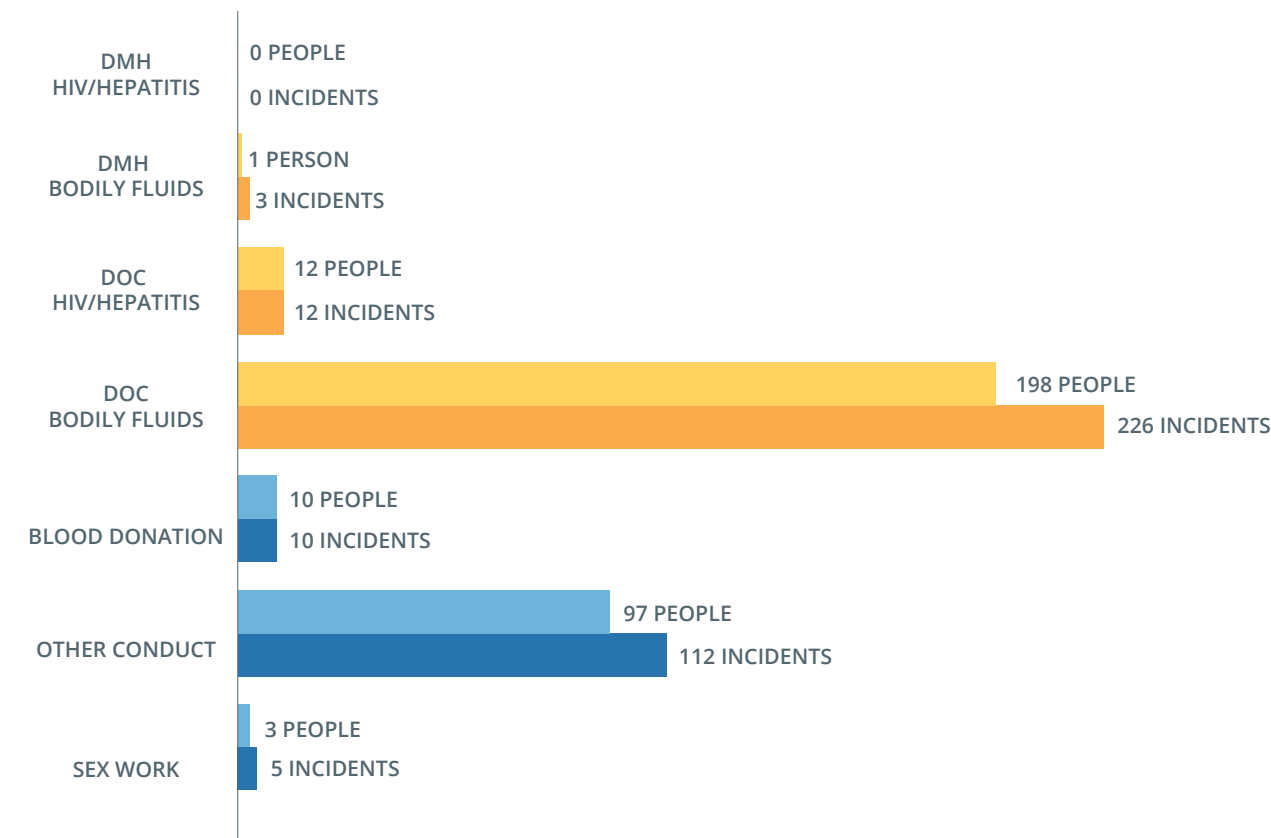
### The Exercise of Prosecutorial Discretion to Dismiss HIV Crimes

Some prosecutors, including in Canada and the United Kingdom, have adopted guidelines to prosecute HIV crimes only when 1) there is actual infection, or a substantial risk of infection based on current scientific knowledge about HIV; 2) the defendant specifically intended to infect the other person; and 3) the defendant took no mitigating measures to prevent transmission.<sup>132</sup>

Missouri’s MSHP records give us some limited insight into the degree to which these incidents are dismissed as the result of decisions by law enforcement or prosecutors not to proceed.<sup>133</sup> The records only clearly indicate that 2.6% (19) of these incidents were terminated at the arrest stage because they were not referred to prosecutors, or at the prosecution stage because prosecutors decided not to proceed with the charges. Even if we were also to assume that law enforcement officers or prosecutors dismissed, as an exercise of prosecutorial discretion related to HIV, all arrest records with “unknown” outcomes for all charges (63), or for which any additional charges beyond those *not* referred to a prosecutor are unknown (6), this percentage only would increase to 12.2% (88). In short, these records indicate that, at most, only 2.6% to 12.2% of incidents are being terminated as a result of law enforcement or prosecutorial discretion. Of course, this is likely a gross overestimate. These cases could have ended for a variety of reasons unrelated to the guidelines outlined above. But even this range suggest that there is little exercise of prosecutorial discretion to limit the breadth of Missouri’s HIV criminal laws, including when they cover conduct that we now know either cannot transmit, or has an extremely remote chance of transmitting, HIV.

### Convictions

Figure 4. Number of incidents resulting in a conviction for an HIV/hepatitis crime and people with such convictions, by crime type



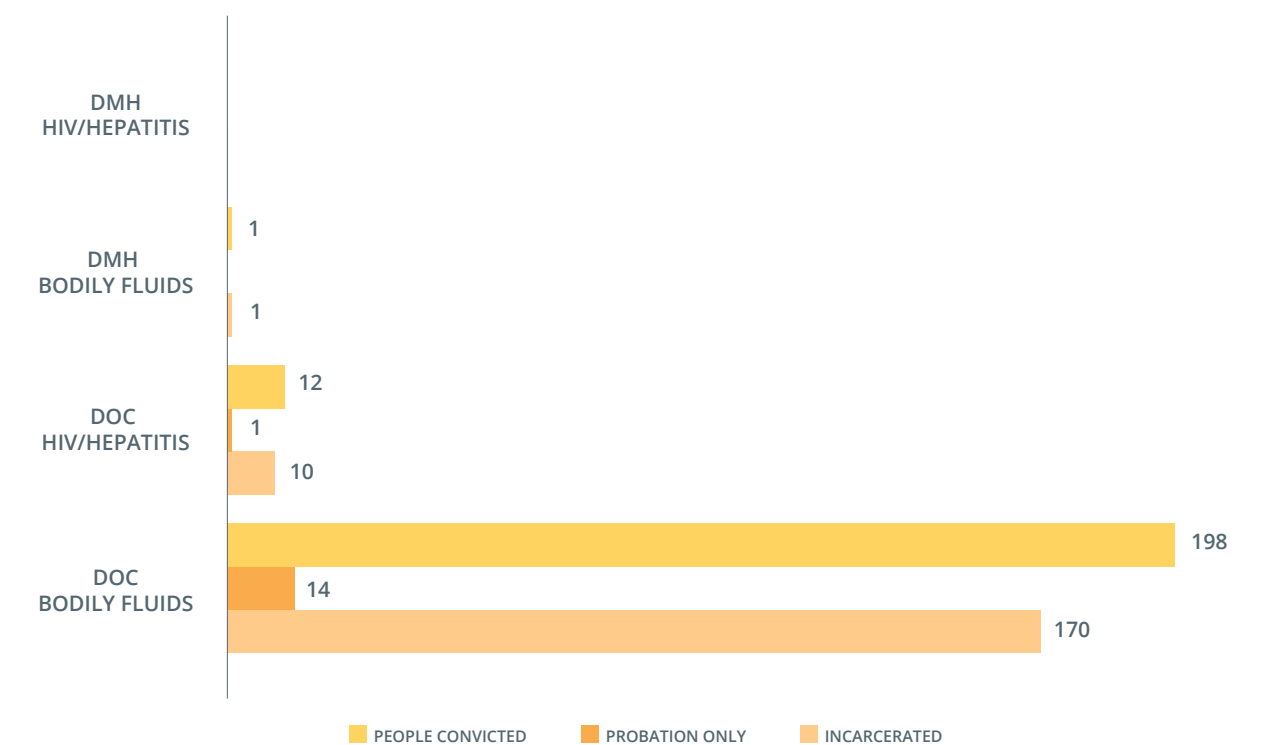
### DOC/DMH crimes with convictions

We have court outcome data for 68.9% (325/472) of DOC/DMH incidents. Of these 80.9% (263) had guilty outcomes for at least one crime of any type in the incident and 74.2% (241) resulted in convictions for at least one DOC/DMH crime.

In terms of the number of people, 211 people in Missouri have been convicted of a DOC/DMH crime.<sup>134</sup> Of these 211 people, 85.8% (181) received unsuspended sentences of incarceration or of both incarceration and probation, while 7.1% (15) received sentences of only probation. The remaining 15 people had court records only indicating suspended sentences and/or sentences of no length of time for their DOC/DMH crimes.

- Over ninety percent (93.8%) (198) of the 211 people convicted of a DOC/DMH crime were convicted of the DOC Bodily Fluids crime. Of these, 85.9% received unsuspended sentences of confinement or confinement and probation, while 7.1% received sentences of only probation. The remaining 14 people had court records only indicating suspended sentences and/or sentences of no length of time.
- Only 5.7% (12) of all people convicted of a DOC/DMH crime in Missouri have been convicted of the DOC HIV/hepatitis crime. Ten of these people were sentenced to confinement or confinement and probation, and only one person was sentenced to probation only. An additional person had court records only indicating suspended sentences and/or sentences of no length of time.
- Only one person has been convicted for a DMH Bodily Fluids crime, and he received a sentence of confinement. No one has been convicted of a DMH HIV/hepatitis crime.

Figure 5: People in Missouri convicted, incarcerated, or receiving only probation for DOC/DMH crimes



### HIV Incidents with Convictions

We obtained court outcome data for 63.5% (167) of HIV incidents. Of these, 84.4% (141) had guilty outcomes for at least one crime (of any type) and 74.9% (125) resulted in convictions for at least one HIV crime.<sup>135</sup>

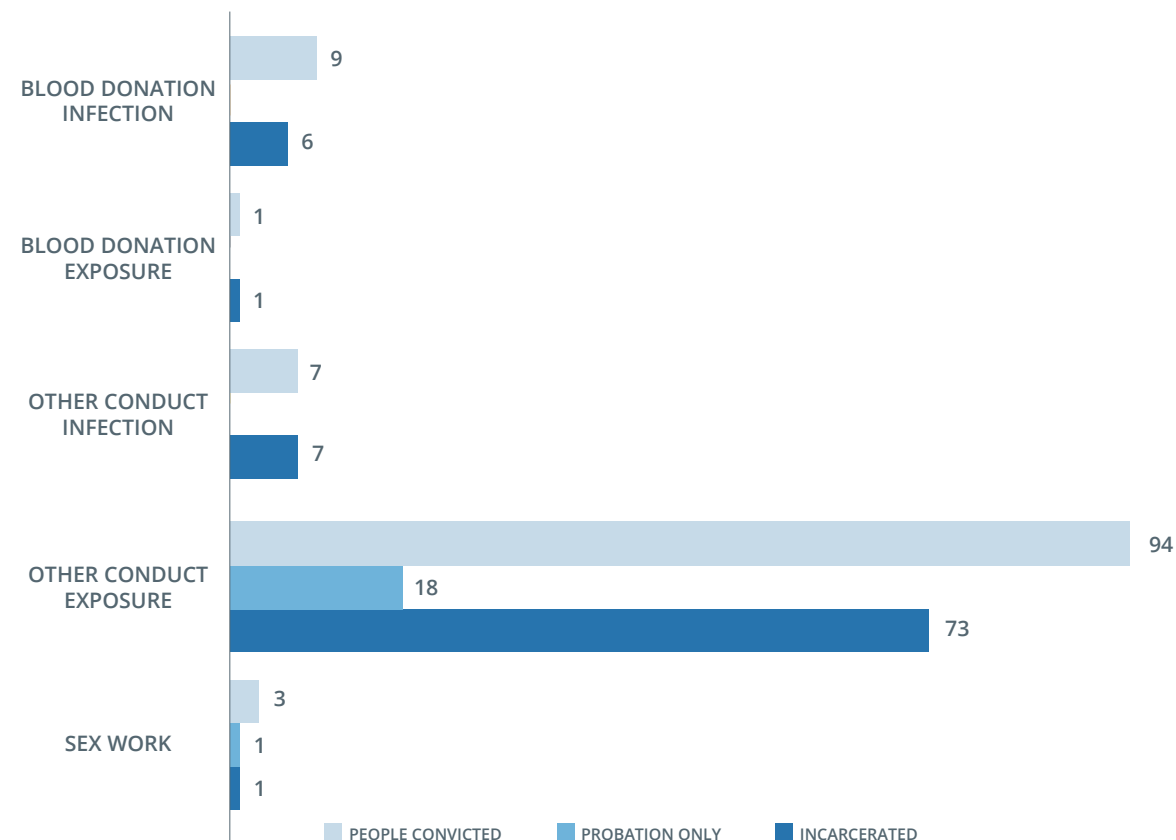
In terms of the number of people, 107 people in Missouri have been convicted of an HIV crime. Of these, 75.7% (81) people received unsuspended sentences of incarceration or of both incarceration and probation, while 17.8% (19) received sentences of only probation. The remainder had court records only indicating suspended sentences or sentences of no length.

### Other Conduct Incidents with Convictions

Of the 107 people convicted of an HIV crime in Missouri, 90.6% (97) were convicted of the Other Conduct crime: 90 people were convicted of only the Other Conduct Exposure crime only, three were convicted of only the Other Conduct Infection crime, and four were convicted of both.

- Of the 94 people convicted of the Other Conduct Exposure crime,<sup>136</sup> 77.7% received sentences of confinement or of both confinement/incarceration and probation, while 19.1% received only probation. The remaining three people had court records only indicating suspended sentences or sentences of no length.
- Of the 7 people convicted of the Other Conduct Infection crime, 100% received sentences of confinement – none received only sentences of probation.

Figure 6. People in Missouri convicted, incarcerated, or receiving only probation for HIV/hepatitis crimes



Since the Other Conduct crime covers a number of behaviors—including but not limited to oral, vaginal, and anal sex, sharing needles, and biting—we did further analysis to try to determine whether the other charges in these incidents indicated the type of risk behavior that led to the conviction for the Other Conduct HIV crime.

- Of the 7 people convicted of the Other Conduct Infection crime, three have other charges that involved sex and one has a charge related to assault and resisting arrest. Most likely, the first three cases involved sexual conduct as the risk exposure and the fourth involved some type of assault on a law enforcement officer. For the other three incidents with convictions for this crime, the other charges do not suggest the risk behavior.<sup>137</sup>
- Of the 94 people convicted of the Other Conduct Exposure crime, 41.5% (39) do not have any other charges in their incidents that would indicate the underlying risk behavior; 22.3% (21) have a sex offense charge in the same incident; 16.0% (15) have charges that indicate the risk behavior involved assault on a law enforcement officer; 6.4% (6) have an HIV Blood Donation charge; and 6.4% (6) have a sex work related charge (one of which was for *patronizing* a sex worker). The remaining 7.4% (7) of people with convictions for this crime have charges that may also indicate that the underlying risk behavior had to do with some type of assault on another person or resisting arrest, but none of their charges were for crimes specifically requiring that the assault be of a law enforcement officer.<sup>138</sup>

Interestingly, there is no evidence from these records that the Other Conduct crime is used to for needle sharing, since there are no relevant drug-related offenses charged, and between 16% and to 23.4% appear to be related to assault on a law enforcement officer or another person.

### Blood Donations

Ten people have been convicted of the Blood Donation crime, including one person convicted of the Blood Donation Exposure crime and nine people convicted of the Blood Donation Infection crime.

- The one person convicted of the Blood Donation Exposure crime was sentenced to confinement and probation.
- Of the nine people convicted of the Blood Donation Infection crime, 66.7% (6) received sentences of confinement – none received only sentences of probation. The remaining three had court records only indicating suspended sentences with no other sentence length provided.

Because it is unlikely that these defendants actually infected someone through the donation of blood, tissue or organs, as explained above, we took a closer look at records for the nine incidents with Blood Donation Infection convictions. The other crimes charged at the time of arrest for at least five of these incidents<sup>139</sup> raise a question about whether some are the result of other crimes, most likely the Other Conduct HIV crime, that have been miscoded.<sup>140</sup> Two of these five incidents also include charges for non-HIV-related sex offenses and a third includes a charge for “stealing” at arrest. In the final two, one only has an assault charge at arrest, and the other has both a charge for assaulting a law enforcement officer at arrest and a Blood Donation Infection charge. These incidents raise a question about whether someone was arrested at the same time for both donating blood and a sex crime, or stealing, or assaulting another person or law enforcement officer. Notably, all five of these incidents originated with the St. Louis Police Department.



In short, given that actually infecting someone through the blood supply is extremely unlikely, and that any such infection would garner media attention and trigger an investigation by the CDC, these records suggest that at least half of the convictions for Blood Donation Infection need to be researched further to determine whether they are the result of miscoding in the MSHP records. If these five incidents with convictions are erroneously coded in the MSHP data, it would mean that no one has been convicted or sentenced for either the Blood Donation Infection or Exposure crime since 2007.

*HIV Sex Work*

Only three people in the state have ever been convicted of the HIV Sex Work crime in Missouri: one of these people was sentenced to confinement and probation as a result of the conviction and one person was sentenced to probation only. The third person had court records only indicating suspended sentences and with no sentence length provided.<sup>141</sup>

**Recidivism**

We also analyzed whether those convicted for each type of crime were recidivists with respect to that specific type of crime; i.e., what percent of people were convicted more than one time for an HIV/hepatitis crime?

**HIV Crimes**

Most people convicted of an HIV crime (85.1%) had only one incident with such a conviction; 14% (15 people) had two incidents with convictions for HIV crimes; and only one person had more than two incidents with convictions for HIV crimes. Of the 16 people convicted of an HIV crime in more than one incident, 13 people had two Other Conduct Exposure incidents with convictions and one person had three such convictions. The remaining two people each had two incidents with Sex Work convictions. No one in the state has been convicted in multiple incidents for the following HIV crimes: Blood Donation Exposure, Blood Donation Infection, or Other Conduct Infection.

**DOC/DMH crimes**

Of the 211 people convicted of DOC/DMH crimes, 90.5% (191) only had one incident with a conviction for these crimes; 7.1% (15) had two incidents with convictions; and only five people had more than two incidents with convictions. All but one of the people convicted multiple times for these types of crimes were convicted of the DOC Bodily Fluids crime. No one in the state has been convicted in more than one incident for either the DOC HIV/hepatitis or DMH HIV/hepatitis crimes.

Although a rough comparison, these lifetime recidivism rates of 14.9% for HIV crimes 9.5% for DOC/DMH crimes compare favorably to Missouri’s general rate for the first new conviction for any crime following release from prison, which in 2018 was 29% at five years after release.<sup>142</sup>

**SENTENCING**

Due to complexities of working with the available sentencing data,<sup>143</sup> we analyzed sentencing information from MSHP records by looking at only incidents with convictions for one type of HIV/hepatitis crime.<sup>144</sup> This allowed us to exclude sentences influenced by plea bargains that involved multiple HIV/hepatitis crimes and non-HIV/hepatitis crimes. We also excluded any suspended sentences or any sentences of probation. Then for each of these incidents, we took the longest sentence for the HIV/hepatitis crime, assuming that if there were multiple counts of the same HIV/hepatitis related crime, all shorter sentences would run concurrently with the longest sentence. Thus, this approach will most likely understate the sentence lengths for Missouri’s HIV/hepatitis crimes.

Table 3 provides the results of this analysis. Sentences of confinement for HIV crimes ranged from 0 to 30 years, with an average sentence of 7.5 years and median sentence of 5 years. For most categories, there were very few incidents with only one type of HIV crime receiving a sentence of confinement. However, there were 54 incidents with only Other Conduct Exposure charges with sentences of confinement. Of these, 44% received sentences of 5 years, 13% of 8 years, and 9% of 10 years.

For the DOC/DMH incidents, sentences ranged from 0.25 to 7 years, with a mean of 2.9 years and a median of 3 years. Ninety-five percent of these incidents only involved convictions for the DOC Bodily Fluids crime. For these incidents, 91% of sentences were between 2 and 4 years: 28% received sentences of 2 years, 31% of 3 years, and 32% of 4 years.

