

By Senator Pizzo

38-01286-19

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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:

24
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

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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,

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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

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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~~

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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 offenses
144 committed upon or in the presence of persons less than 16 years
145 of age;

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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 blood,~~
 166 ~~plasma, organs, skin, or other human tissue; or~~

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

169

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

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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 felony of the third
 187 degree, punishable as provided in s. 775.082 or s. 775.083, ~~or~~
 188 ~~s. 775.084~~. A person may be convicted and sentenced separately
 189 for a violation of this subsection and for the underlying crime
 190 enumerated in paragraphs (1) (a)-(m) ~~(1) (a)-(n)~~.

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

193 921.0022 Criminal Punishment Code; offense severity ranking
 194 chart.—

195 (3) OFFENSE SEVERITY RANKING CHART

196 (e) LEVEL 5

197

Florida Statute	Felony Degree	Description
316.027(2) (a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop;

198

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leaving scene.

199

316.1935 (4) (a) 2nd Aggravated fleeing or eluding.

200

316.80 (2) 2nd Unlawful conveyance of fuel;
obtaining fuel fraudulently.

201

322.34 (6) 3rd Careless operation of motor
vehicle with suspended license,
resulting in death or serious
bodily injury.

202

327.30 (5) 3rd Vessel accidents involving
personal injury; leaving scene.

203

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

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crab trap tags; and engaging in the commercial harvest of stone crabs while license is suspended or revoked.

204

379.367 (4)

3rd

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

205

379.407 (5) (b) 3.

3rd

Possession of 100 or more undersized spiny lobsters.

206

~~381.0041(11)(b)~~

3rd

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

207

440.10 (1) (g)

2nd

Failure to obtain workers' compensation coverage.

208

440.105 (5)

2nd

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

209

440.381 (2)

2nd

Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.

210

624.401 (4) (b) 2.

2nd

Transacting insurance without a

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certificate or authority;
 premium collected \$20,000 or
 more but less than \$100,000.

211

626.902 (1) (c) 2nd Representing an unauthorized
 insurer; repeat offender.

212

790.01 (2) 3rd Carrying a concealed firearm.

213

790.162 2nd Threat to throw or discharge
 destructive device.

214

790.163 (1) 2nd False report of bomb,
 explosive, weapon of mass
 destruction, or use of firearms
 in violent manner.

215

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

216

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

217

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

218

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

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age.

219

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

220

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

221

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

222

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

223

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

224

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

225

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

226

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

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227	817.234 (11) (b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
228	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.
229	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.
230	817.611 (2) (a)	2nd	Traffic in or possess 5 to 14 counterfeit credit cards or related documents.
231	817.625 (2) (b)	2nd	Second or subsequent fraudulent use of scanning device, skimming device, or reencoder.

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232

825.1025 (4) 3rd Lewd or lascivious exhibition
in the presence of an elderly
person or disabled adult.

233

827.071 (4) 2nd Possess with intent to promote
any photographic material,
motion picture, etc., which
includes sexual conduct by a
child.

234

827.071 (5) 3rd Possess, control, or
intentionally view any
photographic material, motion
picture, etc., which includes
sexual conduct by a child.

235

828.12 (2) 3rd Tortures any animal with intent
to inflict intense pain,
serious physical injury, or
death.

236

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.

237

843.01 3rd Resist officer with violence to

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person; resist arrest with violence.

238

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

239

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

240

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

241

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

242

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

243

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).

244

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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.

245

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.

246

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

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specified business site.

247

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.

248

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

249

893.1351(1) 3rd Ownership, lease, or rental for trafficking in or manufacturing of controlled substance.

250

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

254 960.003 Hepatitis and HIV testing for persons charged with
 255 or alleged by petition for delinquency to have committed certain
 256 offenses; disclosure of results to victims.—

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

259 (a) In any case in which a person has been charged by
 260 information or indictment with or alleged by petition for
 261 delinquency to have committed any offense enumerated in s.
 262 775.0877(1)(a)-(m) ~~s. 775.0877(1)(a)-(n)~~, which involves the

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263 transmission of body fluids from one person to another, upon
264 request of the victim or the victim's legal guardian, or of the
265 parent or legal guardian of the victim if the victim is a minor,
266 the court shall order such person to undergo hepatitis and HIV
267 testing within 48 hours after the information, indictment, or
268 petition for delinquency is filed. In the event the victim or,
269 if the victim is a minor, the victim's parent or legal guardian
270 requests hepatitis and HIV testing after 48 hours have elapsed
271 from the filing of the indictment, information, or petition for
272 delinquency, the testing shall be done within 48 hours after the
273 request.

274 (b) However, when a victim of any sexual offense enumerated
275 in s. 775.0877(1)(a)-(m) ~~s. 775.0877(1)(a)-(n)~~ is under the age
276 of 18 at the time the offense was committed or when a victim of
277 any sexual offense enumerated in s. 775.0877(1)(a)-(m) ~~s.~~
278 ~~775.0877(1)(a)-(n)~~ or s. 825.1025 is a disabled adult or elderly
279 person as defined in s. 825.1025 regardless of whether the
280 offense involves the transmission of bodily fluids from one
281 person to another, then upon the request of the victim or the
282 victim's legal guardian, or of the parent or legal guardian, the
283 court shall order such person to undergo hepatitis and HIV
284 testing within 48 hours after the information, indictment, or
285 petition for delinquency is filed. In the event the victim or,
286 if the victim is a minor, the victim's parent or legal guardian
287 requests hepatitis and HIV testing after 48 hours have elapsed
288 from the filing of the indictment, information, or petition for
289 delinquency, the testing shall be done within 48 hours after the
290 request. The testing shall be performed under the direction of
291 the Department of Health in accordance with s. 381.004. The

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292 results of a hepatitis and HIV test performed on a defendant or
293 juvenile offender pursuant to this subsection shall not be
294 admissible in any criminal or juvenile proceeding arising out of
295 the alleged offense.

296 (3) DISCLOSURE OF RESULTS.—

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

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321 this section are confidential and exempt from the provisions of
322 s. 119.07(1) and s. 24(a), Art. I of the State Constitution and
323 shall not be disclosed to any other person except as expressly
324 authorized by law or court order.

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