

By Senator Garcia

36-00181B-17

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1 A bill to be entitled
2 An act relating to transmission of disease through
3 bodily fluids; amending s. 381.0041, F.S.;
4 reclassifying a criminal offense relating to the
5 donation of blood, plasma, organs, skin, or other
6 human tissue; providing an exception to allow such
7 donation when deemed medically appropriate by a
8 licensed physician; amending s. 384.23, F.S.; defining
9 the terms "sexual conduct" and "substantial risk of
10 transmission"; amending s. 384.24, F.S.; expanding the
11 scope of unlawful acts by a person infected with a
12 sexually transmissible disease; amending s. 384.34,
13 F.S.; reclassifying specified criminal offenses;
14 eliminating a fine for specified rule violations;
15 amending s. 775.0877, F.S.; requiring that a person
16 who commits, rather than one who attempts to commit,
17 an offense involving the transmission of semen or
18 vaginal secretions must undergo HIV testing;
19 eliminating the application of the section to certain
20 offenses; revising disclosure requirements;
21 reclassifying specified criminal offenses; amending s.
22 796.08, F.S.; authorizing, rather than requiring, an
23 infected arrestee to request, rather than to submit
24 to, appropriate treatment; requiring the Department of
25 Health to pay any costs associated with the screening
26 of such arrestees; eliminating requirements that
27 persons convicted of specified offenses undergo
28 screening for a sexually transmitted disease;
29 eliminating certain crimes related to prostitution;
30 amending s. 960.003, F.S.; substantially revising the
31 focus of the section from the testing of alleged
32 perpetrators and the disclosure of results of that

36-00181B-17

2017628__

33 testing to the medical treatment and care of victims
34 of sexual assault involving the exchange of bodily
35 fluids presenting a substantial risk of HIV infection;
36 revising legislative findings; requiring that the
37 department refer such victims to medical services;
38 requiring that the medical services include the offer
39 of postexposure prophylaxis; requiring the department
40 to ensure that certain out-of-pocket expenses to
41 victims not exceed a specified amount; amending ss.
42 381.004, 921.0022, and 951.27, F.S.; conforming
43 provisions to changes made by the act; providing an
44 effective date.

45
46 Be It Enacted by the Legislature of the State of Florida:

47
48 Section 1. Paragraph (b) of subsection (11) of section
49 381.0041, Florida Statutes, is amended to read:

50 381.0041 Donation and transfer of human tissue; testing
51 requirements.—

52 (11)

53 (b) Except when the donation is deemed medically
54 appropriate by a licensed physician, any person who has human
55 immunodeficiency virus infection, who knows he or she is
56 infected with human immunodeficiency virus, and who has been
57 informed that he or she may communicate this disease by donating
58 blood, plasma, organs, skin, or other human tissue who donates
59 blood, plasma, organs, skin, or other human tissue commits ~~is~~
60 ~~guilty of a misdemeanor felony~~ of the first ~~third~~ degree,
61 punishable as provided in s. 775.082 or, s. 775.083, ~~or s.~~

36-00181B-17

2017628__

62 ~~775.084.~~

63 Section 2. Section 384.23, Florida Statutes, is amended to
64 read:

65 384.23 Definitions.—As used in this chapter, the term:

66 (1) "Department" means the Department of Health.

67 (2) "County health department" means agencies and entities
68 as designated in chapter 154.

69 (3) "Sexual conduct" means any sexual activity involving
70 the physical contact of the sexual organs of a person with the
71 genitals, mouth, or anus of another person, whether such persons
72 are of the same or the opposite sex.

73 (4)~~(3)~~ "Sexually transmissible disease" means a bacterial,
74 viral, fungal, or parasitic disease determined by rule of the
75 department to be sexually transmissible, to be a threat to the
76 public health and welfare, and to be a disease for which a
77 legitimate public interest will be served by providing for
78 prevention, elimination, control, and treatment. The department
79 must, by rule, determine which diseases are to be designated as
80 sexually transmissible diseases and shall consider the
81 recommendations and classifications of the Centers for Disease
82 Control and Prevention and other nationally recognized medical
83 authorities in that determination. Not all diseases that are
84 sexually transmissible need be designated for the purposes of
85 this act.

86 (5) "Substantial risk of transmission" means a reasonable
87 probability of disease transmission as proven by competent
88 medical or epidemiological evidence.

89 Section 3. Section 384.24, Florida Statutes, is amended to
90 read:

36-00181B-17

2017628__

91 384.24 Unlawful acts.—

92 (1) It is unlawful for any person who has chancroid,
93 gonorrhea, granuloma inguinale, lymphogranuloma venereum,
94 genital herpes simplex, chlamydia, nongonococcal urethritis
95 (NGU), pelvic inflammatory disease (PID)/acute salpingitis, or
96 syphilis, when such person knows he or she is infected with one
97 or more of these diseases and ~~when such person~~ has been informed
98 that he or she may communicate the ~~this~~ disease to another
99 person through sexual conduct ~~intercourse~~, to engage in ~~have~~
100 sexual conduct ~~intercourse~~ with any other person, unless such
101 other person has been informed of the presence of the sexually
102 transmissible disease and has consented to the sexual conduct
103 ~~intercourse~~.

104 (2) It is unlawful for any person who has human
105 immunodeficiency virus infection, when such person knows he or
106 she is infected with this disease and when such person has been
107 informed that he or she may communicate this disease to another
108 person through sexual conduct ~~intercourse~~, to engage in ~~have~~
109 sexual conduct ~~intercourse~~ with any other person, unless such
110 other person has been informed of the presence of the sexually
111 transmissible disease and has consented to the sexual conduct
112 ~~intercourse~~.

