

By Senator Stewart

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1                   A bill to be entitled  
2           An act relating to the human immunodeficiency virus;  
3           amending s. 775.0877, F.S.; excluding saliva from the  
4           offenses involving the transmission of body fluids for  
5           which certain offenders must undergo HIV testing;  
6           deleting offenses relating to prostitution from the  
7           offenses under which certain offenders must undergo  
8           HIV testing; reducing criminal penalties for the  
9           commission of criminal transmission of HIV; amending  
10          s. 796.08, F.S.; deleting requirements relating to the  
11          screening, treatment, and counseling for sexually  
12          transmissible diseases of certain offenders; deleting  
13          criminal penalties for related violations; making  
14          technical changes; amending s. 960.003, F.S.;  
15          conforming cross-references; amending ss. 98.0751 and  
16          381.004, F.S.; conforming provisions to changes made  
17          by the act; providing an effective date.

18  
19 Be It Enacted by the Legislature of the State of Florida:

20  
21           Section 1. Subsections (1), (3), and (6) of section  
22           775.0877, Florida Statutes, are amended to read:

23           775.0877 Criminal transmission of HIV; procedures;  
24           penalties.—

25           (1) In any case in which a person has been convicted of or  
26           has pled nolo contendere or guilty to, regardless of whether  
27           adjudication is withheld, any of the following offenses, or the  
28           attempt thereof, which offense or attempted offense involves the  
29           transmission of body fluids, excluding saliva, from one person

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30 to another:

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

32 (b) Section 826.04, relating to incest;

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

36 (d) Sections 784.011, 784.07(2)(a), and 784.08(2)(d),  
37 relating to assault;

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

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

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

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

45 (i) Section 827.03(2)(a), relating to aggravated child  
46 abuse;

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

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

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

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

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

56 (n) ~~(o)~~ Sections 787.06(3)(b), (d), (f), and (g), relating  
57 to human trafficking,

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59 the court shall order the offender to undergo HIV testing, to be  
60 performed under the direction of the Department of Health in  
61 accordance with s. 381.004, unless the offender has undergone  
62 HIV testing voluntarily or pursuant to procedures established in  
63 s. 381.004(2)(h)6. or s. 951.27, or any other applicable law or  
64 rule providing for HIV testing of criminal offenders or inmates,  
65 subsequent to her or his arrest for an offense enumerated in  
66 paragraphs (a)-(m) ~~(a)-(n)~~ for which she or he was convicted or  
67 to which she or he pled nolo contendere or guilty. The results  
68 of an HIV test performed on an offender pursuant to this  
69 subsection are not admissible in any criminal proceeding arising  
70 out of the alleged offense.

71 (3) An offender who has undergone HIV testing pursuant to  
72 subsection (1), and to whom positive test results have been  
73 disclosed pursuant to subsection (2), who commits a second or  
74 subsequent offense enumerated in paragraphs (1)(a)-(m) ~~(1)(a)-~~  
75 ~~(n)~~, commits criminal transmission of HIV, a misdemeanor of the  
76 first felony of the third degree, punishable as provided in s.  
77 775.082 or, s. 775.083, ~~or s. 775.084~~. A person may be convicted  
78 and sentenced separately for a violation of this subsection and  
79 for the underlying crime enumerated in paragraphs (1)(a)-(m)  
80 ~~(1)(a)-(n)~~.

81 (6) For an alleged violation of any offense enumerated in  
82 paragraphs (1)(a)-(m) ~~(1)(a)-(n)~~ for which the consent of the  
83 victim may be raised as a defense in a criminal prosecution, it  
84 is an affirmative defense to a charge of violating this section  
85 that the person exposed knew that the offender was infected with  
86 HIV, knew that the action being taken could result in  
87 transmission of the HIV infection, and consented to the action

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88 voluntarily with that knowledge.

89 Section 2. Section 796.08, Florida Statutes, is amended to  
90 read:

91 796.08 Screening for HIV and sexually transmissible  
92 diseases; ~~providing penalties.~~

93 (1) (a) As used in this section, the term ~~For the purposes~~  
94 ~~of this section,~~ "sexually transmissible disease" means a  
95 bacterial, viral, fungal, or parasitic disease, determined by  
96 rule of the Department of Health to be sexually transmissible, a  
97 threat to the public health and welfare, and a disease for which  
98 a legitimate public interest is served by providing for  
99 regulation and treatment.

