

1 A bill to be entitled
2 An act relating to transmission of disease through
3 bodily fluids; amending s. 381.0041, F.S.;
4 reclassifying a criminal offense relating to the
5 donation of blood, plasma, organs, skin, or other
6 human tissue; providing an exception to allow such
7 donation when deemed medically appropriate by a
8 licensed physician; amending s. 384.23, F.S.; defining
9 the term "substantial risk of transmission"; amending
10 s. 384.24, F.S.; specifying that a certain act is
11 unlawful if the person committing the act acts with
12 the intent to transmit a specified disease, engages in
13 conduct that poses a substantial risk of transmission
14 of that disease to another person who is unaware that
15 the person who transmits the disease is a carrier of
16 the disease, and actually transmits the disease;
17 providing that certain actions are not sufficient to
18 establish intent on the part of the person who
19 transmits the disease; amending s. 384.34, F.S.;
20 reclassifying specified criminal offenses; eliminating
21 a fine for specified rule violations; amending s.
22 775.0877, F.S.; requiring that a person who commits,
23 rather than one who attempts to commit, an offense
24 involving the transmission of semen or vaginal
25 secretions must undergo HIV testing; eliminating the

26 application of the section to certain offenses;
27 revising disclosure requirements; reclassifying
28 specified criminal offenses; amending s. 796.08, F.S.;
29 authorizing, rather than requiring, an infected
30 arrestee to request, rather than to submit to,
31 appropriate treatment; requiring the Department of
32 Health to pay any costs associated the screening of
33 such arrestees; eliminating requirements that persons
34 convicted of specified offenses undergo screening for
35 a sexually transmitted disease; eliminating certain
36 crimes related to prostitution; amending s. 960.003,
37 F.S.; substantially revising the focus of the section
38 from the testing of alleged perpetrators and the
39 disclosure of results of that testing to the medical
40 treatment and care of victims of sexual assault
41 involving the exchange of bodily fluids presenting a
42 substantial risk of HIV infection; revising
43 legislative findings; requiring that the department
44 refer such victims to medical services; requiring that
45 the medical services include the offer of postexposure
46 prophylaxis; requiring the department to ensure that
47 certain out-of-pocket expenses to victims not exceed a
48 specified amount; amending ss. 381.004, 921.0022, and
49 951.27, F.S.; conforming provisions to changes made by
50 the act; providing an effective date.

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

Section 1. 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 2. Subsection (4) is added to section 384.23, Florida Statutes, to read:

384.23 Definitions.—

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

Section 3. Section 384.24, Florida Statutes, is amended to

76 read:

77 384.24 Unlawful acts.—

78 (1) It is unlawful for any person who has chancroid,
 79 gonorrhoea, granuloma inguinale, lymphogranuloma venereum,
 80 genital herpes simplex, chlamydia, nongonococcal urethritis
 81 (NGU), pelvic inflammatory disease (PID)/acute salpingitis, ~~or~~
 82 syphilis, or human immunodeficiency virus infection, when such
 83 person knows he or she is infected with one or more of these
 84 diseases and ~~when such person~~ has been informed that he or she
 85 may communicate the ~~this~~ disease to another person through
 86 sexual intercourse, to act with the intent to transmit the
 87 disease, engage in conduct that poses a substantial risk of
 88 transmission to another person when the other person is unaware
 89 that the person is a carrier of the disease, and transmit the
 90 disease to the other person ~~have sexual intercourse with any~~
 91 ~~other person, unless such other person has been informed of the~~
 92 ~~presence of the sexually transmissible disease and has consented~~
 93 ~~to the sexual intercourse.~~

94 (2) A person does not act with the intent required under
 95 subsection (1) if he or she in good faith complies with a
 96 treatment regimen prescribed by his or her health care provider
 97 or with the behavioral recommendations of his or her health care
 98 provider or public health officials, or if he or she offers to
 99 comply, but that offer is rejected by the other person. For
 100 purposes of this section, the term "behavioral recommendations"