113 Section 4. Section 384.34, Florida Statutes, is amended to
114 read:

115 384.34 Penalties.—

116 (1) Any person who violates s. 384.24 ~~the provisions of s.~~
117 ~~384.24(1)~~ commits a misdemeanor of the first degree, punishable
118 as provided in s. 775.082 or s. 775.083.

119 (2) Any person who violates ~~the provisions of~~ s. 384.26 or

36-00181B-17

2017628__

120 s. 384.29 commits a misdemeanor of the first degree, punishable
121 as provided in s. 775.082 or s. 775.083.

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

127 ~~(4) Any person who violates the provisions of the~~
128 ~~department's rules pertaining to sexually transmissible diseases~~
129 ~~may be punished by a fine not to exceed \$500 for each violation.~~
130 ~~Any penalties enforced under this subsection shall be in~~
131 ~~addition to other penalties provided by this chapter. The~~
132 ~~department may enforce this section and adopt rules necessary to~~
133 ~~administer this section.~~

134 ~~(5) Any person who violates s. 384.24(2) commits a felony~~
135 ~~of the third degree, punishable as provided in s. 775.082, s.~~
136 ~~775.083, or s. 775.084. Any person who commits multiple~~
137 ~~violations of s. 384.24(2) commits a felony of the first degree,~~
138 ~~punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~

139 (4)~~(6)~~ Any person who obtains information that identifies
140 an individual who has a sexually transmissible disease, who knew
141 or should have known the nature of the information and
142 maliciously, or for monetary gain, disseminates this information
143 or otherwise makes this information known to any other person,
144 except by providing it either to a physician or nurse employed
145 by the Department of Health or to a law enforcement agency,
146 commits a misdemeanor of the first degree ~~felony of the third~~
147 ~~degree~~, punishable as provided in s. 775.082 or ~~s. 775.083, or~~
148 ~~s. 775.084.~~

36-00181B-17

2017628__

149 Section 5. Section 775.0877, Florida Statutes, is amended
150 to read:

151 775.0877 Criminal transmission of HIV; procedures;
152 penalties.—

153 (1) In any case in which a person has been convicted of or
154 has pled nolo contendere or guilty to, regardless of whether
155 adjudication is withheld, any of the following offenses, ~~or the~~
156 ~~attempt thereof~~, which offense ~~or attempted offense~~ involves the
157 transmission of semen or vaginal secretions ~~body fluids~~ from one
158 person to another:

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

160 (b) Section 826.04, relating to incest;

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

164 (d) Sections 784.011, 784.07(2)(a), and 784.08(2)(d),
165 relating to assault;

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

168 (f) Sections 784.03, 784.07(2)(b), and 784.08(2)(c),
169 relating to battery;

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

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

173 (i) Section 827.03(2)(a), relating to aggravated child
174 abuse;

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

177 (k) Section 825.102(2), relating to aggravated abuse of an

36-00181B-17

2017628__

178 elderly person or disabled adult;

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

181 ~~(m) Sections 796.07 and 796.08, relating to prostitution;~~

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

184 (m)~~(o)~~ Sections 787.06(3)(b), (d), (f), and (g), relating
185 to human trafficking,

186

187 the court shall order the offender to undergo HIV testing, to be
188 performed under the direction of the Department of Health in
189 accordance with s. 381.004, unless the offender has undergone
190 HIV testing voluntarily or pursuant to procedures established in
191 s. 381.004(2)(h)6. or s. 951.27, or any other applicable law or
192 rule providing for HIV testing of criminal offenders or inmates,
193 subsequent to her or his arrest for an offense enumerated in
194 paragraphs (a)-(l) ~~(a)-(n)~~ for which she or he was convicted or
195 to which she or he pled nolo contendere or guilty. The results
196 of an HIV test performed on an offender pursuant to this
197 subsection are not admissible in any criminal proceeding arising
198 out of the alleged offense.

199 (2) The results of the HIV test must be disclosed under the
200 direction of the Department of Health, to the offender who has
201 been convicted of or pled nolo contendere or guilty to an
202 offense specified in subsection (1) and to, the public health
203 agency of the county in which the conviction occurred and, if
204 different, the county of residence of the offender, ~~and, upon~~
205 ~~request pursuant to s. 960.003, to the victim or the victim's~~
206 ~~legal guardian, or the parent or legal guardian of the victim if~~

36-00181B-17

2017628__

207 ~~the victim is a minor.~~

208 (3) An offender who has undergone HIV testing pursuant to
209 subsection (1), and to whom positive test results have been
210 disclosed pursuant to subsection (2), who commits a second or
211 subsequent offense enumerated in paragraphs (1) (a)-(l) which
212 results in transmission of HIV to the victim ~~(1) (a)-(n)~~, commits
213 criminal transmission of HIV, a misdemeanor of the first degree
214 ~~felony of the third degree~~, punishable as provided in s. 775.082
215 ~~or~~ s. 775.083, ~~or s. 775.084~~. A person may be convicted and
216 sentenced separately for a violation of this subsection and for
217 the underlying crime enumerated in paragraphs (1) (a)-(l) ~~(1) (a)-~~
218 ~~(n)~~.

219 (4) An offender may challenge the positive results of an
220 HIV test performed pursuant to this section and may introduce
221 results of a backup test performed at her or his own expense.