**Table 3. Sentence lengths for incidents with unsuspended sentences of confinement for only one type of HIV/Hepatitis crime**

	NUMBER OF INCIDENTS	STATUTORY SENTENCING RANGE (YEARS)	ACTUAL RANGE (YEARS)	MEAN (YEARS)	MEDIAN (YEARS)
Blood Donation Exposure	1	5 to 15	10	10	10
Blood Donation Infection	4	10 to 30	0 to 10	5.8	6.5
Other Conduct Exposure	54	5 to 15	1 to 20	6.7	5
Other Conduct Infection <sup>145</sup>	1	10 to 30	10 to 30	10	10
Sex Work	2	5 to 15	5	5	5
DOC Bodily Fluids	160	Up to 4	.25 to 4	2.9	3
DOC HIV/hepatitis	6	Up to 7	2 to 7	5.2	5.5
DMH Bodily Fluids	3	Up to 4	4	4	4
DMH HIV/hepatitis	0	Up to 7	NA	NA	NA

### Comparison with Missouri Sentencing Advisory Commission Data

We can compare our approach with data reported by the Missouri Sentencing Advisory Commission (MOSAC) between 2000 and 2015. See Appendix C, Table C.1. MOSAC appears to take a similar approach in considering only the longest sentence for multiple offenses in one incident and excluding sentences of probation, to diversion programs, and/or that are suspended. However, it is not clear whether the MOSAC limits their analysis to exclude the influence of plea bargains that might have resulted in one aggregate sentence being entered for multiple HIV/hepatitis and non-HIV/hepatitis offenses.<sup>146</sup> In Table 4, we compare the MOSAC data with the findings of our approach described above. To compare our findings with the MOSAC data, we created a weighted average using the mean sentence from the 2010-2015 MOSAC data and either the 2003-2009 data or the 2000-2007 data, whichever of those two periods had the most sentences of confinement.<sup>147</sup> Keeping in mind that there are only MOSAC data for about half of the period considered by our analysis, the average sentence lengths are fairly similar for most crimes. Where the MOSAC data diverge more from our findings for the HIV crimes, the average sentences reported by MOSAC are higher than what we found. This is most likely because they did not limit their analysis to incidents with only convictions for one type of HIV/hepatitis crime, thereby removing the influence of plea bargains that included other crimes; and that our data includes convictions prior to 2002 when the Blood Donation and HIV Other Conduct crimes had lower sentencing ranges.<sup>148</sup>

Table 4. Mean sentence length comparing MOSAC Data with our analysis

	INCIDENTS WITH CONVICTIONS FOR ONLY ONE HIV/HEPATITIS CRIME 1990-2019	MOSAC DATA WEIGHTED AVERAGE 2000-2015 OR 2003-20015
Blood Donation Exposure	10	-
Blood Donation Infection	5.8	19
Other Conduct Exposure	6.7	7.2
Other Conduct Infection	10	20.4
Sex Work	5	5.5
DOC Bodily Fluids	2.8	2.9
DOC HIV/hepatitis	5.2	3.6
DMH Bodily Fluids	4	3.5
DMH HIV/hepatitis	NA	NA

### Cost of Incarceration

Using the sentencing data, we estimate the cost of incarcerating people as a result of Missouri’s HIV/hepatitis crimes. We adjust the average sentence for each crime, using our approach, described above, for the average time actually served for crimes of similar classification (A, B, C, and D felonies) and severity (violent v. non-violent) in Missouri.<sup>149</sup> We then use 2015 data from the Vera Institute for the cost of incarcerating a person for one year in Missouri, \$22,187.<sup>150</sup>

Table 5. Estimated cost of incarceration for Missouri’s HIV/hepatitis crimes

	NUMBER OF INCIDENTS WITH CONVICTIONS	MEAN (YEARS)	TOTAL YEARS	COST PER YEAR	COST	AVERAGE ACTUAL TIME SERVED FOR RELEVANT CLASS AND SEVERITY OF FELONY	ADJUSTED COST FOR ACTUAL TIME SERVED
Blood Donation Exposure (B/Violent)	1	10	10	\$22,187	\$221,870	71.1%	\$157,750
Blood Donation Infection (A/Violent)	6	5.8	34.8	\$22,187	\$772,108	71.1%	\$548,969
Other Conduct Exposure (B/Violent)	80	6.6	528	\$22,187	\$11,714,736	71.1%	\$8,329,177
Other Conduct Infection (A/Violent)	7	10	70	\$22,187	\$1,553,090	71.1%	\$1,104,247
Sex Work (B/Non-Violent)	2	5	10	\$22,187	\$221,870	33.0%	\$73,217
DOC Bodily Fluids (D/Violent)	198	2.9	574.2	\$22,187	\$12,739,775	50.9%	\$6,484,546
DOC HIV/hepatitis (C/Violent)	10	5.2	52	\$22,187	\$1,153,724	71.1%	\$820,298
DMH Bodily Fluids (D/Violent)	3	4	12	\$22,187	\$266,244	50.9%	\$135,518
DMH- HIV/hepatitis (C/Violent)	0	NA	0	\$22,187	\$ -	71.1%	0
<b>Total</b>	<b>307</b>		<b>1,338.6</b>		<b>\$28,643,417</b>		<b>\$17,653,721</b>

A conservative estimate of the cost of incarceration related to Missouri’s HIV/hepatitis crimes since 1990 is \$17.7 million. The DOC/DMH crimes have cost the state \$7.4 million. The HIV crimes have cost the state \$10.2 million, with one type of HIV crime alone, the Other Conduct crime, accounting for \$9.4 million of these costs.

### TIMING OF THE ENFORCEMENT OF MISSOURI'S HIV/HEPATITIS LAWS<sup>151</sup>

Changes in the frequency of enforcement of HIV/hepatitis crimes in Missouri are mainly determined by the addition of the newer laws in 2005 focused on the Department of Corrections and in 2010 focused on the Department of Mental Health. Figure 7, shows the number of arrests under Missouri's HIV/hepatitis crimes by year and by the type of crime. Note that 2019 data are only through October 2019 and not the full year.

The peak enforcement years for HIV crimes in general were between 2010 and 2013; enforcement levels were lower before and after that four-year period. The peak years for enforcement for DOC/DMH crimes were between 2006 and 2011. These crimes appear to have been less frequently charged since 2011, and in particular in the last three years.

Figure 7. HIV/Hepatitis Incidents in Missouri by type of crime and by year (n=709 incidents)<sup>152</sup>

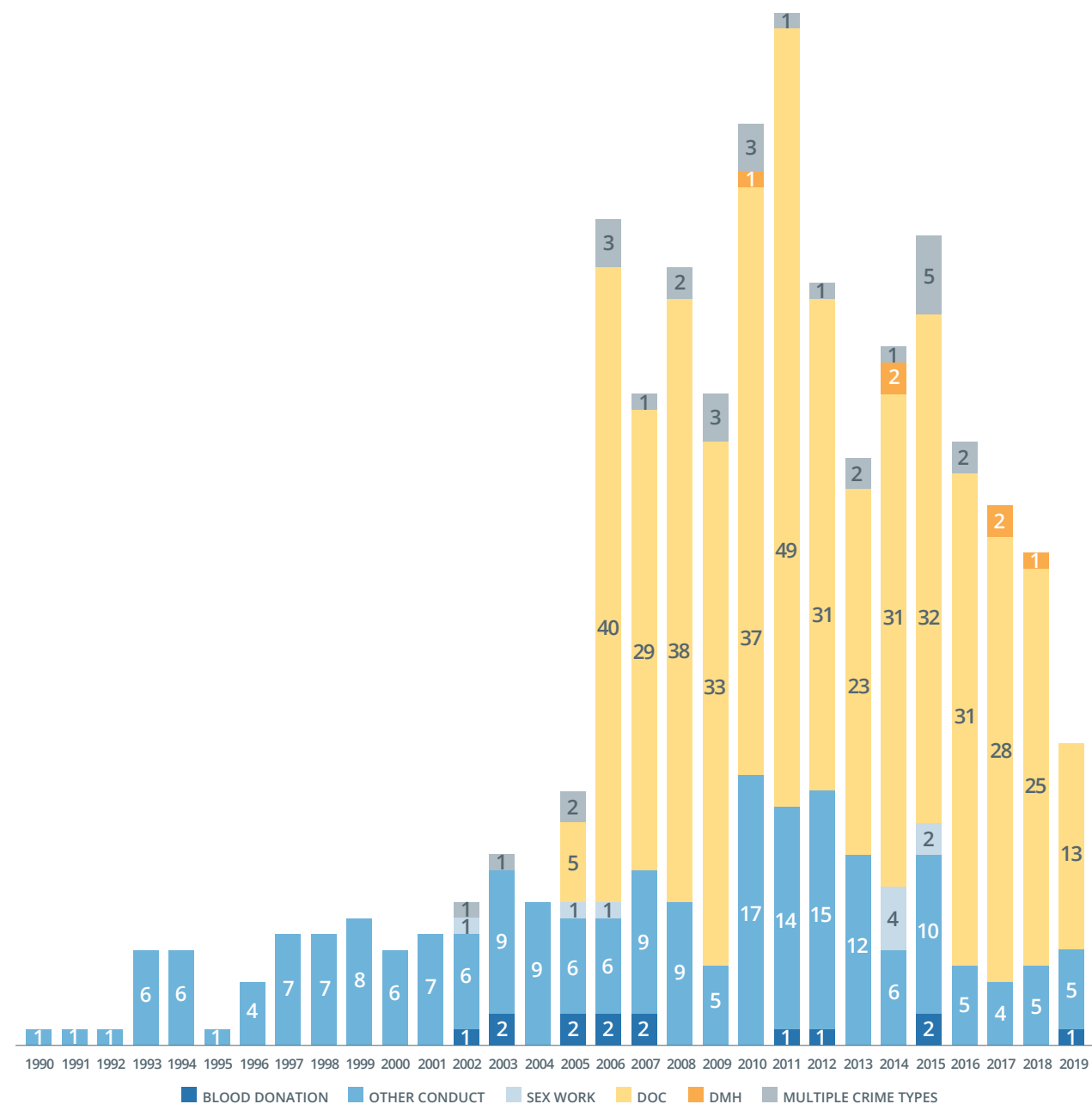
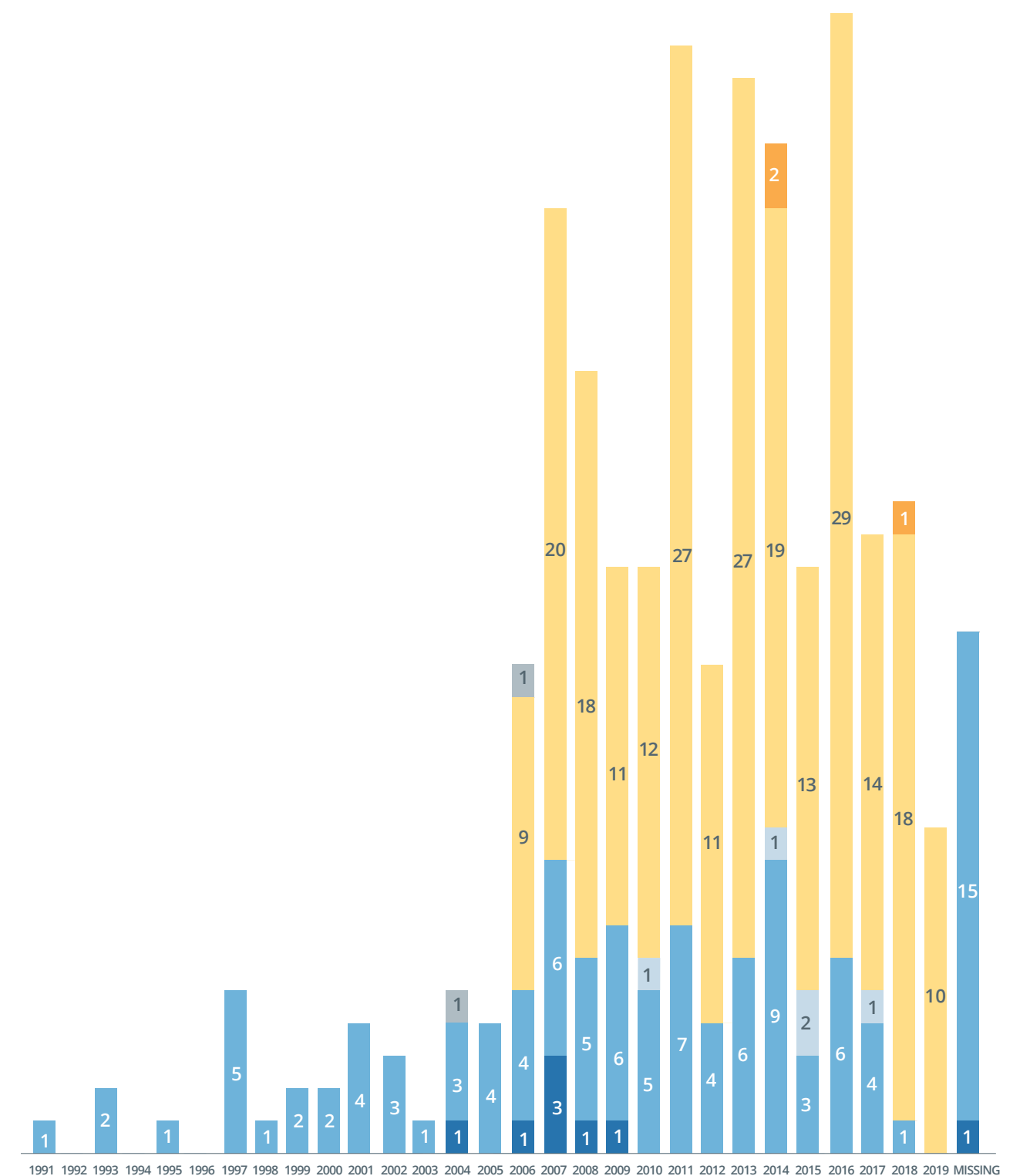


Figure 8. Incidents with a conviction for an HIV/hepatitis crime, by year and crime type, using the year of most recent sentencing date in the incident records (n=366 incidents)<sup>153</sup>



As shown in Figure 8, the pattern for convictions is similar, as measured by the most recent sentencing date for incidents with convictions.<sup>154</sup> Notably, the two types of HIV/hepatitis crimes that are enforced the most frequently continue to result in convictions: as recently as 2019 for DOC crimes and 2018 for Other Conduct crimes.

If the HIV incidents with convictions were evenly spread over the 29 years for which we have data, for Other Conduct crimes, we would expect 16 convictions in the last 5 years. There have, in fact, been 14 such convictions. If the DOC incidents with convictions were evenly spread over the 13 years of data for DOC incidents, we would expect 92 convictions in the last 5 years. There have, in fact, been 84 incidents with convictions. Keeping in mind that the 2019 data is not complete (ending in October of 2019), and there may be a time lag on entering more recent sentencing data in MSHP records, there do not appear to be fewer convictions for the two types of HIV/hepatitis crimes that are most frequently enforced in more recent years.

Considering only the years where we have full years of data (excluding 2019) and where all of the types of Missouri’s HIV/hepatitis laws were in effect (2010-2018), on average, there were 32 incidents per year that included a DOC crime and 10 incidents per year that included an Other Conduct charge. In terms of incidents with convictions, there were an average of 19 incidents with DOC convictions per year and 5 incidents with Other Conduct convictions per year. However, the other HIV/hepatitis crimes in the state are even more rarely enforced. All other crimes averaged one or less incident, and incident with a conviction, per year during this time period.

As shown in Table 6, some of the more specific HIV/hepatitis crime types have not been charged for several years. Notably, no one has been arrested for the Sex Work crime since 2015, and the last conviction was in 2017. While there is at least one 2019 arrest record reflecting the Blood Donation crime, no one has been convicted of that crime since 2009, over a decade ago. Finally, there is no indication from the MSHP records that anyone has ever been convicted of the DMH crime that requires the defendant to have HIV or hepatitis B or C.

**Table 6. Most recent year of arrest and most recent conviction for each type of crime**

	MOST RECENT ARREST <sup>155</sup>	MOST RECENT CONVICTION
Blood Donation Exposure	2008	2006
Blood Donation Infection	2019	2009
Other Conduct Exposure	2019	2018
Other Conduct Infection	2019	2017
Sex Work	2015	2017
DOC Bodily Fluids	2019	2019
DOC HIV/hepatitis	2018	2018
DMH Bodily Fluids	2017	2018
DMH HIV/hepatitis	2018	Never

## LOCATION OF ENFORCEMENT

### Overall

While there have been HIV/hepatitis incidents in 70 of Missouri’s 114 counties, 79.3%<sup>156</sup> of these incidents occurred in the 17<sup>157</sup> counties listed in Table 7. Every other county had 9 or fewer HIV/hepatitis incidents, with 44 counties having no HIV/hepatitis incidents. See Appendix D.

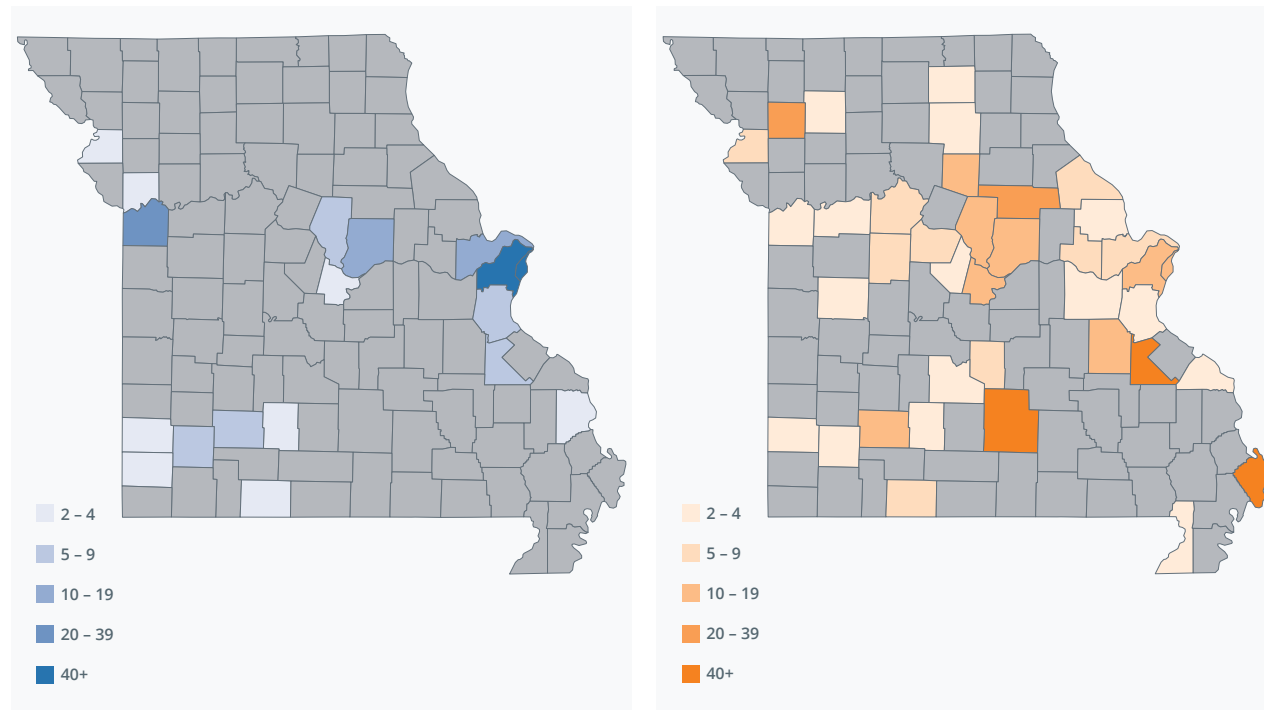
Even fewer counties have had incidents that led to convictions for HIV/hepatitis crimes. Incidents resulting in conviction have only originated in 51 of Missouri’s 114 counties,<sup>158</sup> with 81.0% of these incidents with convictions originating in the 17 counties listed in Table 7. Each of the remaining counties, has had seven or fewer incidents with convictions, with 65 counties having no such incidents. See Appendix D.

**Table 7. Missouri counties ranked by total HIV/hepatitis incidents and HIV/hepatitis incidents with convictions**

COUNTY	OVERALL INCIDENTS	RANK BY INCIDENTS	CONVICTIONS	RANK BY CONVICTIONS
St. Louis City	15.5%	1	12.4%	1
St. Francois	8.6%	2	8.9%	2
St. Louis County	7.7%	3	6.9%	4
Mississippi	7.4%	4	8.3%	3
Texas	6.8%	5	6.6%	5
Audrain	3.6%	6	4.9%	7
Callaway	3.5%	7	6.3%	6
Greene	3.5%	7	2.9%	10
Jackson	3.5%	7	2.9%	10
Boone	3.3%	10	2.3%	15
Dekalb	3.0%	11	4.6%	8
Washington	2.8%	12	3.2%	9
Cole	2.6%	13	2.0%	16
St. Charles	2.6%	13	2.6%	12
Randolph	1.9%	15	2.6%	12
Jefferson	1.6%	16	1.1%	19
Buchanan	1.5%	17	2.6%	12
<b>Total</b>	<b>79.3%</b>		<b>81.0%</b>	

However, as indicated by Figure 9, the geographic pattern for enforcement of Missouri’s HIV laws is different than the pattern for the enforcement of DOC/DMH laws.

**Figure 9. HIV incidents (left) compared to DOC/DMH incidents, counties with two or more incidents (right)**



Tables 8a and 8b further explore these differences. What emerges are very specific geographic patterns for each type of crime:

- **Blood Donation (Infection or Exposure):** While no one has been convicted of this crime since 2009, St. Louis City and St. Louis County account for 56.5% of all such incidents in the state and 60.0% of all convictions.
- **Other Conduct (Infection or Exposure):** St. Louis City and St. Louis County account for 52.4% of these incidents, and 48.6% of such incidents with convictions.<sup>159</sup>
- **Sex Work:** There have only been Sex Work incidents in eight counties in the state, and St. Louis City and St. Louis County account for 58.8% of these. The five Sex Work convictions originated in just three counties: St. Louis, Boone, and Taney.
- **DOC Crimes:** Three counties, St. Francois, Mississippi, and Texas, account for one-third of all DOC incidents (33.6%), and over one-third of all of these incidents with convictions (35.7%).<sup>160</sup>
- **DMH Crimes:** Only three counties have enforced the DMH crime (St. Francois, Callaway, and St. Louis City)—each against one person each. The three incidents with convictions in the state all originated in Callaway County and were all against one individual.

