

1 A bill to be entitled
 2 An act relating to HIV prevention; providing a short
 3 title; amending s. 381.0041, F.S.; providing an
 4 exception to allow the donation of human tissue by a
 5 person who has human immunodeficiency virus infection
 6 under certain circumstances; reclassifying a criminal
 7 offense relating to such donations; amending s.
 8 384.23, F.S.; providing definitions; amending s.
 9 384.24, F.S.; expanding the scope of unlawful acts by
 10 a person infected with a sexually transmissible
 11 disease; expanding the list of sexually transmissible
 12 diseases to include human immunodeficiency virus
 13 infection; providing that certain actions are not
 14 sufficient evidence to establish intent on the part of
 15 the person who transmits the disease; providing a
 16 definition; amending s. 384.34, F.S.; reclassifying
 17 specified criminal offenses; removing a fine for
 18 specified rule violations; amending ss. 775.0877 and
 19 921.0022, F.S.; conforming provisions to changes made
 20 by the act; amending s. 960.003, F.S.; conforming
 21 cross-references; providing an effective date.

22
 23 Be It Enacted by the Legislature of the State of Florida:

24
 25 Section 1. This act may be cited as the "HIV Prevention

26 Justice Act."

27 Section 2. Paragraph (b) of subsection (11) of section
28 381.0041, Florida Statutes, is amended to read:

29 381.0041 Donation and transfer of human tissue; testing
30 requirements.—

31 (11)

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

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

45 384.23 Definitions.—

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

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

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

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

55 Section 4. Section 384.24, Florida Statutes, is amended to
56 read:

57 384.24 Unlawful acts.—

58 (1) It is unlawful for any person who has chancroid,
59 gonorrhea, granuloma inguinale, lymphogranuloma venereum,
60 genital herpes simplex, chlamydia, nongonococcal urethritis
61 (NGU), pelvic inflammatory disease (PID)/acute salpingitis, ~~or~~
62 syphilis, or human immunodeficiency virus infection, when such
63 person knows he or she is infected with one or more of these
64 diseases and when such person has been informed that he or she
65 may communicate this disease to another person through sexual
66 conduct intercourse, to act with the intent to transmit the
67 disease, to engage in have sexual conduct that poses a
68 substantial risk of transmission to another person when the
69 intercourse with any other person is unaware that the person is
70 a carrier of the disease, and to transmit the disease to the,
71 ~~unless such other person has been informed of the presence of~~
72 ~~the sexually transmissible disease and has consented to the~~
73 ~~sexual intercourse.~~

74 (2) A person does not act with the intent set forth in
75 subsection (1) if he or she in good faith complies with a

76 | treatment regimen prescribed by his or her health care provider
 77 | or with the behavioral recommendations of his or her health care
 78 | provider or public health officials to limit the risk of
 79 | transmission, or if he or she offers to comply with such
 80 | behavioral recommendations, but such offer is rejected by the
 81 | other person with whom he or she is engaging in sexual conduct.
 82 | For purposes of this section, the term "behavioral
 83 | recommendations" includes, but is not limited to, the use of a
 84 | prophylactic device to limit the risk of transmission of the
 85 | disease. Evidence of the person's failure to comply with such a
 86 | treatment regimen or such behavioral recommendations is not, in
 87 | and of itself, sufficient to establish that he or she acted with
 88 | the intent set forth in subsection (1) ~~It is unlawful for any~~
 89 | ~~person who has human immunodeficiency virus infection, when such~~
 90 | ~~person knows he or she is infected with this disease and when~~
 91 | ~~such person has been informed that he or she may communicate~~
 92 | ~~this disease to another person through sexual intercourse, to~~
 93 | ~~have sexual intercourse with any other person, unless such other~~
 94 | ~~person has been informed of the presence of the sexually~~
 95 | ~~transmissible disease and has consented to the sexual~~
 96 | ~~intercourse.~~

97 | Section 5. Section 384.34, Florida Statutes, is amended to
 98 | read:

99 | 384.34 Penalties.—

100 | (1) Any person who violates s. 384.24 ~~the provisions of s.~~

101 ~~384.24(1)~~ commits a misdemeanor of the first degree, punishable
102 as provided in s. 775.082 or s. 775.083. Any person who commits
103 a second or subsequent violation of s. 384.24 commits a felony
104 of the third degree, punishable as provided in s. 775.082, s.
105 775.083, or s. 775.084.

