

1 A bill to be entitled
 2 An act relating to HIV prevention; providing a short
 3 title; amending s. 381.0041, F.S.; providing an
 4 exception to allow the donation of human tissue by a
 5 person who has human immunodeficiency virus infection
 6 under certain circumstances; reclassifying a criminal
 7 offense relating to such donations; amending s.
 8 384.23, F.S.; providing definitions; amending s.
 9 384.24, F.S.; expanding the scope of unlawful acts by
 10 a person infected with a sexually transmissible
 11 disease; expanding the list of sexually transmissible
 12 diseases to include human immunodeficiency virus
 13 infection; providing that certain actions are not
 14 sufficient evidence to establish intent on the part of
 15 the person who transmits the disease; providing a
 16 definition; amending s. 384.34, F.S.; reclassifying
 17 specified criminal offenses; removing a fine for
 18 specified rule violations; amending ss. 775.0877 and
 19 921.0022, F.S.; conforming provisions to changes made
 20 by the act; amending s. 960.003, F.S.; conforming
 21 cross-references; providing an effective date.

22
 23 Be It Enacted by the Legislature of the State of Florida:

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 25 Section 1. This act may be cited as the "HIV Prevention

26 Justice Act."

27 Section 2. Paragraph (b) of subsection (11) of section
28 381.0041, Florida Statutes, is amended to read:

29 381.0041 Donation and transfer of human tissue; testing
30 requirements.—

31 (11)

32 (b) Except when the donation is deemed medically
33 appropriate by a licensed physician, any person who has human
34 immunodeficiency virus infection, who knows he or she is
35 infected with human immunodeficiency virus, and who has been
36 informed that he or she may communicate this disease by donating
37 blood, plasma, organs, skin, or other human tissue who donates
38 blood, plasma, organs, skin, or other human tissue commits ~~is~~
39 ~~guilty of a misdemeanor felony~~ of the first ~~third~~ degree,
40 punishable as provided in s. 775.082 or, s. 775.083, ~~or s.~~
41 ~~775.084.~~

42 Section 3. Subsection (3) of section 384.23, Florida
43 Statutes, is renumbered as subsection (4) and a new subsection
44 (3) and subsection (5) are added to that section, to read:

45 384.23 Definitions.—

46 (3) "Sexual conduct" means conduct between persons,
47 regardless of gender, which is capable of transmitting a
48 sexually transmissible disease, including, but not limited to,
49 contact between a:

50 (a) Penis and a vulva or an anus; or

51 (b) Mouth and a penis, a vulva, or an anus.

52 (5) "Substantial risk of transmission" means a reasonable
 53 probability of disease transmission as proven by competent
 54 medical or epidemiological evidence.

55 Section 4. Section 384.24, Florida Statutes, is amended to
 56 read:

57 384.24 Unlawful acts.—

58 (1) It is unlawful for any person who has chancroid,
 59 gonorrhea, granuloma inguinale, lymphogranuloma venereum,
 60 genital herpes simplex, chlamydia, nongonococcal urethritis
 61 (NGU), pelvic inflammatory disease (PID)/acute salpingitis, ~~or~~
 62 syphilis, or human immunodeficiency virus infection, when such
 63 person knows he or she is infected with one or more of these
 64 diseases and when such person has been informed that he or she
 65 may communicate this disease to another person through sexual
 66 conduct intercourse, to act with the intent to transmit the
 67 disease, to engage in have sexual conduct that poses a
 68 substantial risk of transmission to another person when the
 69 intercourse with any other person is unaware that the person is
 70 a carrier of the disease, and to transmit the disease to the,
 71 ~~unless such other person has been informed of the presence of~~
 72 ~~the sexually transmissible disease and has consented to the~~
 73 ~~sexual intercourse.~~

74 (2) A person does not act with the intent set forth in
 75 subsection (1) if he or she in good faith complies with a