222 ~~(5) Nothing in this section requires that an HIV infection~~
223 ~~have occurred in order for an offender to have committed~~
224 ~~criminal transmission of HIV.~~

225 (5)(6) For an alleged violation of any offense enumerated
226 in paragraphs (1) (a)-(l) ~~(1) (a)-(n)~~ for which the consent of the
227 victim may be raised as a defense in a criminal prosecution, it
228 is an affirmative defense to a charge of violating this section
229 that the person exposed knew that the offender was infected with
230 HIV, knew that the action being taken could result in
231 transmission of the HIV infection, and consented to the action
232 voluntarily with that knowledge.

233 Section 6. Section 796.08, Florida Statutes, is amended to
234 read:

235 796.08 Screening for HIV and sexually transmissible

36-00181B-17

2017628__

236 diseases; providing penalties.—

237 (1) (a) For the purposes of this section, the term "sexually
238 transmissible disease" means a bacterial, viral, fungal, or
239 parasitic disease, determined by rule of the Department of
240 Health to be sexually transmissible, a threat to the public
241 health and welfare, and a disease for which a legitimate public
242 interest is served by providing for regulation and treatment.

243 (b) In considering which diseases are designated as
244 sexually transmissible diseases, the Department of Health shall
245 consider such diseases as chancroid, gonorrhea, granuloma
246 inguinale, lymphogranuloma venereum, genital herpes simplex,
247 chlamydia, nongonococcal urethritis (NGU), pelvic inflammatory
248 disease (PID)/acute salpingitis, syphilis, and human
249 immunodeficiency virus infection for designation and shall
250 consider the recommendations and classifications of the Centers
251 for Disease Control and Prevention and other nationally
252 recognized authorities. Not all diseases that are sexually
253 transmissible need be designated for purposes of this section.

254 (2) A person arrested under s. 796.07 may request screening
255 for a sexually transmissible disease under direction of the
256 Department of Health and, if infected, may request ~~shall submit~~
257 ~~to~~ appropriate treatment and counseling. The Department of
258 Health shall ~~A person who requests screening for a sexually~~
259 ~~transmissible disease under this subsection must~~ pay any costs
260 associated with such screening.

261 ~~(3) A person convicted under s. 796.07 of prostitution or~~
262 ~~procuring another to commit prostitution must undergo screening~~
263 ~~for a sexually transmissible disease, including, but not limited~~
264 ~~to, screening to detect exposure to the human immunodeficiency~~

36-00181B-17

2017628__

265 ~~virus, under direction of the Department of Health. If the~~
266 ~~person is infected, he or she must submit to treatment and~~
267 ~~counseling prior to release from probation, community control,~~
268 ~~or incarceration. Notwithstanding the provisions of s. 384.29,~~
269 ~~the results of tests conducted pursuant to this subsection shall~~
270 ~~be made available by the Department of Health to the offender,~~
271 ~~medical personnel, appropriate state agencies, state attorneys,~~
272 ~~and courts of appropriate jurisdiction in need of such~~
273 ~~information in order to enforce the provisions of this chapter.~~

274 ~~(4) A person who commits prostitution or procures another~~
275 ~~for prostitution and who, prior to the commission of such crime,~~
276 ~~had tested positive for a sexually transmissible disease other~~
277 ~~than human immunodeficiency virus infection and knew or had been~~
278 ~~informed that he or she had tested positive for such sexually~~
279 ~~transmissible disease and could possibly communicate such~~
280 ~~disease to another person through sexual activity commits a~~
281 ~~misdemeanor of the first degree, punishable as provided in s.~~
282 ~~775.082 or s. 775.083. A person may be convicted and sentenced~~
283 ~~separately for a violation of this subsection and for the~~
284 ~~underlying crime of prostitution or procurement of prostitution.~~

285 ~~(5) A person who:~~

286 ~~(a) Commits or offers to commit prostitution; or~~

287 ~~(b) Procures another for prostitution by engaging in sexual~~
288 ~~activity in a manner likely to transmit the human~~
289 ~~immunodeficiency virus,~~

290
291 ~~and who, prior to the commission of such crime, had tested~~
292 ~~positive for human immunodeficiency virus and knew or had been~~
293 ~~informed that he or she had tested positive for human~~

36-00181B-17

2017628__

294 ~~immunodeficiency virus and could possibly communicate such~~
295 ~~disease to another person through sexual activity commits~~
296 ~~criminal transmission of HIV, a felony of the third degree,~~
297 ~~punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~
298 ~~A person may be convicted and sentenced separately for a~~
299 ~~violation of this subsection and for the underlying crime of~~
300 ~~prostitution or procurement of prostitution.~~

301 Section 7. Section 960.003, Florida Statutes, is amended to
302 read:

303 960.003 Preventive medical treatment and care for victims
304 of sexual assault involving the exchange of bodily fluids
305 presenting a substantial risk of transmission of HIV Hepatitis
306 and HIV testing for persons charged with or alleged by petition
307 for delinquency to have committed certain offenses; disclosure
308 of results to victims.-

309 (1) LEGISLATIVE FINDINGS ~~INTENT~~.—The Legislature finds that
310 victims of sexual assault involving the exchange of bodily
311 fluids that present a substantial risk of transmission of the
312 human immunodeficiency virus (HIV) should have access to
313 appropriate medical care and affordable postexposure prophylaxis
314 to prevent the acquisition of HIV ~~a victim of a criminal offense~~
315 ~~which involves the transmission of body fluids, or which~~
316 ~~involves certain sexual offenses in which the victim is a minor,~~
317 ~~disabled adult, or elderly person, is entitled to know at the~~
318 ~~earliest possible opportunity whether the person charged with or~~
319 ~~alleged by petition for delinquency to have committed the~~
320 ~~offense has tested positive for hepatitis or human~~
321 ~~immunodeficiency virus (HIV) infection. The Legislature finds~~
322 ~~that to deny victims access to hepatitis and HIV test results~~