100 (b) In considering which diseases are designated as  
101 sexually transmissible diseases, the Department of Health shall  
102 consider such diseases as chancroid, gonorrhea, granuloma  
103 inguinale, lymphogranuloma venereum, genital herpes simplex,  
104 chlamydia, nongonococcal urethritis (NGU), pelvic inflammatory  
105 disease (PID)/acute salpingitis, syphilis, and human  
106 immunodeficiency virus infection for designation and shall  
107 consider the recommendations and classifications of the Centers  
108 for Disease Control and Prevention and other nationally  
109 recognized authorities. Not all diseases that are sexually  
110 transmissible need be designated for purposes of this section.

111 (2) A person arrested under s. 796.07 may request screening  
112 for a sexually transmissible disease, including human  
113 immunodeficiency virus, under direction of the Department of  
114 Health and, ~~if infected, shall submit to appropriate treatment~~  
115 ~~and counseling. A person who requests screening for a sexually~~  
116 ~~transmissible disease under this subsection must pay any costs~~

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117 ~~associated with such screening.~~

118 ~~(3) A person convicted under s. 796.07 of prostitution or~~  
119 ~~procuring another to commit prostitution must undergo screening~~  
120 ~~for a sexually transmissible disease, including, but not limited~~  
121 ~~to, screening to detect exposure to the human immunodeficiency~~  
122 ~~virus, under direction of the Department of Health. If the~~  
123 ~~person is infected, he or she must submit to treatment and~~  
124 ~~counseling prior to release from probation, community control,~~  
125 ~~or incarceration. Notwithstanding the provisions of s. 384.29,~~  
126 ~~the results of tests conducted pursuant to this subsection shall~~  
127 ~~be made available by the Department of Health to the offender,~~  
128 ~~medical personnel, appropriate state agencies, state attorneys,~~  
129 ~~and courts of appropriate jurisdiction in need of such~~  
130 ~~information in order to enforce the provisions of this chapter.~~

131 ~~(4) A person who commits prostitution or procures another~~  
132 ~~for prostitution and who, prior to the commission of such crime,~~  
133 ~~had tested positive for a sexually transmissible disease other~~  
134 ~~than human immunodeficiency virus infection and knew or had been~~  
135 ~~informed that he or she had tested positive for such sexually~~  
136 ~~transmissible disease and could possibly communicate such~~  
137 ~~disease to another person through sexual activity commits a~~  
138 ~~misdemeanor of the first degree, punishable as provided in s.~~  
139 ~~775.082 or s. 775.083. A person may be convicted and sentenced~~  
140 ~~separately for a violation of this subsection and for the~~  
141 ~~underlying crime of prostitution or procurement of prostitution.~~

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

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

144 ~~(b) Procures another for prostitution by engaging in sexual~~  
145 ~~activity in a manner likely to transmit the human~~

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146 immunodeficiency virus,

147

148 ~~and who, prior to the commission of such crime, had tested~~  
149 ~~positive for human immunodeficiency virus and knew or had been~~  
150 ~~informed that he or she had tested positive for human~~  
151 ~~immunodeficiency virus and could possibly communicate such~~  
152 ~~disease to another person through sexual activity commits~~  
153 ~~criminal transmission of HIV, a felony of the third degree,~~  
154 ~~punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~  
155 ~~A person may be convicted and sentenced separately for a~~  
156 ~~violation of this subsection and for the underlying crime of~~  
157 ~~prostitution or procurement of prostitution.~~

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

161 960.003 Hepatitis and HIV testing for persons charged with  
162 or alleged by petition for delinquency to have committed certain  
163 offenses; disclosure of results to victims.—

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

166 (a) In any case in which a person has been charged by  
167 information or indictment with or alleged by petition for  
168 delinquency to have committed any offense enumerated in s.  
169 775.0877(1)(a)-(m) ~~s. 775.0877(1)(a)-(n)~~, which involves the  
170 transmission of body fluids from one person to another, upon  
171 request of the victim or the victim's legal guardian, or of the  
172 parent or legal guardian of the victim if the victim is a minor,  
173 the court shall order such person to undergo hepatitis and HIV  
174 testing within 48 hours after the information, indictment, or

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175 petition for delinquency is filed. In the event the victim or,  
176 if the victim is a minor, the victim's parent or legal guardian  
177 requests hepatitis and HIV testing after 48 hours have elapsed  
178 from the filing of the indictment, information, or petition for  
179 delinquency, the testing shall be done within 48 hours after the  
180 request.

