

By Senator Jones

34-00235-26

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A bill to be entitled

An act relating to the HIV Prevention Justice Act; providing a short title; amending s. 381.0041, F.S.; reducing the degree of criminal penalty for certain persons who are infected with human immunodeficiency virus (HIV) and who donate blood, plasma, organs, skin, or other human tissue for use in another person; providing an exception; reordering and amending s. 384.23, F.S.; defining the terms "sexual conduct" and "substantial risk of transmission"; amending s. 384.24, F.S.; revising prohibitions relating to the intentional transmission of certain diseases through sexual conduct; providing exceptions; defining the term "behavioral recommendations"; providing that a person's failure to comply with behavioral recommendations is not sufficient to establish intent to transmit a disease; amending s. 384.34, F.S.; revising penalties to conform to changes made by the act; amending s. 775.0877, F.S.; revising requirements for HIV testing in cases involving criminal transmission of HIV; conforming provisions to changes made by the act; amending s. 921.0022, F.S.; conforming a provision to changes made by the act; amending s. 960.003, F.S.; conforming cross-references; making technical changes; providing an effective date.

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

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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 ~~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 reordered and amended to read:

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

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

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

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

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

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

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(4) "Sexually transmissible disease" means a bacterial, viral, fungal, or parasitic disease determined by rule of the department to be sexually transmissible, to be a threat to the public health and welfare, and to be a disease for which a legitimate public interest will be served by providing for prevention, elimination, control, and treatment. The department must, by rule, determine which diseases are to be designated as sexually transmissible diseases and shall consider the recommendations and classifications of the Centers for Disease Control and Prevention and other nationally recognized medical authorities in that determination. Not all diseases that are sexually transmissible need be designated for the purposes of this act.

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

Section 4. Section 384.24, Florida Statutes, is amended to 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

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

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

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Section 5. Subsections (1), (2), (4), (5), and (6) of section 384.34, Florida Statutes, are amended to read:

384.34 Penalties.—

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

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

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

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

~~(6)~~ Any person who obtains information that identifies an individual who has a sexually transmissible disease, who knew or should have known the nature of the information, and who maliciously, or for monetary gain, disseminates this information or otherwise makes this information known to any other person, except by providing it either to a physician or nurse employed by the Department of Health or to a law enforcement agency, commits a felony of the third degree, punishable as provided in

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s. 775.082, s. 775.083, or s. 775.084.

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

775.0877 Criminal transmission of HIV; procedures; penalties.—

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

(a) Section 794.011, relating to sexual battery;

(b) Section 826.04, relating to incest;

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

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

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

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

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

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

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

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

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

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

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

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

(n)~~(o)~~ Section 787.06(3)(b), (d), (f), and (g) and (5), relating to human trafficking,

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

(3) An offender who has undergone HIV testing pursuant to subsection (1), and to whom positive test results have been disclosed pursuant to subsection (2), who commits a second or subsequent offense enumerated in paragraphs (1)(a)-(m) ~~(1)(a)-(n)~~, commits criminal transmission of HIV, a misdemeanor of the first felony of the third degree, punishable as provided in s. 775.082 or, s. 775.083, ~~or s. 775.084~~. A person may be convicted

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and sentenced separately for a violation of this subsection and
for the underlying crime enumerated in paragraphs (1) (a) - (m)
~~(1) (a) - (n)~~.

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

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

921.0022 Criminal Punishment Code; offense severity ranking
chart.—

(3) OFFENSE SEVERITY RANKING CHART

(e) LEVEL 5

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(3) (a)	2nd	Driving at high speed or with wanton disregard

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for safety while fleeing
or attempting to elude
law enforcement officer
who is in a patrol
vehicle with siren and
lights activated.

224

316.80 (2)

2nd

Unlawful conveyance of
fuel; obtaining fuel
fraudulently.

225

322.34 (6)

3rd

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

226

327.30 (5) (a) 2.

3rd

Vessel accidents
involving personal
injuries other than
serious bodily injury;
leaving scene.

227

365.172
(14) (b) 2.

2nd

Misuse of emergency
communications system
resulting in death.

228

379.365 (2) (c) 1.

3rd

Violation of rules
relating to: willful

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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,
 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.

229

379.367(4)

3rd

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

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230

379.407(5)(b)3.

3rd

Possession of 100 or
more undersized spiny
lobsters.

231

~~381.0041(11)(b)~~~~3rd~~

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

232

440.10(1)(g)

2nd

Failure to obtain
workers' compensation
coverage.