36-00181B-17

2017628__

323 ~~causes unnecessary mental anguish in persons who have already~~
324 ~~suffered trauma. The Legislature further finds that since~~
325 ~~medical science now recognizes that early diagnosis is a~~
326 ~~critical factor in the treatment of hepatitis and HIV infection,~~
327 ~~both the victim and the person charged with or alleged by~~
328 ~~petition for delinquency to have committed the offense benefit~~
329 ~~from prompt disclosure of hepatitis and HIV test results.~~

330 (2) REFERRAL TO MEDICAL SERVICES REQUIRED ~~TESTING OF PERSON~~
331 ~~CHARGED WITH OR ALLEGED BY PETITION FOR DELINQUENCY TO HAVE~~
332 ~~COMMITTED CERTAIN OFFENSES.-~~

333 ~~(a) In~~ The Department of Health shall refer for medical
334 services any case in which a person who alleges that he or she
335 has been the victim of a sexual assault involving an exchange of
336 bodily fluids which presents a substantial risk of transmission
337 of the human immunodeficiency virus (HIV). Such services must
338 include the offer of postexposure prophylaxis (PEP) to prevent
339 the acquisition of HIV. The Department of Health shall ensure
340 that any person electing to take PEP under this subsection does
341 not incur out-of-pocket expenses of more than \$30 in obtaining
342 this medication ~~has been charged by information or indictment~~
343 ~~with or alleged by petition for delinquency to have committed~~
344 ~~any offense enumerated in s. 775.0877(1)(a)-(n), which involves~~
345 ~~the transmission of body fluids from one person to another, upon~~
346 ~~request of the victim or the victim's legal guardian, or of the~~
347 ~~parent or legal guardian of the victim if the victim is a minor,~~
348 ~~the court shall order such person to undergo hepatitis and HIV~~
349 ~~testing within 48 hours after the information, indictment, or~~
350 ~~petition for delinquency is filed. In the event the victim or,~~
351 ~~if the victim is a minor, the victim's parent or legal guardian~~

36-00181B-17

2017628__

352 ~~requests hepatitis and HIV testing after 48 hours have elapsed~~
353 ~~from the filing of the indictment, information, or petition for~~
354 ~~delinquency, the testing shall be done within 48 hours after the~~
355 ~~request.~~

356 ~~(b) However, when a victim of any sexual offense enumerated~~
357 ~~in s. 775.0877(1)(a)-(n) is under the age of 18 at the time the~~
358 ~~offense was committed or when a victim of any sexual offense~~
359 ~~enumerated in s. 775.0877(1)(a)-(n) or s. 825.1025 is a disabled~~
360 ~~adult or elderly person as defined in s. 825.1025 regardless of~~
361 ~~whether the offense involves the transmission of bodily fluids~~
362 ~~from one person to another, then upon the request of the victim~~
363 ~~or the victim's legal guardian, or of the parent or legal~~
364 ~~guardian, the court shall order such person to undergo hepatitis~~
365 ~~and HIV testing within 48 hours after the information,~~
366 ~~indictment, or petition for delinquency is filed. In the event~~
367 ~~the victim or, if the victim is a minor, the victim's parent or~~
368 ~~legal guardian requests hepatitis and HIV testing after 48 hours~~
369 ~~have elapsed from the filing of the indictment, information, or~~
370 ~~petition for delinquency, the testing shall be done within 48~~
371 ~~hours after the request. The testing shall be performed under~~
372 ~~the direction of the Department of Health in accordance with s.~~
373 ~~381.004. The results of a hepatitis and HIV test performed on a~~
374 ~~defendant or juvenile offender pursuant to this subsection shall~~
375 ~~not be admissible in any criminal or juvenile proceeding arising~~
376 ~~out of the alleged offense.~~

377 ~~(c) If medically appropriate, followup HIV testing shall be~~
378 ~~provided when testing has been ordered under paragraph (a) or~~
379 ~~paragraph (b). The medical propriety of followup HIV testing~~
380 ~~shall be based upon a determination by a physician and does not~~

36-00181B-17

2017628__

381 ~~require an additional court order. Notification to the victim,~~
382 ~~or to the victim's parent or legal guardian, and to the~~
383 ~~defendant of the results of each followup test shall be made as~~
384 ~~soon as practicable in accordance with this section.~~

385 ~~(3) DISCLOSURE OF RESULTS.~~

386 ~~(a) The results of the test shall be disclosed no later~~
387 ~~than 2 weeks after the court receives such results, under the~~
388 ~~direction of the Department of Health, to the person charged~~
389 ~~with or alleged by petition for delinquency to have committed or~~
390 ~~to the person convicted of or adjudicated delinquent for any~~
391 ~~offense enumerated in s. 775.0877(1)(a)-(n), which involves the~~
392 ~~transmission of body fluids from one person to another, and,~~
393 ~~upon request, to the victim or the victim's legal guardian, or~~
394 ~~the parent or legal guardian of the victim if the victim is a~~
395 ~~minor, and to public health agencies pursuant to s. 775.0877. If~~
396 ~~the alleged offender is a juvenile, the test results shall also~~
397 ~~be disclosed to the parent or guardian. When the victim is a~~
398 ~~victim as described in paragraph (2)(b), the test results must~~
399 ~~also be disclosed no later than 2 weeks after the court receives~~
400 ~~such results, to the person charged with or alleged by petition~~
401 ~~for delinquency to have committed or to the person convicted of~~
402 ~~or adjudicated delinquent for any offense enumerated in s.~~
403 ~~775.0877(1)(a)-(n), or s. 825.1025 regardless of whether the~~
404 ~~offense involves the transmission of bodily fluids from one~~
405 ~~person to another, and, upon request, to the victim or the~~
406 ~~victim's legal guardian, or the parent or legal guardian of the~~
407 ~~victim, and to public health agencies pursuant to s. 775.0877.~~
408 ~~Otherwise, hepatitis and HIV test results obtained pursuant to~~
409 ~~this section are confidential and exempt from the provisions of~~