181 (b) However, when a victim of any sexual offense enumerated  
182 in s. 775.0877(1)(a)-(m) ~~s. 775.0877(1)(a)-(n)~~ is under the age  
183 of 18 at the time the offense was committed or when a victim of  
184 any sexual offense enumerated in s. 775.0877(1)(a)-(m) ~~s.~~  
185 ~~775.0877(1)(a)-(n)~~ or s. 825.1025 is a disabled adult or elderly  
186 person as defined in s. 825.1025 regardless of whether the  
187 offense involves the transmission of bodily fluids from one  
188 person to another, then upon the request of the victim or the  
189 victim's legal guardian, or of the parent or legal guardian, the  
190 court shall order such person to undergo hepatitis and HIV  
191 testing within 48 hours after the information, indictment, or  
192 petition for delinquency is filed. In the event the victim or,  
193 if the victim is a minor, the victim's parent or legal guardian  
194 requests hepatitis and HIV testing after 48 hours have elapsed  
195 from the filing of the indictment, information, or petition for  
196 delinquency, the testing shall be done within 48 hours after the  
197 request. The testing shall be performed under the direction of  
198 the Department of Health in accordance with s. 381.004. The  
199 results of a hepatitis and HIV test performed on a defendant or  
200 juvenile offender pursuant to this subsection shall not be  
201 admissible in any criminal or juvenile proceeding arising out of  
202 the alleged offense.

203 (3) DISCLOSURE OF RESULTS.-

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204 (a) The results of the test shall be disclosed no later  
205 than 2 weeks after the court receives such results, under the  
206 direction of the Department of Health, to the person charged  
207 with or alleged by petition for delinquency to have committed or  
208 to the person convicted of or adjudicated delinquent for any  
209 offense enumerated in s. 775.0877(1) (a)-(m) ~~s. 775.0877(1) (a)-~~  
210 ~~(n)~~, which involves the transmission of body fluids from one  
211 person to another, and, upon request, to the victim or the  
212 victim's legal guardian, or the parent or legal guardian of the  
213 victim if the victim is a minor, and to public health agencies  
214 pursuant to s. 775.0877. If the alleged offender is a juvenile,  
215 the test results shall also be disclosed to the parent or  
216 guardian. When the victim is a victim as described in paragraph  
217 (2) (b), the test results must also be disclosed no later than 2  
218 weeks after the court receives such results, to the person  
219 charged with or alleged by petition for delinquency to have  
220 committed or to the person convicted of or adjudicated  
221 delinquent for any offense enumerated in s. 775.0877(1) (a)-(m)  
222 ~~s. 775.0877(1) (a)-(n)~~, or s. 825.1025 regardless of whether the  
223 offense involves the transmission of bodily fluids from one  
224 person to another, and, upon request, to the victim or the  
225 victim's legal guardian, or the parent or legal guardian of the  
226 victim, and to public health agencies pursuant to s. 775.0877.  
227 Otherwise, hepatitis and HIV test results obtained pursuant to  
228 this section are confidential and exempt from the provisions of  
229 s. 119.07(1) and s. 24(a), Art. I of the State Constitution and  
230 shall not be disclosed to any other person except as expressly  
231 authorized by law or court order.

232 Section 4. Paragraph (b) of subsection (2) of section



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233 98.0751, Florida Statutes, is amended to read:

234 98.0751 Restoration of voting rights; termination of  
235 ineligibility subsequent to a felony conviction.—

236 (2) For purposes of this section, the term:

237 (b) "Felony sexual offense" means any of the following:

238 1. Any felony offense that serves as a predicate to  
239 registration as a sexual offender in accordance with s.

