

By Senator Pizzo

38-01596A-21

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1 A bill to be entitled
2 An act relating to the HIV Prevention Justice Act;
3 providing a short title; amending s. 381.0041, F.S.;
4 reducing the degree of criminal penalty for certain
5 persons who are infected with human immunodeficiency
6 virus (HIV) and who donate blood, plasma, organs,
7 skin, or other human tissue for use in another person;
8 providing an exception; amending s. 384.23, F.S.;
9 defining the terms "sexual conduct" and "substantial
10 risk of transmission"; amending s. 384.24, F.S.;
11 revising prohibitions relating to the intentional
12 transmission of certain diseases through sexual
13 conduct; providing exceptions; defining the term
14 "behavioral recommendations"; providing that a
15 person's failure to comply with behavioral
16 recommendations does not de facto establish intent to
17 transmit a disease; amending s. 384.34, F.S.; revising
18 penalties to conform to changes made by the act;
19 amending s. 775.0877, F.S.; revising requirements for
20 HIV testing in cases involving criminal transmission
21 of HIV; conforming provisions to changes made by the
22 act; amending s. 921.0022, F.S.; conforming a
23 provision to changes made by the act; amending s.
24 960.003, F.S.; conforming cross-references; providing
25 an effective date.

26
27 Be It Enacted by the Legislature of the State of Florida:

28
29 Section 1. This act may be cited as the "HIV Prevention

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30 Justice Act."

31 Section 2. Paragraph (b) of subsection (11) of section
32 381.0041, Florida Statutes, is amended to read:

33 381.0041 Donation and transfer of human tissue; testing
34 requirements.-

35 (11)

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

46 Section 3. Section 384.23, Florida Statutes, is amended to
47 read:

48 384.23 Definitions.-As used in this chapter, the term:

49 (2)~~(1)~~ "Department" means the Department of Health.

50 (1)~~(2)~~ "County health department" means agencies and
51 entities as designated in chapter 154.

52 (3) "Sexual conduct" means conduct between persons,
53 regardless of gender, which is capable of transmitting a
54 sexually transmissible disease, including, but not limited to,
55 contact between a:

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

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

58 (4) "Sexually transmissible disease" means a bacterial,

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59 viral, fungal, or parasitic disease determined by rule of the
60 department to be sexually transmissible, to be a threat to the
61 public health and welfare, and to be a disease for which a
62 legitimate public interest will be served by providing for
63 prevention, elimination, control, and treatment. The department
64 must, by rule, determine which diseases are to be designated as
65 sexually transmissible diseases and shall consider the
66 recommendations and classifications of the Centers for Disease
67 Control and Prevention and other nationally recognized medical
68 authorities in that determination. Not all diseases that are
69 sexually transmissible need be designated for the purposes of
70 this act.

71 (5) "Substantial risk of transmission" means a reasonable
72 probability of disease transmission as proven by competent
73 medical evidence.

74 Section 4. Section 384.24, Florida Statutes, is amended to
75 read:

76 384.24 Unlawful acts.—

77 (1) It is unlawful for any person who has chancroid,
78 gonorrhea, granuloma inguinale, lymphogranuloma venereum,
79 genital herpes simplex, chlamydia, nongonococcal urethritis
80 (NGU), pelvic inflammatory disease (PID)/acute salpingitis, ~~or~~
81 syphilis, or human immunodeficiency virus, when such person
82 knows he or she is infected with one or more of these diseases
83 and when such person has been informed that he or she may
84 communicate this disease to another person through sexual
85 conduct intercourse, to act with the intent to transmit the
86 disease, to engage in have sexual conduct that poses a
87 substantial risk of transmission to another person when the

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88 ~~intercourse with any other person is unaware that the person is~~
89 ~~a carrier of the disease, and to transmit the disease to the,~~
90 ~~unless such other person has been informed of the presence of~~
91 ~~the sexually transmissible disease and has consented to the~~
92 ~~sexual intercourse.~~