**Table 8a. Top counties by HIV/hepatitis incidents**

BLOOD DONATION		OTHER CONDUCT		SEX WORK		DOC-ALL		DMH-ALL	
23 of 23 Incidents With Known County		225 of 239 Incidents With Known County		17 of 17 Incidents With Known County		447 of 466 Incidents With Known County		7 of 7 Incidents With Known County	
County	Incidents	County	Incidents	County	Incidents	County	Incidents	County	Incidents
St. Louis City	10	St. Louis City	80	St. Louis City	7	St. Francois	52	St. Francois	3
St. Louis County	3	St. Louis County	38	St. Louis County	3	Mississippi	51	Callaway	3
Buchanan	2	Jackson	19	Boone	2	Texas	47	St. Louis City	1
Jackson	2	Callaway	11	Jackson	1	St. Louis City	25		
Jefferson	2	St. Charles	11	Jasper	1	Audrain	24		
		Greene	7	Lincoln	1	Dekalb	21		
		Jefferson	6	St. Charles	1	Washington	19		
		Boone	5	Taney	1	Greene	17		
82.6% of total		78.7% of total		100% of total		57.3% of total		100% of total	

NOTE: Event categories are not mutually exclusive; e.g., an incident may show up in more than one column, if two or more co-occurring HIV/hepatitis charges are involved in the incident

Table 8b. Top counties by HIV/hepatitis convictions

BLOOD DONATION		OTHER CONDUCT		SEX WORK		DOC-ALL		DMH-ALL	
10 of 10 Incidents With Known County		105 of 112 Incidents With Known County		5 of 5 Incidents With Known County		227 of 238 Incidents With Known County		3 of 3 Incidents With Known County	
County	Incidents	County	Incidents	County	Incidents	County	Incidents	County	Incidents
St. Louis City	6	St. Louis City	33	St. Louis County	2	St. Francois	29	Callaway	3
Buchanan	2	St. Louis County	18	Boone	2	Mississippi	29		
Caldwell	1	Callaway	11	Taney	1	Texas	23		
Cass	1	Jackson	8			Audrain	16		
		St. Charles	7			Dekalb	16		
		Greene	3			Washington	11		
		Jefferson	3			Randolph	9		
		Clay	3			Callaway	8		
100% of total		81.9% of total		100% of total		62.1% of total		100% of total	

**Enforcement of HIV crimes compared to population of PLWH**

To some extent, the enforcement of HIV crimes in the state mirrors where PLWH live in the state, as shown by Figure 10 and Figure 11, which compare rates of PLWH in the state with counties that have two or more incidents involving one of the state’s HIV crimes. For example, there are higher numbers of both PLWH and HIV criminalization incidents in Missouri’s counties with larger populations, including along the I-70 corridor.

Figure 10. Number of HIV incidents per county, among counties with two or more incidents

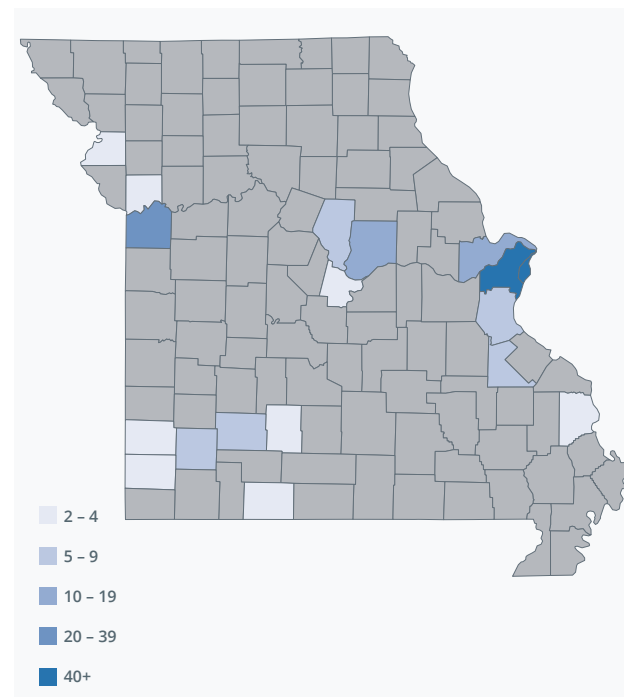
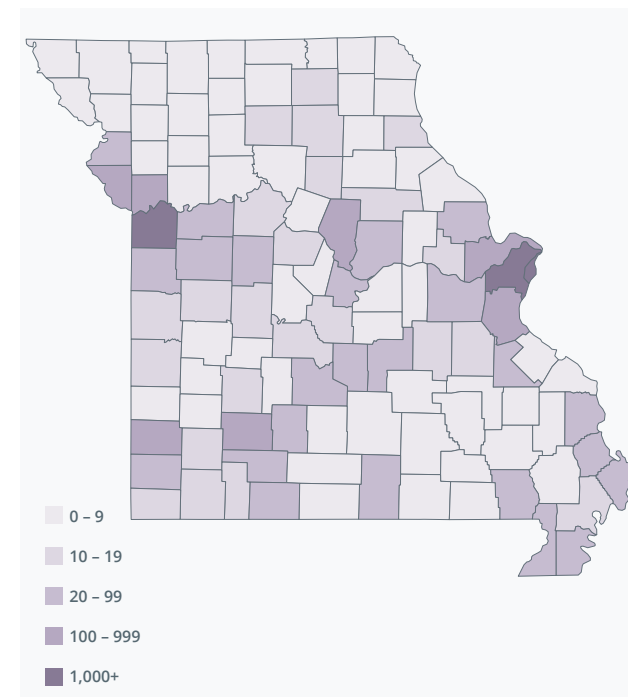


Figure 11. Location of people living with HIV, by county, in Missouri



However, there is more enforcement of HIV crimes in the St. Louis HIV Care region<sup>161</sup> than the population of PLWH living in the region would indicate. Over 60% of each of the different types of HIV incidents are from the St. Louis HIV Care region: Blood Donation incidents (65.2%), Other Conduct incidents (60.4%), and Sex Work incidents (70.6%).

Overall, while the St. Louis HIV Care region has 48.3% of PLWH in Missouri,<sup>162</sup> it has 61.0% of all HIV incidents. This in contrast to the Kansas City HIV Care region,<sup>163</sup> which has 29.6% of all PLWH in the state, but only 10.8% of HIV incidents.

Figure 12. Percent of PLWH and HIV incidents in the Kansas City and St. Louis HIV Care Regions<sup>164</sup>

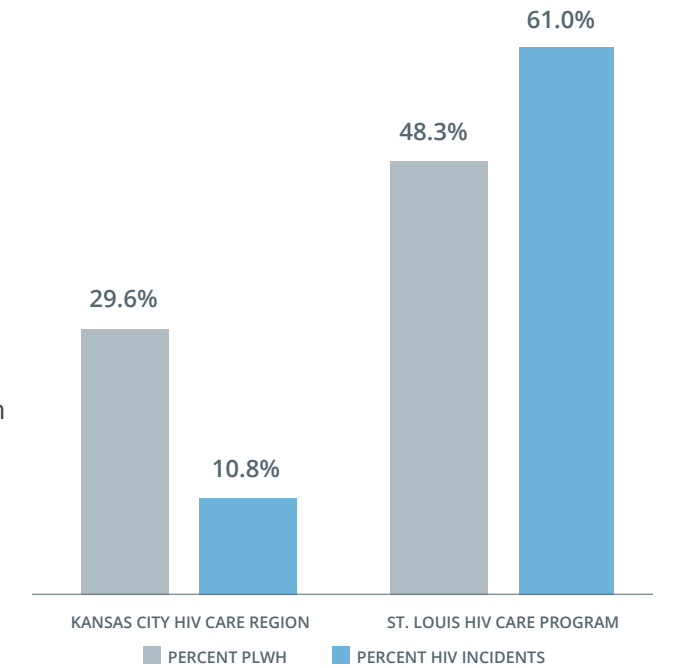
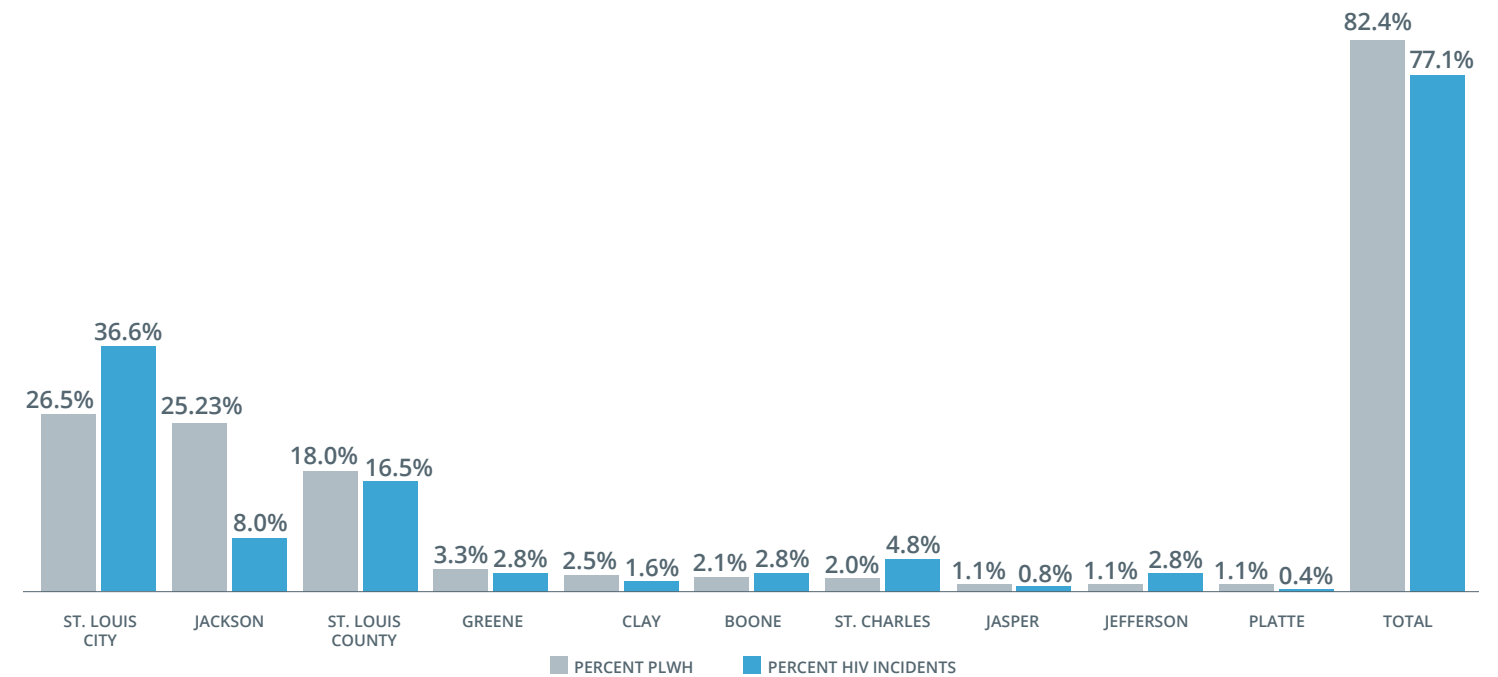


Figure 13. Percent of Missouri’s PLWH population and HIV incidents in the 10 counties in Missouri with the most PLWH<sup>165</sup>

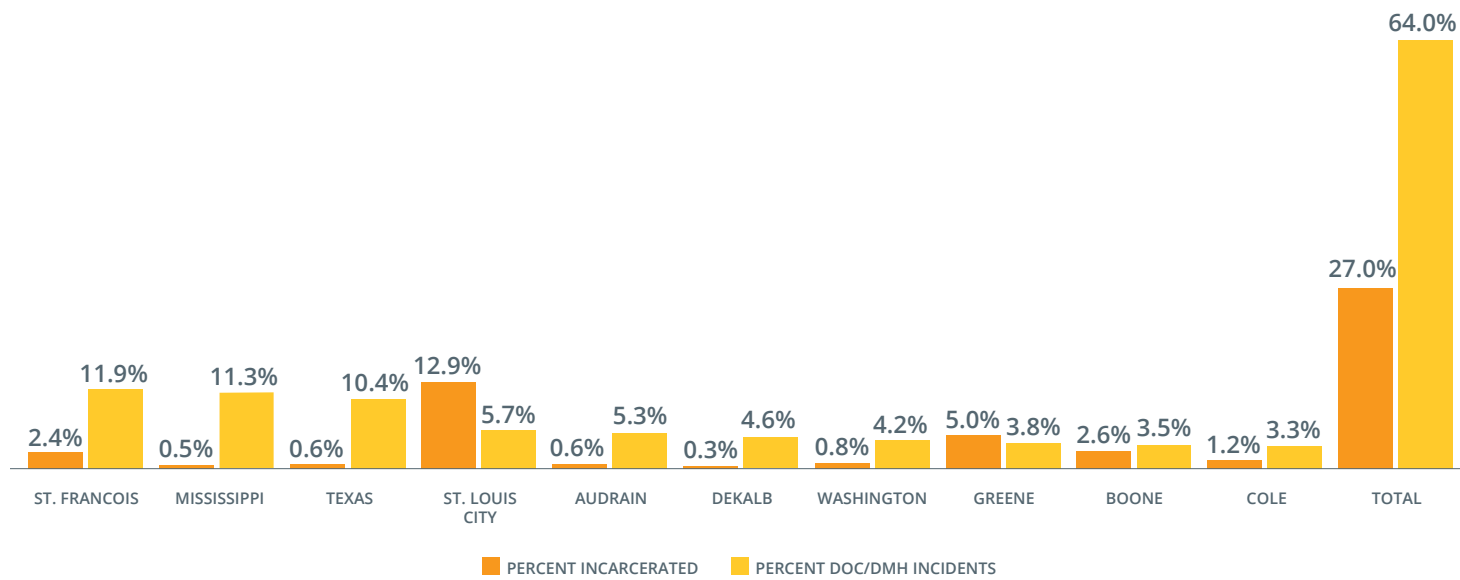


More specifically, St. Louis City primarily accounts for the over-representation of HIV criminal incidents relative to PLWH in the St. Louis HIV Care region, with some over-representation in St. Charles and Jefferson counties as well. In contrast, in the Kansas City HIV Care region, Jackson County has far less criminal enforcement than its underlying population of PLWH would suggest.

### DOC/DMH crimes compared to incarcerated population

As Table 8a indicates, DOC/DMH incidents are also concentrated in a few counties, namely St. Francois, Mississippi, and Texas counties. This is not because of a corresponding concentration of Missouri’s incarcerated population. While these three counties account for 33.6% of Missouri’s DOC/DMH incidents, they only have 3.6% of the state’s incarcerated population.<sup>166</sup> In short, they have ten times the level of arrests for these crimes than their underlying incarcerated population would suggest. Further, as shown in Figure 14, over 64% of DOC/DMH incidents are in just 10 counties in the state, yet these counties contain only 27% of the state’s incarcerated population. One exception to this trend among the 10 counties with the largest number of DOC/DMH incidents is seen in St. Louis City, which is responsible for 5.7% of DOC/DMH incidents, but is home to almost 13% of Missouri’s incarcerated population. Excluding St. Louis City, the other nine counties account for 58.3% of the charging of DOC/DMH crimes and yet only have 14.1% of the state’s incarcerated population. In short, these nine remaining counties have over four times the level of these incidents as their underlying incarcerated population would suggest. This may mean that DOC crimes are enforced more frequently based on interactions with Department of Corrections employees during arrest, as opposed to being based on interactions with Department of Corrections employees while people are incarcerated.

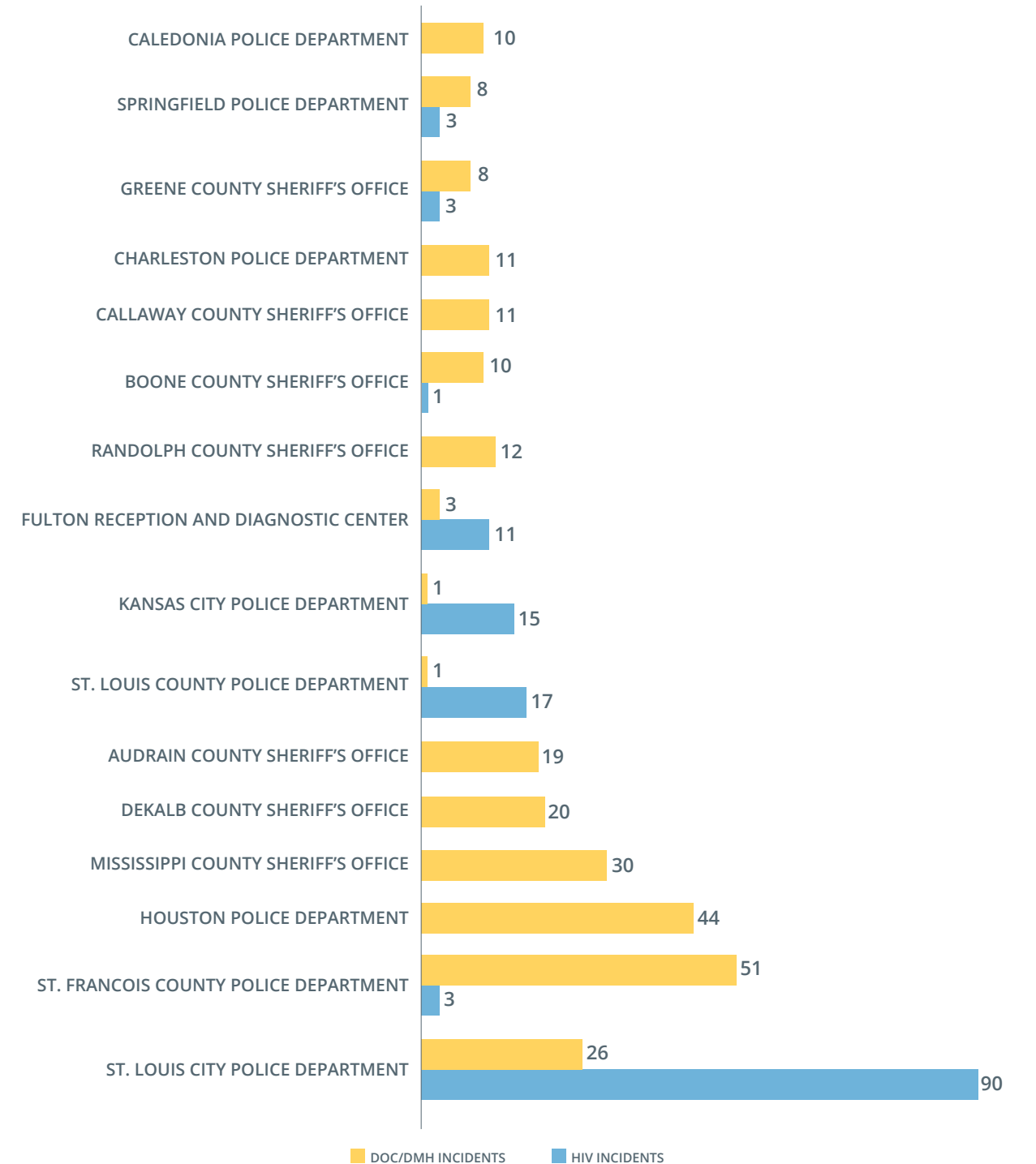
Figure 14. Percent of Missouri’s incarcerated population<sup>167</sup> and DOC/DMH incidents in the 10 counties in Missouri with the largest number of DOC/DMH incidents



### ENFORCEMENT AGENCIES

The criminal records further allow us to identify which law enforcement agencies are originating the arrest records for these incidents, as shown in Figure 15. See Appendix E.

Figure 15. Law enforcement agencies in Missouri with 10 or more HIV/hepatitis incidents, by HIV incidents and DOC/DMH incidents<sup>168</sup>



### HIV Crimes

Corresponding with the geographic concentration of these incidents in St. Louis City, described above, the St. Louis City Police Department originated over a third (38.8%)<sup>169</sup> of all HIV criminal incidents in the state, followed by the St. Louis County Police Department (7.3%), the Kansas City Police Department (6.5%), and the Fulton Reception and Diagnostic Center (4.7%). These four agencies alone collectively account for over half (57.3%) of all HIV incidents in Missouri.

### DOC/DMH crimes

Similarly, a handful of law enforcement agencies originated a disproportionate percentage of the state's DOC/DMH incidents. The following six agencies account for 44.4% of all DOC/DMH incidents in the state: the St. Francois County Sheriff's Department (11.9%), the Houston Police Department in Texas County (10.3%), the Mississippi County Sheriff's Office (7.0%), the St. Louis City Police Department (6.1%), the Dekalb County Sheriff's Office (4.7%), and the Audrain County Sherriff's Office (4.4%).

