

By Senator Garcia

36-00520-18

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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.

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

Section 1. This act shall be known 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 felony~~ of the first ~~third~~ degree, punishable as provided in s. 775.082 or, s. 775.083, ~~or s.~~ ~~775.084.~~

Section 3. Present subsection (3) of section 384.23, Florida Statutes, is redesignated 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:

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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

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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~~  
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

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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

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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 offenses  
152 committed upon or in the presence of persons less than 16 years  
153 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 blood,~~  
174 ~~plasma, organs, skin, or other human tissue; or~~

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175       ~~(e)~~ Sections 787.06(3)(b), (d), (f), and (g), relating to  
 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:

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

203       (3) OFFENSE SEVERITY RANKING CHART

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(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 (4) (a)	2nd	Aggravated fleeing or eluding.
316.80 (2)	2nd	Unlawful conveyance of fuel; obtaining fuel fraudulently.
322.34 (6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
327.30 (5)	3rd	Vessel accidents involving personal injury; leaving scene.
379.365 (2) (c) 1.	3rd	Violation of rules

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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 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,

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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.

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

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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.

222

790.163 (1)

2nd

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

223

790.221 (1)

2nd

Possession of short-  
barreled shotgun or  
machine gun.

224

790.23

2nd

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

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devices.

225

796.05 (1)

2nd

Live on earnings of a prostitute; 1st offense.

226

800.04 (6) (c)

3rd

Lewd or lascivious conduct; offender less than 18 years of age.

227

800.04 (7) (b)

2nd

Lewd or lascivious exhibition; offender 18 years of age or older.

228

806.111 (1)

3rd

Possess, manufacture, or 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

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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,  
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

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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.

238

817.611 (2) (a)

2nd

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

239

817.625 (2) (b)

2nd

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

240

825.1025 (4)

3rd

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

241

827.071 (4)

2nd

Possess with intent to  
 promote any photographic  
 material, motion

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

242

827.071 (5)

3rd

Possess, control, or  
intentionally view any  
photographic material,  
motion 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

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electronic device or  
equipment.

247

847.0138  
(2) & (3)

3rd

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

248

874.05 (1) (b)

2nd

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

249

874.05 (2) (a)

2nd

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

250

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),

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(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, 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),

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or (4) within 1,000 feet  
of property used for  
religious services or a  
specified business site.

254

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)4. drugs) within  
1,000 feet of public  
housing facility.

255

893.13(4)(b)

2nd

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

256

893.1351(1)

3rd

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

257

258

Section 8. This act shall take effect July 1, 2018.