A bill to be entitled
An act relating to HIV prevention; providing a short
title; amending s. 381.0041, F.S.; providing an
exception to allow the donation of human tissue by a
person who has human immunodeficiency virus infection
under certain circumstances; reclassifying a criminal
offense relating to such donations; amending s.
384.23, F.S.; providing definitions; amending s.
384.24, F.S.; expanding the scope of unlawful acts by
a person infected with a sexually transmissible
disease; expanding the list of sexually transmissible
diseases to include human immunodeficiency virus
infection; providing that certain actions are not
sufficient evidence to establish intent on the part of
the person who transmits the disease; providing a
definition; amending s. 384.34, F.S.; reclassifying
specified criminal offenses; removing a fine for
specified rule violations; amending ss. 775.0877 and
921.0022, F.S.; conforming provisions to changes made
by the act; amending s. 960.003, F.S.; conforming
cross-references; providing an effective date.

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 commits is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, or s. 775.084.

Section 3. Subsection (3) of section 384.23, Florida Statutes, is renumbered as subsection (4) and a new subsection (3) and subsection (5) are added to that section, to read:

384.23 Definitions.—

(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.

(5) "Substantial risk of transmission" means a reasonable probability of disease transmission as proven by competent medical or epidemiological 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 infection, 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 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 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 set forth in 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.

For purposes of this section, the term "behavioral recommendations" includes, but is not limited to, the use of a prophylactic device to limit the risk of transmission of the disease. Evidence of the person's failure to comply with such a treatment regimen or such behavioral recommendations is not, in and of itself, sufficient to establish that he or she acted with the intent set forth in subsection (1).

It is unlawful for any person who has human immunodeficiency virus infection, when such person knows he or she is infected with this disease and when such person has been informed that he or she may communicate this disease to another person through sexual intercourse, to have sexual intercourse with any other person, unless such other person has been informed of the presence of the sexually transmissible disease and has consented to the sexual intercourse.

Section 5. Section 384.34, Florida Statutes, is 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. Any person who commits a second or subsequent violation of s. 384.24 commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(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.

(3) Any person who maliciously disseminates any false information or report concerning the existence of any sexually transmissible disease 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.
(+) 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 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 misdemeanor or a felony of the first or third degree, punishable as provided in s. 775.082 or s. 775.083, or s. 775.084.

Section 6. Subsections (1) and (3) 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 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;
(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;

or

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

(e) Sections 787.06(3)(b), (d), (f), and (g), 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 felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A person may be convicted and sentenced separately for a violation of this subsection and for the underlying crime enumerated in paragraphs (1)(a)-(m) (1)(a)-(n).

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
<table>
<thead>
<tr>
<th>Florida Statute</th>
<th>Felony Degree</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>316.027(2)(a)</td>
<td>3rd</td>
<td>Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.</td>
</tr>
<tr>
<td>316.1935(4)(a)</td>
<td>2nd</td>
<td>Aggravated fleeing or eluding.</td>
</tr>
<tr>
<td>316.80(2)</td>
<td>2nd</td>
<td>Unlawful conveyance of fuel; obtaining fuel fraudulently.</td>
</tr>
<tr>
<td>322.34(6)</td>
<td>3rd</td>
<td>Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.</td>
</tr>
<tr>
<td>327.30(5)</td>
<td>3rd</td>
<td>Vessel accidents involving personal injury; leaving scene.</td>
</tr>
<tr>
<td>379.365(2)(c)1.</td>
<td>3rd</td>
<td>Violation of rules relating to: willful molestation of stone crab traps, lines, or buoys; illegal bartering, trading, or</td>
</tr>
</tbody>
</table>
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.

207

379.367(4) 3rd Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.

208

379.407(5)(b)3. 3rd Possession of 100 or more undersized spiny lobsters.