Figure 16. Arresting agencies with 10 or more HIV/hepatitis incidents with convictions

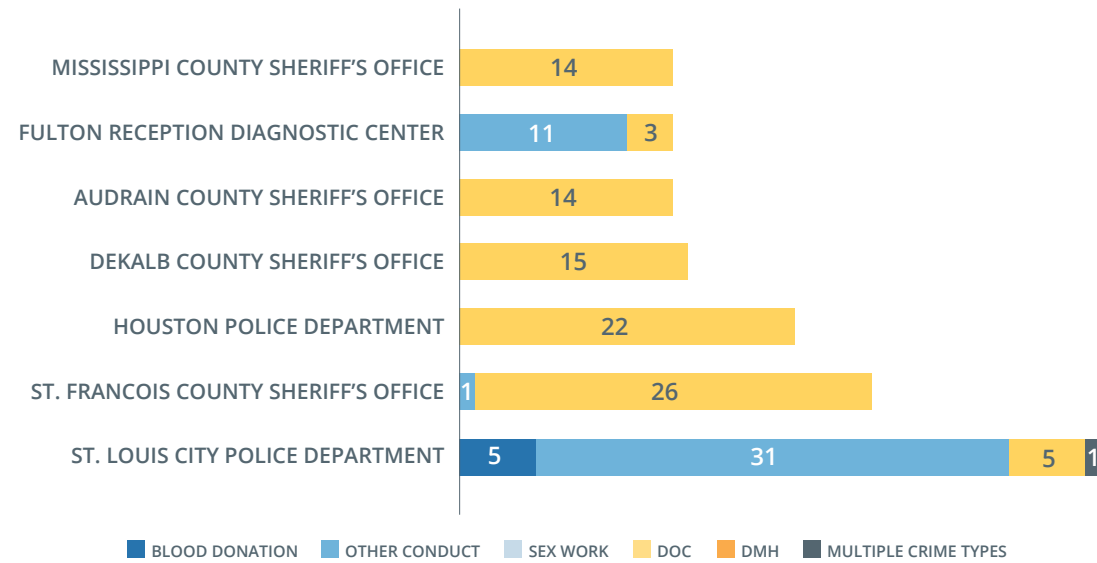


Figure 16 shows the top arresting agencies for HIV/hepatitis incidents resulting in convictions. The top three agencies remain the same as those with the most HIV/hepatitis incidents overall.

However, when considering the number of each agency's incidents with convictions as a percentage of all incidents originating from that agency, a more nuanced pattern emerges. See Appendix E. For example, while the St. Louis City Police Department has the most HIV/hepatitis incidents in the state and the most incidents with convictions, it has the fourth lowest percentage of incidents resulting in convictions (39.6%). At the other end of the spectrum, there are six agencies for which over 70% of their HIV/hepatitis incidents resulted in convictions: the Fulton Reception and Diagnostic Center (100%), the Callaway County Sheriff's Office (81.8%), the Dekalb County Sheriff's Office (75%), the Audrain County Sheriff's Office (73.7%), the Charleston Police Department (72.7%), and the Caledonia Police Department (70%).

Figure 17 presents the convictions per incidents rate for agencies with 10 or more HIV incidents, while Figure 18 presents similar data for agencies with 10 or more DOC/DMH incidents. Both figures show a great deal of variation in the degree to which incidents result in convictions, which could be influenced, in part, by decisions made by the law enforcement agencies as well as local prosecutors and courts. One consistent trend is that MSHP records indicate that more DOC/DMH incidents from these agencies result in convictions than do HIV incidents.

Figure 17. HIV incidents with convictions as a percent of all HIV incidents by agency of arrest, among law enforcement agencies originating 10 or more HIV incidents.

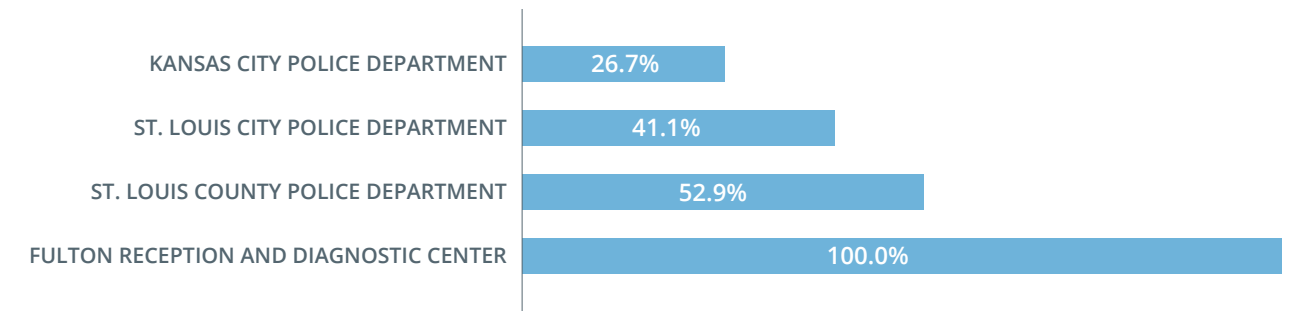
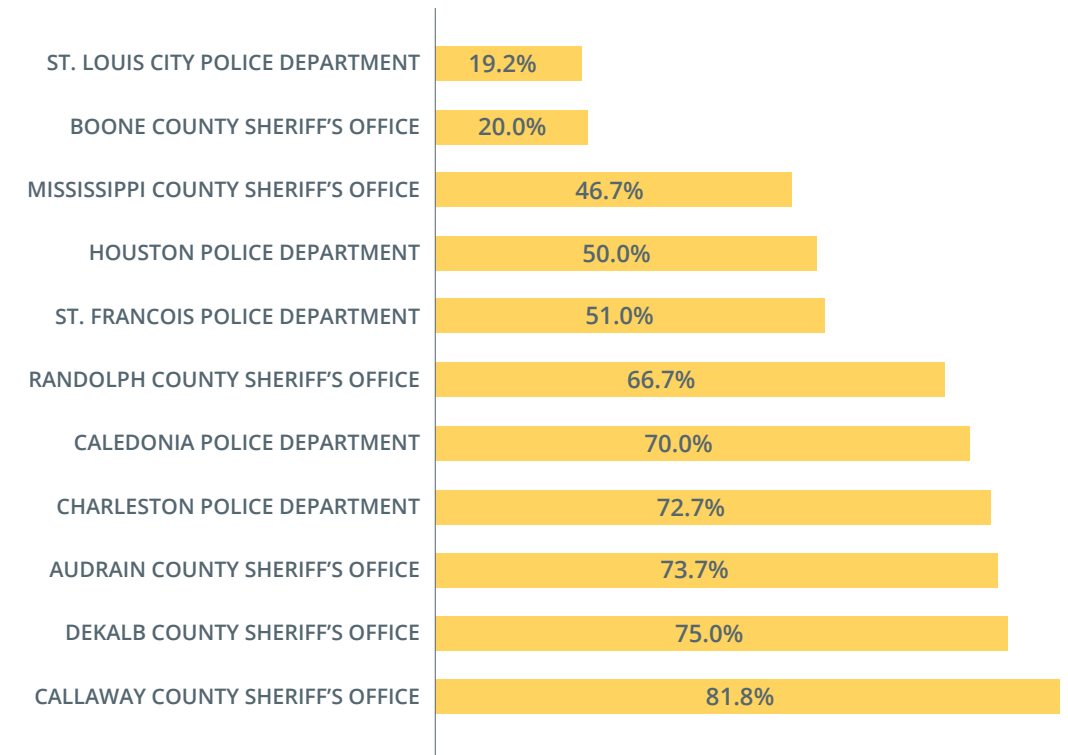


Figure 18. DOC/DMH incidents with convictions as a percent of all DOC/DMH incidents by agency of arrest, among agencies with 10 or more DOC/DMH incidents.





## PEOPLE IMPACTED BY MISSOURI'S HIV/HEPATITIS CRIMINAL LAWS

In this section we consider the demographics (age, national original, gender, and race) and criminal history of people who have been arrested for one or more of Missouri's HIV/hepatitis crimes.

### Sexual Orientation and Gender Identity

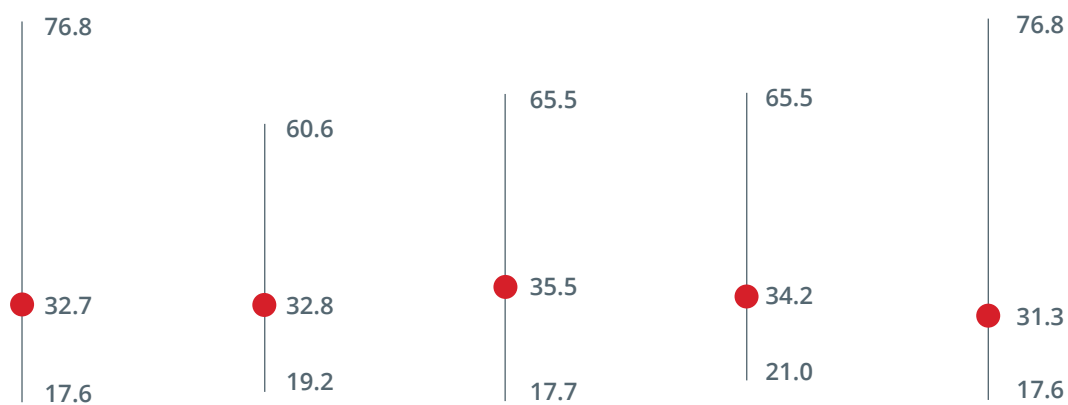
MSHP data do not include sexual orientation or gender identity, so we are unable to provide information about LGBTQ identity among people impacted by Missouri's HIV/hepatitis laws. Approximately, 68.2% of PLWH in Missouri are Men who have Sex with Men (MSM) and 5.3% are MSM/IDUs (Injection Drug Use).<sup>170</sup> A review of documented arrests and prosecutions for HIV exposure in the United States from 2008 to 2019 provides anecdotal evidence that many of Missouri's HIV incidents do not involve MSMs. The study found only 17 cases from Missouri during that time period.<sup>171</sup> Of those, only 15.8% involved MSMs. There were more HIV cases involving heterosexual sex (64.7%) and exposing a law enforcement officer through spitting or biting (23.5%).<sup>172</sup>

Though data specific to HIV prevalence among transgender people in Missouri is unavailable, national data<sup>173</sup> show that transgender people (primarily transgender women) have very high rates of HIV.<sup>174</sup> Transgender women may be counted as "men" in the MSHP data and in our analysis based on gender below. In the study based on press reports referenced above, none of the HIV exposure cases in Missouri involved transgender people.<sup>175</sup>

### Age

In Missouri, the average age at the time of arrest for individuals' first HIV/hepatitis incident was 32.8 years. Their ages ranged from 17.6 to 76.8 years.

Figure 19. Average age and age range for individuals' first HIV/hepatitis related incident.<sup>176</sup>



Looking more broadly at the ages at which individuals with HIV/hepatitis arrests first came into contact with the criminal justice system, the average age at first arrest (for any crime) was 23.4 years, with a range from 14.6 to 76.8 years. Of those with an HIV/hepatitis incident, 58.9% had their first contact with the criminal system before the age of 21 and 28.8% had their first contact before the age of 18.

### National Origin and Place of Birth

Among all people with an HIV/hepatitis incident in Missouri, 96.6% were born in the U.S. Only 1% (6 people) were identified as being born outside of the U.S. By comparison, 4% of Missouri's population is foreign born.<sup>177</sup> By definition, this also means that almost 97% of people impacted by these crimes are U.S. citizens by birth.

Further, among all people with an arrest for a HIV/hepatitis incident, 70% were born in Missouri and 5% were born in Illinois.

### Gender

Among all people with an arrest for an HIV/hepatitis incident in Missouri, approximately 14.3% are women and 85.7% are men. The percentages are similar for those convicted of an HIV/hepatitis crime (13.5% v. 86.5%). However, there is greater variation in the percentages of women arrested or convicted for the different types of HIV/hepatitis crimes.

### HIV crimes

Of all those with an HIV incident in Missouri, approximately 13% of those with arrests and convictions are female. This is lower than the percentage of PLWH who are female in Missouri, 17.6%.<sup>178</sup> For the HIV crime that is most frequently enforced in the state, Other Conduct (over 90% of all incidents), women are less likely to have such a criminal incident (11.0%) or an incident with a conviction (9.3%) than would be expected based on the percentage of PLWH in the state who are female. Considering just convictions, women make up 9.6% of those with an Other Conduct Exposure conviction and none of the 7 people with an Other Conduct Infection conviction. In short, Missouri's most frequently enforced HIV crime is disproportionately enforced against men, who comprise over 90% of the people convicted of this crime. However, those with Sex Work incidents are much more likely to be female (42.9% female), and all three of the people convicted of the HIV Sex Work crime in Missouri are female (100%).

Figure 20. Birthplace of people with an HIV/hepatitis incident

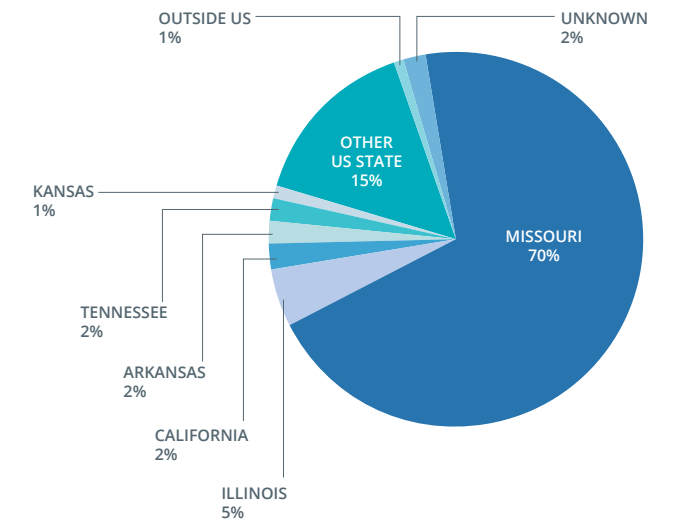
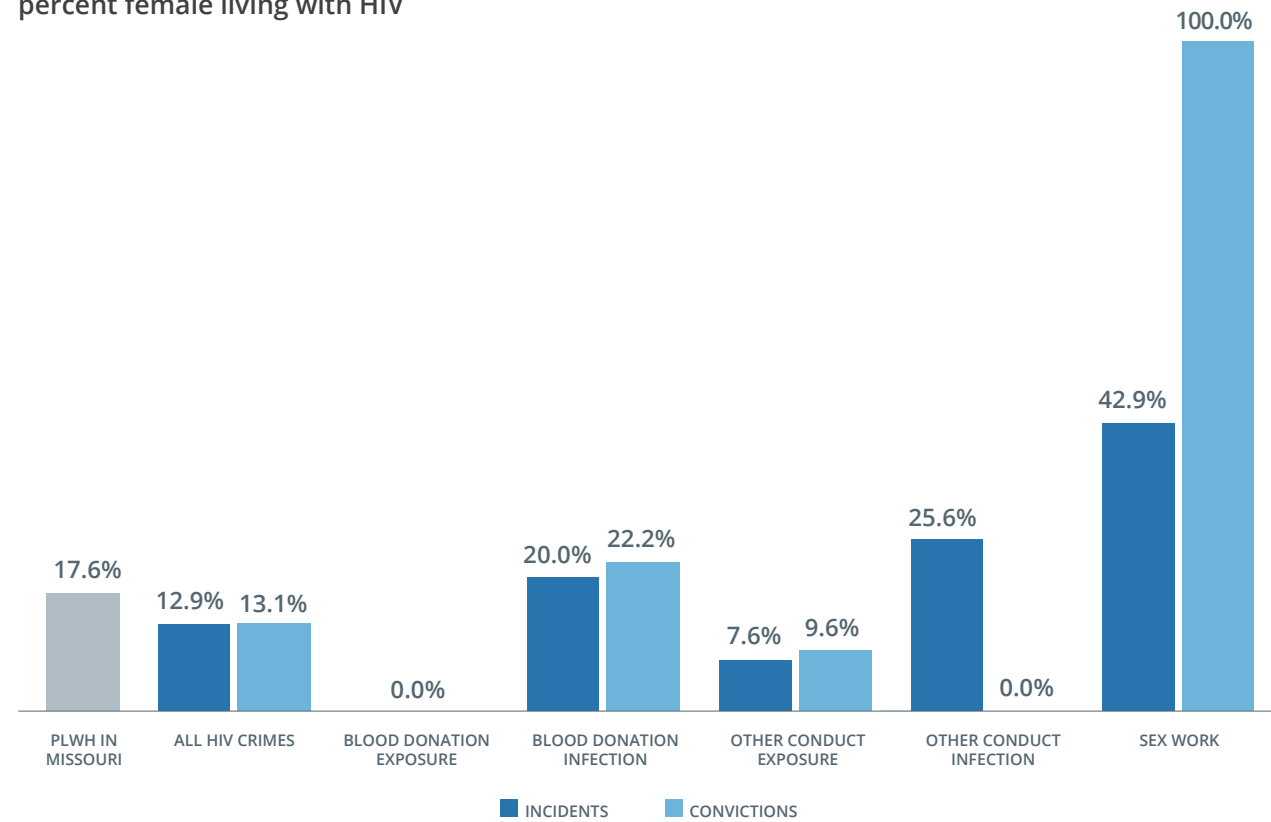


Figure 21. Percent female of people with HIV incidents or convictions in Missouri compared to percent female living with HIV

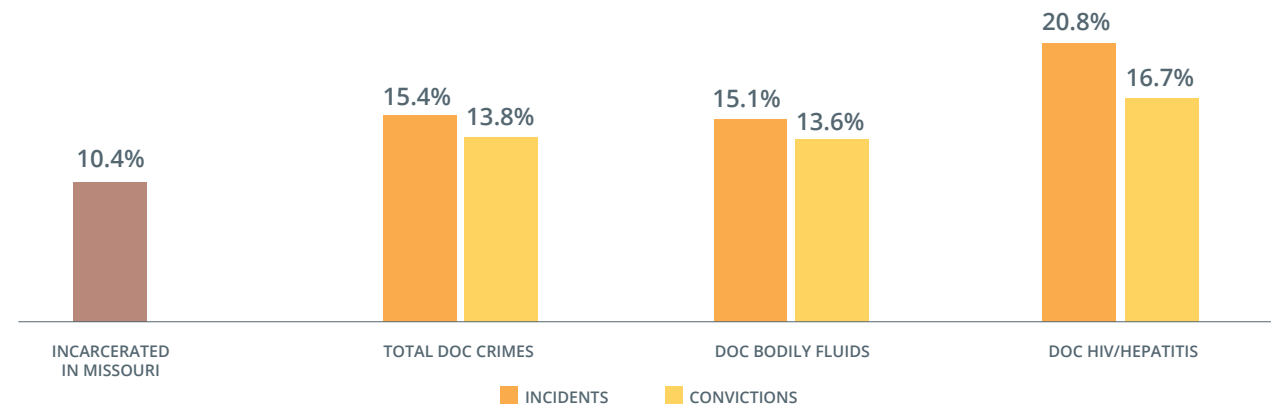


**DOC/DMH crimes**

For Department of Corrections (DOC) crimes, approximately 15% of those with incidents and convictions are female. This is higher than the proportion of Missouri’s incarcerated population that is female, 10.4%.<sup>179</sup> In particular, those with DOC HIV/hepatitis incidents (20.8%) and convictions (16.7%) are more likely to be female than would be expected given the percentage of the overall incarcerated population who are female.

The three people arrested for the DMH crime are men, including the one person in the state who has been convicted of this crime. These three people are not represented in Figure 22 below.

Figure 22. Percent female of people with DOC incidents or convictions in Missouri compared with percent female in Missouri’s incarcerated population



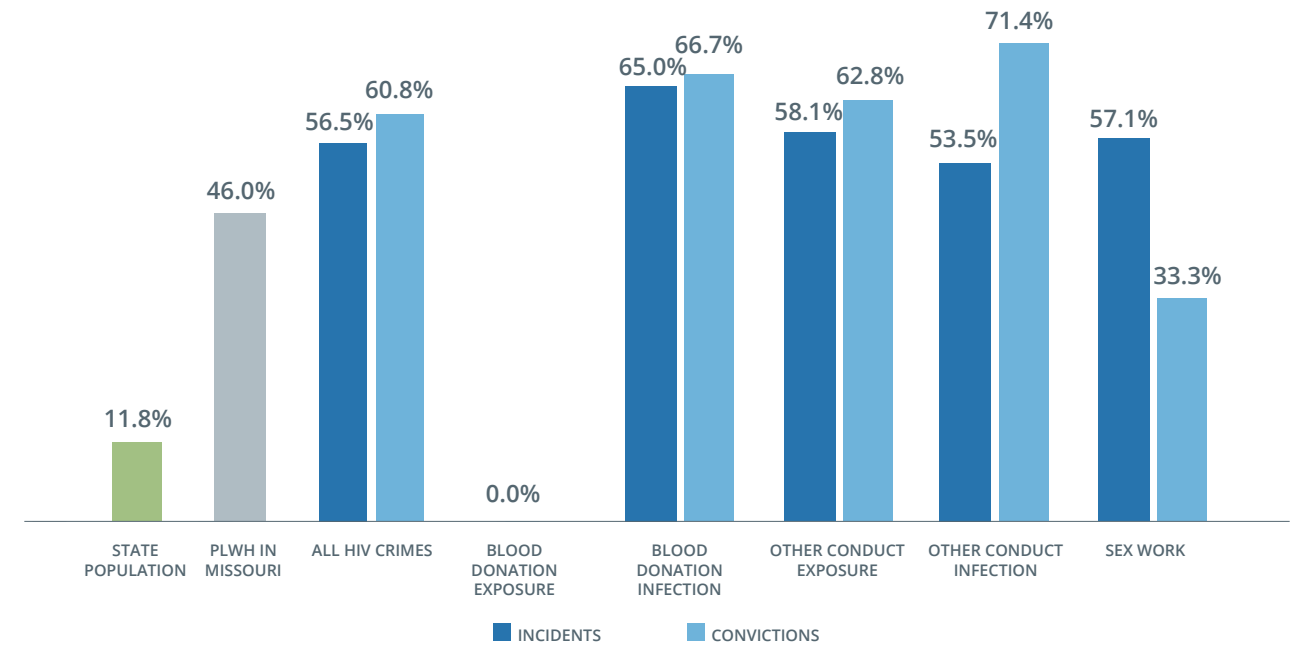
**Race and Ethnicity**

MSHP records only provide race and ethnicity data in the following categories: Black, White, Native American, and Unknown. Thus, we are unable to provide data on Latinx people, Asian Pacific Islanders, those of more than one race, or any other racial or ethnic groups. For all people with HIV/hepatitis incidents, approximately half are identified in the data as Black (49.2%) and half are White (49.9%). The percentages were similar for those with convictions (52.5% Black v. 47.2% White). Only 2 people were identified in the data as Native American and only 3 people had “Unknown” for their race. Due to the limited data on race and ethnicity, we present race data for the specific HIV/hepatitis crimes only for the percentage that were identified as Black or White.