76 treatment regimen prescribed by his or her health care provider
77 or with the behavioral recommendations of his or her health care
78 provider or public health officials to limit the risk of
79 transmission, or if he or she offers to comply with such
80 behavioral recommendations, but such offer is rejected by the
81 other person with whom he or she is engaging in sexual conduct.
82 For purposes of this section, the term "behavioral
83 recommendations" includes, but is not limited to, the use of a
84 prophylactic device to limit the risk of transmission of the
85 disease. Evidence of the person's failure to comply with such a
86 treatment regimen or such behavioral recommendations is not, in
87 and of itself, sufficient to establish that he or she acted with
88 the intent set forth in subsection (1) ~~It is unlawful for any~~
89 ~~person who has human immunodeficiency virus infection, when such~~
90 ~~person knows he or she is infected with this disease and when~~
91 ~~such person has been informed that he or she may communicate~~
92 ~~this disease to another person through sexual intercourse, to~~
93 ~~have sexual intercourse with any other person, unless such other~~
94 ~~person has been informed of the presence of the sexually~~
95 ~~transmissible disease and has consented to the sexual~~
96 ~~intercourse.~~

97 Section 5. Section 384.34, Florida Statutes, is amended to
98 read:

99 384.34 Penalties.—

100 (1) Any person who violates s. 384.24 ~~the provisions of s.~~

101 ~~384.24(1)~~ commits a misdemeanor of the first degree, punishable
102 as provided in s. 775.082 or s. 775.083.

103 (2) Any person who violates ~~the provisions of~~ s. 384.26 or
104 s. 384.29 commits a misdemeanor of the first degree, punishable
105 as provided in s. 775.082 or s. 775.083.

106 (3) Any person who maliciously disseminates any false
107 information or report concerning the existence of any sexually
108 transmissible disease commits a misdemeanor felony of the first
109 ~~third~~ degree, punishable as provided in s. 775.082 or s. 775.083
110 ~~ss. 775.082, 775.083, and 775.084.~~

111 (4) ~~Any person who violates the provisions of the~~
112 ~~department's rules pertaining to sexually transmissible diseases~~
113 ~~may be punished by a fine not to exceed \$500 for each violation.~~
114 ~~Any penalties enforced under this subsection shall be in~~
115 ~~addition to other penalties provided by this chapter. The~~
116 ~~department may enforce this section and adopt rules necessary to~~
117 ~~administer this section.~~

118 (5) ~~Any person who violates s. 384.24(2) commits a felony~~
119 ~~of the third degree, punishable as provided in s. 775.082, s.~~
120 ~~775.083, or s. 775.084. Any person who commits multiple~~
121 ~~violations of s. 384.24(2) commits a felony of the first degree,~~
122 ~~punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~

123 (6) Any person who obtains information that identifies an
124 individual who has a sexually transmissible disease, who knew or
125 should have known the nature of the information and maliciously,

126 or for monetary gain, disseminates this information or otherwise
 127 makes this information known to any other person, except by
 128 providing it either to a physician or nurse employed by the
 129 Department of Health or to a law enforcement agency, commits a
 130 misdemeanor ~~felony~~ of the first ~~third~~ degree, punishable as
 131 provided in s. 775.082 or, s. 775.083, ~~or s. 775.084.~~

132 Section 6. Subsections (1) and (3) of section 775.0877,
 133 Florida Statutes, are amended to read:

134 775.0877 Criminal transmission of HIV; procedures;
 135 penalties.—

136 (1) In any case in which a person has been convicted of or
 137 has pled nolo contendere or guilty to, regardless of whether
 138 adjudication is withheld, any of the following offenses, or the
 139 attempt thereof, which offense or attempted offense involves the
 140 transmission of body fluids from one person to another:

141 (a) Section 794.011, relating to sexual battery;

142 (b) Section 826.04, relating to incest;

143 (c) Section 800.04, relating to lewd or lascivious
 144 offenses committed upon or in the presence of persons less than
 145 16 years of age;

