

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 659 Sexually Transmissible Diseases

**SPONSOR(S):** Criminal Justice Subcommittee, Robinson, F.

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1522

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 6 N, As CS	Hall	Hall
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

### SUMMARY ANALYSIS

Human immunodeficiency virus (HIV) attacks the body's immune system, reducing its ability to fight off infections and disease. Florida law criminalizes certain conduct committed by an HIV-positive person who is aware of such diagnosis. A person commits a third degree felony when he or she, knowing of his or her HIV diagnosis:

- Has sexual intercourse with another person after being informed of the risk of HIV transmission, unless the other person has consented after being informed of the diagnosis, a violation of ss. 384.24 and 384.34, F.S.;
- Donates blood, plasma, organs, skin, or other human tissue after being informed that HIV can spread through such donation, a violation of s. 381.0041, F.S.; or
- Tested positive for HIV after a conviction for or plea to a specified offense involving the transmission of bodily fluids, was informed of the results, and commits a subsequent specified offense involving the transmission of bodily fluids, a violation of s. 775.0877, F.S.

However, a person who has sexual intercourse, without informing and obtaining the consent of his or her sexual partner, after being informed that he or she is infected with a specified sexually transmitted infection (STI) only commits a first degree misdemeanor.

The Florida Department of Health (DOH) rules regulate STI testing, confidentiality of information, disease reporting, quarantine orders, and notification requirements, and impose a \$500 fine for each violation of such rules.

No effective cure for HIV exists, but antiretroviral therapy can slow or prevent disease progression and reduce the amount of HIV in a person's blood (viral load), which in turn reduces the likelihood of transmission. To reflect the reduced risk of HIV transmission due to advances in medical treatment, CS/HB 659:

- Amends ss. 381.0041, 384.34, and 775.0877, F.S., to reduce from a third degree felony to a first degree misdemeanor:
  - Engaging in sexual conduct that creates a substantial risk of transmission by a person with HIV, knowing the risk of HIV transmission, without disclosing such diagnosis to his or her sexual partner;
  - Criminal transmission of HIV when a person has tested positive for HIV after a court ordered test, was informed of the test results, and commits a subsequent offense involving the transmission of bodily fluids; and
  - Donating blood, organs, and other human tissue by persons with HIV not deemed medically appropriate by a licensed physician.
- Amends s. 381.0041, F.S., to permit the donation of blood, organs, and other human tissue by a person with HIV if a licensed physician deems the donation medically appropriate; and
- Amends 384.34, F.S., to delete the fine for a violation of DOH rules regarding STIs and create a third degree felony for a second or subsequent violation of s. 384.24, F.S.

The bill may have a negative indeterminate impact on state government by reducing prison beds and a positive indeterminate impact on local governments by increasing jail beds.

The bill provides an effective date of July 1, 2023.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives .**

**STORAGE NAME:** h0659a.CRJ

**DATE:** 3/30/2023

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

Human immunodeficiency virus (HIV) spreads through the transfer of blood, semen, pre-seminal fluid, rectal fluids, vaginal fluids, and breast milk from an infected person to the mucous membranes or damaged tissue of a non-infected person.<sup>1</sup> Common methods of HIV transmission include unprotected anal or vaginal sex and sharing needles or syringes for drug injections.<sup>2</sup> Less common methods of transmission include the passage of HIV from mother to child during pregnancy, birth, or breastfeeding and being stuck with an HIV-contaminated needle or other sharp object, usually in a healthcare setting.<sup>3</sup> Rare methods of transmission include oral sex, receiving blood transfusions, blood products, or organ or tissue transplants contaminated with HIV, bites, and kissing.<sup>4</sup>

Once transmitted, HIV attacks the infected person's immune system, specifically, the lymphocytes known as CD4 cells or T Cells, which participate in an immune response.<sup>5</sup> Untreated, HIV reduces a body's ability to fight off infections and disease and can lead to acquired immunodeficiency syndrome (AIDS), the most severe form of HIV infection.<sup>6</sup> There is no effective cure for HIV, but antiretroviral therapy (ART) can slow or prevent the disease's progression and dramatically prolong the lifespan of an infected person.<sup>7</sup> When treated, an infected person can expect to live nearly as long as a person without HIV.<sup>8</sup> ART can also reduce the amount of HIV in a person's blood, known as the viral load.<sup>9</sup> Persons who attain an undetectable viral load have effectively no risk of transmitting HIV through sexual conduct.<sup>10</sup>