**HIV Crimes**

Black people comprise 11.8% of Missouri’s population<sup>180</sup> but 46% of people living with HIV in the state.<sup>181</sup> Black people make up an even larger percentage of those with an HIV criminal incident (56.5%) and those convicted of an HIV crime (60.8%). Those convicted of the two crimes with higher penalties for actually infecting someone with HIV are even more likely to be Black than would be expected given the percentage of PLWH who are Black—66.7% of those with Blood Donation Infection convictions and 71.4% of those with Other Conduct Infection convictions. While those convicted of the Sex Work crime are less likely to be Black (33%) than would be expected, only three people have been convicted of that crime: one is Black and two are White (all three are women).

Figure 23. Percent of people with HIV incidents and convictions in Missouri who are Black, compared to percent who are Black in state population and among PLWH

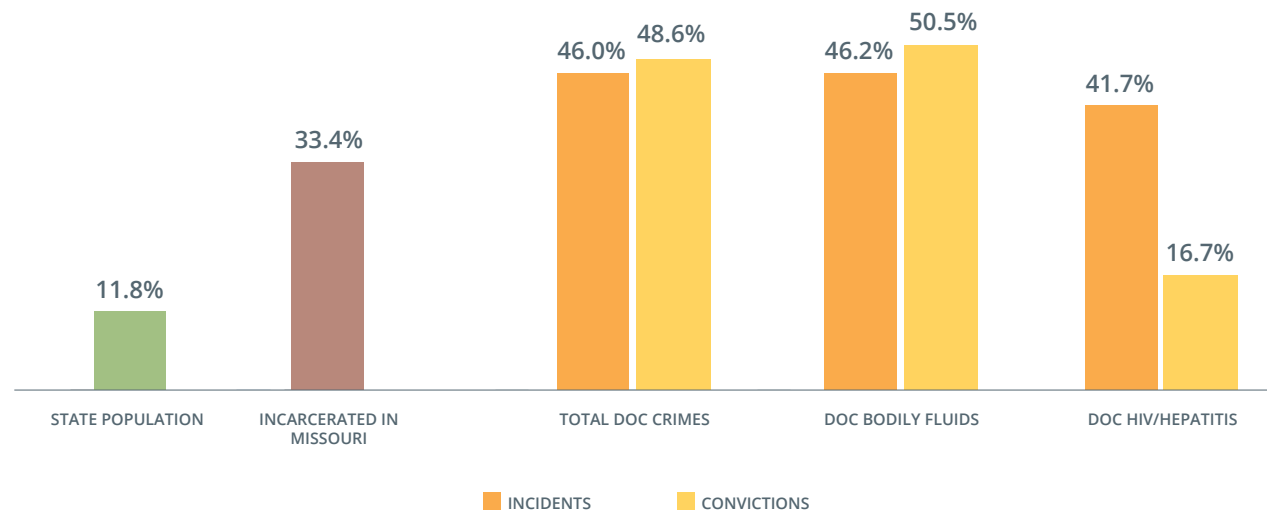


### DOC/DMH crimes

Approximately 46% of those with DOC incidents and 48.6% of those with convictions are Black. This is higher than the proportion of Missouri’s incarcerated population who is Black, 33.4%.<sup>182</sup> Those with DOC HIV/hepatitis incidents (41.7%) and convictions (16.7%) are somewhat less likely to be Black than would be expected (keeping in mind that only 12 people in the state have a conviction for this crime, two of whom are Black).

As noted above, the three people arrested for the DMH crime are all White men, including the one person in the state who has been convicted of this crime. These three people are not represented in Figure 24 below.

Figure 24. Percent of people with DOC incidents and convictions in Missouri who are Black, compared with state and incarcerated population



### Race and Gender

When we combine the data for race and gender, we see a consistent pattern of Black men being disproportionately arrested and convicted for most types of HIV/hepatitis crimes in Missouri.

#### HIV crimes

While Black men comprise 35% of PLWH in the state of Missouri,<sup>183</sup> they make up over half of those with an HIV incident (50.2%) or conviction (54.2%). They are overrepresented in the enforcement data for every type of HIV crime, except for Sex Work, where the three people with convictions are all women. For the other three types of HIV crimes, they are even more overrepresented among those who have been convicted. Further, 63% (10 of 16) of the people convicted of a crime of *infecting* someone with HIV in the state have been Black men (5 of those convicted of Blood Donation Infection and 5 of those convicted of Other Conduct Infection).

Black women comprise approximately 11% of PLWH in the state of Missouri.<sup>184</sup> They are only overrepresented for Sex Work incidents (21.4%) and convictions (33.4%), keeping in mind that only three women have been convicted of the HIV Sex Work crime in Missouri. For all other types of HIV crimes, Black women represent a smaller percentage of people with a given incident than would be expected given their overall representation among PLWH.

White women (5.4% PLWH in Missouri)<sup>185</sup> are overrepresented in the HIV crimes that have lower numbers of incidents and convictions, but are underrepresented for the most frequently enforced HIV crime in Missouri (Other Conduct Exposure).

For every type of HIV crime, White men are underrepresented in the MSHP enforcement data. They make up 41.9% of PLWH in the state,<sup>186</sup> but only 35.4% of those with an HIV incident and only 31.8% of those convicted of an HIV crime.

In short, there has been one arrest of a Black man for an HIV crime in Missouri for every 43 Black men living with HIV in the state today.<sup>187</sup>

Figure 25. Percent of people with HIV incidents and convictions in Missouri by race and gender, compared to percent of people living with HIV<sup>188</sup>

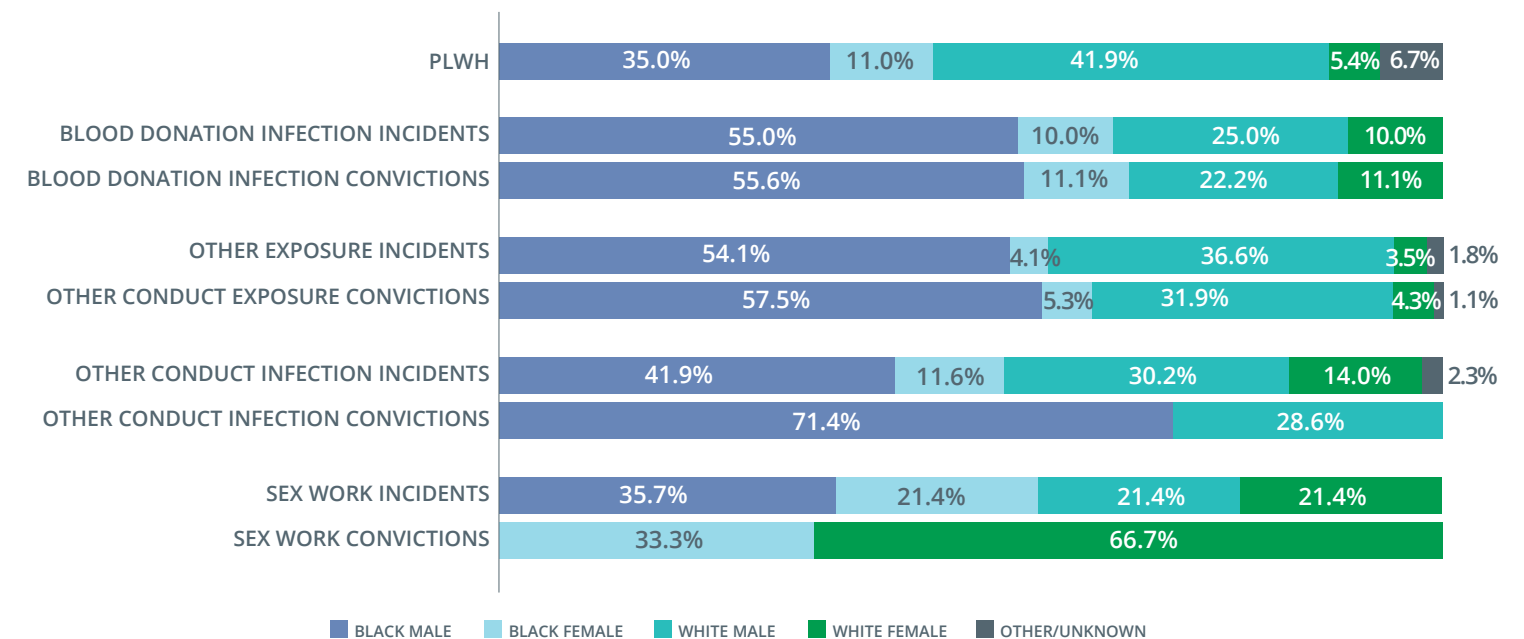
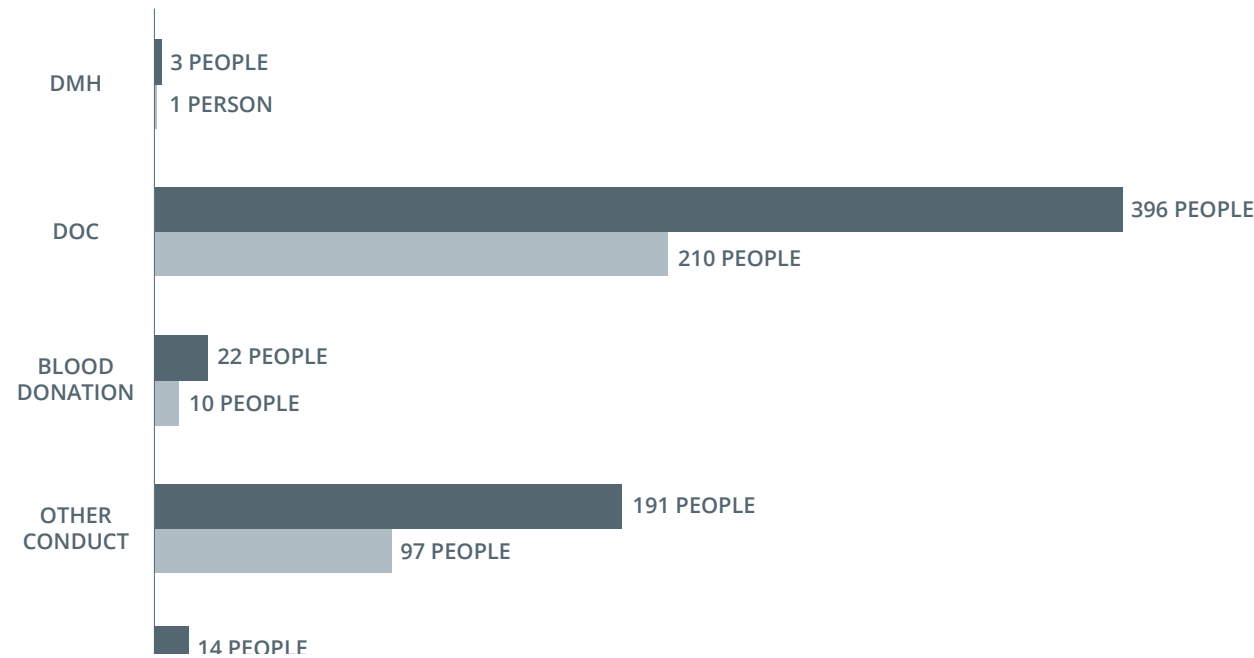


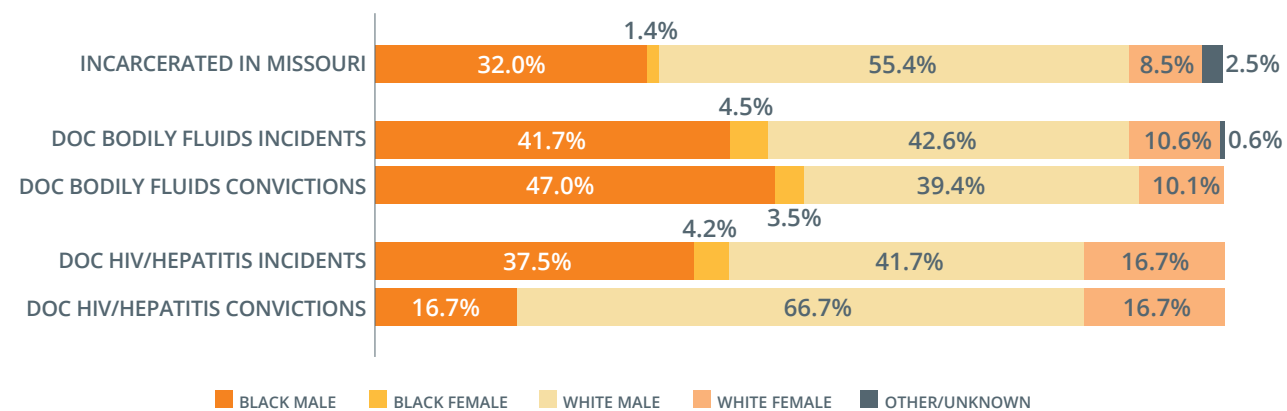
Figure 26. Arrests and convictions of Black men in Missouri for select HIV crimes, compared to state population and percent living with HIV.



**DOC crimes**

White men are underrepresented among those with DOC incidents and convictions as well, while every other group is overrepresented for these incidents. Only among the subset with convictions for DOC HIV/Hepatitis Convictions (there have been only 12 such incidents with convictions) are White men overrepresented and Black men and Black women underrepresented. For all types of DOC incidents and convictions, White women are overrepresented as compared to their percentage among Missouri’s incarcerated population.

Figure 27. People with DOC incidents and convictions in Missouri by race and gender, compared to percent of people incarcerated<sup>189</sup>



**Criminal History**

**HIV Crimes**

One out of six people with an HIV incident (17.2%) has no other criminal record. The HIV incidents were their only contacts with Missouri’s criminal system. For over one in four (28.7%), their HIV incident was their first contact with the Missouri criminal system. This increased to over one in three (35%) of those arrested for actually infecting someone with HIV through a blood or organ donation.

We also looked at those impacted by Missouri’s HIV criminal laws to determine if they had a history of drug-related crimes.<sup>190</sup> Over forty percent of people with HIV crimes (43.5%) had drug offenses in their criminal history. For the vast majority, this involved separate incidents from their HIV/ incidents. Only 3.4% of HIV incidents also had a drug-related offense. Those with DOC/DMH incidents were more likely to have drug-related offenses (53.8%) in their lifetime criminal history as compared to those with HIV incidents (43.5%). Notably, those with an Other Conduct *Infection* incident had a higher lifetime history of having a drug-related offense (51.2%) than those with HIV offenses overall (43.5%).

**DOC/DMH incidents**

In contrast, only 3% of people with DOC/DMH incidents had no additional contacts with the criminal system. This is not surprising since most of these crimes are charged while the person is incarcerated, or during the process of being arrested, for another crime. Notably, this percentage more than triples, to 10.4%, for those with a DOC incident that includes that the defendant had HIV or hepatitis B or C. For all people with DOC/DMH incidents, 7.3% of those incidents were their first contact with the Missouri criminal system. Following the same pattern, this percentage more than triples (22.9%) for those with a DOC incident that included that the defendant had HIV or hepatitis B or C.

In short, for approximately one-fourth of incidents that involve a crime where the defendant is alleged to have HIV or hepatitis B or C, these crimes are their first interaction with Missouri’s criminal system. For some, it is their only contact.

These actual infection incidents were also more likely to contain a drug-related offense within the same incident (14.0%) as compared to all HIV incidents (3.4%). In addition, DOC incidents where the defendant was alleged to have HIV or hepatitis B or C were much more likely to have a drug-related offense in the same incident (8.2%) as compared to DOC incidents where the defendant was not alleged to have one of those viruses (1.9%).

## LIMITATIONS

This research has several limitations related to the nature of the MSHP data. MSHP relies upon data entered by law enforcement agencies, prosecuting agencies, and criminal courts throughout the state. Because entries are not uniform throughout the records, deciphering the data required a time-intensive process. With some records, making a determination about MSHP data required a case-by-case determination, which was followed by secondary confirmation by another member of the research staff. To the extent that data remained unclear, they were excluded from analysis.

Another significant limitation to these data was the lack of information regarding key respondent demographics, including ethnicity, sexual orientation, and gender identity. Ethnicity is not collected in MSHP records, and further, race is based on arresting officer determination, not necessarily the self-report of the person being arrested,<sup>191</sup> with only a few small categories utilized (white, Black, American Indian, and unknown). As a result, we are unable to disaggregate results by Hispanic ethnicity, nor can we explore racial differences any further than what is currently presented.

Similarly, sexual orientation and gender identity are not collected by MSHP, and thus are not included in the available data. Given the disproportionate impact HIV infection has on gay and bisexual men and transgender women—particularly gay, bisexual, and transgender people of color, this gap in the data is significant.

Finally, there are limitations in terms of the level of detail and nuance available through MSHP data. For the Other Conduct incidents, the text of the statute only refers to “reckless risk,” and thus no further information is available on the potential route of exposure. While co-occurring sex work and drug charges within Other Conduct incidents were explored in an attempt to further disaggregate these incidents into separate categories, the majority of incidents lacked a relevant co-occurring charge, and thus this determination could not be made.

Similarly, for DOC/DMH HIV/hepatitis incidents, no additional information was provided about whether the defendant was charged with having HIV, hepatitis B, and/or hepatitis C. We attempted to determine which of the DOC/DMHIV/hepatitis incidents involved HIV by looking for the co-occurrence of HIV specific charge in the same incident, but less than a quarter of DOC/DMH HIV/hepatitis incidents (12 of 52 incidents) included a co-occurring HIV charge. In addition, for the more general DOC/DMH Bodily Fluids incidents, information on the underlying bodily fluid is also lacking.

## CONCLUSION

Over 593 people have been arrested for HIV/hepatitis crimes in Missouri and 318 people have been convicted of these crimes. When just looking at Missouri’s enforcement of HIV crimes, its frequency of enforcement is much higher than the three other states for which the Williams Institute has done similar analysis.

Several of Missouri’s HIV/hepatitis crimes have never been frequently enforced, such as the HIV Sex work crime (only 3 people ever convicted), Blood Donation Crime (only 10 people convicted and none since 2009), and the crime for exposing Department of Mental Health employees to bodily fluids (only one person ever convicted). Solely based on the low levels of current enforcement, it would be hard to argue that these laws serve any public health or other purpose.

Over 90% of the enforcement of Missouri’s HIV/hepatitis crimes is focused on two crimes: 1) reckless exposure to HIV through sex, needle sharing, biting or other means, and 2) the crime of exposing Department of Corrections employees to bodily fluids through spitting, biting, or other means. The enforcement of these two crimes has not slackened in recent years. For both, the enforcement is heavily concentrated in a relatively small subset of Missouri’s counties, primarily in St. Louis City and St. Louis counties for the Other Conduct HIV crime, and primarily in St. Francois, Texas, and Mississippi counties for the crime of exposing employees of the Department of Corrections to bodily fluids. There is a corresponding concentration of enforcement by a smaller subset of law enforcement agencies. And for the enforcement of both of these crimes, the enforcement is heavily concentrated against Black men, at levels that cannot be fully explained by the higher percentages of Black men who are living with HIV or who are incarcerated in Missouri.

None of these crimes require the specific intent to infect someone, or actually infecting someone, to be guilty of a felony. They all include conduct that cannot transmit HIV, or where the risk is extremely remote. Yet they are bringing new people into Missouri’s criminal justice system and exposing them to lengthy sentences. For example, one out of six people with an HIV incident have no other criminal record in Missouri, and for over one out of four, their HIV arrest was their first contact with Missouri’s criminal justice system. If convicted, the average sentences for these crimes range from 2.8 to 10 years, with the longest sentences extending up to 30 years. A conservative estimate of the cost of incarceration to date of Missouri’s HIV/hepatitis crimes is \$17.7 million.

This research suggests that Missouri’s HIV/hepatitis laws should be modernized by the state legislature to reflect our current understanding of the transmission, prevention, and treatment of HIV and hepatitis. In addition, further research is needed to explore why enforcement rates differ so greatly by county and by law enforcement agency in Missouri, and why there is disproportionate enforcement on the basis of race and gender, in particular against Black men.

## AUTHORS

**BRAD SEARS, JD** is an Associate Dean of Public Interest Law at UCLA School of Law & the David S. Sanders Distinguished Scholar of Law and Policy at the Williams Institute.

**SHOSHANA K. GOLDBERG, PHD, MPH** is a Research Consultant with the Williams Institute.

**CHRISTY MALLORY, JD** is the Renberg Scholar of Law and State & Local Policy Director at the Williams Institute.

## ACKNOWLEDGMENTS

We would like to thank the Elton John AIDS Foundation for their financial support of this project. We would also like to thank the staff of the Missouri State Highway Patrol (MSHP) who, throughout this process, were extremely helpful. A special thanks to Kevin Thurman, who provided extensive guidance on the available data, and served as our point of contact throughout the process.