36-00181B-17

2017628__

410 ~~s. 119.07(1) and s. 24(a), Art. I of the State Constitution and~~
411 ~~shall not be disclosed to any other person except as expressly~~
412 ~~authorized by law or court order.~~

413 ~~(b) At the time that the results are disclosed to the~~
414 ~~victim or the victim's legal guardian, or to the parent or legal~~
415 ~~guardian of a victim if the victim is a minor, the same~~
416 ~~immediate opportunity for face-to-face counseling which must be~~
417 ~~made available under s. 381.004 to those who undergo hepatitis~~
418 ~~and HIV testing shall also be afforded to the victim or the~~
419 ~~victim's legal guardian, or to the parent or legal guardian of~~
420 ~~the victim if the victim is a minor.~~

421 ~~(4) POSTCONVICTION TESTING. If, for any reason, the testing~~
422 ~~requested under subsection (2) has not been undertaken, then~~
423 ~~upon request of the victim or the victim's legal guardian, or~~
424 ~~the parent or legal guardian of the victim if the victim is a~~
425 ~~minor, the court shall order the offender to undergo hepatitis~~
426 ~~and HIV testing following conviction or delinquency~~
427 ~~adjudication. The testing shall be performed under the direction~~
428 ~~of the Department of Health, and the results shall be disclosed~~
429 ~~in accordance with the provisions of subsection (3).~~

430 ~~(5) EXCEPTIONS. Subsections (2) and (4) do not apply if:~~

431 ~~(a) The person charged with or convicted of or alleged by~~
432 ~~petition for delinquency to have committed or been adjudicated~~
433 ~~delinquent for an offense described in subsection (2) has~~
434 ~~undergone hepatitis and HIV testing voluntarily or pursuant to~~
435 ~~procedures established in s. 381.004(2)(h)6. or s. 951.27, or~~
436 ~~any other applicable law or rule providing for hepatitis and HIV~~
437 ~~testing of criminal defendants, inmates, or juvenile offenders,~~
438 ~~subsequent to his or her arrest, conviction, or delinquency~~

36-00181B-17

2017628__

439 ~~adjudication for the offense for which he or she was charged or~~
440 ~~alleged by petition for delinquency to have committed; and~~

441 ~~(b) The results of such hepatitis and HIV testing have been~~
442 ~~furnished to the victim or the victim's legal guardian, or the~~
443 ~~parent or legal guardian of the victim if the victim is a minor.~~

444 ~~(6) TESTING DURING INCARCERATION, DETENTION, OR PLACEMENT;~~
445 ~~DISCLOSURE. In any case in which a person convicted of or~~
446 ~~adjudicated delinquent for an offense described in subsection~~
447 ~~(2) has not been tested under subsection (2), but undergoes~~
448 ~~hepatitis and HIV testing during his or her incarceration,~~
449 ~~detention, or placement, the results of the initial hepatitis~~
450 ~~and HIV testing shall be disclosed in accordance with subsection~~
451 ~~(3). Except as otherwise requested by the victim or the victim's~~
452 ~~legal guardian, or the parent or guardian of the victim if the~~
453 ~~victim is a minor, if the initial test is conducted within the~~
454 ~~first year of the imprisonment, detention, or placement, the~~
455 ~~request for disclosure shall be considered a standing request~~
456 ~~for any subsequent hepatitis and HIV test results obtained~~
457 ~~within 1 year after the initial hepatitis and HIV tests are~~
458 ~~performed, and need not be repeated for each test~~
459 ~~administration. Where the inmate or juvenile offender has~~
460 ~~previously been tested pursuant to subsection (2) the request~~
461 ~~for disclosure under this subsection shall be considered a~~
462 ~~standing request for subsequent hepatitis and HIV results~~
463 ~~conducted within 1 year of the test performed pursuant to~~
464 ~~subsection (2). If the hepatitis and HIV testing is performed by~~
465 ~~an agency other than the Department of Health, that agency shall~~
466 ~~be responsible for forwarding the test results to the Department~~
467 ~~of Health for disclosure in accordance with the provisions of~~

36-00181B-17

2017628__

468 ~~subsection (3). This subsection shall not be limited to results~~
469 ~~of hepatitis and HIV tests administered subsequent to June 27,~~
470 ~~1990, but shall also apply to the results of all hepatitis and~~
471 ~~HIV tests performed on inmates convicted of or juvenile~~
472 ~~offenders adjudicated delinquent for sex offenses as described~~
473 ~~in subsection (2) during their incarceration, detention, or~~
474 ~~placement prior to June 27, 1990.~~