93 (2) A person does not act with the intent required under
94 subsection (1) if he or she in good faith complies with a
95 treatment regimen prescribed by his or her health care provider
96 or with the behavioral recommendations of his or her health care
97 provider or public health officials to limit the risk of
98 transmission, or if he or she offers to comply with such
99 behavioral recommendations but such offer is rejected by the
100 other person with whom he or she is engaging in sexual conduct.
101 For purposes of this subsection, the term "behavioral
102 recommendations" includes, but is not limited to, the use of a
103 prophylactic device to limit the risk of transmission of the
104 disease. Evidence of the person's failure to comply with such a
105 treatment regimen or such behavioral recommendations is not, in
106 and of itself, sufficient to establish that he or she acted with
107 the intent required under subsection (1) ~~It is unlawful for any~~
108 ~~person who has human immunodeficiency virus infection, when such~~
109 ~~person knows he or she is infected with this disease and when~~
110 ~~such person has been informed that he or she may communicate~~
111 ~~this disease to another person through sexual intercourse, to~~
112 ~~have sexual intercourse with any other person, unless such other~~
113 ~~person has been informed of the presence of the sexually~~
114 ~~transmissible disease and has consented to the sexual~~
115 ~~intercourse.~~

116 Section 5. Subsections (1), (2), (4), (5), and (6) of

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117 section 384.34, Florida Statutes, are amended to read:

118 384.34 Penalties.—

119 (1) Any person who violates s. 384.24 ~~the provisions of s.~~
120 ~~384.24(1)~~ commits a misdemeanor of the first degree, punishable
121 as provided in s. 775.082 or s. 775.083.

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

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

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

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

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146 Section 6. Subsections (1), (3), and (6) of section
147 775.0877, Florida Statutes, are amended to read:

148 775.0877 Criminal transmission of HIV; procedures;
149 penalties.—

150 (1) In any case in which a person has been convicted of or
151 has pled nolo contendere or guilty to, regardless of whether
152 adjudication is withheld, any of the following offenses, or the
153 attempt thereof, which offense or attempted offense involves the
154 transmission of body fluids, with the exception of saliva, from
155 one person to another:

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

157 (b) Section 826.04, relating to incest;

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

161 (d) Sections 784.011, 784.07(2)(a), and 784.08(2)(d),
162 relating to assault;

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

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

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

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

170 (i) Section 827.03(2)(a), relating to aggravated child
171 abuse;

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

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

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175 elderly person or disabled adult;

176 (l) Section 827.071, relating to sexual performance by

177 person less than 18 years of age;

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

179 ~~(n) Section 381.0041(11)(b), relating to donation of blood,~~

180 ~~plasma, organs, skin, or other human tissue; or~~

181 (n)~~(o)~~ Sections 787.06(3)(b), (d), (f), and (g), relating

182 to human trafficking,

183

184 the court shall order the offender to undergo HIV testing, to be

185 performed under the direction of the Department of Health in

186 accordance with s. 381.004, unless the offender has undergone

187 HIV testing voluntarily or pursuant to procedures established in

188 s. 381.004(2)(h)6. or s. 951.27, or any other applicable law or

189 rule providing for HIV testing of criminal offenders or inmates,

190 subsequent to her or his arrest for an offense enumerated in

191 paragraphs (a)-(m) ~~(a)-(n)~~ for which she or he was convicted or

192 to which she or he pled nolo contendere or guilty. The results

193 of an HIV test performed on an offender pursuant to this

194 subsection are not admissible in any criminal proceeding arising

195 out of the alleged offense.

196 (3) An offender who has undergone HIV testing pursuant to

197 subsection (1), and to whom positive test results have been

198 disclosed pursuant to subsection (2), who commits a second or

199 subsequent offense enumerated in paragraphs (1)(a)-(m) ~~(1)(a)-~~

200 ~~(n)~~, commits criminal transmission of HIV, a misdemeanor of the

201 first felony of the third degree, punishable as provided in s.

202 775.082 or, s. 775.083, ~~or s. 775.084~~. A person may be convicted

203 and sentenced separately for a violation of this subsection and

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204 for the underlying crime enumerated in paragraphs (1) (a) - (m)
 205 ~~(1) (a) - (n)~~.

