

By Senator Pizzo

38-00172-22

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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

3rd

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

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

812.081 (3)

2nd

Trafficking in trade  
secrets.

248

812.131 (2) (b)

3rd

Robbery by sudden  
snatching.

249

812.16 (2)

3rd

Owning, operating, or  
conducting a chop shop.

250

817.034 (4) (a) 2.

2nd

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



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255

cards or related documents.

817.625 (2) (b)

2nd

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

256

825.1025 (4)

3rd

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

257

827.071 (4)

2nd

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

258

827.071 (5)

3rd

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

259

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828.12 (2)

3rd

Tortures any animal with intent to inflict intense pain, serious physical injury, or death.

260

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.

261

843.01

3rd

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

262

847.0135 (5) (b)

2nd

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

263

847.0137  
(2) & (3)

3rd

Transmission of pornography by electronic device or equipment.

264

847.0138  
(2) & (3)

3rd

Transmission of material harmful to minors to a



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minor by electronic device or equipment.

265

874.05 (1) (b)

2nd

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

266

874.05 (2) (a)

2nd

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

267

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).

268

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)

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within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.

269

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.

270

893.13(1)(e)2.

2nd

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



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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  
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

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314 request. The testing shall be performed under the direction of  
315 the Department of Health in accordance with s. 381.004. The  
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

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343 victim, and to public health agencies pursuant to s. 775.0877.  
344 Otherwise, hepatitis and HIV test results obtained pursuant to  
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, 2022.