233

440.105(5)

2nd

Unlawful solicitation
for the purpose of
making workers'
compensation claims.

234

440.381(2)

3rd

Submission of false,
misleading, or
incomplete information
with the purpose of
avoiding or reducing
workers' compensation
premiums.

235

624.401(4)(b)2.

2nd

Transacting insurance
without a certificate or
authority; premium

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collected \$20,000 or
more but less than
\$100,000.

236

626.902 (1) (c)

2nd

Representing an
unauthorized insurer;
repeat offender.

237

790.01 (3)

3rd

Unlawful carrying of a
concealed firearm.

238

790.162

2nd

Threat to throw or
discharge destructive
device.

239

790.163 (1)

2nd

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

240

790.221 (1)

2nd

Possession of short-
barreled shotgun or
machine gun.

241

790.23

2nd

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

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242	796.05 (1)	2nd	Live on earnings of a prostitute; 1st offense.
243	800.04 (6) (c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
244	800.04 (7) (b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
245	806.111 (1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
246	810.145 (4)	3rd	Commercial digital voyeurism dissemination.
247	810.145 (7) (a)	2nd	Digital voyeurism; 2nd or subsequent offense.
248	810.145 (8) (a)	2nd	Digital voyeurism; certain minor victims.
249	812.014 (2) (d) 3.	2nd	Grand theft, 2nd degree; theft from 20 or more dwellings or their

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unenclosed curtilage, or
any combination.

250

812.0145(2)(b)

2nd

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

251

812.015

3rd

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

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

252

812.015(8)(f)

3rd

Retail theft; multiple
thefts within specified
period.

253

812.015(8)(g)

3rd

Retail theft; committed
with specified number of
other persons.

254

812.019(1)

2nd

Stolen property; dealing
in or trafficking in.

255

812.081(3)

2nd

Trafficking in trade
secrets.

256

812.131(2)(b)

3rd

Robbery by sudden
snatching.

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257

812.16 (2)

3rd

Owning, operating, or
conducting a chop shop.

258

817.034 (4) (a) 2.

2nd

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

259

817.234 (11) (b)

2nd

Insurance fraud;
property value \$20,000
or more but less than
\$100,000.

260

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.

261

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

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or more or use of
personal identification
information of 10 or
more persons.

262

817.611 (2) (a)

2nd

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

263

817.625 (2) (b)

2nd

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

264

825.1025 (4)

3rd

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

265

828.12 (2)

3rd

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

266

836.14 (4)

2nd

Person who willfully

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promotes for financial
gain a sexually explicit
image of an identifiable
person without consent.

267

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.

268

843.01 (1)

3rd

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

269

847.0135 (5) (b)

2nd

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

270

847.0137
(2) & (3)

3rd

Transmission of
pornography by
electronic device or
equipment.

271

847.0138
(2) & (3)

3rd

Transmission of material
harmful to minors to a
minor by electronic

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device or equipment.

272

874.05 (1) (b)

2nd

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

273

874.05 (2) (a)

2nd

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

274

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).

275

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

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child care facility,
school, or state,
county, or municipal
park or publicly owned
recreational facility or
community center.

276

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.

277

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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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.

893.13(4)(b)

2nd

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

893.1351(1)

3rd

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

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

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

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

(a) In any case in which a person has been charged by information or indictment with or alleged by petition for delinquency to have committed any offense enumerated in s.

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293 775.0877(1)(a)-(m) ~~s. 775.0877(1)(a)-(n)~~, which involves the
294 transmission of body fluids from one person to another, upon
295 request of the victim or the victim's legal guardian, or of the
296 parent or legal guardian of the victim if the victim is a minor,
297 the court shall order such person to undergo hepatitis and HIV
298 testing within 48 hours after the information, indictment, or
299 petition for delinquency is filed. In the event the victim or,
300 if the victim is a minor, the victim's parent or legal guardian
301 requests hepatitis and HIV testing after 48 hours have elapsed
302 from the filing of the indictment, information, or petition for
303 delinquency, the testing must ~~shall~~ be done within 48 hours
304 after the request.

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

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

(3) DISCLOSURE OF RESULTS.—

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

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351 Otherwise, hepatitis and HIV test results obtained pursuant to
352 this section are confidential and exempt from the provisions of
353 s. 119.07(1) and s. 24(a), Art. I of the State Constitution and
354 shall not be disclosed to any other person except as expressly
355 authorized by law or court order.

356 Section 9. This act shall take effect July 1, 2026.