

1 A bill to be entitled
2 An act relating to transmission of disease through
3 bodily fluids; providing a short title; amending s.
4 381.0041, F.S.; providing an exception to allow the
5 donation of blood, plasma, organs, skin, or other
6 human tissue by certain persons when deemed medically
7 appropriate by a licensed physician; reclassifying a
8 criminal offense relating to such donations; amending
9 s. 384.23, F.S.; defining the terms "sexual conduct"
10 and "substantial risk of transmission"; amending s.
11 384.24, F.S.; expanding the scope of unlawful acts by
12 a person infected with a sexually transmissible
13 disease; expanding the list of sexually transmissible
14 diseases to include human immunodeficiency virus
15 infections; specifying that a certain act is unlawful
16 if the person committing the offense acts with the
17 intent to transmit a specified disease, engages in
18 conduct that poses a substantial risk of transmission
19 of that disease to another person who is unaware that
20 the person who transmits the disease is a carrier of
21 the disease, and actually transmits the disease;
22 providing that certain actions are not sufficient to
23 establish intent on the part of the person who
24 transmits the disease; defining the term "behavioral
25 recommendations"; amending s. 384.34, F.S.;

26 reclassifying specified criminal offenses; eliminating
 27 a fine for specified rule violations; amending ss.
 28 775.0877 and 921.0022, F.S.; conforming provisions to
 29 changes made by the act; providing an effective date.
 30

31 Be It Enacted by the Legislature of the State of Florida:
 32

33 Section 1. This act shall be known as the "HIV Prevention
 34 Justice Act."

35 Section 2. Paragraph (b) of subsection (11) of section
 36 381.0041, Florida Statutes, is amended to read:

37 381.0041 Donation and transfer of human tissue; testing
 38 requirements.—

39 (11)

40 (b) Except when the donation is deemed medically
 41 appropriate by a licensed physician, any person who has human
 42 immunodeficiency virus infection, who knows he or she is
 43 infected with human immunodeficiency virus, and who has been
 44 informed that he or she may communicate this disease by donating
 45 blood, plasma, organs, skin, or other human tissue who donates
 46 blood, plasma, organs, skin, or other human tissue commits ~~is~~
 47 ~~guilty of a misdemeanor felony~~ of the first ~~third~~ degree,
 48 punishable as provided in s. 775.082 or, s. 775.083, ~~or s.~~
 49 ~~775.084.~~

50 Section 3. Present subsection (3) of section 384.23,

51 Florida Statutes, is redesignated as subsection (4) and a new
52 subsection (3) and subsection (5) are added to that section, to
53 read:

54 384.23 Definitions.—

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

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

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

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

64 Section 4. Section 384.24, Florida Statutes, is amended to
65 read:

66 384.24 Unlawful acts.—

67 (1) It is unlawful for any person who has chancroid,
68 gonorrhea, granuloma inguinale, lymphogranuloma venereum,
69 genital herpes simplex, chlamydia, nongonococcal urethritis
70 (NGU), pelvic inflammatory disease (PID)/acute salpingitis, ~~or~~
71 syphilis, or human immunodeficiency virus infection, when such
72 person knows he or she is infected with one or more of these
73 diseases and when such person has been informed that he or she
74 may communicate this disease to another person through sexual
75 conduct intercourse, to act with the intent to transmit the

76 | disease, to engage in have sexual conduct that poses a
77 | substantial risk of transmission to another person when the
78 | ~~intercourse with any other person is unaware that the person is~~
79 | a carrier of the disease, and to transmit the disease to the,
80 | ~~unless such other person has been informed of the presence of~~
81 | ~~the sexually transmissible disease and has consented to the~~
82 | ~~sexual intercourse.~~

83 | (2) A person does not act with the intent required in
84 | subsection (1) if he or she in good faith complies with a
85 | treatment regimen prescribed by his or her health care provider
86 | or with the behavioral recommendations of his or her health care
87 | provider or public health officials to limit the risk of
88 | transmission, or if he or she offers to comply with such
89 | behavioral recommendations, but that offer is rejected by the
90 | other person. For purposes of this section, the term "behavioral
91 | recommendations" includes, but is not limited to, the use of a
92 | prophylactic device to limit the risk of transmission of the
93 | disease. Evidence of the person's failure to comply with such a
94 | treatment regimen or such behavioral recommendations is not, in
95 | and of itself, sufficient to establish that he or she acted with
96 | the intent required under subsection (1) ~~It is unlawful for any~~
97 | ~~person who has human immunodeficiency virus infection, when such~~
98 | ~~person knows he or she is infected with this disease and when~~
99 | ~~such person has been informed that he or she may communicate~~
100 | ~~this disease to another person through sexual intercourse, to~~

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101 ~~have sexual intercourse with any other person, unless such other~~
102 ~~person has been informed of the presence of the sexually~~
103 ~~transmissible disease and has consented to the sexual~~
104 ~~intercourse.~~

105 Section 5. Section 384.34, Florida Statutes, is amended to
106 read:

107 384.34 Penalties.—

108 (1) Any person who violates s. 384.24 ~~the provisions of s.~~
109 ~~384.24(1)~~ commits a misdemeanor of the first degree, punishable
110 as provided in s. 775.082 or s. 775.083.