In the United States, about 51 percent of an estimated 1.1 million people with HIV<sup>11</sup> had achieved an undetectable viral load by the end of 2015.<sup>12</sup> In Florida, 62 percent of the 116,944 people living with HIV<sup>13</sup> had achieved an undetectable viral load.<sup>14</sup>

#### Criminal HIV Exposure Laws

As of 2022, 35 states have laws that criminalize HIV exposure.<sup>15</sup> Such laws attempt to deter HIV transmission by:

- Criminalizing behaviors that result in HIV exposure;

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<sup>1</sup> Centers for Disease Control and Prevention (CDC), *HIV Transmission*, <https://www.cdc.gov/hiv/basics/transmission.html> (last visited Mar. 27, 2023).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Centers for Disease Control and Prevention (CDC), *About HIV/AIDS*, <https://www.cdc.gov/hiv/basics/whatisshiv.html> (last visited Mar. 27, 2023).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Centers for Disease Control and Prevention (CDC), *HIV Care Saves Lives infographic*, <https://www.cdc.gov/vitalsigns/hiv-aids-medical-care/infographic.html> (last visited Mar. 27, 2023).

<sup>9</sup> CDC, *supra* at FN 5.

<sup>10</sup> *Id.*

<sup>11</sup> The annual number of new HIV diagnoses in the United States remained stable between 2012 and 2017, with 2017 resulting in approximately 38,739 new HIV diagnoses. Centers for Disease Control and Prevention (CDC), *HIV in the United States and Dependent Areas*, <https://www.cdc.gov/hiv/pdf/statistics/overview/cdc-hiv-us-atagance.pdf> (last visited Mar. 27, 2023).

<sup>12</sup> Centers for Disease Control and Prevention (CDC), *HIV in the United States and Dependent Areas*, <https://www.cdc.gov/hiv/pdf/statistics/overview/cdc-hiv-us-atagance.pdf> (last visited Mar. 27, 2023).

<sup>13</sup> Florida reported an estimated 4,949 new HIV diagnoses in 2017. Florida Department of Health, *HIV Data Center*, <http://www.floridahealth.gov/diseases-and-conditions/aids/surveillance/index.html> (last visited Mar. 27, 2023).

<sup>14</sup> Florida Department of Health, *HIV Data Center*, <http://www.floridahealth.gov/diseases-and-conditions/aids/surveillance/index.html> (last visited Mar. 27, 2023).

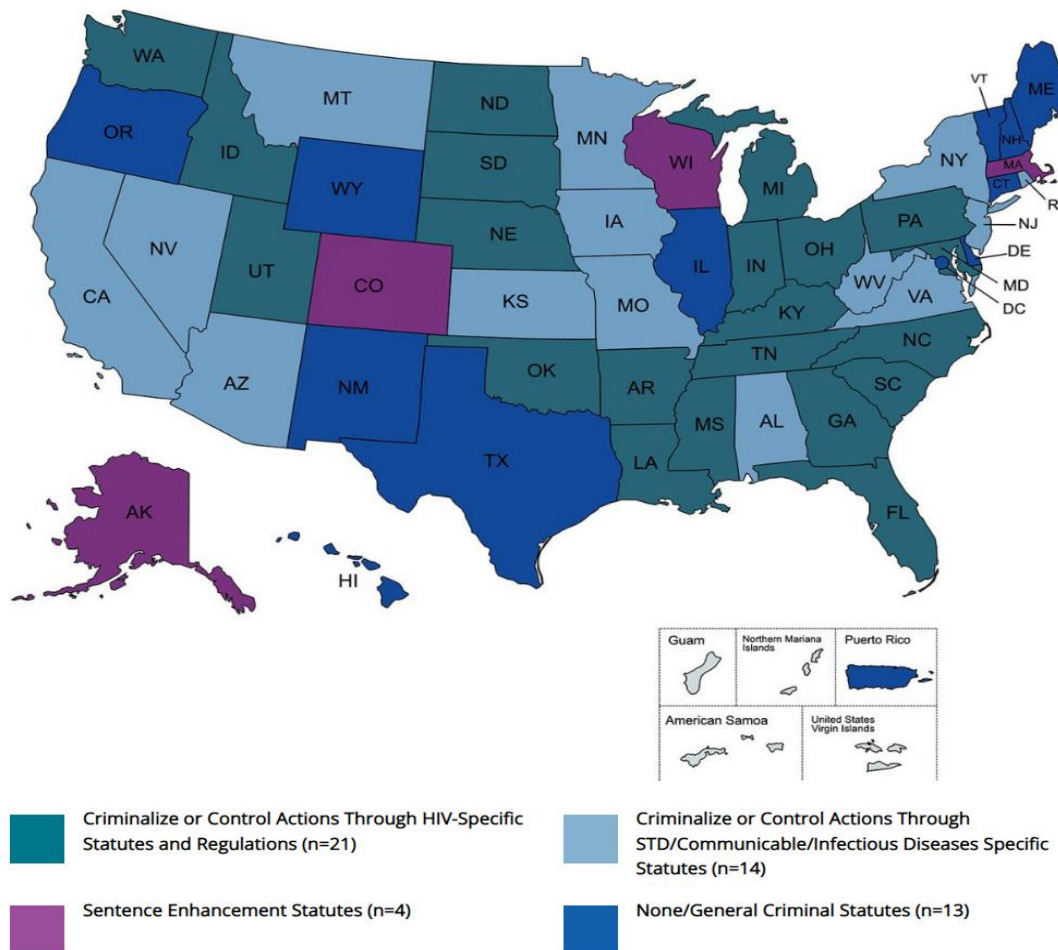
<sup>15</sup> J. Stan Lehman, et al., *Prevalence and Public Health Implications of State Laws that Criminalize Potential HIV Exposure in the United States*, *AIDS and Behavior* (Mar. 15, 2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4019819/> (last visited Mar. 27, 2023).