101 includes, but is not limited to, the use of a prophylactic
102 device to measurably limit the risk of transmission of the
103 disease. Evidence of the person's failure to comply with such a
104 treatment regimen or such behavioral recommendations is not, in
105 and of itself, sufficient to establish that he or she acted with
106 the intent required under subsection (1) ~~It is unlawful for any~~
107 ~~person who has human immunodeficiency virus infection, when such~~
108 ~~person knows he or she is infected with this disease and when~~
109 ~~such person has been informed that he or she may communicate~~
110 ~~this disease to another person through sexual intercourse, to~~
111 ~~have sexual intercourse with any other person, unless such other~~
112 ~~person has been informed of the presence of the sexually~~
113 ~~transmissible disease and has consented to the sexual~~
114 ~~intercourse.~~

115 Section 4. Section 384.34, Florida Statutes, is amended to
116 read:

117 384.34 Penalties.—

118 (1) Any person who violates s. 384.24 ~~the provisions of s.~~
119 ~~384.24(1)~~ commits a misdemeanor of the first degree, punishable
120 as provided in s. 775.082 or s. 775.083.

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

124 (3) Any person who maliciously disseminates any false
125 information or report concerning the existence of any sexually

126 transmissible disease commits a misdemeanor of the first degree
 127 ~~felony of the third degree~~, punishable as provided in s. 775.082
 128 or s. 775.083 ~~ss. 775.082, 775.083, and 775.084.~~

129 ~~(4) Any person who violates the provisions of the~~
 130 ~~department's rules pertaining to sexually transmissible diseases~~
 131 ~~may be punished by a fine not to exceed \$500 for each violation.~~
 132 ~~Any penalties enforced under this subsection shall be in~~
 133 ~~addition to other penalties provided by this chapter. The~~
 134 ~~department may enforce this section and adopt rules necessary to~~
 135 ~~administer this section.~~

136 ~~(5) Any person who violates s. 384.24(2) commits a felony~~
 137 ~~of the third degree, punishable as provided in s. 775.082, s.~~
 138 ~~775.083, or s. 775.084. Any person who commits multiple~~
 139 ~~violations of s. 384.24(2) commits a felony of the first degree,~~
 140 ~~punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~

141 (4) ~~(6)~~ Any person who obtains information that identifies
 142 an individual who has a sexually transmissible disease, who knew
 143 or should have known the nature of the information and
 144 maliciously, or for monetary gain, disseminates this information
 145 or otherwise makes this information known to any other person,
 146 except by providing it either to a physician or nurse employed
 147 by the Department of Health or to a law enforcement agency,
 148 commits a misdemeanor of the first degree ~~felony of the third~~
 149 ~~degree~~, punishable as provided in s. 775.082 or, s. 775.083, ~~or~~
 150 ~~s. 775.084.~~

151 Section 5. Section 775.0877, Florida Statutes, is amended
 152 to read:

153 775.0877 Criminal transmission of HIV; procedures;
 154 penalties.—

155 (1) In any case in which a person has been convicted of or
 156 has pled nolo contendere or guilty to, regardless of whether
 157 adjudication is withheld, any of the following offenses, ~~or the~~
 158 ~~attempt thereof,~~ which offense ~~or attempted offense~~ involves the
 159 transmission of semen or vaginal secretions ~~body fluids~~ from one
 160 person to another:

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

162 (b) Section 826.04, relating to incest;

163 (c) Section 800.04, relating to lewd or lascivious
 164 offenses committed upon or in the presence of persons less than
 165 16 years of age;

166 (d) Sections 784.011, 784.07(2)(a), and 784.08(2)(d),
 167 relating to assault;

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

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

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

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

175 (i) Section 827.03(2)(a), relating to aggravated child

176 | abuse;

177 | (j) Section 825.102(1), relating to abuse of an elderly

178 | person or disabled adult;

179 | (k) Section 825.102(2), relating to aggravated abuse of an

180 | elderly person or disabled adult;

181 | (l) Section 827.071, relating to sexual performance by

182 | person less than 18 years of age;