We would also like to thank Ayako Miyashita Ochoa and Amira Hasenbush for their Williams Institute reports focused on California, Florida, and Georgia that served as models for this study. Finally, we would like to thank our colleagues at the Williams Institute, Jocelyn Samuels, Executive Director; Kerith J. Conron, Research Director and Distinguished Scholar; Bianca D.M. Wilson, Rabbi Barbara Zacky Senior Scholar of Public Policy, and Rachel Dowd, Communications Director, for their feedback on this study.

## FUNDERS

This study is funded by a grant from the Elton John AIDS Foundation.

### ABOUT THE WILLIAMS INSTITUTE

The Williams Institute is dedicated to conducting rigorous, independent research on sexual orientation and gender identity law and public policy. A think tank at UCLA Law, the Williams Institute produces high-quality research with real-world relevance and disseminates it to judges, legislators, policymakers, media and the public. These studies can be accessed at the Williams Institute website.

### FOR MORE INFORMATION

The Williams Institute, UCLA School of Law  
Box 951476, Los Angeles, CA 90095-1476  
williamsinstitute.law.ucla.edu

RESEARCH THAT MATTERS



## APPENDIX A

### CLEANING AND MERGING THE THREE SETS OF RECORDS: ARREST, PROSECUTION, COURT

In Missouri, criminal records were kept separately at the arrest (Arrest data), prosecution (Prosecution data), and court (Court data) stages. To create a complete record for an incident, we matched and combined records with the same OCN numbers across the three sets of records.<sup>192</sup>

We can be fairly certain we have the full records for between 64% to 65% of the incidents.<sup>193</sup> For the remaining 35% of incidents, it could be that we do not have complete data across the three sets of records. For example, this is clearly the case for 16.7% of the incidents where we have records for a later stage of an incident but not earlier stages. On the other hand, whether we have the complete record is unclear for 69 incidents (8.7% of the total number of incidents) that have “unknown” as their outcome at the Arrest stage with no further records at the Prosecution or Court stages, as well as an additional 10.1% of incidents for which it is unclear whether we have all the records.

Fortunately, we can infer the final disposition of the incident (pending appeals or subsequent changes to the given sentence) for almost 80% of the incidents.<sup>194</sup> We can infer there was an arrest and prosecution as long as we have Court records for an incident, and for 76% of incidents we do have Court records with information about the final court disposition for the incident. When combined with the 3.2% of incidents that were fully resolved at either the Arrest or Prosecution stage, we most likely have final outcomes for 79.3% of our incidents.

This percentage is very similar for DOC/DMH incidents (80.7%) and HIV incidents (77.3%). Notably, however, among HIV crimes there is variation in data completeness. The percentage of incidents where we can be certain that we have the final record for the incident is much lower for Blood Donation Infection incidents (66.7%) and is considerably higher for Sex Work incidents (94.1%) and incidents including Other Conduct Infection charges (93%).<sup>195</sup>

## APPENDIX B

### ALTERNATIVE METHOD FOR COMPUTING SENTENCE LENGTHS

We also analyzed sentences by looking at every *conviction* for an HIV/hepatitis crime that had an unsuspended sentence of confinement of one day or longer. This method risks being influenced by plea bargained sentences that included non-HIV/hepatitis crimes. For example, a DOC Bodily Fluids conviction in an incident where there were also convictions for assault on a corrections officer and destruction of prison property might have one plea bargained sentence reflecting all three crimes that is entered as the sentence for the DOC Bodily Fluids conviction. Moreover, there might be two to three different sentences in the court record with no indication of whether they are for the same count or multiple counts. Nonetheless, this approach serves as a check on our narrower analysis described above that is based on a more limited number of incidents.

For five of the nine specific crime types, the different approaches make no difference to the median sentence (Blood Donation Exposure; Other Conduct Infection; Sex Work; DMH Bodily Fluids; and DMH HIV/hepatitis). Further, the median sentence for DOC HIV/hepatitis decreased by just half a year. For each of the other three types of HIV/hepatitis crimes, the median sentence increased: the median sentence for Blood Donation Infection increased by 1 year, for Other Conduct Exposure by 2 years, and for DOC Bodily Fluids by 1 year. For each of these three crimes, the higher end of the range of sentences is extended, perhaps none more dramatically so than the sentence of over 107 years for one conviction of the Other Conduct Exposure crime.<sup>196</sup>

Moreover, for those crimes where we have the largest number of sentences, the distribution of sentence lengths looks similar under both approaches. For the 253 lines of sentencing data in our data set for Other Conduct Exposure convictions leading to confinement, 31% of sentences were for 4 to 6 years and 28% were for 7 to 10 years. For the 326 lines of sentencing data for DOC Bodily Fluids convictions, 19% received sentences for 2 years, 24% for 3 years, and 33% for 4 years. In other words, 76.4% of sentences for these DOC Bodily Fluids Charges (249 of the 326) were between 2 and 4 years.

**Table B1. Sentence length using all unsuspended sentences of confinement for each type of HIV/hepatitis charge, in all incidents**

	NUMBER OF CHARGES WITH CONVICTIONS	STATUTORY SENTENCING RANGE (YEARS)	ACTUAL RANGE (YEARS)	MEAN (YEARS)	MEDIAN (YEARS)
Blood Donation Exposure	1	5 to 15	10	10	10
Blood Donation Infection	16	10 to 30	3 to 15	7.5	7.5
Other Conduct Exposure	253	5 to 15	.08 to 107.25	8.4	7
Other Conduct Infection	20	10 to 30	.08 to 30	11	10
Sex Work	3	5 to 15	5	5	5
DOC Bodily Fluids	326	Up to 4	.03 to 15	3.4	3
DOC HIV/hepatitis	18	Up to 7	2 to 10	5.2	5
DMH Bodily Fluids	3	Up to 4	4	4	4
DMH HIV /hepatitis	0	Up to 7	NA	NA	NA

## APPENDIX C

### SENTENCING DATA FROM THE MISSOURI SENTENCING ADVISORY COMMISSION (MOSAC)

Table C1 presents MOSAC data from three separate reports covering convictions from 2010 to 2015,<sup>197</sup> 2003 to 2009,<sup>198</sup> and 2000 to 2007.<sup>199</sup> Note that there is a second line for Other Conduct Exposure felonies due to a different charging code prior to 2002, reflecting classification of this crime as a class D non-violent felony, as opposed to a Class B violent felony.<sup>200</sup>

Table C1. Sentencing Data from the Missouri Sentencing Advisory Commission (MOSAC)\*

MOSAC DATA	CONVICTIONS 2010-2015	% PRISON	2010-15 SENTENCES OF CONFINEMENT	2010-2015 MEAN SENTENCE	CONVICTIONS 2003-2009	% PRISON	2003-2009 SENTENCES OF CONFINEMENT	2003-2009 MEAN SENTENCES	CONVICTIONS 2000-2007	% PRISON	SENTENCES OF CONFINEMENT	2000-2007 MEAN SENTENCES
Blood Donation Exposure	1	0	0	0	-	-	-	-	-	-	-	-
Blood Donation Infection	0	0	0	0	3	67%	2	19	2	0.5	1	30
Other Conduct Exposure	33	58%	19	8.1	19	74%	14	7.4	9	66.7	6	8.7
Other Conduct Exposure - D Felony	-	-	-	-	4	50%	2	4	11	54.5	6	4
Other Conduct Infection	6	100%	6	18.8	2	50%	1	30	1	0	0	0
Sex Work	4	25%	1	5	1	100%	1	6	1	1	1	6
DOC Bodily Fluids	105	79%	83	2.9	47	68%	32	3	16	56.3	9	3
DOC HIV/hepatitis	8	63%	5	4	3	100%	3	3	3	66.7	2	3
DMH Bodily Fluids <sup>201</sup>	4	100%	4	3.5	NA	NA	NA	NA	NA	NA	NA	NA
DMH HIV /hepatitis	0	0	0	0	NA	NA	NA	NA	NA	NA	NA	NA

## APPENDIX D

Table D1. Missouri counties with two or more HIV/hepatitis incident (number of incidents)

	HIV/ HEPATITIS (N=690)	BLOOD DONATION (N=23)	OTHER CONDUCT (N=225)	SEX WORK (N=17)	ALL HIV (N=249)	DOC (N=447)	DMH (N=7)	DOC/ DMH (N=453)
St. Louis City	107	10	80	7	91	25	1	26
St. Francois	59	1	5		5	52	3	54
St. Louis	53	3	38	3	41	14		14
Mississippi	51					51		51
Texas	47					47		47
Audrain	25		1		1	24		24
Callaway	24		11		11	10	3	13
Greene	24		7		7	17		17
Jackson	24	2	19	1	20	4		4
Boone	23		5	2	7	16		16
Dekalb	21					21		21
Washington	19					19		19
Cole	18		3		3	15		15
St. Charles	18		11	1	12	6		6
Randolph	13					13		13
Jefferson	11	2	6		7	4		4
Buchanan	10	2	3		4	6		6
Lawrence	9		5		5	4		4
Taney	9		2	1	3	6		6
Pike	8					8		8
Warren	8					8		8
Cooper	7		1		1	6		6
Saline	7					7		7
Pettis	6					6		6
Pulaski	6					6		6
Webster	5		3		3	2		2
Clay	4		4		4			
Jasper	4		1	1	2	2		2
Laclede	4					4		4
Perry	4					4		4
Cape Girardeau	3		2		2	1		1
Lafayette	3		1		1	2		2
Lincoln	3		1	1	1	2		2
Moniteau	3		1		1	2		2
Newton	3	1	1		2	1		1
Adair	2					2		2
Daviess	2					2		2
Dunklin	2					2		2
Franklin	2					2		2
Henry	2					2		2
Macon	2					2		2
Nodaway	2		1		1	1		1
Phelps	2		1		1	1		1
Platte	2		1		1	1		1
Scott	2		1		1	1		1
Stoddard	2		1		1	1		1
Wright	2		1		1	1		1

NOTE: Numbers will not sum to total due to some incidents involving co-occurring crime charges (e.g., an HIV incident may involve Blood Donation, Other Conduct, and/or Sex Work charges)

N's reported in table headers reflect total number of incidents of a given type with known location information—including those incidents not shown in this table due to being the sole incident in a given county (e.g., there are 690 incidents with known arresting location county, but only 667 are depicted; the remaining 23 are the sole incident in their county)



**Table D2. Missouri counties originating two or more HIV/hepatitis incidents with convictions (number of incidents with convictions)**

	HIV/ HEPATITIS (N=348)	BLOOD DONATION (N=10)	OTHER CONDUCT (N=105)	SEX WORK (N=5)	ALL HIV (N=118)	DOC (N=227)	DMH (N=3)	DOC/ DMH (N=230)
St. Louis City	43	6	33		38	5		5
St. Francois	31		2		2	29		29
Mississippi	29					29		29
St. Louis	24		18	2	20	4		4
Texas	23					23		23
Callaway	22		11		11	8	3	11
Audrain	17		1		1	16		16
Dekalb	16					16		16
Washington	11					11		11
Greene	10		3		3	7		7
Jackson	10		8		8	2		2
Buchanan	9	2	2		3	6		6
Randolph	9					9		9
St. Charles	9		7		7	2		2
Boone	8		1	2	3	5		5
Cole	7					7		7
Pike	7					7		7
Taney	6		1	1	2	4		4
Cooper	4		1			3		3
Jefferson	4		3		3	1		1
Pettis	4					4		4
Webster	4		2		2	2		2
Clay	3		3		3			
Lawrence	3		1		1	2		2
Saline	3					3		3
Lafayette	2					2		2
Moniteau	2		1		1	1		1
Nodaway	2		1		1	1		1
Perry	2					2		2
Platte	2		1		1	1		1
Warren	2					2		2

NOTE: Numbers will not sum to total due to some incidents involving co-occurring convicted crime charges. N's reported in table headers reflect total number of convicted incidents of a given type with known arrest location information—including those incidents not shown in this table due to being the sole convicted incident in a given county (e.g. there are 348 incidents with known arresting location county that led to conviction, but only 328 are depicted; the remaining 20 are the sole convicted incident in their county)

## APPENDIX E

Table E1. HIV and DOC/DMH incidents, and incidents with convictions, by agency of arrest, among agencies with 10 or more incidents

AGENCY	HIV/HEPATITIS INCIDENTS			ALL HIV INCIDENTS			DOC/DMH INCIDENTS		
	Incidents	Convictions	% Incidents with Convictions	Incidents	Convictions	% Incidents with Convictions	Incidents	Convictions	% Incidents with Convictions
St. Louis City Police Department	106	42	39.6%	90	37	41.1%	26	5	19.2%
St. Francois County Police Department	54	27	50.0%	3	1	33.3%	51	26	51.0%
Houston Police Department	44	22	50.0%	0			44	22	50.0%
Mississippi County Sheriff's Office	30	14	46.7%	0			30	14	46.7%
Dekalb County Sheriff's Office	20	15	75.0%	0			20	15	75.0%
Audrain County Sheriff's Office	19	14	73.7%	0			19	14	73.7%
St. Louis County Police Department	17	9	52.9%	17	9	52.9%	1	0	0.0%
Kansas City Police Department	16	4	25.0%	15	4	26.7%	1	0	0.0%
Fulton Reception and Diagnostic Center	14	14	100.0%	11	11	100.0%	3	3	100.0%
Randolph County Sheriff's Office	12	8	66.7%	0			12	8	66.7%
Boone County Sheriff's Office	11	2	18.2%	1	0	0.0%	10	2	20.0%
Callaway County Sheriff's Office	11	9	81.8%	0			11	9	81.8%
Charleston Police Department	11	8	72.7%	0			11	8	72.7%
Greene County Sheriff's Office	11	4	36.4%	3	1	33.3%	8	3	37.5%
Springfield Police Department	11	5	45.5%	3	1	33.3%	8	4	50.0%
Caledonia Police Department	10	7	70.0%	0			10	7	70.0%

## APPENDIX F

This table indicates the data we requested from MSHP from Arrest, Prosecution, and Court records. An X indicates we received the data. Yellow shading indicates that the data is not part of the records for that stage of the proceeding.

DATA REQUESTED FOR ALL STAGES	ARREST DATA	PROSECUTION DATA	COURT DATA
SID - unique identifier for a person	X	X	X
OCN - event number	X	X	X
DOA - Date of Arrest	X	X	X
DOO - Date of Offense	X	X	X
Arresting County	X	X	X
ORI - A unique number from the FBI assigned to the agency that originated the record	X	X	X
Race of Defendant	X	X	X
Sex of Defendant	X	X	X
Date of Birth	X	X	X
State of Birth	X	X	X
County of Birth	X	X	X
Charge - a Uniform Crime Code (UCC) code for the crime charged	X	X	X
UCC Long description - a written out name for the crime (UCC) charged	X	X	X
Count - a count number for the crimes (UCCs) charged	X	X	x
<b>Arrest Record Data Only</b>			
Booking Agency ORI	X		
Arrest Case Number	X		
County Extradited to After Arrest	X		
Citizenship of defendant	Not available		
Domestic Violence - If event (OCN) involved domestic violence	Not available		
Status of UCC as reported at arrest			
No Further Action			
Not Filed From Prosecutor	X		
Referred to Municipal Prosecutor			
Referred to State Prosecutor			
Turned Over To			
Unknown			

DATA REQUESTED FOR ALL STAGES	ARREST DATA	PROSECUTION DATA	COURT DATA
<b>Prosecution Record Data Only</b>			
Prosecution Case Number		X	
Originating Agency (as reported at Prosecution)		X	
Date of prosecution action		X	
Code for prosecution action		X	
Status of prosecution charges			
Charges Filed		X	
No Bill			
Nolle Pros			
<b>From Court Data Only</b>			
Court seen in—Code			X
Court seen in—Name			X
Case Number, as reported at sentencing			X
Date of most recent sentencing action			X
Code for sentencing outcome			X
Text description of sentencing outcome			
Acquitted			
Acquitted/Insane			
Change of venue			
Defendant Died			X
Dismissed by Court			
Dismissed by State			
Guilty			
Guilty-SIS (Suspended)			
Number of years sentenced			X
Number of months sentenced			X
Number of days sentenced			X
Was the sentence suspended?			X
Did sentence result in confinement or probation?			X

## ENDNOTES

- <sup>1</sup> See 18 U.S.C. § 1122 (2015)(pertaining to the donation or sale of blood or other potentially infectious fluids or tissues).
- <sup>2</sup> *Punishment is Not a Public Health Strategy: The Criminalization of Viral Hepatitis in the United States*, CENTER FOR HIV LAW & POLICY (August 21, 2018) <https://www.hivlawandpolicy.org/sites/default/files/CHLP%20VH%20Info%20Sheet%20Final.pdf>; HIV CRIMINALIZATION IN THE UNITED STATES: A SOURCEBOOK ON STATE AND FEDERAL HIV CRIMINAL LAW AND PRACTICE THIRD EDITION, CENTER FOR HIV LAW & POLICY (2019), <http://www.hivlawandpolicy.org/sourcebook>.
- <sup>3</sup> See e.g., Françoise Barré-Sinoussi et al. *Expert Consensus Statements on the Science of HIV in the Context of Criminal Law*, 21 J. INT. AIDS SOC. e215161(2018); J. Stan Lehman et al., *Prevalence and Public Health Implications of State Laws that Criminalize Potential HIV Exposure in the United States*, 18 AIDS BEHAV. 997, 1000 (2014).
- <sup>4</sup> Dini Harsono et al., *Criminalization of HIV Exposure: A Review of Empirical Studies in the United States*, 21 AIDS BEHAV. 27, 2-3 (2017); Lehman et al., *supra* note 3 at 999.
- <sup>5</sup> *A Timeline of HIV/AIDS*, HIV.GOV, <https://www.hiv.gov/sites/default/files/aidsgov-timeline.pdf> (last visited January 9, 2020).
- <sup>6</sup> Antiretroviral Therapy Cohort Collaboration, *Survival of HIV-Positive Patients Starting Antiretroviral Therapy Between 1996 and 2013: A Collaborative Analysis of Cohort Studies*, 4 LANCET HIV PE349 (2017); Barré-Sinoussi et al., *supra* note 3 at 7; *HIV Care Saves Lives Infographic*, CDC.GOV (November 25, 2014), <https://www.cdc.gov/vitalsigns/hiv-aids-medical-care/infographic.html>; Lehman et al., *supra* note 3 at 1004.
- <sup>7</sup> Dr. Francis Collins, *For HIV, Treatment is Prevention*, NIH.GOV (Jan. 22, 2019), <https://directorsblog.nih.gov/2019/01/22/for-hiv-treatment-is-prevention/>; Media Advisory, National Institutes of Health, *The Science is Clear: With HIV, Undetectable Equals Untransmittable* (Jan. 10, 2019), <https://www.nih.gov/news-events/news-releases/science-clear-hiv-undetectable-equals-untransmittable>; Robert W. Eisinger, Carl W. Dieffenbach & Anthony S. Fauci, *HIV Viral Load and Transmissibility of HIV Infection: Undetectable Equals Untransmittable*, 321 JAMA 451 (2019); PrEP, CDC.GOV, <https://www.cdc.gov/hiv/basics/prep.html> (last updated December 3, 2019); Susan P. Buchbinder, *Maximizing the Benefits of HIV Preexposure Prophylaxis*, 25 TOP. ANTIVIRAL MED. 138 (2018).
- <sup>8</sup> HIV CRIMINALIZATION IN THE UNITED STATES: A SOURCEBOOK ON STATE AND FEDERAL HIV CRIMINAL LAW AND PRACTICE, MISSOURI, CENTER FOR HIV LAW & POLICY (September 2019), [http://www.hivlawandpolicy.org/sites/default/files/Missouri%20-%20Excerpt%20from%20CHLP%27s%20Sourcebook%20on%20HIV%20Criminalization%20in%20the%20U.S.\\_0.pdf](http://www.hivlawandpolicy.org/sites/default/files/Missouri%20-%20Excerpt%20from%20CHLP%27s%20Sourcebook%20on%20HIV%20Criminalization%20in%20the%20U.S._0.pdf).
- <sup>9</sup> *Id.*
- <sup>10</sup> Collins, *supra* note 7; National Institutes of Health, *supra* note 7; Eisinger et al., *supra*, note 7; Buchbinder, *supra*, note 7; Barré-Sinoussi et al., *supra* note 3.
- <sup>11</sup> MO. REV. STAT. § 192.020.
- <sup>12</sup> MO. REV. STAT. § 192.320.
- <sup>13</sup> Health care workers who provide medical treatment to another health care worker or to a law enforcement officer who has been exposed to body fluids may request from the Missouri Department of Health, and disclose to the patient, the HIV status of the source individual. If, however, the Department of Health or the health care worker further releases information about the source individual's HIV status, they can be charged with a misdemeanor. MO. REV. STAT. § 191.658.
- <sup>14</sup> Formerly MO. REV. STAT. § 565.085. Incidents arising out of the former statute, and corresponding charge codes, are grouped with those including the current statute, and corresponding charge codes, for analyses presented in this report.
- <sup>15</sup> Formerly MO. REV. STAT. § 565.086. Incidents arising out of the former statute, and corresponding charge codes, are grouped with those including the current statute, and corresponding charge codes, for analyses presented in this report.