- Criminalizing behaviors that result in STI or other communicable or infectious disease exposure, which may include HIV exposure;
- Increasing sentence lengths for certain crimes committed by a person infected with HIV; and
- Increasing sentence lengths for certain crimes committed by a person infected with an STI, which may include HIV.<sup>16</sup>

Additionally, all 50 states have general criminal laws, such as assault, battery, reckless endangerment, and attempted murder, under which the state can prosecute a person with HIV for engaging in certain behaviors.<sup>17</sup>

### Types of Criminalization Laws in the U.S.<sup>18</sup>

#### HIV and STD Criminalization Laws 2022



Opponents of criminal HIV exposure laws argue that such laws can lead to unintended consequences by encouraging the deferral of HIV testing, reinforcing hostility towards HIV-positive persons, exacerbating HIV-related stigma, and deterring HIV-positive status disclosure.<sup>19</sup> Opponents also point out that most criminal HIV exposure laws do not account for scientifically supported risk levels associated with the type of activity the offender engages in or any risk reduction measures. As a result, these laws may criminalize behaviors the Center for Disease Control and Prevention (CDC) regards as posing little or no risk for HIV transmission.<sup>20</sup>

<sup>16</sup> Centers for Disease Control and Prevention (CDC), *HIV and STD Criminal Laws*, <https://www.cdc.gov/hiv/policies/law/states/exposure.html> (last visited Mar. 27, 2023).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> C. Galletly, Z. Lazzarini, C. Sanders, and S.D. Pinkerton, *Criminal HIV Exposure Laws: Moving Forward*, AIDS and Behavior (June 2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4084714/> (last visited Mar. 27, 2023).

<sup>20</sup> U.S. Department of Justice (DOJ), *Best Practice Guide to Reform HIV-Specific Criminal Laws to Align with Scientifically-Supported Factors*, <https://www.hivlawandpolicy.org/sites/default/files/DOJ-HIV-Criminal-Law-Best-Practices-Guide.pdf> (last visited Mar. 27, 2023).

In light of scientific advancements in HIV treatment and prevention, the United States Department of Justice (DOJ) recommends that states reform HIV criminal exposure laws to eliminate HIV-specific penalties, except when a person knows he or she is HIV-positive and:

- Commits a sex crime with the risk of transmission (e.g., rape or other sexual assault); and
- Evidence clearly demonstrates that the person intended to transmit HIV and the person's behavior posed a significant risk of transmission.<sup>21</sup>

## Florida Law

### *Sexual Conduct and Non-Disclosure*

Under s. 384.24(1), F.S., a person commits a first degree misdemeanor if the person knows he or she has a specified sexually transmitted infection (STI),<sup>22</sup> has been informed of the risk of transmission of such STI through sexual intercourse, and has sexual intercourse with another person, unless that person consented with knowledge of the diagnosis.