240 943.0435;

241 2. Section 491.0112;

242 3. Section 784.049(3)(b);

243 4. Section 794.08;

244 5. ~~Section 796.08;~~

245 ~~6.~~ Section 800.101;

246 6.7. Section 826.04;

247 ~~7.8.~~ Section 847.012;

248 ~~8.9.~~ Section 872.06(2);

249 ~~9.10.~~ Section 944.35(3)(b)2.;

250 ~~10.11.~~ Section 951.221(1); or

251 ~~11.12.~~ Any similar offense committed in another

252 jurisdiction which would be an offense listed in this paragraph  
253 if it had been committed in violation of the laws of this state.

254 Section 5. Paragraph (h) of subsection (2) of section

255 381.004, Florida Statutes, is amended to read:

256 381.004 HIV testing.—

257 (2) HUMAN IMMUNODEFICIENCY VIRUS TESTING; INFORMED CONSENT;  
258 RESULTS; COUNSELING; CONFIDENTIALITY.—

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

260 1. When testing for sexually transmissible diseases is  
261 required by state or federal law, or by rule, including the

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262 following situations:

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

265 b. HIV testing of inmates pursuant to s. 945.355 before  
266 their release from prison by reason of parole, accumulation of  
267 gain-time credits, or expiration of sentence.

268 c. Testing for HIV by a medical examiner in accordance with  
269 s. 406.11.

270 d. HIV testing of pregnant women pursuant to s. 384.31.

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

273 3. For the performance of an HIV-related test by licensed  
274 medical personnel in bona fide medical emergencies if the test  
275 results are necessary for medical diagnostic purposes to provide  
276 appropriate emergency care or treatment to the person being  
277 tested and the patient is unable to consent, as supported by  
278 documentation in the medical record. Notification of test  
279 results in accordance with paragraph (c) is required.

280 4. For the performance of an HIV-related test by licensed  
281 medical personnel for medical diagnosis of acute illness where,  
282 in the opinion of the attending physician, providing  
283 notification would be detrimental to the patient, as supported  
284 by documentation in the medical record, and the test results are  
285 necessary for medical diagnostic purposes to provide appropriate  
286 care or treatment to the person being tested. Notification of  
287 test results in accordance with paragraph (c) is required if it  
288 would not be detrimental to the patient. This subparagraph does  
289 not authorize the routine testing of patients for HIV infection  
290 without notification.

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

293 6. For the performance of an HIV test upon a defendant  
294 pursuant to the victim's request in a prosecution for any type  
295 of sexual battery where a blood sample is taken from the  
296 defendant voluntarily, pursuant to court order for any purpose,  
297 or pursuant to s. 775.0877, s. 951.27, or s. 960.003; however,  
298 the results of an HIV test performed shall be disclosed solely  
299 to the victim and the defendant, except as provided in ss.  
300 775.0877, 951.27, and 960.003.

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

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

308 9. If human tissue is collected lawfully without the  
309 consent of the donor for corneal removal as authorized by s.  
310 765.5185 or enucleation of the eyes as authorized by s. 765.519.

311 10. For the performance of an HIV test upon an individual  
312 who comes into contact with medical personnel in such a way that  
313 a significant exposure has occurred during the course of  
314 employment, within the scope of practice, or during the course  
315 of providing emergency medical assistance to the individual. The  
316 term "medical personnel" includes a licensed or certified health  
317 care professional; an employee of a health care professional or  
318 health care facility; employees of a laboratory licensed under  
319 chapter 483; personnel of a blood bank or plasma center; a

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320 medical student or other student who is receiving training as a  
321 health care professional at a health care facility; and a  
322 paramedic or emergency medical technician certified by the  
323 department to perform life-support procedures under s. 401.23.

324 a. The occurrence of a significant exposure shall be  
325 documented by medical personnel under the supervision of a  
326 licensed physician and recorded only in the personnel record of  
327 the medical personnel.

328 b. Costs of an HIV test shall be borne by the medical  
329 personnel or the employer of the medical personnel. However,  
330 costs of testing or treatment not directly related to the  
331 initial HIV tests or costs of subsequent testing or treatment  
332 may not be borne by the medical personnel or the employer of the  
333 medical personnel.

334 c. In order to use the provisions of this subparagraph, the  
335 medical personnel must be tested for HIV pursuant to this  
336 section or provide the results of an HIV test taken within 6  
337 months before the significant exposure if such test results are  
338 negative.