146 (d) Sections 784.011, 784.07(2)(a), and 784.08(2)(d),
 147 relating to assault;

148 (e) Sections 784.021, 784.07(2)(c), and 784.08(2)(b),
 149 relating to aggravated assault;

150 (f) Sections 784.03, 784.07(2)(b), and 784.08(2)(c),

151 relating to battery;

152 (g) Sections 784.045, 784.07(2)(d), and 784.08(2)(a),
153 relating to aggravated battery;

154 (h) Section 827.03(2)(c), relating to child abuse;

155 (i) Section 827.03(2)(a), relating to aggravated child
156 abuse;

157 (j) Section 825.102(1), relating to abuse of an elderly
158 person or disabled adult;

159 (k) Section 825.102(2), relating to aggravated abuse of an
160 elderly person or disabled adult;

161 (l) Section 827.071, relating to sexual performance by
162 person less than 18 years of age;

163 (m) Sections 796.07 and 796.08, relating to prostitution;
164 or

165 (n) ~~Section 381.0041(11)(b), relating to donation of~~
166 ~~blood, plasma, organs, skin, or other human tissue; or~~

167 ~~(e)~~ Sections 787.06(3)(b), (d), (f), and (g), relating to
168 human trafficking,

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170 the court shall order the offender to undergo HIV testing, to be
171 performed under the direction of the Department of Health in
172 accordance with s. 381.004, unless the offender has undergone
173 HIV testing voluntarily or pursuant to procedures established in
174 s. 381.004(2)(h)6. or s. 951.27, or any other applicable law or
175 rule providing for HIV testing of criminal offenders or inmates,

176 subsequent to her or his arrest for an offense enumerated in
 177 paragraphs (a)-(m) ~~(a)-(n)~~ for which she or he was convicted or
 178 to which she or he pled nolo contendere or guilty. The results
 179 of an HIV test performed on an offender pursuant to this
 180 subsection are not admissible in any criminal proceeding arising
 181 out of the alleged offense.

182 (3) An offender who has undergone HIV testing pursuant to
 183 subsection (1), and to whom positive test results have been
 184 disclosed pursuant to subsection (2), who commits a second or
 185 subsequent offense enumerated in paragraphs (1)(a)-(m) ~~(1)(a)-~~
 186 ~~(n)~~, commits criminal transmission of HIV, a misdemeanor ~~felony~~
 187 of the first ~~third~~ degree, punishable as provided in s. 775.082
 188 or, s. 775.083, ~~or s. 775.084~~. A person may be convicted and
 189 sentenced separately for a violation of this subsection and for
 190 the underlying crime enumerated in paragraphs (1)(a)-(m) ~~(1)(a)-~~
 191 ~~(n)~~.

192 Section 7. Paragraph (e) of subsection (3) of section
 193 921.0022, Florida Statutes, is amended to read:

194 921.0022 Criminal Punishment Code; offense severity
 195 ranking chart.—

196 (3) OFFENSE SEVERITY RANKING CHART

197 (e) LEVEL 5

198

Florida	Felony	
Statute	Degree	Description

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199	316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
200	316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
201	316.80(2)	2nd	Unlawful conveyance of fuel; obtaining fuel fraudulently.
202	322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
203	327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
204	379.365(2)(c)1.	3rd	Violation of rules relating to: willful molestation of stone crab traps, lines, or buoys; illegal bartering, trading, or sale, conspiring or aiding in such barter, trade, or sale, or

supplying, agreeing to supply, aiding in supplying, or giving away stone crab trap tags or certificates; making, altering, forging, counterfeiting, or reproducing stone crab trap tags; possession of forged, counterfeit, or imitation stone crab trap tags; and engaging in the commercial harvest of stone crabs while license is suspended or revoked.

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379.367 (4) 3rd Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.

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379.407 (5) (b) 3. 3rd Possession of 100 or more undersized spiny lobsters.