<sup>16</sup> H.B. 1151, 84th Gen. Assem. (Mo. 1988). The HIV criminalization laws of some states grew out of what was felt to be a federal mandate required by the Ryan White Comprehensive AIDS Resources Emergency Act of 1990 (“Ryan White Ac”). In its original form, it conditioned states’ receipt of federal funding on criminalizing PLWH for offenses such as knowingly donating blood, semen, or breast milk with the intention of exposing another to HIV, knowingly engaging in sexual activity with the intention of exposing another to HIV, or knowingly sharing a used hypodermic needle with the intention of exposing another to HIV. Ryan White Comprehensive AIDS Resources Emergency Act of 1990, Pub. L. No. 101–381, 104 Stat. 576 §2647 (1990). Notably, Missouri’s criminalization of HIV started prior to the Ryan White Act and has never required the intent to infect someone with HIV.

<sup>17</sup> *Id.*

<sup>18</sup> S.B. 347, 89th Gen. Assem. (Mo. 1997).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> H.B. 1756, 91st Gen. Assem. (Mo. 2002).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> MO. REV. STAT. § 567.010(2).

<sup>29</sup> MO. REV. STAT. § 567.010(4).

<sup>30</sup> S.B. 60, 79th Gen. Assem. (Mo. 1977).

<sup>31</sup> H.B. 1756, 91st Gen. Assem. (Mo. 2002).

<sup>32</sup> *Id.*

<sup>33</sup> MO. REV. STAT. § 567.020 (2019).

<sup>34</sup> H.B. 700, 93rd Gen. Assem. (Mo. 2005).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> S.B. 491, 97th Gen. Assem. (Mo. 2014).

<sup>38</sup> S.B. 5, 92nd Gen. Assem. (Mo. 2003); S.B. 491, 97th Gen. Assem. (Mo. 2014).

<sup>39</sup> S.B. 774, 95th Gen. Assem. (Mo. 2010).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> S.B. 491, 97th Gen. Assem. (Mo. 2014).

<sup>44</sup> S.B. 347, 89th Gen. Assem. (Mo. 1997).

<sup>45</sup> 971 S.W.2d 307 (Mo. 1998).

<sup>46</sup> *Id.* at 311.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at 311-12.

<sup>49</sup> *Id.* at 312.

<sup>50</sup> *Id.*

<sup>51</sup> S.B. 347, 89th Gen. Assem. (Mo. 1997).

<sup>52</sup> 216 S.W.3d 180 (Mo. Ct. App. 2007).

<sup>53</sup> *Id.* at 184.

<sup>54</sup> *Id.* 185-86.

<sup>55</sup> *Id.*

<sup>56</sup> 483 S.W.3d 385 (Mo. 2016).

<sup>57</sup> *Id.* at 386.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> 513 S.W.3d 360 (Mo. Ct. App. 2016).

<sup>61</sup> *Id.* at 363.

<sup>62</sup> *Id.*

<sup>63</sup> FACT SHEET: MISSOURI V. JOHNSON, CENTER FOR HIV LAW & POLICY (2017), <https://www.hivlawandpolicy.org/resources/fact-sheet-missouri-v-johnson-center-hiv-law-and-policy-2017>.

<sup>64</sup> Catherine Hanssens, *Michael Johnson Released on Parole, Heads Back to Indiana*, HIVLAWANDPOLICY.ORG (July 9, 2019), <http://www.hivlawandpolicy.org/news/michael-johnson-released-parole-heads-back-indiana>.

<sup>65</sup> Angela Perone, *From Punitive to Proactive: An Alternative Approach for Responding to HIV Criminalization that Departs from Penalizing Marginalized Communities*, 24 HASTINGS WOMEN’S L.J. 363 (2013); UNAIDS, *Criminalization of HIV Non-Disclosure, Exposure and Transmission: Background and Current Landscape* (2012), [https://www.unaids.org/sites/default/files/media\\_asset/JC2322\\_BackgroundCurrentLandscapeCriminalisationHIV\\_en.pdf](https://www.unaids.org/sites/default/files/media_asset/JC2322_BackgroundCurrentLandscapeCriminalisationHIV_en.pdf).

<sup>66</sup> PRESIDENTIAL ADVISORY COUNCIL ON HIV/AIDS, RESOLUTION ON ENDING FEDERAL & STATE HIV-SPECIFIC CRIMINAL LAWS, PROSECUTIONS, & CIVIL COMMITMENTS (2013), [https://www.hivlawandpolicy.org/sites/default/files/PACHA\\_Criminalization\\_Resolution%20Final%20012513.pdf](https://www.hivlawandpolicy.org/sites/default/files/PACHA_Criminalization_Resolution%20Final%20012513.pdf).

<sup>67</sup> Lehman et al., *supra* note 3 at 1004.

<sup>68</sup> DEP’T OF JUSTICE, OFFICE OF CIVIL RIGHTS, BEST PRACTICES GUIDE TO REFORM HIV-SPECIFIC CRIMINAL LAWS TO ALIGN WITH SCIENTIFICALLY-SUPPORTED FACTORS (2014), <https://www.hivlawandpolicy.org/sites/default/files/DOJ-HIV-Criminal-Law-Best-Practices-Guide.pdf>.

<sup>69</sup> THE WHITE HOUSE OFFICE OF NAT’L AIDS POLICY, NATIONAL HIV/AIDS STRATEGY FOR THE U.S.: UPDATED TO 2020, 42 (2015), <https://www.hiv.gov/federal-response/national-hiv-aids-strategy/nhas-update>.

<sup>70</sup> REPEAL HIV Discrimination Act of 2017, H.R. 1739, 115th Cong. (2017); REPEAL HIV Discrimination Act of 2015, H.R. 1586, 114th Cong. (2015); Repeal Existing Policies that Encourage and Allow Legal HIV Discrimination Act of 2013, H.R. 1843, 113th Cong. (2013); REPEAL Act, H.R. 3053, 112th Cong. (2011).

<sup>71</sup> *Id.*

<sup>72</sup> S.F. 2297, 85th Gen Assem. (Iowa 2014).

<sup>73</sup> Statement in Response to Iowa Bill SF 2297 and the Criminalization of HIV, Hepatitis, Meningococcal Disease and Tuberculosis, HIVLAWANDPOLICY.ORG (May 2, 2014), <https://www.hivlawandpolicy.org/news/statement-response-iowa-bill-sf-2297-and-criminalization-hiv-hepatitis-meningococcal-disease>.

<sup>74</sup> *Id.*

<sup>75</sup> Elaine Rita Mendus, Governor Signs Historic HIV Bill, Equality California (May 28, 2016, 2:06 PM EST) <https://www.eqca.org/hivplus-california-governor-signs-historic-hiv-bill/>.

<sup>76</sup> S.B. 239, 2017-2018 Reg. Sess. (Cal. 2017); HIV CRIMINALIZATION IN THE UNITED STATES: A SOURCEBOOK ON STATE AND FEDERAL HIV CRIMINAL LAW AND PRACTICE, CALIFORNIA, CENTER FOR HIV LAW & POLICY, [http://www.hivlawandpolicy.org/sites/default/files/California%20-%20Excerpt%20from%20CHLP%27s%20Sourcebook%20on%20HIV%20Criminalization%20in%20the%20U.S.\\_0.pdf](http://www.hivlawandpolicy.org/sites/default/files/California%20-%20Excerpt%20from%20CHLP%27s%20Sourcebook%20on%20HIV%20Criminalization%20in%20the%20U.S._0.pdf). (last visited January 10, 2020).

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.* It also provides that the failure to take such precautions does not prove that the defendant did act with the specific intent to transmit a disease.

<sup>80</sup> *Id.* The bill also vacated sentence enhancements for those previously convicted of solicitation or prostitution while living with HIV.

<sup>81</sup> HIV CRIMINALIZATION IN THE UNITED STATES: A SOURCEBOOK ON STATE AND FEDERAL HIV CRIMINAL LAW AND PRACTICE, NORTH CAROLINA, CENTER FOR HIV LAW & POLICY, [http://www.hivlawandpolicy.org/sites/default/files/North%20Carolina%20-%20Excerpt%20from%20CHLP%27s%20Sourcebook%20on%20HIV%20Criminalization%20in%20the%20U.S.\\_0.pdf](http://www.hivlawandpolicy.org/sites/default/files/North%20Carolina%20-%20Excerpt%20from%20CHLP%27s%20Sourcebook%20on%20HIV%20Criminalization%20in%20the%20U.S._0.pdf) (last visited January 10, 2020).

<sup>82</sup> *Id.*

<sup>83</sup> See *supra* note 7.

<sup>84</sup> Press Release, Michigan Makes Strides in Modernizing HIV Disclosure Law, Mich. Coalition for HIV Health and Safety (Jan. 9, 2019), <http://www.hivjustice.net/storify/us-new-legislation-updates-michigan-hiv-disclosure-law-reflecting-advances-in-hiv-science/>.

<sup>85</sup> Positive Justice Project, the PJP Update, HIVLAWANDPOLICY.ORG (Apr. 2019), <http://www.hivlawandpolicy.org/resources/pjp-update-april-2019>.

<sup>86</sup> H.B. 1691, 99th Gen. Assem., 2nd Reg. Sess. (Mo. 2020).

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> IRB Exemption was granted under UCLA IRB#19-000470 on Mar. 7, 2019.

<sup>99</sup> Public Records Request, Mo. State Highway Patrol, [https://mshp.govqa.us/WEBAPP/\\_rs/\(S\(feliw1iwktsk4qwq3f5jrkfm\)\)/Login.aspx](https://mshp.govqa.us/WEBAPP/_rs/(S(feliw1iwktsk4qwq3f5jrkfm))/Login.aspx) (last visited Jan. 14, 2020).

<sup>100</sup> Since Missouri's first HIV/hepatitis crime was passed in 1988, we did not expect to receive any records prior to 1988.

<sup>101</sup> Mo. 2018-2019 Charge Code Manual, Mo. State Highway Patrol, <http://www.mshp.dps.missouri.gov/MSHPWWeb/PatrolDivisions/CRID/documents/20182019CombinedChargeCodeManualMay2019Quarterly06062019.pdf> (last visited Nov. 9, 2019).

<sup>102</sup> *Id.*

<sup>103</sup> Given limitations of the data, and the risk of overcounting the enforcement of HIV/hepatitis crimes, we chose to limit our analysis to incidents, or clusters of charges including at least one HIV/hepatitis crime. Identifying the exact number of charges brought under each of the different types of HIV/hepatitis crimes in Missouri would have been very difficult, if not impossible, given the lack of the ability to distinguish separate counts for the same crime within a given incident (OCN). Notably, our analysis related to the number of people impacted by each crime, and their demographics, would not change if we had been able to quantify the number of charges or convictions for each crime, as opposed to the number of incidents, or convictions with incidents, as presented here.

<sup>104</sup> Incidents containing the following Missouri charge code: 191.677-003Y20025599. Mo. 2019-2020 Charge Code Manual, *supra* 100 at 7 ("Be or attempt to be a blood, blood product, organ, tissue, sperm donor when actor is knowingly infected with HIV").

<sup>105</sup> Incidents containing the following Missouri charge code: 191.677-001Y20025599. *Id.* ("Knowingly infect another with HIV by being a blood, blood product, organ, tissue or sperm donor").

<sup>106</sup> Incidents containing the following Missouri charge codes: 567.020-003Y200240. *Id.* at 80 ("Actor knowingly infected with HIV performed an act of prostitution").

<sup>107</sup> Incidents containing the following Missouri charge codes: 191.677-004Y20025599. *Id.* at 8 ("Recklessly risk infection of another with HIV when actor is knowingly infected with HIV"); 191.677-999Y19885599. (Formerly 191.677.36192. Retired 2002); 191.677-998Y19975599. (Formerly 191.677.36190) Mo. 2002-2003 Charge Code Manual, Mo. State Highway Patrol 135, <http://www.mshp.dps.missouri.gov/MSHPWWeb/PatrolDivisions/CRID/documents/2002-2003ChargeCodeManual.pdf> ("Recklessly risk infection of another with HIV" and "Reckless risk infection of person under 17 with HIV-actor over 21").

<sup>108</sup> Incidents containing the following Missouri charge codes: 191.677-002Y20025599. Mo. 2019-2020 Charge Code Manual, *supra* note 100 at 8 ("Recklessly infect another with HIV when actor is knowingly infected with HIV").

<sup>109</sup> Incidents containing the following Missouri charge codes: 575.155-001Y20171399. *Id.* at 93 ("Endanger correctional employee/ visitor/ another offender by attempt/knowingly cause person to come in contact with bodily fluid(s)"); 565.085-001Y20051399. (Retired 2016) Missouri August 2016 – December 2016 Supplemental Charge Code Manual, Mo. State Highway Patrol 66, [http://www.mshp.dps.missouri.gov/MSHPWWeb/PatrolDivisions/CRID/documents/2016AugustSupplementalChargeCodeManualWebsite\\_001.pdf](http://www.mshp.dps.missouri.gov/MSHPWWeb/PatrolDivisions/CRID/documents/2016AugustSupplementalChargeCodeManualWebsite_001.pdf) ("Endanger correctional employee/ visitor/ another offender by attempting to cause or knowingly cause person to come in contact with bodily fluid(s)").

<sup>110</sup> Incidents containing the following Missouri charge codes: 575.155-003Y20171399. Mo. 2019-2020 Charge Code Manual, *supra* note 100 at 93 ("Endangering corrections employee/ visitor/another offender by attempt/ knowingly expose person to HIV/Hepatitis B or C"); 565.085-003Y20051399. (Retired 2016) (Mo. August 2016 – December 2016 Supplemental Charge Code Manual, Mo. State Highway Patrol 66 [http://www.mshp.dps.missouri.gov/MSHPWWeb/PatrolDivisions/CRID/documents/2016AugustSupplementalChargeCodeManualWebsite\\_001.pdf](http://www.mshp.dps.missouri.gov/MSHPWWeb/PatrolDivisions/CRID/documents/2016AugustSupplementalChargeCodeManualWebsite_001.pdf) (last visited Jan. 13, 2020) ("Endanger correctional employee/ visitor/ another offender by attempting to expose or knowingly expose a person to HIV/Hepatitis B or C").

<sup>111</sup> Incidents containing the following Missouri charge codes: 575.157-002Y20171399. Mo. 2019-2020 Charge Code Manual, *supra* note 100 at 93 ("DMH offender endanger DMH employee, visitor, other person or offender by attempt to or knowingly cause person to contact body fluids/feces"); 565.086-002Y20101399. (Retired 2016) Mo. August 2016 – December 2016 Supplemental Charge Code Manual, *supra* note 109 ("Sexually violent predator endanger a department of mental health employee, visitor, other person or offender by attempt to cause or knowingly cause person to come in contact with bodily fluids/feces").

<sup>112</sup> Incidents containing the following Missouri charge codes: 575.157-001Y20171399\_\_ Mo. 2019-2020 Charge Code Manual, *supra* note 100 at 93 (“DMH offender endanger DMH employee, visitor, other person or offender by attempt to or knowingly cause person to contract HIV/Hepatitis”); 565.086-001Y20101399\_\_ (Retired 2016) Mo. August 2016 – December 2016 Supplemental Charge Code Manual, *supra* note 109 (“Sexually violent predator endanger a department of mental health employee, visitor, other person or offender by attempting to cause or knowingly cause person to come in contact with HIV/hepatitis”).

<sup>113</sup> Eighty-four percent of people impacted by Missouri’s HIV/hepatitis crimes have been arrested for only one HIV/hepatitis incident (496 people), 13% have been arrested for two (78 people), and only 3.2% have been arrested for more than two (19 people).

<sup>114</sup> Eleven of these twelve incidents originate with the St. Louis City Police Department with only a DOC HIV/hepatitis charge at arrest and then that charge was changed to an HIV Other Conduct Exposure charge at the prosecution stage, ultimately resulting in 9 incidents with convictions for the Other Conduct crime, and a court dismissing the two other incidents. The 12th incident looks very similar but originates with the Clayton Police Department. These records suggest that in Saint Louis City there is a practice of converting incidents involving exposures to law enforcement officers from DOC HIV/hepatitis crime at arrest, to Other Conduct exposure charges by the time of sentencing, thereby increasing the applicable sentencing range from 0 to 7 years to 5 to 15 years.

<sup>115</sup> See *supra* note 113.

<sup>116</sup> Amira Hasenbush & Brian Zanoni, HIV Criminalization in California: Evaluation of Transmission Risk, Williams Institute 1 (2016), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/HIVCriminalization.EvaluationofTransmissionRisk.2016.pdf>.

<sup>117</sup> Disease and Organisms, CDC.GOV, [https://www.cdc.gov/bloodsafety/bbp/diseases-organisms.html#anchor\\_1555502061](https://www.cdc.gov/bloodsafety/bbp/diseases-organisms.html#anchor_1555502061) (last visited Jan. 31, 2019).

<sup>118</sup> Shimian Zou, *Prevalence, Incidence, and Residual Risk of Human Immunodeficiency Virus and Hepatitis C Virus Infections Among United States Blood Donors Since The Introduction Of Nucleic Acid Testing*, 50 TRANSFUSION 1495, 1499 (2010).

<sup>119</sup> *HIV Transmission through Transfusion—Missouri and Colorado*, 2008, 59 MMWR 1335, 1337 (2010), <https://www.cdc.gov/mmwr/pdf/wk/mm5941.pdf>. The 2008 incident did happen in Missouri and was covered by the press in Missouri and the CDC published its investigation determining that the person donating blood could not have known that he was HIV-positive at the time that he was donating blood because he had been so recently infected. Thus, in the one reported case that did happen in Missouri, and nationally since 2008, the person could not have been “knowingly infected with HIV” at the time of the donation. We can hypothesize two possibilities for these charges of actually infecting another person through blood and organ donations: 1) that defendants are either pleading to these charges (without understanding the charges) and/or 2) this crime is being miscoded by officers and prosecutors in Missouri’s criminal records system.

<sup>120</sup> *HIV Transmitted from a Living Organ Donor—New York City*, 2009, 60 MMWR 297, 300 (2011), <https://www.cdc.gov/mmwr/pdf/wk/mm6010.pdf>.

<sup>121</sup> See page 26, *infra*.

<sup>122</sup> Incidents containing the following Missouri charge codes: 567.020-003Y200240\_\_\_. Mo. 2019-2020 Charge Code Manual, Mo. State Highway Patrol 80 <https://www.mshp.dps.missouri.gov/MSHPWeb/PatrolDivisions/CRID/documents/20192020CombinedChargeCodeManual.pdf> (last visited Jan. 13, 2020) (“Actor knowingly infected with HIV performed an act of prostitution”).

<sup>123</sup> See page 27, *infra*.

<sup>124</sup> Amira Hasenbush, Ayako Miyashita & Brian Zanoni, HIV CRIMINALIZATION IN CALIFORNIA: PENAL IMPLICATIONS FOR PEOPLE LIVING WITH HIV/AIDS, Williams Institute 12 (2016), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-California-Updated-June-2016.pdf>

<sup>125</sup> Amira Hasenbush, HIV CRIMINALIZATION IN FLORIDA: PENAL IMPLICATIONS FOR PEOPLE LIVING WITH HIV/AIDS, Williams Institute, 10 (2018), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-Florida-Oct-2018.pdf>.

<sup>126</sup> We defined prostitution-related charges included as any charges under Mo. REV. STAT. § 567.020 Prostitution (<https://revisor.mo.gov/main/OneSection.aspx?section=567.020&bid=48012&hl=prostitution%u2044>) or Mo. REV. STAT. § 567.030 Patronizing Prostitution (<https://revisor.mo.gov/main/OneSection.aspx?section=567.030&bid=35452&hl=prostitution%u2044>). The full list of Missouri charge codes included are 567.020-001Y197740\_\_ through 567.030-004Y200440\_\_ as detailed in Mo. 2019-2020 Charge Code Manual, *supra* note 121 at 80.

<sup>127</sup> Amira Hasenbush, Ayako Miyashita & Bianca D.m. Wilson, Williams Institute, HIV CRIMINALIZATION IN CALIFORNIA: PENAL IMPLICATIONS FOR PEOPLE LIVING WITH HIV/AIDS 12 (2015), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-California-Updated-June-2016.pdf>.

<sup>128</sup> Amira Hasenbush, Williams Institute, HIV CRIMINALIZATION IN FLORIDA: PENAL IMPLICATIONS FOR PEOPLE LIVING WITH HIV/AIDS 10 (2018), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-Florida-Oct-2018.pdf>.

<sup>129</sup> Amira Hasenbush, Williams Institute, HIV CRIMINALIZATION IN GEORGIA: PENAL IMPLICATIONS FOR PEOPLE LIVING WITH HIV/AIDS 9 (2018), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-Georgia-Jan-2018-1.pdf>.

<sup>130</sup> For consistency, the number of PLWH for each state was taken from AIDSvu <https://map.aidsvu.org/map> (last visited January 20, 2020).

<sup>131</sup> Georgia’s criminal justice records do not provide enough detail exclude HIV crimes focused on sex work and make a similar comparison.

<sup>132</sup> See e.g. Desmond Brown, *Justice Department Issues New Guidelines on Prosecution for Non-Disclosure of HIV Status*, CBC NEWS (Dec. 2, 2018, 10:55 AM ET), <https://www.cbc.ca/news/canada/toronto/canada-prosecutions-hiv-non-closures-cases-1.4929292>; INTENTIONAL OR RECKLESS SEXUAL TRANSMISSION OF INFECTION, CODE FOR CROWN PROSECUTORS, <https://www.cps.gov.uk/legal-guidance/intentional-or-reckless-sexual-transmission-infection> (last visited Jan. 15, 2020); Policy: Sexual Transmission, or Realistic Possibility of Transmission of HIV, Crown Counsel Policy Manual (Apr. 16, 2019), <https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/prosecution-service/crown-counsel-policy-manual/sex-2.pdf>.