206 (6) For an alleged violation of any offense enumerated in
 207 paragraphs (1) (a) - (m) ~~(1) (a) - (n)~~ for which the consent of the
 208 victim may be raised as a defense in a criminal prosecution, it
 209 is an affirmative defense to a charge of violating this section
 210 that the person exposed knew that the offender was infected with
 211 HIV, knew that the action being taken could result in
 212 transmission of the HIV infection, and consented to the action
 213 voluntarily with that knowledge.

214 Section 7. Paragraph (e) of subsection (3) of section
 215 921.0022, Florida Statutes, is amended to read:

216 921.0022 Criminal Punishment Code; offense severity ranking
 217 chart.-

218 (3) OFFENSE SEVERITY RANKING CHART

219 (e) LEVEL 5

220

| 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. |

221

222

223

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316.80 (2)

2nd

Unlawful conveyance of fuel; obtaining fuel fraudulently.

224

322.34 (6)

3rd

Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.

225

327.30 (5)

3rd

Vessel accidents involving personal injury; leaving scene.

226

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,

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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.

227

379.367(4)

3rd

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

228

379.407(5)(b)3.

3rd

Possession of 100 or
 more undersized spiny
 lobsters.

229

~~381.0041(11)(b)~~

~~3rd~~

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

230

440.10(1)(g)

2nd

Failure to obtain
 workers' compensation
 coverage.

231

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| | | | |
|-----|--------------------|-----|---|
| 232 | 440.105 (5) | 2nd | Unlawful solicitation for the purpose of making workers' compensation claims. |
| 233 | 440.381 (2) | 3rd | Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums. |
| 234 | 624.401 (4) (b) 2. | 2nd | Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000. |
| 235 | 626.902 (1) (c) | 2nd | Representing an unauthorized insurer; repeat offender. |
| 236 | 790.01 (2) | 3rd | Carrying a concealed firearm. |
| 236 | 790.162 | 2nd | Threat to throw or discharge destructive |

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device.

237

790.163 (1)

2nd

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

238

790.221 (1)

2nd

Possession of short-barreled shotgun or machine gun.

239

790.23

2nd

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

240

796.05 (1)

2nd

Live on earnings of a prostitute; 1st offense.

241

800.04 (6) (c)

3rd

Lewd or lascivious conduct; offender less than 18 years of age.

242

800.04 (7) (b)

2nd

Lewd or lascivious exhibition; offender 18 years of age or older.

243

806.111 (1)

3rd

Possess, manufacture, or

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dispense fire bomb with
intent to damage any
structure or property.

244

812.0145 (2) (b)

2nd

Theft from person 65
years of age or older;
\$10,000 or more but less
than \$50,000.

245

812.015 (8) (a) & (c)-(e)

3rd

Retail theft; property
stolen is valued at \$750
or more and one or more
specified acts.

246

812.019 (1)

2nd

Stolen property; dealing
in or trafficking in.

247

812.131 (2) (b)

3rd

Robbery by sudden
snatching.

248

812.16 (2)

3rd

Owning, operating, or
conducting a chop shop.

249

817.034 (4) (a) 2.

2nd

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

250

817.234 (11) (b)

2nd

Insurance fraud;
property value \$20,000

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or more but less than
\$100,000.

251

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.

252

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.

253

817.611 (2) (a)

2nd

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

254

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817.625 (2) (b)

2nd

Second or subsequent fraudulent use of scanning device, skimming device, or reencoder.

255

825.1025 (4)

3rd

Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.

256

827.071 (4)

2nd

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

257

827.071 (5)

3rd

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

258

828.12 (2)

3rd

Tortures any animal with intent to inflict intense pain, serious

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physical injury, or
death.

259

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.

260

843.01

3rd

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

261

847.0135(5)(b)

2nd

Lewd or lascivious exhibition using computer; offender 18 years or older.

262

847.0137(2) & (3)

3rd

Transmission of pornography by electronic device or equipment.

263

847.0138(2) & (3)

3rd

Transmission of material harmful to minors to a minor by electronic device or equipment.

264

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874.05 (1) (b)

2nd

Encouraging or recruiting another to join a criminal gang; second or subsequent offense.

265

874.05 (2) (a)

2nd

Encouraging or recruiting person under 13 years of age to join a criminal gang.

266

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).

267

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,

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county, or municipal park or publicly owned recreational facility or community center.