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~~381.0041(11)(b) 3rd Donate blood, plasma, or organs knowing HIV positive.~~

208

440.10 (1) (g) 2nd Failure to obtain workers' compensation coverage.

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209	440.105 (5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
210	440.381 (2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
211	624.401 (4) (b) 2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
212	626.902 (1) (c)	2nd	Representing an unauthorized insurer; repeat offender.
213	790.01 (2)	3rd	Carrying a concealed firearm.
214	790.162	2nd	Threat to throw or discharge destructive device.
215	790.163 (1)	2nd	False report of bomb,

property.

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812.0145 (2) (b) 2nd Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.

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812.015 (8) 3rd Retail theft; property stolen is valued at \$300 or more and one or more specified acts.

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812.019 (1) 2nd Stolen property; dealing in or trafficking in.

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812.131 (2) (b) 3rd Robbery by sudden snatching.

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812.16 (2) 3rd Owning, operating, or conducting a chop shop.

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817.034 (4) (a) 2. 2nd Communications fraud, value \$20,000 to \$50,000.

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817.234 (11) (b) 2nd Insurance fraud; property value \$20,000 or more but less than \$100,000.

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230	817.2341 (1), (2) (a) & (3) (a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
231	817.568 (2) (b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more persons.
232	817.611 (2) (a)	2nd	Traffic in or possess 5 to 14 counterfeit credit cards or related documents.
233	817.625 (2) (b)	2nd	Second or subsequent fraudulent use of scanning device, skimming device, or reencoder.

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234	825.1025 (4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
235	827.071 (4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
236	827.071 (5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.
237	828.12 (2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
	839.13 (2) (b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or

death.

238 843.01 3rd Resist officer with violence to
 person; resist arrest with
 violence.

239 847.0135(5) (b) 2nd Lewd or lascivious exhibition
 using computer; offender 18
 years or older.

240 847.0137 3rd Transmission of pornography by
 (2) & (3) electronic device or equipment.

241 847.0138 3rd Transmission of material
 (2) & (3) harmful to minors to a minor by
 electronic device or equipment.

242 874.05(1) (b) 2nd Encouraging or recruiting
 another to join a criminal
 gang; second or subsequent
 offense.

243 874.05(2) (a) 2nd Encouraging or recruiting
 person under 13 years of age to
 join a criminal gang.

244

893.13(1)(a)1. 2nd Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5. drugs).

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893.13(1)(c)2. 2nd Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.

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893.13(1)(d)1. 1st Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5. drugs) within 1,000 feet of

university.

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893.13(1)(e)2. 2nd Sell, manufacture, or deliver
cannabis or other drug
prohibited under s.
893.03(1)(c), (2)(c)1.,
(2)(c)2., (2)(c)3., (2)(c)6.,
(2)(c)7., (2)(c)8., (2)(c)9.,
(2)(c)10., (3), or (4) within
1,000 feet of property used for
religious services or a
specified business site.

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893.13(1)(f)1. 1st Sell, manufacture, or deliver
cocaine (or other s.
893.03(1)(a), (1)(b), (1)(d),
or (2)(a), (2)(b), or (2)(c)5.
drugs) within 1,000 feet of
public housing facility.

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893.13(4)(b) 2nd Use or hire of minor; deliver
to minor other controlled
substance.

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893.1351(1) 3rd Ownership, lease, or rental for

trafficking in or manufacturing
of controlled substance.

