

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:

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

(1)~~(2)~~ "County health department" means agencies and

51 entities as designated in chapter 154.

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, 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) ~~(e)~~ 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	Felony	
Statute	Degree	Description
316.027 (2) (a)	3rd	Accidents involving personal injuries

221

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222			other than serious bodily injury, failure to stop; leaving scene.
223	316.1935 (4) (a)	2nd	Aggravated fleeing or eluding.
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)	3rd	Vessel accidents involving personal injury; leaving scene.
	379.365 (2) (c) 1.	3rd	Violation of rules relating to: willful molestation of stone crab traps, lines, or buoys; illegal bartering,

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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.

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

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229	<del>381.0041(11)(b)</del>	3rd	more undersized spiny lobsters.  <del>Donate blood,</del> <del>plasma, or organs</del> <del>knowing HIV</del> <del>positive.</del>
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' 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

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			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.
238	790.221 (1)	2nd	Possession of short-barreled shotgun or machine gun.
239	790.23	2nd	Felons in possession of



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246	812.015 (8) (a) & (c) - (e)	3rd	Retail theft; property stolen is valued at \$750 or more and one or more specified acts.
247	812.019 (1)	2nd	Stolen property; dealing in or trafficking in.
248	812.131 (2) (b)	3rd	Robbery by sudden snatching.
249	812.16 (2)	3rd	Owning, operating, or conducting a chop shop.
250	817.034 (4) (a) 2.	2nd	Communications fraud, value \$20,000 to \$50,000.
251	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,

252	817.568 (2) (b)	2nd	<p>making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.</p> <p>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.</p>
253	817.611 (2) (a)	2nd	<p>Traffic in or possess 5 to 14 counterfeit credit cards or related documents.</p>
254	817.625 (2) (b)	2nd	<p>Second or subsequent fraudulent use of</p>



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255	825.1025 (4)	3rd	<p>scanning device, skimming device, or reencoder.</p> <p>Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.</p>
256	827.071 (4)	2nd	<p>Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.</p>
257	827.071 (5)	3rd	<p>Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.</p>
258	828.12 (2)	3rd	<p>Tortures any animal with intent to inflict intense pain, serious physical injury, or</p>

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259			death.
	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.
260	843.01	3rd	Resist officer with violence to person; resist arrest with violence.
261	847.0135 (5) (b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
262	847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
263	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.

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264	874.05 (1) (b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
265	874.05 (2) (a)	2nd	Encouraging or recruiting person under 13 years of age to join a criminal gang.
266	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).
267	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

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

268

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.

269

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.

270

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.

271

893.13(4)(b)

2nd

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

272

893.1351(1)

3rd

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

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274

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

280 offenses; disclosure of results to victims.—

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

283 (a) In any case in which a person has been charged by  
284 information or indictment with or alleged by petition for  
285 delinquency to have committed any offense enumerated in s.  
286 775.0877(1)(a)-(m) ~~s. 775.0877(1)(a)-(n)~~, which involves the  
287 transmission of body fluids from one person to another, upon  
288 request of the victim or the victim's legal guardian, or of the  
289 parent or legal guardian of the victim if the victim is a minor,  
290 the court shall order such person to undergo hepatitis and HIV  
291 testing within 48 hours after the information, indictment, or  
292 petition for delinquency is filed. In the event the victim or,  
293 if the victim is a minor, the victim's parent or legal guardian  
294 requests hepatitis and HIV testing after 48 hours have elapsed  
295 from the filing of the indictment, information, or petition for  
296 delinquency, the testing shall be done within 48 hours after the  
297 request.

298 (b) However, when a victim of any sexual offense  
299 enumerated in s. 775.0877(1)(a)-(m) ~~s. 775.0877(1)(a)-(n)~~ is  
300 under the age of 18 at the time the offense was committed or  
301 when a victim of any sexual offense enumerated in s.  
302 775.0877(1)(a)-(m) ~~s. 775.0877(1)(a)-(n)~~ or s. 825.1025 is a  
303 disabled adult or elderly person as defined in s. 825.1025  
304 regardless of whether the offense involves the transmission of

305 | bodily fluids from one person to another, then upon the request  
 306 | of the victim or the victim's legal guardian, or of the parent  
 307 | or legal guardian, the court shall order such person to undergo  
 308 | hepatitis and HIV testing within 48 hours after the information,  
 309 | indictment, or petition for delinquency is filed. In the event  
 310 | the victim or, if the victim is a minor, the victim's parent or  
 311 | legal guardian requests hepatitis and HIV testing after 48 hours  
 312 | have elapsed from the filing of the indictment, information, or  
 313 | petition for delinquency, the testing shall be done within 48  
 314 | hours after the request. The testing shall be performed under  
 315 | the direction of the Department of Health in accordance with s.  
 316 | 381.004. The results of a hepatitis and HIV test performed on a  
 317 | defendant or juvenile offender pursuant to this subsection shall  
 318 | not be admissible in any criminal or juvenile proceeding arising  
 319 | out of the alleged offense.

320 | (3) DISCLOSURE OF RESULTS.—

321 | (a) The results of the test shall be disclosed no later  
 322 | than 2 weeks after the court receives such results, under the  
 323 | direction of the Department of Health, to the person charged  
 324 | with or alleged by petition for delinquency to have committed or  
 325 | to the person convicted of or adjudicated delinquent for any  
 326 | offense enumerated in s. 775.0877(1)(a)-(m) ~~s. 775.0877(1)(a)-~~  
 327 | ~~(n)~~, which involves the transmission of body fluids from one  
 328 | person to another, and, upon request, to the victim or the  
 329 | victim's legal guardian, or the parent or legal guardian of the

330 victim if the victim is a minor, and to public health agencies  
331 pursuant to s. 775.0877. If the alleged offender is a juvenile,  
332 the test results shall also be disclosed to the parent or  
333 guardian. When the victim is a victim as described in paragraph  
334 (2)(b), the test results must also be disclosed no later than 2  
335 weeks after the court receives such results, to the person  
336 charged with or alleged by petition for delinquency to have  
337 committed or to the person convicted of or adjudicated  
338 delinquent for any offense enumerated in s. 775.0877(1)(a)-(m)  
339 ~~s. 775.0877(1)(a)-(n)~~, or s. 825.1025 regardless of whether the  
340 offense involves the transmission of bodily fluids from one  
341 person to another, and, upon request, to the victim or the  
342 victim's legal guardian, or the parent or legal guardian of the  
343 victim, and to public health agencies pursuant to s. 775.0877.  
344 Otherwise, hepatitis and HIV test results obtained pursuant to  
345 this section are confidential and exempt from the provisions of  
346 s. 119.07(1) and s. 24(a), Art. I of the State Constitution and  
347 shall not be disclosed to any other person except as expressly  
348 authorized by law or court order.

349 Section 9. This act shall take effect July 1, 2021.