475 Section 8. Paragraphs (f) and (h) of subsection (2) of
476 section 381.004, Florida Statutes, are amended to read:

477 381.004 HIV testing.—

478 (2) HUMAN IMMUNODEFICIENCY VIRUS TESTING; INFORMED CONSENT;
479 RESULTS; COUNSELING; CONFIDENTIALITY.—

480 (f) Except as provided in this section, the identity of a
481 person upon whom a test has been performed is confidential and
482 exempt from the provisions of s. 119.07(1). No person to whom
483 the results of a test have been disclosed may disclose the test
484 results to another person except as authorized by this
485 subsection and by s. 951.27 ~~ss. 951.27 and 960.003~~. Whenever
486 disclosure is made pursuant to this subsection, it shall be
487 accompanied by a statement in writing which includes the
488 following or substantially similar language: "This information
489 has been disclosed to you from records whose confidentiality is
490 protected by state law. State law prohibits you from making any
491 further disclosure of such information without the specific
492 written consent of the person to whom such information pertains,
493 or as otherwise permitted by state law. A general authorization
494 for the release of medical or other information is NOT
495 sufficient for this purpose." An oral disclosure shall be
496 accompanied by oral notice and followed by a written notice

36-00181B-17

2017628__

497 within 10 days, except that this notice shall not be required
498 for disclosures made pursuant to subparagraphs (e)3. and 4.

499 (h) Paragraph (a) does not apply:

500 1. When testing for sexually transmissible diseases is
501 required by state or federal law, or by rule, including the
502 following situations:

503 ~~a. HIV testing pursuant to s. 796.08 of persons convicted~~
504 ~~of prostitution or of procuring another to commit prostitution.~~

505 ~~b.~~ HIV testing of inmates pursuant to s. 945.355 before
506 their release from prison by reason of parole, accumulation of
507 gain-time credits, or expiration of sentence.

508 ~~b.e.~~ Testing for HIV by a medical examiner in accordance
509 with s. 406.11.

510 ~~c.d.~~ HIV testing of pregnant women pursuant to s. 384.31.

511 2. To those exceptions provided for blood, plasma, organs,
512 skin, semen, or other human tissue pursuant to s. 381.0041.

513 3. For the performance of an HIV-related test by licensed
514 medical personnel in bona fide medical emergencies if the test
515 results are necessary for medical diagnostic purposes to provide
516 appropriate emergency care or treatment to the person being
517 tested and the patient is unable to consent, as supported by
518 documentation in the medical record. Notification of test
519 results in accordance with paragraph (c) is required.

520 4. For the performance of an HIV-related test by licensed
521 medical personnel for medical diagnosis of acute illness where,
522 in the opinion of the attending physician, providing
523 notification would be detrimental to the patient, as supported
524 by documentation in the medical record, and the test results are
525 necessary for medical diagnostic purposes to provide appropriate

36-00181B-17

2017628__

526 care or treatment to the person being tested. Notification of
527 test results in accordance with paragraph (c) is required if it
528 would not be detrimental to the patient. This subparagraph does
529 not authorize the routine testing of patients for HIV infection
530 without notification.

531 5. If HIV testing is performed as part of an autopsy for
532 which consent was obtained pursuant to s. 872.04.

533 6. For the performance of an HIV test upon a defendant
534 pursuant to the victim's request in a prosecution for any type
535 of sexual battery where a blood sample is taken from the
536 defendant voluntarily, pursuant to court order for any purpose,
537 or pursuant to s. 775.0877 or s. 951.27, ~~or s. 960.003~~;
538 however, the results of an HIV test performed shall be disclosed
539 solely to the victim and the defendant, except as provided in
540 ss. 775.0877 and 951.27, ~~and 960.003~~.

541 7. If an HIV test is mandated by court order.

542 8. For epidemiological research pursuant to s. 381.0031,
543 for research consistent with institutional review boards created
544 by 45 C.F.R. part 46, or for the performance of an HIV-related
545 test for the purpose of research, if the testing is performed in
546 a manner by which the identity of the test subject is not known
547 and may not be retrieved by the researcher.

548 9. If human tissue is collected lawfully without the
549 consent of the donor for corneal removal as authorized by s.
550 765.5185 or enucleation of the eyes as authorized by s. 765.519.

551 10. For the performance of an HIV test upon an individual
552 who comes into contact with medical personnel in such a way that
553 a significant exposure has occurred during the course of
554 employment, within the scope of practice, or during the course

36-00181B-17

2017628__

555 of providing emergency medical assistance to the individual. The
556 term "medical personnel" includes a licensed or certified health
557 care professional; an employee of a health care professional or
558 health care facility; employees of a laboratory licensed under
559 chapter 483; personnel of a blood bank or plasma center; a
560 medical student or other student who is receiving training as a
561 health care professional at a health care facility; and a
562 paramedic or emergency medical technician certified by the
563 department to perform life-support procedures under s. 401.23.

564 a. The occurrence of a significant exposure shall be
565 documented by medical personnel under the supervision of a
566 licensed physician and recorded only in the personnel record of
567 the medical personnel.

568 b. Costs of an HIV test shall be borne by the medical
569 personnel or the employer of the medical personnel. However,
570 costs of testing or treatment not directly related to the
571 initial HIV tests or costs of subsequent testing or treatment
572 may not be borne by the medical personnel or the employer of the
573 medical personnel.

574 c. In order to use the provisions of this subparagraph, the
575 medical personnel must be tested for HIV pursuant to this
576 section or provide the results of an HIV test taken within 6
577 months before the significant exposure if such test results are
578 negative.

579 d. A person who receives the results of an HIV test
580 pursuant to this subparagraph shall maintain the confidentiality
581 of the information received and of the persons tested. Such
582 confidential information is exempt from s. 119.07(1).