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Section 8. Paragraphs (a) and (b) of subsection (2) and paragraph (a) of subsection (3) of section 960.003, Florida Statutes, are amended to read:

960.003 Hepatitis and HIV testing for persons charged with or alleged by petition for delinquency to have committed certain offenses; disclosure of results to victims.—

(2) TESTING OF PERSON CHARGED WITH OR ALLEGED BY PETITION FOR DELINQUENCY TO HAVE COMMITTED CERTAIN OFFENSES.—

(a) In any case in which a person has been charged by information or indictment with or alleged by petition for delinquency to have committed any offense enumerated in s. 775.0877(1)(a)-(m) ~~s. 775.0877(1)(a)-(n)~~, which involves the transmission of body fluids from one person to another, upon request of the victim or the victim's legal guardian, or of the parent or legal guardian of the victim if the victim is a minor, the court shall order such person to undergo hepatitis and HIV testing within 48 hours after the information, indictment, or petition for delinquency is filed. In the event the victim or, if the victim is a minor, the victim's parent or legal guardian requests hepatitis and HIV testing after 48 hours have elapsed from the filing of the indictment, information, or petition for delinquency, the testing shall be done within 48 hours after the

274 request.

275 (b) However, when a victim of any sexual offense
276 enumerated in s. 775.0877(1)(a)-(m) ~~s. 775.0877(1)(a)-(n)~~ is
277 under the age of 18 at the time the offense was committed or
278 when a victim of any sexual offense enumerated in s.
279 775.0877(1)(a)-(m) ~~s. 775.0877(1)(a)-(n)~~ or s. 825.1025 is a
280 disabled adult or elderly person as defined in s. 825.1025
281 regardless of whether the offense involves the transmission of
282 bodily fluids from one person to another, then upon the request
283 of the victim or the victim's legal guardian, or of the parent
284 or legal guardian, the court shall order such person to undergo
285 hepatitis and HIV testing within 48 hours after the information,
286 indictment, or petition for delinquency is filed. In the event
287 the victim or, if the victim is a minor, the victim's parent or
288 legal guardian requests hepatitis and HIV testing after 48 hours
289 have elapsed from the filing of the indictment, information, or
290 petition for delinquency, the testing shall be done within 48
291 hours after the request. The testing shall be performed under
292 the direction of the Department of Health in accordance with s.
293 381.004. The results of a hepatitis and HIV test performed on a
294 defendant or juvenile offender pursuant to this subsection shall
295 not be admissible in any criminal or juvenile proceeding arising
296 out of the alleged offense.

297 (3) DISCLOSURE OF RESULTS.—

298 (a) The results of the test shall be disclosed no later

299 | than 2 weeks after the court receives such results, under the
300 | direction of the Department of Health, to the person charged
301 | with or alleged by petition for delinquency to have committed or
302 | to the person convicted of or adjudicated delinquent for any
303 | offense enumerated in s. 775.0877(1)(a)-(m) ~~s. 775.0877(1)(a)-~~
304 | ~~(n)~~, which involves the transmission of body fluids from one
305 | person to another, and, upon request, to the victim or the
306 | victim's legal guardian, or the parent or legal guardian of the
307 | victim if the victim is a minor, and to public health agencies
308 | pursuant to s. 775.0877. If the alleged offender is a juvenile,
309 | the test results shall also be disclosed to the parent or
310 | guardian. When the victim is a victim as described in paragraph
311 | (2)(b), the test results must also be disclosed no later than 2
312 | weeks after the court receives such results, to the person
313 | charged with or alleged by petition for delinquency to have
314 | committed or to the person convicted of or adjudicated
315 | delinquent for any offense enumerated in s. 775.0877(1)(a)-(m)
316 | ~~s. 775.0877(1)(a)-(n)~~, or s. 825.1025 regardless of whether the
317 | offense involves the transmission of bodily fluids from one
318 | person to another, and, upon request, to the victim or the
319 | victim's legal guardian, or the parent or legal guardian of the
320 | victim, and to public health agencies pursuant to s. 775.0877.
321 | Otherwise, hepatitis and HIV test results obtained pursuant to
322 | this section are confidential and exempt from the provisions of
323 | s. 119.07(1) and s. 24(a), Art. I of the State Constitution and

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324 | shall not be disclosed to any other person except as expressly
325 | authorized by law or court order.

326 | Section 9. This act shall take effect July 1, 2019.