

1 A bill to be entitled
2 An act relating to sexually transmissible diseases;
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.

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

Section 1. This act may be cited as the "HIV Prevention Justice Act."

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

381.0041 Donation and transfer of human tissue; testing requirements.—

(11)

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

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

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

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

51 (2)~~(1)~~ "Department" means the Department of Health.

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,
 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:

384.24 Unlawful acts.—

(1) It is unlawful for any person who has chancroid, gonorrhea, granuloma inguinale, lymphogranuloma venereum, genital herpes simplex, chlamydia, nongonococcal urethritis (NGU), pelvic inflammatory disease (PID)/acute salpingitis, ~~or~~ syphilis, or human immunodeficiency virus, when such person knows he or she is infected with one or more of these diseases and when such person has been informed that he or she may communicate this disease to another person through sexual conduct intercourse, to act with the intent to transmit the disease, to engage in have sexual conduct that poses a substantial risk of transmission to another person when the intercourse with any other person is unaware that the person is a carrier of the disease, and to transmit the disease to the~~r~~, unless such other person has been informed of the presence of the sexually transmissible disease and has consented to the sexual intercourse.

(2) A person does not act with the intent required under subsection (1) if he or she in good faith complies with a treatment regimen prescribed by his or her health care provider or with the behavioral recommendations of his or her health care provider or public health officials to limit the risk of transmission, or if he or she offers to comply with such behavioral recommendations but such offer is rejected by the 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
 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.

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
159 offenses committed upon or in the presence of persons less than
160 16 years 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
175 elderly person or disabled adult;

176 (1) 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~~
 180 ~~blood, plasma, organs, skin, or other human tissue; or~~
 181 (n)~~(n)~~ 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
 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
 217 ranking 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 |

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bodily injury, failure to stop;
leaving scene.

222

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

223

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

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certificates; making, altering, 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

440.105(5) 2nd Unlawful solicitation for the purpose of making workers'

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compensation claims.

232

440.381 (2) 3rd Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.

233

624.401 (4) (b) 2. 2nd Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.

234

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

235

790.01 (2) 3rd Carrying a concealed firearm.

236

790.162 2nd Threat to throw or discharge destructive device.

237

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

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| 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 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 Retail theft; property stolen
(8) (a) & (c) - is valued at \$750 or more and
(e) one or more specified acts.

246

812.015 (8) (f) 3rd Retail theft; multiple thefts
within specified period.

247

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

248

812.081 (3) 2nd Trafficking in trade secrets.

249

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

250

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

251

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

252

817.234 (11) (b) 2nd Insurance fraud; property value
\$20,000 or more but less than

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\$100,000.

253

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.

254

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.

255

817.611(2) (a)

2nd

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

256

817.625(2) (b)

2nd

Second or subsequent fraudulent use of scanning device,

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skimming device, or reencoder.

257

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

258

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

259

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

260

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

261

836.14(4) 2nd Person who willfully promotes
for financial gain a sexually
explicit image of an

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| | | | identifiable person without consent. |
| 262 | 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. |
| 263 | 843.01 | 3rd | Resist officer with violence to person; resist arrest with violence. |
| 264 | 847.0135(5)(b) | 2nd | Lewd or lascivious exhibition using computer; offender 18 years or older. |
| 265 | 847.0137 (2) & (3) | 3rd | Transmission of pornography by electronic device or equipment. |
| 266 | 847.0138 (2) & (3) | 3rd | Transmission of material harmful to minors to a minor by electronic device or equipment. |
| 267 | 874.05(1)(b) | 2nd | Encouraging or recruiting |

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

268 874.05(2) (a) 2nd Encouraging or recruiting person under 13 years of age to join a criminal gang.

269 893.13(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).

270 893.13(1) (c) 2. 2nd Sell, manufacture, or deliver cannabis (or other s. 893.03(1) (c), (2) (c) 1., (2) (c) 2., (2) (c) 3., (2) (c) 6., (2) (c) 7., (2) (c) 8., (2) (c) 9., (2) (c) 10., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or

community center.

271

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.

272

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.

273

893.13(1)(f)1. 1st Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), or (2)(a), (2)(b), or (2)(c)5. drugs) within 1,000 feet of

public housing facility.

274

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

275

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

276

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

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

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

285 (a) In any case in which a person has been charged by
286 information or indictment with or alleged by petition for
287 delinquency to have committed any offense enumerated in s.
288 775.0877(1) (a) - (m) ~~s. 775.0877(1) (a) - (n)~~, which involves the
289 transmission of body fluids from one person to another, upon
290 request of the victim or the victim's legal guardian, or of the
291 parent or legal guardian of the victim if the victim is a minor,

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

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

317 the direction of the Department of Health in accordance with s.
318 381.004. The results of a hepatitis and HIV test performed on a
319 defendant or juvenile offender pursuant to this subsection shall
320 not be admissible in any criminal or juvenile proceeding arising
321 out of the alleged offense.

322 (3) DISCLOSURE OF RESULTS.—

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

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342 offense involves the transmission of bodily fluids from one
343 person to another, and, upon request, to the victim or the
344 victim's legal guardian, or the parent or legal guardian of the
345 victim, and to public health agencies pursuant to s. 775.0877.
346 Otherwise, hepatitis and HIV test results obtained pursuant to
347 this section are confidential and exempt from the provisions of
348 s. 119.07(1) and s. 24(a), Art. I of the State Constitution and
349 shall not be disclosed to any other person except as expressly
350 authorized by law or court order.

351 Section 9. This act shall take effect July 1, 2023.