183 | ~~(m) Sections 796.07 and 796.08, relating to prostitution;~~

184 | ~~(n) Section 381.0041(11)(b), relating to donation of~~

185 | ~~blood, plasma, organs, skin, or other human tissue; or~~

186 | (m) ~~(e)~~ Sections 787.06(3)(b), (d), (f), and (g), relating

187 | to human trafficking,

188 |

189 | the court shall order the offender to undergo HIV testing, to be

190 | performed under the direction of the Department of Health in

191 | accordance with s. 381.004, unless the offender has undergone

192 | HIV testing voluntarily or pursuant to procedures established in

193 | s. 381.004(2)(h)6. or s. 951.27, or any other applicable law or

194 | rule providing for HIV testing of criminal offenders or inmates,

195 | subsequent to her or his arrest for an offense enumerated in

196 | paragraphs (a)-(1) ~~(a)-(n)~~ for which she or he was convicted or

197 | to which she or he pled nolo contendere or guilty. The results

198 | of an HIV test performed on an offender pursuant to this

199 | subsection are not admissible in any criminal proceeding arising

200 | out of the alleged offense.

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201 (2) The results of the HIV test must be disclosed under
202 the direction of the Department of Health, to the offender who
203 has been convicted of or pled nolo contendere or guilty to an
204 offense specified in subsection (1) and to, the public health
205 agency of the county in which the conviction occurred and, if
206 different, the county of residence of the offender, ~~and, upon~~
207 ~~request pursuant to s. 960.003, to the victim or the victim's~~
208 ~~legal guardian, or the parent or legal guardian of the victim if~~
209 ~~the victim is a minor.~~

210 (3) An offender who has undergone HIV testing pursuant to
211 subsection (1), and to whom positive test results have been
212 disclosed pursuant to subsection (2), who commits a second or
213 subsequent offense enumerated in paragraphs (1)(a)-(l) that
214 results in transmission of HIV to the victim ~~(1)(a)-(n)~~, commits
215 criminal transmission of HIV, a misdemeanor of the first degree
216 ~~felony of the third degree~~, punishable as provided in s. 775.082
217 or, s. 775.083, ~~or s. 775.084~~. A person may be convicted and
218 sentenced separately for a violation of this subsection and for
219 the underlying crime enumerated in paragraphs (1)(a)-(l) ~~(1)(a)-~~
220 ~~(n)~~.

221 (4) An offender may challenge the positive results of an
222 HIV test performed pursuant to this section and may introduce
223 results of a backup test performed at her or his own expense.

224 ~~(5) Nothing in this section requires that an HIV infection~~
225 ~~have occurred in order for an offender to have committed~~

226 ~~criminal transmission of HIV.~~

227 (5)~~(6)~~ For an alleged violation of any offense enumerated
228 in paragraphs (1)(a)-(l) ~~(1)(a)-(n)~~ for which the consent of the
229 victim may be raised as a defense in a criminal prosecution, it
230 is an affirmative defense to a charge of violating this section
231 that the person exposed knew that the offender was infected with
232 HIV, knew that the action being taken could result in
233 transmission of the HIV infection, and consented to the action
234 voluntarily with that knowledge.

235 Section 6. Section 796.08, Florida Statutes, is amended to
236 read:

237 796.08 Screening for HIV and sexually transmissible
238 diseases; providing penalties.—

239 (1)(a) For the purposes of this section, the term
240 "sexually transmissible disease" means a bacterial, viral,
241 fungal, or parasitic disease, determined by rule of the
242 Department of Health to be sexually transmissible, a threat to
243 the public health and welfare, and a disease for which a
244 legitimate public interest is served by providing for regulation
245 and treatment.

246 (b) In considering which diseases are designated as
247 sexually transmissible diseases, the Department of Health shall
248 consider such diseases as chancroid, gonorrhea, granuloma
249 inguinale, lymphogranuloma venereum, genital herpes simplex,
250 chlamydia, nongonococcal urethritis (NGU), pelvic inflammatory

251 disease (PID)/acute salpingitis, syphilis, and human
252 immunodeficiency virus infection for designation and shall
253 consider the recommendations and classifications of the Centers
254 for Disease Control and Prevention and other nationally
255 recognized authorities. Not all diseases that are sexually
256 transmissible need be designated for purposes of this section.