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

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

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

121 ~~(5) Any person who violates s. 384.24(2) commits a felony~~
122 ~~of the third degree, punishable as provided in s. 775.082, s.~~
123 ~~775.083, or s. 775.084. Any person who commits multiple~~
124 ~~violations of s. 384.24(2) commits a felony of the first degree,~~
125 ~~punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~

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

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

137 775.0877 Criminal transmission of HIV; procedures;
 138 penalties.—

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

144 (a) Section 794.011, relating to sexual battery;

145 (b) Section 826.04, relating to incest;

146 (c) Section 800.04, relating to lewd or lascivious
 147 offenses committed upon or in the presence of persons less than
 148 16 years of age;

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

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

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

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

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

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

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

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

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

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

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

170 ~~(o)~~ Sections 787.06(3)(b), (d), (f), and (g), relating to
 171 human trafficking,
 172

173 the court shall order the offender to undergo HIV testing, to be
 174 performed under the direction of the Department of Health in
 175 accordance with s. 381.004, unless the offender has undergone

176 HIV testing voluntarily or pursuant to procedures established in
177 s. 381.004(2)(h)6. or s. 951.27, or any other applicable law or
178 rule providing for HIV testing of criminal offenders or inmates,
179 subsequent to her or his arrest for an offense enumerated in
180 paragraphs (a)-(m) ~~(a)-(n)~~ for which she or he was convicted or
181 to which she or he pled nolo contendere or guilty. The results
182 of an HIV test performed on an offender pursuant to this
183 subsection are not admissible in any criminal proceeding arising
184 out of the alleged offense.

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

194 Section 7. Paragraph (e) of subsection (3) of section
195 921.0022, Florida Statutes, is amended to read:

196 921.0022 Criminal Punishment Code; offense severity
197 ranking chart.—

198 (3) OFFENSE SEVERITY RANKING CHART

199 (e) LEVEL 5

200

CS/HB 79

2019

	Florida Statute	Felony Degree	Description
201	316.027 (2) (a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
202	316.1935 (4) (a)	2nd	Aggravated fleeing or eluding.
203	316.80 (2)	2nd	Unlawful conveyance of fuel; obtaining fuel fraudulently.
204	322.34 (6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
205	327.30 (5)	3rd	Vessel accidents involving personal injury; leaving scene.
206	379.365 (2) (c) 1.	3rd	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 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.~~

210

211	440.10 (1) (g)	2nd	Failure to obtain workers' compensation coverage.
212	440.105 (5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
213	440.381 (2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
214	624.401 (4) (b) 2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
215	626.902 (1) (c)	2nd	Representing an unauthorized insurer; repeat offender.
216	790.01 (2)	3rd	Carrying a concealed firearm.
	790.162	2nd	Threat to throw or discharge destructive device.

217	790.163 (1)	2nd	False report of bomb, explosive, weapon of mass destruction, or use of firearms in violent manner.
218	790.221 (1)	2nd	Possession of short-barreled shotgun or machine gun.
219	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
220	796.05 (1)	2nd	Live on earnings of a prostitute; 1st offense.
221	800.04 (6) (c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
222	800.04 (7) (b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
223	806.111 (1)	3rd	Possess, manufacture, or

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

224

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

225

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

226

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

227

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

228

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

229

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

230

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

\$100,000.

231

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.

232

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.