A person commits a third degree felony<sup>23</sup> if the person knows he or she has HIV, has been informed of the risk of transmission through sexual intercourse, and has sexual intercourse with another person, unless that person consented with knowledge of the diagnosis.<sup>24</sup> A person commits a first degree felony<sup>25</sup> for a second or subsequent non-disclosure offense.<sup>26</sup> Conviction for a non-disclosure offense does not require the intent to transmit or the actual transmission of HIV.

Florida law does not currently define "sexual intercourse." However, the Florida Supreme Court has defined sexual intercourse to include penile-vaginal penetration and acts of oral and anal intercourse.<sup>27</sup>

### *Criminal Transmission of HIV*

A person convicted of committing or attempting to commit a specified offense involving the transmission of bodily fluids from one person to another must undergo HIV testing.<sup>28</sup> Specified offenses include:<sup>29</sup>

- Sexual battery;<sup>30</sup>
- Incest;<sup>31</sup>
- Lewd or lascivious offenses on a person under 16;<sup>32</sup>
- Assault<sup>33</sup> or aggravated assault;<sup>34</sup>
- Battery<sup>35</sup> or aggravated battery;<sup>36</sup>
- Child abuse<sup>37</sup> or aggravated child abuse;<sup>38</sup>
- Abuse of an elderly person or disabled adult<sup>39</sup> or aggravated abuse of an elderly person or disabled adult;<sup>40</sup>

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<sup>21</sup> *Id.*

<sup>22</sup> See s. 384.24(1), F.S., for the list of included sexually transmitted infections which include gonorrhea, chlamydia, and syphilis, among others.

<sup>23</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Ss. 775.082(3)(e) and 775.083(1)(c), F.S.

<sup>24</sup> Ss. 384.24(2) and 384.34(5), F.S.

<sup>25</sup> A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Ss. 775.082(3)(b)1. and 775.083(1)(b), F.S.

<sup>26</sup> *Id.*

<sup>27</sup> *Debaun v. State*, 213 So. 3d 747 (Fla. 2017).

<sup>28</sup> S. 775.0877(1), F.S.

<sup>29</sup> *Id.*

<sup>30</sup> S. 794.011, F.S.

<sup>31</sup> S. 826.04, F.S.

<sup>32</sup> S. 800.04, F.S.

<sup>33</sup> Ss. 784.011, 784.07(2)(a), and 784.08(2)(d), F.S.

<sup>34</sup> Ss. 784.021, 784.07(2)(c), and 784.08(2)(b), F.S.

<sup>35</sup> Ss. 784.03, 784.07(2)(b), 784.08(2)(c), F.S.

<sup>36</sup> Ss. 784.045, 784.07(2)(d), and 784.08(2)(a), F.S.

<sup>37</sup> S. 827.03(2)(c), F.S.

<sup>38</sup> S. 827.03(2)(a), F.S.

<sup>39</sup> S. 825.102(1), F.S.

<sup>40</sup> S. 825.102(2), F.S.

- Sexual performance of a minor;<sup>41</sup>
- Prostitution,<sup>42</sup>
- Human trafficking;<sup>43</sup> and
- Donation of blood, plasma, organs, skin, or other human tissue by a person with HIV under specified circumstances.<sup>44</sup>

A person who tests positive for HIV following a conviction for a specified offense, who is informed of the result, and who later commits another specified offense involving the transmission of bodily fluids commits criminal transmission of HIV, a third degree felony punishable by up to five years imprisonment and a \$5,000 fine.<sup>45</sup> An offender may be convicted of and sentenced separately for criminal transmission of HIV and for the underlying offense.<sup>46</sup> A conviction for criminal transmission of HIV does not require the intent to transmit or the actual transmission of HIV.<sup>47</sup>

#### *Court-Ordered Hepatitis and HIV Testing*

At the request of a victim,<sup>48</sup> a court must order an offender charged with the commission of a specified offense to undergo Hepatitis and HIV testing if the offense:

- Involves the transmission of bodily fluids from one person to another;<sup>49</sup> or
- Is a sexual offense and the victim was a minor, a disabled adult, or an elderly person.<sup>50</sup>

The specified offenses are all the offenses that form the basis for a conviction of criminal transmission of HIV, except human trafficking, and include donation of blood, plasma, organs, skin, or other human tissue by a person with HIV under certain conditions.<sup>51</sup>

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<sup>41</sup> S. 827.071, F.S.