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

343 e. If the source of the exposure is not available and will  
344 not voluntarily present himself or herself to a health facility  
345 to be tested for HIV, the medical personnel or the employer of  
346 such person acting on behalf of the employee may seek a court  
347 order directing the source of the exposure to submit to HIV  
348 testing. A sworn statement by a physician licensed under chapter

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349 458 or chapter 459 that a significant exposure has occurred and  
350 that, in the physician's medical judgment, testing is medically  
351 necessary to determine the course of treatment constitutes  
352 probable cause for the issuance of an order by the court. The  
353 results of the test shall be released to the source of the  
354 exposure and to the person who experienced the exposure.

355 11. For the performance of an HIV test upon an individual  
356 who comes into contact with nonmedical personnel in such a way  
357 that a significant exposure has occurred while the nonmedical  
358 personnel provides emergency medical assistance during a medical  
359 emergency. For the purposes of this subparagraph, a medical  
360 emergency means an emergency medical condition outside of a  
361 hospital or health care facility that provides physician care.  
362 The test may be performed only during the course of treatment  
363 for the medical emergency.

364 a. The occurrence of a significant exposure shall be  
365 documented by medical personnel under the supervision of a  
366 licensed physician and recorded in the medical record of the  
367 nonmedical personnel.

368 b. Costs of any HIV test shall be borne by the nonmedical  
369 personnel or the employer of the nonmedical personnel. However,  
370 costs of testing or treatment not directly related to the  
371 initial HIV tests or costs of subsequent testing or treatment  
372 may not be borne by the nonmedical personnel or the employer of  
373 the nonmedical personnel.

374 c. In order to use the provisions of this subparagraph, the  
375 nonmedical personnel shall be tested for HIV pursuant to this  
376 section or shall provide the results of an HIV test taken within  
377 6 months before the significant exposure if such test results

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378 are negative.

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

383 e. If the source of the exposure is not available and will  
384 not voluntarily present himself or herself to a health facility  
385 to be tested for HIV, the nonmedical personnel or the employer  
386 of the nonmedical personnel acting on behalf of the employee may  
387 seek a court order directing the source of the exposure to  
388 submit to HIV testing. A sworn statement by a physician licensed  
389 under chapter 458 or chapter 459 that a significant exposure has  
390 occurred and that, in the physician's medical judgment, testing  
391 is medically necessary to determine the course of treatment  
392 constitutes probable cause for the issuance of an order by the  
393 court. The results of the test shall be released to the source  
394 of the exposure and to the person who experienced the exposure.

395 12. For the performance of an HIV test by the medical  
396 examiner or attending physician upon an individual who expired  
397 or could not be resuscitated while receiving emergency medical  
398 assistance or care and who was the source of a significant  
399 exposure to medical or nonmedical personnel providing such  
400 assistance or care.

401 a. HIV testing may be conducted only after appropriate  
402 medical personnel under the supervision of a licensed physician  
403 documents in the medical record of the medical personnel or  
404 nonmedical personnel that there has been a significant exposure  
405 and that, in accordance with the written protocols based on the  
406 National Centers for Disease Control and Prevention guidelines

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407 on HIV postexposure prophylaxis and in the physician's medical  
408 judgment, the information is medically necessary to determine  
409 the course of treatment for the medical personnel or nonmedical  
410 personnel.

411 b. Costs of an HIV test performed under this subparagraph  
412 may not be charged to the deceased or to the family of the  
413 deceased person.

414 c. For this subparagraph to be applicable, the medical  
415 personnel or nonmedical personnel must be tested for HIV under  
416 this section or must provide the results of an HIV test taken  
417 within 6 months before the significant exposure if such test  
418 results are negative.

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

421 13. For the performance of an HIV-related test medically  
422 indicated by licensed medical personnel for medical diagnosis of  
423 a hospitalized infant as necessary to provide appropriate care  
424 and treatment of the infant if, after a reasonable attempt, a  
425 parent cannot be contacted to provide consent. The medical  
426 records of the infant must reflect the reason consent of the  
427 parent was not initially obtained. Test results shall be  
428 provided to the parent when the parent is located.

429 14. For the performance of HIV testing conducted to monitor  
430 the clinical progress of a patient previously diagnosed to be  
431 HIV positive.

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

434 Section 6. This act shall take effect July 1, 2022.