233

817.611 (2) (a)

2nd

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

234

817.625 (2) (b)

2nd

Second or subsequent fraudulent use of scanning device,

skimming device, or reencoder.

235

825.1025 (4)

3rd

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

236

827.071 (4)

2nd

Possess with intent to promote
any photographic material,
motion picture, etc., which
includes sexual conduct by a
child.

237

827.071 (5)

3rd

Possess, control, or
intentionally view any
photographic material, motion
picture, etc., which includes
sexual conduct by a child.

238

828.12 (2)

3rd

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

239

839.13 (2) (b)

2nd

Falsifying records of an
individual in the care and

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

246

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).

247

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.

248

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.

249

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.

250

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.

251

893.13(4) (b)

2nd

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

274 from the filing of the indictment, information, or petition for
275 delinquency, the testing shall be done within 48 hours after the
276 request.

277 (b) However, when a victim of any sexual offense
278 enumerated in s. 775.0877(1)(a)-(m) ~~s. 775.0877(1)(a)-(n)~~ is
279 under the age of 18 at the time the offense was committed or
280 when a victim of any sexual offense enumerated in s.
281 775.0877(1)(a)-(m) ~~s. 775.0877(1)(a)-(n)~~ or s. 825.1025 is a
282 disabled adult or elderly person as defined in s. 825.1025
283 regardless of whether the offense involves the transmission of
284 bodily fluids from one person to another, then upon the request
285 of the victim or the victim's legal guardian, or of the parent
286 or legal guardian, the court shall order such person to undergo
287 hepatitis and HIV testing within 48 hours after the information,
288 indictment, or petition for delinquency is filed. In the event
289 the victim or, if the victim is a minor, the victim's parent or
290 legal guardian requests hepatitis and HIV testing after 48 hours
291 have elapsed from the filing of the indictment, information, or
292 petition for delinquency, the testing shall be done within 48
293 hours after the request. The testing shall be performed under
294 the direction of the Department of Health in accordance with s.
295 381.004. The results of a hepatitis and HIV test performed on a
296 defendant or juvenile offender pursuant to this subsection shall
297 not be admissible in any criminal or juvenile proceeding arising
298 out of the alleged offense.

299 (3) DISCLOSURE OF RESULTS.—

300 (a) The results of the test shall be disclosed no later
301 than 2 weeks after the court receives such results, under the
302 direction of the Department of Health, to the person charged
303 with or alleged by petition for delinquency to have committed or
304 to the person convicted of or adjudicated delinquent for any
305 offense enumerated in s. 775.0877(1)(a)-(m) ~~s. 775.0877(1)(a)-~~
306 ~~(n)~~, which involves the transmission of body fluids from one
307 person to another, and, upon request, to the victim or the
308 victim's legal guardian, or the parent or legal guardian of the
309 victim if the victim is a minor, and to public health agencies
310 pursuant to s. 775.0877. If the alleged offender is a juvenile,
311 the test results shall also be disclosed to the parent or
312 guardian. When the victim is a victim as described in paragraph
313 (2)(b), the test results must also be disclosed no later than 2
314 weeks after the court receives such results, to the person
315 charged with or alleged by petition for delinquency to have
316 committed or to the person convicted of or adjudicated
317 delinquent for any offense enumerated in s. 775.0877(1)(a)-(m)
318 ~~s. 775.0877(1)(a)-(n)~~, or s. 825.1025 regardless of whether the
319 offense involves the transmission of bodily fluids from one
320 person to another, and, upon request, to the victim or the
321 victim's legal guardian, or the parent or legal guardian of the
322 victim, and to public health agencies pursuant to s. 775.0877.
323 Otherwise, hepatitis and HIV test results obtained pursuant to

324 | this section are confidential and exempt from the provisions of
325 | s. 119.07(1) and s. 24(a), Art. I of the State Constitution and
326 | shall not be disclosed to any other person except as expressly
327 | authorized by law or court order.

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