209

381.0041(11)(b) 3rd Donate blood, plasma, or organs knowing HIV positive.
<table>
<thead>
<tr>
<th>Statute</th>
<th>Citation</th>
<th>Section</th>
<th>Failure</th>
</tr>
</thead>
<tbody>
<tr>
<td>440.10(1)(g)</td>
<td>2nd</td>
<td>Failure to obtain workers' compensation coverage.</td>
<td></td>
</tr>
<tr>
<td>440.105(5)</td>
<td>2nd</td>
<td>Unlawful solicitation for the purpose of making workers' compensation claims.</td>
<td></td>
</tr>
<tr>
<td>440.381(2)</td>
<td>2nd</td>
<td>Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.</td>
<td></td>
</tr>
<tr>
<td>624.401(4)(b)2.</td>
<td>2nd</td>
<td>Transacting insurance without a certificate or authority; premium collected $20,000 or more but less than $100,000.</td>
<td></td>
</tr>
<tr>
<td>626.902(1)(c)</td>
<td>2nd</td>
<td>Representing an unauthorized insurer; repeat offender.</td>
<td></td>
</tr>
<tr>
<td>790.01(2)</td>
<td>3rd</td>
<td>Carrying a concealed firearm.</td>
<td></td>
</tr>
<tr>
<td>790.162</td>
<td>2nd</td>
<td>Threat to throw or discharge destructive device.</td>
<td></td>
</tr>
<tr>
<td>Section</td>
<td>Degree</td>
<td>Description</td>
<td></td>
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</tr>
<tr>
<td>790.163(1)</td>
<td>2nd</td>
<td>False report of bomb, explosive, weapon of mass destruction, or use of firearms in violent manner.</td>
<td></td>
</tr>
<tr>
<td>790.221(1)</td>
<td>2nd</td>
<td>Possession of short-barreled shotgun or machine gun.</td>
<td></td>
</tr>
<tr>
<td>790.23</td>
<td>2nd</td>
<td>Felons in possession of firearms, ammunition, or electronic weapons or devices.</td>
<td></td>
</tr>
<tr>
<td>796.05(1)</td>
<td>2nd</td>
<td>Live on earnings of a prostitute; 1st offense.</td>
<td></td>
</tr>
<tr>
<td>800.04(6)(c)</td>
<td>3rd</td>
<td>Lewd or lascivious conduct; offender less than 18 years of age.</td>
<td></td>
</tr>
<tr>
<td>800.04(7)(b)</td>
<td>2nd</td>
<td>Lewd or lascivious exhibition; offender 18 years of age or older.</td>
<td></td>
</tr>
<tr>
<td>806.111(1)</td>
<td>3rd</td>
<td>Possess, manufacture, or...</td>
<td></td>
</tr>
</tbody>
</table>
dispense fire bomb with intent to damage any structure or property.

812.0145(2)(b) 2nd Theft from person 65 years of age or older; $10,000 or more but less than $50,000.

812.015(8) 3rd Retail theft; property stolen is valued at $300 or more and one or more specified acts.

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

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

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

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

817.234(11)(b) 2nd Insurance fraud; property value $20,000 or more but less than
$100,000.

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.

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.

817.611(2)(a) 2nd Traffic in or possess 5 to 14 counterfeit credit cards or related documents.

817.625(2)(b) 2nd Second or subsequent fraudulent use of scanning device,
<table>
<thead>
<tr>
<th>Statute</th>
<th>Section</th>
<th>Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>825.1025(4)</td>
<td>3rd</td>
<td>Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.</td>
</tr>
<tr>
<td></td>
<td>827.071(4)</td>
<td>3rd</td>
<td>Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.</td>
</tr>
<tr>
<td></td>
<td>828.12(2)</td>
<td>3rd</td>
<td>Tortures any animal with intent to inflict intense pain, serious physical injury, or death.</td>
</tr>
<tr>
<td></td>
<td>839.13(2)(b)</td>
<td>2nd</td>
<td>Falsifying records of an individual in the care and skimming device, or reencoder.</td>
</tr>
</tbody>
</table>

CODING: Words **stricken** are deletions; words *underlined* are additions.
<table>
<thead>
<tr>
<th>Section</th>
<th>Degree</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>843.01</td>
<td>3rd</td>
<td>Resist officer with violence to person; resist arrest with violence.</td>
</tr>
<tr>
<td>847.0135(5)(b)</td>
<td>2nd</td>
<td>Lewd or lascivious exhibition using computer; offender 18 years or older.</td>
</tr>
<tr>
<td>847.0137</td>
<td>3rd</td>
<td>Transmission of pornography by electronic device or equipment.</td>
</tr>
<tr>
<td>847.0138</td>
<td>3rd</td>
<td>Transmission of material harmful to minors to a minor by electronic device or equipment.</td>
</tr>
<tr>
<td>874.05(1)(b)</td>
<td>2nd</td>
<td>Encouraging or recruiting another to join a criminal gang; second or subsequent offense.</td>
</tr>
<tr>
<td>874.05(2)(a)</td>
<td>2nd</td>
<td>Encouraging or recruiting</td>
</tr>
</tbody>
</table>
person under 13 years of age to join a criminal gang.

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).

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.

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.

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.

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

(b) However, when a victim of any sexual offense
enumerated in s. 775.0877(1)(a)-(m) is under the age of 18 at the time the offense was committed or
when a victim of any sexual offense enumerated in s. 775.0877(1)(a)-(m) or s. 825.1025 is a
disabled adult or elderly person as defined in s. 825.1025 regardless of whether the offense involves the transmission of
bodily fluids from one person to another, then upon the request
of the victim or the victim's legal guardian, or of the parent
or legal guardian, the court shall order such person to undergo
hepatitis and HIV testing within 48 hours after the information,
indictment, or petition for delinquency is filed. In the event
the victim or, if the victim is a minor, the victim's parent or
legal guardian requests hepatitis and HIV testing after 48 hours
have elapsed from the filing of the indictment, information, or
petition for delinquency, the testing shall be done within 48
hours after the request. The testing shall be performed under
the 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 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 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) or 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 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) or 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. Otherwise, hepatitis and HIV test results obtained pursuant to
this section are confidential and exempt from the provisions of
s. 119.07(1) and s. 24(a), Art. I of the State Constitution and
shall not be disclosed to any other person except as expressly
authorized by law or court order.

Section 9. This act shall take effect July 1, 2019.