<sup>42</sup> Ss. 796.07 and 796.08, F.S.

<sup>43</sup> Ss. 787.06(3)(b), (d), (f), and (g), F.S.

<sup>44</sup> S. 381.0041(11)(b), F.S.

<sup>45</sup> S. 775.0877(3), F.S.

<sup>46</sup> *Id.*

<sup>47</sup> S. 775.0877(5), F.S.

<sup>48</sup> A request may also come from a victim's legal guardian or the parents of a minor victim.

<sup>49</sup> S. 960.003(2)(a), F.S.

<sup>50</sup> S. 960.003(2)(b), F.S.

<sup>51</sup> *Id.*

## *Blood, Organ, and Tissue Donation*

Due to increased life expectancy, the number of HIV-positive persons in need of organ transplants has increased.<sup>52</sup> However, the number of people on the organ transplant waiting list far outweighs the number of available organs.<sup>53</sup> This shortage disproportionately affects persons with HIV, who have a higher mortality rate than persons without HIV on the organ transplant waiting list.<sup>54</sup>

For decades, federal law prohibited persons with HIV from donating organs for transplantation, even to HIV-positive recipients.<sup>55</sup> However, in 2013, the HIV Organ Policy Equity (HOPE) Act legalized HIV-positive organ donations for transplantation into HIV-positive candidates under approved research protocols designed to evaluate the feasibility, effectiveness, and safety of such organ transplants.<sup>56</sup>

Although authorized by federal law, it is a third degree felony in Florida for an HIV-positive person to donate blood, plasma, organs, skin, or other human tissue when he or she knew of the HIV infection and was informed that transmission could occur through such donation.<sup>57</sup> Florida prohibits HIV-positive persons from donating human tissue to other HIV-positive recipients or as part of a clinical research study.<sup>58</sup>

### *DOH Rules*

DOH promulgates rules regulating STI testing, confidentiality of information, disease reporting, quarantine orders, and notification requirements.<sup>59</sup> A person who violates DOH rules related to STIs<sup>60</sup> is subject to a \$500 fine for each violation.<sup>61</sup> DOH can impose the fine in addition to other penalties provided by ch. 384, F.S.<sup>62</sup>

### **Effect of the Proposed Changes**

#### Sexual Conduct and Non-Disclosure

CS/HB 659 amends ss. 384.24 and 384.34, F.S., to reduce the criminal penalty for engaging in sexual conduct while knowingly HIV-positive without the informed consent of the person's sexual partner from a third degree felony to a first degree misdemeanor. As such, under the bill the penalty for engaging in sexual conduct without disclosing an HIV diagnosis is the same as the penalty for engaging in sexual conduct without disclosing a diagnosis for other enumerated STIs. The bill replaces the term "sexual intercourse" with the term "sexual conduct" which is defined as conduct between persons, regardless of gender, which is capable of transmitting a sexually transmissible disease, including, but not limited to, contact between a:

- Penis and a vulva or an anus; or
- Mouth and a penis, a vulva, or an anus.

The bill requires the state to prove that the offender engaged in sexual conduct that imposed a substantial risk of transmission of HIV or another specified STI when the other person was unaware of

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<sup>52</sup> Christine Durand, M.D., *The Transformation of Transplantation*, HIV Specialist (July 2018), [https://aahivm.org/wp-content/uploads/2018/07/FINALHIVspecialist\\_July2018FINAL-1.pdf](https://aahivm.org/wp-content/uploads/2018/07/FINALHIVspecialist_July2018FINAL-1.pdf) (last visited Mar. 27, 2023).

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> UNOS, *At Two Years, HOPE Act Still Offering Hope*, <https://unos.org/at-two-years-hope-act-still-offering-hope/> (last visited Mar. 27, 2023).

<sup>56</sup> *Id.*

<sup>57</sup> S. 381.0041(11)(b), F.S.

<sup>58</sup> *Id.*

<sup>59</sup> R. 64D-3, F.A.C.

<sup>60</sup> For example, r. 64D-3.029, F.A.C., requires practitioners, hospitals, and laboratories to report to DOH diseases or conditions identified by DOH as being of public health significance, including HIV, within specified timeframes.

<sup>61</sup> S. 384.34(4), F.S.