583 e. If the source of the exposure is not available and will

36-00181B-17

2017628__

584 not voluntarily present himself or herself to a health facility
585 to be tested for HIV, the medical personnel or the employer of
586 such person acting on behalf of the employee may seek a court
587 order directing the source of the exposure to submit to HIV
588 testing. A sworn statement by a physician licensed under chapter
589 458 or chapter 459 that a significant exposure has occurred and
590 that, in the physician's medical judgment, testing is medically
591 necessary to determine the course of treatment constitutes
592 probable cause for the issuance of an order by the court. The
593 results of the test shall be released to the source of the
594 exposure and to the person who experienced the exposure.

595 11. For the performance of an HIV test upon an individual
596 who comes into contact with nonmedical personnel in such a way
597 that a significant exposure has occurred while the nonmedical
598 personnel provides emergency medical assistance during a medical
599 emergency. For the purposes of this subparagraph, a medical
600 emergency means an emergency medical condition outside of a
601 hospital or health care facility that provides physician care.
602 The test may be performed only during the course of treatment
603 for the medical emergency.

604 a. The occurrence of a significant exposure shall be
605 documented by medical personnel under the supervision of a
606 licensed physician and recorded in the medical record of the
607 nonmedical personnel.

608 b. Costs of any HIV test shall be borne by the nonmedical
609 personnel or the employer of the nonmedical personnel. However,
610 costs of testing or treatment not directly related to the
611 initial HIV tests or costs of subsequent testing or treatment
612 may not be borne by the nonmedical personnel or the employer of

36-00181B-17

2017628__

613 the nonmedical personnel.

614 c. In order to use the provisions of this subparagraph, the
615 nonmedical personnel shall be tested for HIV pursuant to this
616 section or shall provide the results of an HIV test taken within
617 6 months before the significant exposure if such test results
618 are negative.

619 d. A person who receives the results of an HIV test
620 pursuant to this subparagraph shall maintain the confidentiality
621 of the information received and of the persons tested. Such
622 confidential information is exempt from s. 119.07(1).

623 e. If the source of the exposure is not available and will
624 not voluntarily present himself or herself to a health facility
625 to be tested for HIV, the nonmedical personnel or the employer
626 of the nonmedical personnel acting on behalf of the employee may
627 seek a court order directing the source of the exposure to
628 submit to HIV testing. A sworn statement by a physician licensed
629 under chapter 458 or chapter 459 that a significant exposure has
630 occurred and that, in the physician's medical judgment, testing
631 is medically necessary to determine the course of treatment
632 constitutes probable cause for the issuance of an order by the
633 court. The results of the test shall be released to the source
634 of the exposure and to the person who experienced the exposure.

635 12. For the performance of an HIV test by the medical
636 examiner or attending physician upon an individual who expired
637 or could not be resuscitated while receiving emergency medical
638 assistance or care and who was the source of a significant
639 exposure to medical or nonmedical personnel providing such
640 assistance or care.

641 a. HIV testing may be conducted only after appropriate

36-00181B-17

2017628__

642 medical personnel under the supervision of a licensed physician
643 documents in the medical record of the medical personnel or
644 nonmedical personnel that there has been a significant exposure
645 and that, in accordance with the written protocols based on the
646 National Centers for Disease Control and Prevention guidelines
647 on HIV postexposure prophylaxis and in the physician's medical
648 judgment, the information is medically necessary to determine
649 the course of treatment for the medical personnel or nonmedical
650 personnel.

651 b. Costs of an HIV test performed under this subparagraph
652 may not be charged to the deceased or to the family of the
653 deceased person.

654 c. For this subparagraph to be applicable, the medical
655 personnel or nonmedical personnel must be tested for HIV under
656 this section or must provide the results of an HIV test taken
657 within 6 months before the significant exposure if such test
658 results are negative.

659 d. A person who receives the results of an HIV test
660 pursuant to this subparagraph shall comply with paragraph (e).

661 13. For the performance of an HIV-related test medically
662 indicated by licensed medical personnel for medical diagnosis of
663 a hospitalized infant as necessary to provide appropriate care
664 and treatment of the infant if, after a reasonable attempt, a
665 parent cannot be contacted to provide consent. The medical
666 records of the infant must reflect the reason consent of the
667 parent was not initially obtained. Test results shall be
668 provided to the parent when the parent is located.

669 14. For the performance of HIV testing conducted to monitor
670 the clinical progress of a patient previously diagnosed to be

36-00181B-17

2017628__

671 HIV positive.

672 15. For the performance of repeated HIV testing conducted
673 to monitor possible conversion from a significant exposure.

674 Section 9. Paragraph (e) of subsection (3) of section
675 921.0022, Florida Statutes, is amended to read:

676 921.0022 Criminal Punishment Code; offense severity ranking
677 chart.—

678 (3) OFFENSE SEVERITY RANKING CHART

679 (e) LEVEL 5

680

Florida Statute	Felony Degree	Description
316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
316.80(2)	2nd	Unlawful conveyance of fuel; obtaining fuel fraudulently.
322.34(6)	3rd	Careless operation of motor vehicle with suspended license,

681

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36-00181B-17

2017628__

685

resulting in death or
serious bodily injury.

327.30(5)

3rd

Vessel accidents
involving personal
injury; leaving scene.

686

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

36-00181B-17

2017628__

in the commercial
harvest of stone crabs
while license is
suspended or revoked.

687

379.367 (4)

3rd

Willful molestation of a
commercial harvester's
spiny lobster trap,
line, or buoy.

688

379.407 (5) (b) 3.

3rd

Possession of 100 or
more undersized spiny
lobsters.