268

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.

269

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.

270

893.13(1)(f)1.

1st

Sell, manufacture, or deliver cocaine (or

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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.

271

893.13(4)(b)

2nd

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

272

893.1351(1)

3rd

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

273

274

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

278 960.003 Hepatitis and HIV testing for persons charged with
 279 or alleged by petition for delinquency to have committed certain
 280 offenses; disclosure of results to victims.—

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

283 (a) In any case in which a person has been charged by
 284 information or indictment with or alleged by petition for
 285 delinquency to have committed any offense enumerated in s.
 286 775.0877(1)(a)-(m) ~~s. 775.0877(1)(a)-(n)~~, which involves the

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287 transmission of body fluids from one person to another, upon
288 request of the victim or the victim's legal guardian, or of the
289 parent or legal guardian of the victim if the victim is a minor,
290 the court shall order such person to undergo hepatitis and HIV
291 testing within 48 hours after the information, indictment, or
292 petition for delinquency is filed. In the event the victim or,
293 if the victim is a minor, the victim's parent or legal guardian
294 requests hepatitis and HIV testing after 48 hours have elapsed
295 from the filing of the indictment, information, or petition for
296 delinquency, the testing shall be done within 48 hours after the
297 request.

298 (b) However, when a victim of any sexual offense enumerated
299 in s. 775.0877(1)(a)-(m) ~~s. 775.0877(1)(a)-(n)~~ is under the age
300 of 18 at the time the offense was committed or when a victim of
301 any sexual offense enumerated in s. 775.0877(1)(a)-(m) ~~s.~~
302 ~~775.0877(1)(a)-(n)~~ or s. 825.1025 is a disabled adult or elderly
303 person as defined in s. 825.1025 regardless of whether the
304 offense involves the transmission of bodily fluids from one
305 person to another, then upon the request of the victim or the
306 victim's legal guardian, or of the parent or legal guardian, the
307 court shall order such person to undergo hepatitis and HIV
308 testing within 48 hours after the information, indictment, or
309 petition for delinquency is filed. In the event the victim or,
310 if the victim is a minor, the victim's parent or legal guardian
311 requests hepatitis and HIV testing after 48 hours have elapsed
312 from the filing of the indictment, information, or petition for
313 delinquency, the testing shall be done within 48 hours after the
314 request. The testing shall be performed under the direction of
315 the Department of Health in accordance with s. 381.004. The

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316 results of a hepatitis and HIV test performed on a defendant or
317 juvenile offender pursuant to this subsection shall not be
318 admissible in any criminal or juvenile proceeding arising out of
319 the alleged offense.

320 (3) DISCLOSURE OF RESULTS.—

321 (a) The results of the test shall be disclosed no later
322 than 2 weeks after the court receives such results, under the
323 direction of the Department of Health, to the person charged
324 with or alleged by petition for delinquency to have committed or
325 to the person convicted of or adjudicated delinquent for any
326 offense enumerated in s. 775.0877(1)(a)-(m) ~~s. 775.0877(1)(a)-~~
327 ~~(n)~~, which involves the transmission of body fluids from one
328 person to another, and, upon request, to the victim or the
329 victim's legal guardian, or the parent or legal guardian of the
330 victim if the victim is a minor, and to public health agencies
331 pursuant to s. 775.0877. If the alleged offender is a juvenile,
332 the test results shall also be disclosed to the parent or
333 guardian. When the victim is a victim as described in paragraph
334 (2)(b), the test results must also be disclosed no later than 2
335 weeks after the court receives such results, to the person
336 charged with or alleged by petition for delinquency to have
337 committed or to the person convicted of or adjudicated
338 delinquent for any offense enumerated in s. 775.0877(1)(a)-(m)
339 ~~s. 775.0877(1)(a)-(n)~~, or s. 825.1025 regardless of whether the
340 offense involves the transmission of bodily fluids from one
341 person to another, and, upon request, to the victim or the
342 victim's legal guardian, or the parent or legal guardian of the
343 victim, and to public health agencies pursuant to s. 775.0877.
344 Otherwise, hepatitis and HIV test results obtained pursuant to

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

349 Section 9. This act shall take effect July 1, 2021.