<sup>133</sup> Of course, law enforcement could decide not to even create an arrest record for someone alleged to have exposed another person with HIV based on current science and medicine about HIV and the transmission of HIV. We would have no way to measure the exercise type of discretion not to proceed with a case.

<sup>134</sup> Data from the Missouri Sentencing Advisory Commission (MOSAC) for convictions between 2003 and 2015 for DOC/DMH crimes shows 177 incidents with convictions. See Appendix C, *infra*. Where we have sentencing dates, we can date 169 DOC/DMH incidents with convictions for DOC/DMH crimes in those years (or, alternatively, 199 DOC/DMH incidents have arrest dates in those years that ultimately resulted in convictions). Our data and analysis reflected in Figure 5 includes data for 2016 to October 2019 that are not included in the MOSAC data.

<sup>135</sup> Data from the Missouri Sentencing Advisory Commission (MOSAC) for convictions between 2003 and 2015 show 80 convictions for HIV crimes. See Appendix C. Where we have sentencing dates, we can date 74 HIV crime convictions in those years (or, alternatively, 85 HIV incidents have arrest dates in those years that ultimately resulted in convictions). Our data and analysis reflected in Figure 6 extends back two more decades to 1991 and includes data for 2016 to October 2019.

<sup>136</sup> This includes the people convicted of both the Other Conduct Exposure and Infection crimes.

<sup>137</sup> One of the incidents involves charges of burglary and theft. The other two incidents have no other charges.

<sup>138</sup> The other charges in these incidents include assault, domestic assault, burglary, and driving without a license. It is hard to reconcile how this conduct would occur alongside either sex or needle sharing, but easier to understand it involving assault of another person or resisting arrest.

<sup>139</sup> Of the other four Blood Donation Infection convictions, two were relatively straightforward, involving no other charges at arrest, prosecution, or conviction than the Blood Donation Infection charge. Two others involved a mixture of HIV Other Conduct charges and Blood Donation charges. One of these started out at arrest with only an HIV Other Conduct Exposure charge and then resulted in only conviction for a Blood Donation Infection charge. The other incident contains multiple charges of Other Conduct and Blood Donation Infection at arrest and sentencing. It is possible that these last two incidents involved risk behaviors others than donating blood or organs, but the MSHP records provide no further guidance for suggest that.

<sup>140</sup> This could be possible because four of the HIV crimes (Blood Donation Infection, Blood Donation Exposure, Other Conduct Infection, and Other Conduct Exposure) only differ by one digit in the code that is entered into the MSHP records, and the Blood Donation Infection code is the first numerically of the four. More specifically, in the middle of a long code, to indicate the Blood Donation Infection crime in the MSHP records you enter a 1, the Other Conduct Infection crime a 2, the Blood Donation Exposure crime a 3, and the Other Conduct Exposure crime a 4.

<sup>141</sup> The convictions for the three types of HIV crimes here total 110, as opposed to 107, because three people convicted for Blood Donation crimes were also convicted for Other Conduct crimes and are included in both categories.

<sup>142</sup> MO. DEP'T OF CORRECTIONS, 2018 PROFILE OF THE INSTITUTIONALIZED AND SUPERVISED OFFENDER POP. 80 (2018), <https://doc.mo.gov/media/pdf/2018-offender-profile>.

<sup>143</sup> The sentencing data from Missouri's criminal justice records presented several challenges. Many sentences for a single count of a crime contained three data points for sentence length: a suspended sentence for confinement, a sentence of confinement, and a sentence of probation. However, whether a sentence was suspended or for confinement or probation was not always indicated. Further, while there was a field to give count numbers for each charge, this field was frequently not populated. As a result, it was often difficult to determine whether an incident contained sentences for one or multiple counts for a single type of HIV/hepatitis crime, and then to determine which count the various lines of sentencing data were associated with. Further, the sentencing information within many incidents contained the same sentence for all counts for all charges. Presumably, this indicated a plea bargain that applied to all charges, the length of which was determined by all charges (HIV/hepatitis and non-HIV/hepatitis). In general, over 94% of state convictions for felonies are the result of plea bargains and we assume a similar portion of plea bargains for HIV/hepatitis incidents in Missouri. See Justice Anthony Kennedy in *Missouri v. Frye*, 566 U.S. 134, 143 (2012) ("...ninety-four percent of state convictions are the result of guilty pleas.") (internal citations omitted). Finally, nothing in MSHP court records indicate whether the sentences for different charges and/or counts within an incident ran concurrently or consecutively.

<sup>144</sup> Since the approach limited the number of incidents with convictions that we had to analyze, we also provide an alternative approach in Appendix B. However, we feel the approach presented here is more accurate for reasons we explain in the text.

<sup>145</sup> There were four incidents that had an unsuspended sentence for both a Other Conduct Exposure and an Other Conduct charge. While none of the Other Conduct Exposure-only incidents had sentences of greater than 10 years, all 4 of these Exposure and Infection incidents had sentences of greater than 10 years (14, 15, 15, and 20 years).

<sup>146</sup> USER GUIDE 2015-2016, MO. SENTENCING ADVISORY COMMITTEE 35 (2016), <https://www.courts.mo.gov/file.jsp?id=102733> ("Offenders sentenced to multiple offenses at the same sentencing are counted only once for the most serious offense....Average sentences are calculated for prison commitments, they do not include sentences of offenders sentenced under section 559.115 or to SES probation."); ANNUAL REPORT ON SENTENCING AND SENTENCING DISPARITY FISCAL YEAR 2015, MO. SENTENCING ADVISORY COMMITTEE 70 (2016), <https://www.courts.mo.gov/file.jsp?id=102734> ("Sentencing data is extracted from the DOC OPII database and includes the first sentence for unrelated sentences in Missouri courts ... Where there is more than one related sentence, the most serious sentence is selected. Revocations of sentences are not included. Prison sentences include only sentences for a term sentence (commitment). Sentence average is for prison sentences only and does not include sentences for SES probation and 120-day probation sentences."); RECOMMENDED SENTENCING BIENNIAL REPORT 2009, MO. SENTENCING ADVISORY COMM. 66 (2009), <https://www.courts.mo.gov/file.jsp?id=45469>.

<sup>147</sup> In addition, we combine the MOSAC data for Other Conduct Exposure Class D Felony with the Class B Felony data, as we have done throughout the analysis of our data.

<sup>148</sup> Prior to 2002 the Blood Donation and Other Conduct crimes were punishable for up to 7 years as compared to 5 to 15 (Exposure) or 10 to 30 years (Infection) after 2002. Our data include convictions from 1990 to 2000 under this lower sentencing range that the MOSAC data do not. While there is the most divergence for the two infection crimes, the number of convictions in the MOSAC data is very small: only 2 sentences for the Blood Donation Infection crime and only 7 for the Other Conduct Infection crime.

<sup>149</sup> PROFILE OF THE INSTITUTIONAL AND SUPERVISED OFFENDER POPULATION 2018, *supra* note 141 at 13, 68 (for ABC Violent Felonies, applied here to Blood Donation and DOC/DMH HIV/hepatitis crimes), 69 (D Violent Felony, applied here to DOC/DMH Bodily Fluids crimes), 70 (A,B,C, Sex Felonies, applied here to Other Conduct Crimes), 73 (B Nonviolent, applied here to Sex Work crimes). To get the average time actually served, we took the average of that percentage for 2009-2018, the period covered for each table

<sup>150</sup> Chris Mai & Ram Subramanian, THE PRICE OF PRISONS: EXAMINING STATE SPENDING TRENDS, 2010-2015, VERA INST. OF JUSTICE 8 (2017), <https://www.vera.org/downloads/publications/the-price-of-prisons-2015-state-spending-trends.pdf>.

<sup>151</sup> HIV/hepatitis incidents were dated in Figure 7 and accompanying text by using the earliest action date in the event record. An alternative method would have been to use the Date of Arrest (DOA) (see Table B.1 in Appendix B). Since for some incidents the prosecution and sentencing action dates in the incident records proceeded the Date of Arrest, we assumed that the Date of Arrest had been changed at some later point in updating the record and no longer reflected the original date of arrest (in other words, we assumed that a person could not be prosecuted or sentenced before the date that they were arrested for an incident). We did analyze the dates of the incidents using Date of Arrest, and the overall pattern in Figure 7 remains the same. For dating *incidents* overall, figures and numbers reported in this section are limited to 709 events. We excluded 14 incidents that were outliers in terms of the progression of a case through the criminal justice system, namely those with a prosecution action date  $\pm$  3 years from arrest date, and/or a sentencing action date  $\pm$  5 years from arrest date. For these incidents, we were concerned that updates to the record had altered the stated date of arrest, in particular since some had prosecution or sentencing dates that were before the date of arrest. For dating *incidents with convictions*, we did not exclude these outliers since we were focused on the most recent sentencing action date as opposed to determining when the HIV/hepatitis charges were initially brought.

<sup>152</sup> Multiple incidents refer to those where more than one type of HIV/hepatitis crime is charged within the incident. Since Figure 7 is meant to convey the level of Missouri's enforcement activity, a single person can have HIV/hepatitis incidents in multiple years and even more than once in a single year (e.g. these 709 incidents are among 583 people). However, as explained above, the vast majority of people had only one incident involving only one type of HIV/hepatitis crime.

<sup>153</sup> "Missing" refers to incidents with a sentence outcome (e.g. guilty/guilty-SIS), but no date listed for sentencing action.

<sup>154</sup> "Incidents with convictions" are incidents where at least one HIV/hepatitis crime charge within the incident received a verdict of "guilty" or "guilty-SIS."

<sup>155</sup> "Most recent arrest" is the date of the incident with the most recent action date for a given HIV/hepatitis incident type, as dated by the year of the most recent action date in an incident record (arrest date, prosecution action date, or sentencing action date). In most cases, this will be Date of Arrest (DOA), with outlying events excluded as defined above "Most recent conviction" is the date of the incident with the most recent conviction for the relevant HIV/hepatitis incident type, as dated by the year of the most recent sentencing action date for a HIV/hepatitis crime charge of a given type within an incident; outlier events are not excluded as explained above.

<sup>156</sup> In this section, percentages for county location are calculated based on a percentage of all 690 incidents (95.4% of all incidents) with a known county, not based on all incidents or all incidents with convictions.

<sup>157</sup> Locations of incidents were first determined the county of arrest as listed in the MSHP record(s). If there was not a county of arrest listed, it was determined by using the Originating Agency Identifier for the arresting agency, or the "ARR ORI" field in the Arrest, Prosecution, and Court records.

<sup>158</sup> Locations of incidents *with convictions* were also first determined the county of arrest as listed in the MSHP record(s). If there was not a county of arrest listed, it was determined by using the Originating Agency Identifier for the arresting agency, or the "ARR ORI" field in the Arrest, Prosecution, and Court records. While Court records did include the county for the court hearing the cases, we had far fewer Court records with location information, and we assume that most incidents were processed in the same county as arrest. Accordingly, we chose to determine location by using the variable for which we had the most data (county of arrest and ARR ORI).

<sup>159</sup> Fourteen Other Conduct incidents did not have a known arresting county; including seven incidents with convictions.

<sup>160</sup> Nineteen DOC incidents did not have a known arresting county, including 11 incidents with convictions.

<sup>161</sup> The St. Louis HIV Care Region includes St. Louis City, St. Louis County, and St. Charles, Franklin Jefferson, Lincoln, and Warren counties. See BUREAU OF REPORTABLE DISEASE INFORMATICS, MO. DEPT. OF HEALTH AND HUMAN SVCS., 2017 EPIDEMIOLOGIC PROFILES OF HIV, STD, AND HEPATITIS IN MISSOURI, 9 (2017), <https://health.mo.gov/data/hivstdaids/pdf/MOHIVSTD2017.pdf>.

<sup>162</sup> *Id.*

<sup>163</sup> *Id.* The Kansas City HIV Care Region includes Cass, Clay, Clinton, Jackson, Platte, Lafayette, and Ray counties.

<sup>164</sup> See *Id.* for percent of PLWH in Kansas City and St. Louis HIV Care Regions.

<sup>165</sup> *d.* at 8. An estimated 12,890 people are living with HIV in Missouri, as of year-end 2017. County percentages reflect the number of people living with HIV, and those living with Stage 3 AIDS, by county of residence at time of diagnosis.

<sup>166</sup> Mo. DEP'T OF CORRECTIONS, 2018 PROFILE OF THE INSTITUTIONALIZED AND SUPERVISED OFFENDER POP. 13 (2018), <https://doc.mo.gov/media/pdf/2018-offender-profile>.

<sup>167</sup> *Id.*

<sup>168</sup> There are 12 incidents which are both an HIV incident and a DOC/DMH incident; 11 are from the 16 agencies presented here, and include 10 events from St. Louis City Police Department (agency has 106 total incidents) and one event from the St. Louis County Police Department (agency has 17 total incidents).

<sup>169</sup> All percentages in this section are among incidents, or incidents with known convictions, where we have a known arresting agency. We have a known arresting agency for 232 out of 263 HIV incidents and 108 out of 125 HIV incidents with convictions. We have a known arresting agency for 428 out of 472 DOC/DMH incidents and 215 out of 241 DOC/DMH incidents with convictions.

<sup>170</sup> BUREAU OF REPORTABLE DISEASE INFORMATICS, *supra* note 160 at 20. Of the 12,892 PLWH (including HIV and Stage 3 AIDS) with reported route of transmission, a total of 8,860 were assigned MSM as their exposure category (4,512 with HIV, 4,348 with Stage 3 AIDS). An additional 678 were assigned MSM/IDU (281 with HIV, 397 with Stage 3 AIDS).

<sup>171</sup> POSITIVE JUSTICE PROJECT & CENTER FOR HIV LAW & POLICY, ARRESTS AND PROSECUTIONS FOR HIV EXPOSURE IN THE U.S., 2008-2019, [https://www.hivlawandpolicy.org/sites/default/files/Chart%20of%20U.S.%20Arrests%20and%20Prosecutions%20for%20HIV%20Exposure%20in%20the%20United%20States%20%28June%202019%29\\_0.pdf](https://www.hivlawandpolicy.org/sites/default/files/Chart%20of%20U.S.%20Arrests%20and%20Prosecutions%20for%20HIV%20Exposure%20in%20the%20United%20States%20%28June%202019%29_0.pdf), (last visited Jan. 20, 2020).

<sup>172</sup> *Id.* Of the 17 cases documented largely through press reports, two involved men who had sex with men; 11 involved heterosexual sex including two case involving commercial sex, and the remaining four involved alleged exposure through spitting or biting in cases involving law enforcement.

<sup>173</sup> See, e.g., Jeffrey S. Becasen, *Estimating the Prevalence of HIV and Sexual Behaviors Among the US Transgender Population: A Systematic Review and Meta-Analysis*, 2006-2017, 109 AJPH e1 (2019); Hollie Clark et al., *Diagnosed HIV Infection in Transgender Adults and Adolescents: Results from the National HIV Surveillance System*, 21 AIDS BEHAV. 2774 (2017); C. WINTER, HEALTH EQUITY SERIES: RESPONDING TO LGBT HEALTH DISPARITIES, Mo. FOUNDATION FOR HEALTH (2012), <https://mffh.org/wp-content/uploads/2016/04/LGBTHealthEquityReport.pdf>.

<sup>174</sup> A 2019 study found that 14% of transgender women have HIV. Becasen, *supra* note 172 at 3.

<sup>175</sup> POSITIVE JUSTICE PROJECT & CENTER FOR HIV LAW & POLICY, ARRESTS AND PROSECUTIONS FOR HIV EXPOSURE IN THE U.S., 2008-2019, [https://www.hivlawandpolicy.org/sites/default/files/Chart%20of%20U.S.%20Arrests%20and%20Prosecutions%20for%20HIV%20Exposure%20in%20the%20United%20States%20%28June%202019%29\\_0.pdf](https://www.hivlawandpolicy.org/sites/default/files/Chart%20of%20U.S.%20Arrests%20and%20Prosecutions%20for%20HIV%20Exposure%20in%20the%20United%20States%20%28June%202019%29_0.pdf), (last visited Jan. 20, 2020).

<sup>176</sup> This chart does not include those with DMH incidents because there were only 3 people with DMH incidents (aged 44-54). Age reflects age at earliest action date (date of arrest, prosecution action date, and sentencing action date) of the earliest event of a given type in a person's lifetime history, with age computed as difference between earliest action date, and "birthdate" (coded as the midpoint of year of birth, June 30, as only year of birth was provided). Age is reported for the 583 people with non-excluded events (events excluded due to outlying dates, as described above).

<sup>177</sup> American Immigration Council, *Immigrants in Missouri* (2017), <https://www.americanimmigrationcouncil.org/research/immigrants-in-missouri>.

<sup>178</sup> BUREAU OF REPORTABLE DISEASE INFORMATICS, *supra* note 160 at 5.

<sup>179</sup> Mo. DEP'T OF CORRECTIONS, *supra* note 165 at 17.

<sup>180</sup> Quick Facts: Missouri, U.S. Census Bureau, <https://www.census.gov/quickfacts/MO> (last visited Jan. 20, 2020).

<sup>181</sup> BUREAU OF REPORTABLE DISEASE INFORMATICS, *supra* note 160 at 5.

<sup>182</sup> Mo. DEP'T OF CORRECTIONS, *supra* note 165 at 17.

<sup>183</sup> BUREAU OF REPORTABLE DISEASE INFORMATICS, *supra* note 160 at 5.

<sup>184</sup> *Id.*

<sup>185</sup> *Id.*

<sup>186</sup> *Id.*

<sup>187</sup> A total of 105 Black men have been arrested for an HIV crime, and 58 have been convicted of an HIV crime, compared with 4,517 Black men LWH in Missouri (See BUREAU OF REPORTABLE DISEASE INFORMATICS, *supra* note 160 at 5.).

<sup>188</sup> Blood Exposure incidents have not been included in this chart because there only two such incidents. Both involve males, one of who was convicted for this crime. Race/gender breakdown of PLWH from BUREAU OF REPORTABLE DISEASE INFORMATICS, *supra* note 160 at 5.

<sup>189</sup> Mo. DEP'T OF CORRECTIONS, *supra* note 165 at 17.

<sup>190</sup> Drug related crimes includes all Controlled Substance related charges, under Mo. REV. STAT. § 579 (2019), including all charges dealing with possession, distribution, trafficking, and manufacturing

<sup>191</sup> Based on personal electronic communication with MSHP System/Data Administrator, Jan. 14, 2020

<sup>192</sup> As part of this matching process we did eliminate 34 records (25 HIV events, 9 non-HIV events) that appeared to be duplicative or largely overlapping for the same factual incident, even though the records had separate OCNs. Most of these cases were cases with records that ended at the arrest stage with a "turned over to" outcome, indicating that they were turned over to another law enforcement agency in Missouri. By matching SIDs, Dates of Arrest, the charges, and in some cases Date of Offense fields (this field was infrequently used), we could determine if the case was picked up by another agency that assigned it a new OCN. Ultimately, we reviewed the HIV/hepatitis incidents of every person (SID) who had multiple HIV/hepatitis incidents (OCNs), to eliminate any obvious duplication. Our default was to leave incidents as separate, but were they evidence of duplication was persuasive (same SID, DOA, charges, and/or DOA), we combined the two incidents (when both contained useful information) or eliminated one from our counts (when the information was completely duplicative).

<sup>193</sup> For 60.6% of incidents (438 records) we had Arrest, Prosecution, and Court records. For another 3.2% of incidents, we only had Arrest records (19), or only Arrest and Prosecution records (4), but it was clear from the outcomes for the charges in these incidents that the case had ended at these stages and that there should not be records for the later stages of the incident. This included incidents with charges with outcomes of only "no further action," "not filed from prosecutor," and/or "turned over to" at the arrest stage; and only of "nolle prosecution" at the prosecution stage. For another 1.4% of incidents, the Arrest (7), Prosecution (1), or both Arrest and Prosecution (2) records were from 2018 or 2019. For these, it may be that not enough time had elapsed since the beginning of the case for them to be resolved or for their records to be completed.

<sup>194</sup> This includes 438 incidents for which we have arrest, prosecution, and court data; 58 for which we have prosecution and court data; 47 for which we have arrest and court data; and 7 where we only have court data.

<sup>195</sup> This could mean that Blood donation charges were more likely to be dismissed at earlier stages; and that the Sex Work and Other Conduct Infection charges were less likely to be so (and/or more likely to involve guilty pleas) than the other crimes. While this seems reasonable based on what is required to prove the elements of the underlying crimes, the records provided do not allow us to conclusively determine so.

<sup>196</sup> This is only sentences for any of the HIV/hepatitis crimes that is greater than 30 years and reflective of a combined sentence for a number of sex offense crimes.

<sup>197</sup> USER GUIDE 2015-2016, *supra* note 145 at 32.

<sup>198</sup> RECOMMENDED SENTENCING BIENNIAL REPORT 2009, *supra* note 145 at 66.

<sup>199</sup> RECOMMENDED SENTENCING BIENNIAL REPORT 2007, *supra* note 145 at 57.

<sup>200</sup> Compare H.B. 1151, 84th Gen. Assem. (Mo. 1988) (Class D Felony punishable up to 7 year) with H.B. 1756, 91st Gen. Assem. (Mo. 2002). (class B Felony publishable from 5 to 15 years).

<sup>201</sup> Since the DMH statute went into in 2010, no data exists prior to 2010.