<sup>62</sup> *Id.* Other penalties include criminal misdemeanor penalties for violations of s. 384.29, F.S., relating to the confidentiality of information and records held by DOH, and for violations of s. 384.26, F.S., relating to the confidentiality of information gathered by DOH during an investigation into the source and spread of an STI.

the HIV or specified STI diagnosis. The bill defines “substantial risk of transmission” as a reasonable probability of disease transmission as proven by competent medical evidence.

The bill amends s. 384.34, F.S., which authorizes an offender who commits multiple violations of engaging in sexual conduct without disclosure of a person’s STI or HIV diagnosis to be convicted of a third degree felony.

Finally, the bill deletes the \$500 civil penalty for violating DOH rules regarding STIs.

### Criminal Transmission of HIV

The bill amends s. 775.0877, F.S., to reduce the penalty for criminal transmission of HIV from a third degree felony to a first degree misdemeanor.

The bill also removes any conviction for an offense or an attempt to commit an offense involving the transmission of saliva from the requirement for the court to order the offender to undergo HIV testing upon his or her conviction. Additionally, the bill removes a violation of s. 381.0041(11)(b), F.S., relating to the donation of blood, plasma, organs, skin, or other human tissue from the list of specified offenses in s. 775.0877, F.S., for which a court must order the offender to submit to HIV testing upon his or her conviction. As a result, a person convicted of donation of human tissue by an HIV-positive person does not have to submit to HIV testing, and a second or subsequent offense would not constitute criminal transmission of HIV.

### Court-Ordered Hepatitis and HIV Testing

The bill amends s. 960.003, F.S., to remove a violation of s. 381.0041(11)(b), F.S., relating to the unlawful donation of blood, plasma, organs, skin, or other human tissue by an HIV positive person, from the list of offenses for which a court may order the offender to submit to Hepatitis and HIV testing at a victim’s request if:

- The offense involves the transmission of bodily fluids from one person to another; or
- The offense is a sexual offense and the victim was a minor, a disabled adult, or an elderly person.

As such, an offender committing unlawful donation of blood, plasma, organs, skin, or other human tissues would not be subject to court-ordered Hepatitis or HIV testing at the request of a victim under this section. However, the donated tissue would still be tested for STIs and other communicable diseases.<sup>63</sup>

### Blood, Organ, and Tissue Donation

The bill amends s. 381.0041, F.S., to permit the donation of blood, plasma, organs, skin, or other human tissue by a person with HIV if a licensed physician deems the donation medically appropriate. This may authorize persons with HIV to donate human tissue to other persons with HIV and to participate in clinical research trials authorized by the HOPE Act.

The bill also reduces the criminal penalty for the donation of blood, plasma, organs, skin, or other human tissue by a person with HIV when not deemed medically appropriate by a licensed physician from a third degree felony to a first degree misdemeanor.

The bill amends s. 921.0022, F.S., to conform the Criminal Punishment Code offense severity ranking chart to remove a violation for s. 381.0041(11)(b), F.S., as the bill reduces the penalty for the offense to a misdemeanor.

The bill provides an effective date of July 1, 2023.

**B. SECTION DIRECTORY:**

**Section 1:** Providing a short title.

**Section 2:** Amending s. 381.0041, F.S., relating to donation and transfer of human tissue; testing requirements.

**Section 3:** Amending s. 384.23, F.S., relating to definitions.

**Section 4:** Amending s. 384.24, F.S., relating to unlawful acts.

**Section 5:** Amending s. 384.34, F.S., relating to penalties.

**Section 6:** Amending s. 775.0877, F.S., relating to criminal transmission of HIV; procedures; penalties.

**Section 7:** Amending s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

**Section 8:** Amending s. 960.003, F.S., relating to Hepatitis and HIV testing for persons charged with or alleged by petition for delinquency to have committed certain offenses; disclosure of results to victims.

**Section 9:** Providing an effective date of July 1, 2023.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

The bill may have a negative indeterminate impact on prison beds, as it reduces the offense severity of current felony offenses to misdemeanor offenses that do not carry prison sentences.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

The bill may have a positive indeterminate impact on jail beds, as it reduces the offense severity of current felony offenses to misdemeanor offenses that may carry county jail sentences.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

None.



2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill removes DOH's authority to promulgate rules regarding the enforcement of financial penalties for violating rules related to STIs.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On March 29, 2023, the Criminal Justice Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment removed the requirement for the state to prove that a person acted with the intent to transmit an STI or HIV and actually transmitted the disease in order to prove a violation of s. 384.24, F.S., and also created a third degree felony for a second or subsequent violation of s. 384.24, F.S.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.