689

~~381.0041(11)(b)~~

3rd

~~Donate blood, plasma, or
organs knowing HIV
positive.~~

690

440.10 (1) (g)

2nd

Failure to obtain
workers' compensation
coverage.

691

440.105 (5)

2nd

Unlawful solicitation
for the purpose of
making workers'
compensation claims.

692

440.381 (2)

2nd

Submission of false,
misleading, or

36-00181B-17

2017628__

incomplete information
with the purpose of
avoiding or reducing
workers' compensation
premiums.

693

624.401 (4) (b) 2.

2nd

Transacting insurance
without a certificate or
authority; premium
collected \$20,000 or
more but less than
\$100,000.

694

626.902 (1) (c)

2nd

Representing an
unauthorized insurer;
repeat offender.

695

790.01 (2)

3rd

Carrying a concealed
firearm.

696

790.162

2nd

Threat to throw or
discharge destructive
device.

697

790.163 (1)

2nd

False report of bomb,
explosive, weapon of
mass destruction, or use
of firearms in violent
manner.

36-00181B-17

2017628__

698

790.221 (1) 2nd Possession of short-barreled shotgun or machine gun.

699

790.23 2nd Felons in possession of firearms, ammunition, or electronic weapons or devices.

700

796.05 (1) 2nd Live on earnings of a prostitute; 1st offense.

701

800.04 (6) (c) 3rd Lewd or lascivious conduct; offender less than 18 years of age.

702

800.04 (7) (b) 2nd Lewd or lascivious exhibition; offender 18 years of age or older.

703

806.111 (1) 3rd Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.

704

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

36-00181B-17

2017628__

than \$50,000.

705

812.015 (8)

3rd

Retail theft; property stolen is valued at \$300 or more and one or more specified acts.

706

812.019 (1)

2nd

Stolen property; dealing in or trafficking in.

707

812.131 (2) (b)

3rd

Robbery by sudden snatching.

708

812.16 (2)

3rd

Owning, operating, or conducting a chop shop.

709

817.034 (4) (a) 2.

2nd

Communications fraud, value \$20,000 to \$50,000.

710

817.234 (11) (b)

2nd

Insurance fraud; property value \$20,000 or more but less than \$100,000.

711

817.2341 (1),
(2) (a) & (3) (a)

3rd

Filing false financial statements, making false entries of material fact or false statements

36-00181B-17

2017628__

regarding property values relating to the solvency of an insuring entity.

712

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.

713

817.611 (2) (a)

2nd

Traffic in or possess 5 to 14 counterfeit credit cards or related documents.

714

817.625 (2) (b)

2nd

Second or subsequent fraudulent use of scanning device or reencoder.

715

825.1025 (4)

3rd

Lewd or lascivious exhibition in the

36-00181B-17

2017628__

presence of an elderly
 person or disabled
 adult.

716

827.071 (4)

2nd

Possess with intent to
 promote any photographic
 material, motion
 picture, etc., which
 includes sexual conduct
 by a child.

717

827.071 (5)

3rd

Possess, control, or
 intentionally view any
 photographic material,
 motion picture, etc.,
 which includes sexual
 conduct by a child.

718

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.

719

843.01

3rd

Resist officer with
 violence to person;
 resist arrest with
 violence.

720

36-00181B-17 2017628__

721	847.0135 (5) (b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
722	847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
723	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
724	874.05 (1) (b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
725	874.05 (2) (a)	2nd	Encouraging or recruiting person under 13 years of age to join a criminal gang.
	893.13 (1) (a) 1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1) (a),

36-00181B-17

2017628__

(1) (b), (1) (d), (2) (a),
 (2) (b), or (2) (c) 4.
 drugs).

726

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) 5.,
 (2) (c) 6., (2) (c) 7.,
 (2) (c) 8., (2) (c) 9., (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.

727

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) 4.
 drugs) within 1,000 feet
 of university.

728

893.13 (1) (e) 2.

2nd

Sell, manufacture, or

36-00181B-17

2017628__

deliver cannabis or other drug prohibited under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) within 1,000 feet of property used for religious services or a specified business site.

729

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)4. drugs) within 1,000 feet of public housing facility.

730

893.13(4)(b)

2nd

Use or hire of minor; deliver to minor other controlled substance.

731

893.1351(1)

3rd

Ownership, lease, or rental for trafficking in or manufacturing of controlled substance.

36-00181B-17

2017628__

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Section 10. Subsection (2) of section 951.27, Florida Statutes, is amended to read:

951.27 Blood tests of inmates.—

(2) Except as otherwise provided in this subsection, serologic blood test results obtained pursuant to subsection (1) are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. However, such results may be provided to employees or officers of the sheriff or chief correctional officer who are responsible for the custody and care of the affected inmate and have a need to know such information, and as provided in s. 775.0877 ~~ss. 775.0877 and 960.003~~. In addition, upon request of the victim or the victim's legal guardian, or the parent or legal guardian of the victim if the victim is a minor, the results of any HIV test performed on an inmate who has been arrested for any sexual offense involving oral, anal, or vaginal penetration by, or union with, the sexual organ of another, shall be disclosed to the victim or the victim's legal guardian, or to the parent or legal guardian of the victim if the victim is a minor. In such cases, the county or municipal detention facility shall furnish the test results to the Department of Health, which is responsible for disclosing the results to public health agencies as provided in s. 775.0877 and to the victim or the victim's legal guardian, or the parent or legal guardian of the victim if the victim is a minor, ~~as provided in s. 960.003(3)~~.

Section 11. This act shall take effect July 1, 2017.