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

114 (3) Any person who maliciously disseminates any false
115 information or report concerning the existence of any sexually
116 transmissible disease commits a misdemeanor ~~felony~~ of the first
117 ~~third~~ degree, punishable as provided in s. 775.082 or s. 775.083
118 ~~ss. 775.082, 775.083, and 775.084.~~

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

126 ~~(5) Any person who violates s. 384.24(2) commits a felony~~
 127 ~~of the third degree, punishable as provided in s. 775.082, s.~~
 128 ~~775.083, or s. 775.084. Any person who commits multiple~~
 129 ~~violations of s. 384.24(2) commits a felony of the first degree,~~
 130 ~~punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~

131 ~~(6)~~ Any person who obtains information that identifies an
 132 individual who has a sexually transmissible disease, who knew or
 133 should have known the nature of the information and maliciously,
 134 or for monetary gain, disseminates this information or otherwise
 135 makes this information known to any other person, except by
 136 providing it either to a physician or nurse employed by the
 137 Department of Health or to a law enforcement agency, commits a
 138 misdemeanor ~~felony~~ of the first ~~third~~ degree, punishable as
 139 provided in s. 775.082 or, s. 775.083, ~~or s. 775.084.~~

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

142 775.0877 Criminal transmission of HIV; procedures;
 143 penalties.—

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

- 149 (a) Section 794.011, relating to sexual battery;
- 150 (b) Section 826.04, relating to incest;

- 151 (c) Section 800.04, relating to lewd or lascivious
 152 offenses committed upon or in the presence of persons less than
 153 16 years of age;
- 154 (d) Sections 784.011, 784.07(2)(a), and 784.08(2)(d),
 155 relating to assault;
- 156 (e) Sections 784.021, 784.07(2)(c), and 784.08(2)(b),
 157 relating to aggravated assault;
- 158 (f) Sections 784.03, 784.07(2)(b), and 784.08(2)(c),
 159 relating to battery;
- 160 (g) Sections 784.045, 784.07(2)(d), and 784.08(2)(a),
 161 relating to aggravated battery;
- 162 (h) Section 827.03(2)(c), relating to child abuse;
- 163 (i) Section 827.03(2)(a), relating to aggravated child
 164 abuse;
- 165 (j) Section 825.102(1), relating to abuse of an elderly
 166 person or disabled adult;
- 167 (k) Section 825.102(2), relating to aggravated abuse of an
 168 elderly person or disabled adult;
- 169 (l) Section 827.071, relating to sexual performance by
 170 person less than 18 years of age;
- 171 (m) Sections 796.07 and 796.08, relating to prostitution;
 172 or
- 173 (n) ~~Section 381.0041(11)(b), relating to donation of~~
 174 ~~blood, plasma, organs, skin, or other human tissue; or~~
- 175 ~~(o)~~ Sections 787.06(3)(b), (d), (f), and (g), relating to

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176 human trafficking,
177
178 the court shall order the offender to undergo HIV testing, to be
179 performed under the direction of the Department of Health in
180 accordance with s. 381.004, unless the offender has undergone
181 HIV testing voluntarily or pursuant to procedures established in
182 s. 381.004(2)(h)6. or s. 951.27, or any other applicable law or
183 rule providing for HIV testing of criminal offenders or inmates,
184 subsequent to her or his arrest for an offense enumerated in
185 paragraphs (a)-(n) for which she or he was convicted or to which
186 she or he pled nolo contendere or guilty. The results of an HIV
187 test performed on an offender pursuant to this subsection are
188 not admissible in any criminal proceeding arising out of the
189 alleged offense.

190 (3) An offender who has undergone HIV testing pursuant to
191 subsection (1), and to whom positive test results have been
192 disclosed pursuant to subsection (2), who commits a second or
193 subsequent offense enumerated in paragraphs (1)(a)-(n), commits
194 criminal transmission of HIV, a misdemeanor ~~felony~~ of the first
195 ~~third~~ degree, punishable as provided in s. 775.082 or ~~s.~~
196 775.083, ~~or s. 775.084~~. A person may be convicted and sentenced
197 separately for a violation of this subsection and for the
198 underlying crime enumerated in paragraphs (1)(a)-(n).

199 Section 7. Paragraph (e) of subsection (3) of section
200 921.0022, Florida Statutes, is amended to read:

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201 921.0022 Criminal Punishment Code; offense severity
 202 ranking chart.—

203 (3) OFFENSE SEVERITY RANKING CHART

204 (e) LEVEL 5

205

Florida	Felony	
Statute	Degree	Description

206

316.027 (2) (a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
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207

316.1935 (4) (a)	2nd	Aggravated fleeing or eluding.
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208

316.80 (2)	2nd	Unlawful conveyance of fuel; obtaining fuel fraudulently.
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209

322.34 (6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or
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210	327.30 (5)	3rd	<p>serious bodily injury.</p> <p>Vessel accidents involving personal injury; leaving scene.</p>
211	379.365 (2) (c) 1.	3rd	<p>Violation of rules relating to: willful molestation of stone crab traps, lines, or buoys; illegal bartering, trading, or sale, conspiring or aiding in such barter, trade, or sale, or supplying, agreeing to supply, aiding in supplying, or giving away stone crab trap tags or certificates; making, altering, forging, counterfeiting, or reproducing stone crab trap tags; possession of forged, counterfeit, or imitation stone crab trap tags; and engaging in the commercial</p>

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harvest of stone crabs
while license is suspended
or revoked.

212

379.367 (4)

3rd

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

213

379.407 (5) (b) 3.

3rd

Possession of 100 or
more undersized spiny
lobsters.

214

~~381.0041 (11) (b)~~

~~3rd~~

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

215

440.10 (1) (g)

2nd

Failure to obtain workers'
compensation coverage.

216

440.105 (5)

2nd

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

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217 | 440.381 (2) | 2nd | Submission of false,
 | | | misleading, or incomplete
 | | | information with the purpose
 | | | of avoiding or reducing
 | | | workers' compensation
 | | | premiums.

218 | 624.401 (4) (b) 2. | 2nd | Transacting insurance
 | | | without a certificate
 | | | or authority; premium
 | | | collected \$20,000 or
 | | | more but less than
 | | | \$100,000.

219 | 626.902 (1) (c) | 2nd | Representing an
 | | | unauthorized insurer;
 | | | repeat offender.

220 | 790.01 (2) | 3rd | Carrying a concealed
 | | | firearm.

221 | 790.162 | 2nd | Threat to throw or discharge
 | | | destructive device.

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223	790.163 (1)	2nd	False report of bomb, explosive, weapon of mass destruction, or use of firearms in violent manner.
224	790.221 (1)	2nd	Possession of short- barreled shotgun or machine gun.
225	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
226	796.05 (1)	2nd	Live on earnings of a prostitute; 1st offense.
227	800.04 (6) (c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
228	800.04 (7) (b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
	806.111 (1)	3rd	Possess, manufacture, or

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dispense fire bomb with
intent to damage any
structure or property.

229

812.0145 (2) (b)

2nd Theft from person
65 years of age or
older; \$10,000 or
more but less than
\$50,000.

230

812.015 (8)

3rd Retail theft; property
stolen is valued at \$300
or more and one or more
specified acts.

231

812.019 (1)

2nd Stolen property; dealing in
or trafficking in.

232

812.131 (2) (b)

3rd Robbery by sudden
snatching.

233

812.16 (2)

3rd Owning, operating, or
conducting a chop shop.

234

817.034 (4) (a) 2.

2nd Communications fraud,

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

235

817.234 (11) (b)

2nd Insurance fraud;
property value
\$20,000 or more but
less than \$100,000.

236

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.

237

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.

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239	817.611 (2) (a)	2nd	Traffic in or possess 5 to 14 counterfeit credit cards or related documents.
240	817.625 (2) (b)	2nd	Second or subsequent fraudulent use of scanning device, skimming device, or reencoder.
241	825.1025 (4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
242	827.071 (4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
242	827.071 (5)	3rd	Possess, control, or intentionally view any photographic material, motion

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picture, etc., which includes sexual conduct by a child.

243

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.

244

843.01

3rd Resist officer with violence to person; resist arrest with violence.

245

847.0135 (5) (b)

2nd Lewd or lascivious exhibition using computer; offender 18 years or older.

246

847.0137
(2) & (3)

3rd Transmission of pornography by electronic device or equipment.

247

847.0138
(2) & (3)

3rd Transmission of material harmful to minors to a minor by electronic device or equipment.

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249	874.05 (1) (b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
250	874.05 (2) (a)	2nd	Encouraging or recruiting person under 13 years of age to join a criminal gang.
251	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) 4. drugs).
251	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) 5., (2) (c) 6., (2) (c) 7., (2) (c) 8., (2) (c) 9., (3), or (4) drugs) within 1,000 feet of a child care facility,

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

252

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)4. drugs) within
1,000 feet of university.

253

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)5., (2)(c)6.,
(2)(c)7., (2)(c)8.,
(2)(c)9., (3), or (4)
within 1,000 feet of
property used for
religious services or a
specified business site.