257 (2) A person arrested under s. 796.07 may request
258 screening for a sexually transmissible disease under direction
259 of the Department of Health and, if infected, may request ~~shall~~
260 ~~submit to~~ appropriate treatment and counseling. The Department
261 of Health shall ~~A person who requests screening for a sexually~~
262 ~~transmissible disease under this subsection must~~ pay any costs
263 associated with such screening.

264 ~~(3) A person convicted under s. 796.07 of prostitution or~~
265 ~~procuring another to commit prostitution must undergo screening~~
266 ~~for a sexually transmissible disease, including, but not limited~~
267 ~~to, screening to detect exposure to the human immunodeficiency~~
268 ~~virus, under direction of the Department of Health. If the~~
269 ~~person is infected, he or she must submit to treatment and~~
270 ~~counseling prior to release from probation, community control,~~
271 ~~or incarceration. Notwithstanding the provisions of s. 384.29,~~
272 ~~the results of tests conducted pursuant to this subsection shall~~
273 ~~be made available by the Department of Health to the offender,~~
274 ~~medical personnel, appropriate state agencies, state attorneys,~~
275 ~~and courts of appropriate jurisdiction in need of such~~

276 ~~information in order to enforce the provisions of this chapter.~~

277 ~~(4) A person who commits prostitution or procures another~~
278 ~~for prostitution and who, prior to the commission of such crime,~~
279 ~~had tested positive for a sexually transmissible disease other~~
280 ~~than human immunodeficiency virus infection and knew or had been~~
281 ~~informed that he or she had tested positive for such sexually~~
282 ~~transmissible disease and could possibly communicate such~~
283 ~~disease to another person through sexual activity commits a~~
284 ~~misdemeanor of the first degree, punishable as provided in s.~~
285 ~~775.082 or s. 775.083. A person may be convicted and sentenced~~
286 ~~separately for a violation of this subsection and for the~~
287 ~~underlying crime of prostitution or procurement of prostitution.~~

288 ~~(5) A person who:~~

289 ~~(a) Commits or offers to commit prostitution; or~~

290 ~~(b) Procures another for prostitution by engaging in~~
291 ~~sexual activity in a manner likely to transmit the human~~
292 ~~immunodeficiency virus,~~

293

294 ~~and who, prior to the commission of such crime, had tested~~
295 ~~positive for human immunodeficiency virus and knew or had been~~
296 ~~informed that he or she had tested positive for human~~
297 ~~immunodeficiency virus and could possibly communicate such~~
298 ~~disease to another person through sexual activity commits~~
299 ~~criminal transmission of HIV, a felony of the third degree,~~
300 ~~punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~

301 ~~A person may be convicted and sentenced separately for a~~
302 ~~violation of this subsection and for the underlying crime of~~
303 ~~prostitution or procurement of prostitution.~~

304 Section 7. Section 960.003, Florida Statutes, is amended
305 to read:

306 960.003 Preventive medical treatment and care for victims
307 of sexual assault involving the exchange of bodily fluids
308 presenting a substantial risk of transmission of HIV Hepatitis
309 ~~and HIV testing for persons charged with or alleged by petition~~
310 ~~for delinquency to have committed certain offenses; disclosure~~
311 ~~of results to victims.-~~

312 (1) LEGISLATIVE FINDINGS ~~INTENT~~.—The Legislature finds
313 that victims of sexual assault involving the exchange of bodily
314 fluids that presents a substantial risk of transmission of the
315 human immunodeficiency virus (HIV) should have access to
316 appropriate medical care and affordable postexposure prophylaxis
317 to prevent the acquisition of HIV ~~a victim of a criminal offense~~
318 ~~which involves the transmission of body fluids, or which~~
319 ~~involves certain sexual offenses in which the victim is a minor,~~
320 ~~disabled adult, or elderly person, is entitled to know at the~~
321 ~~earliest possible opportunity whether the person charged with or~~
322 ~~alleged by petition for delinquency to have committed the~~
323 ~~offense has tested positive for hepatitis or human~~
324 ~~immunodeficiency virus (HIV) infection. The Legislature finds~~
325 ~~that to deny victims access to hepatitis and HIV test results~~

326 ~~causes unnecessary mental anguish in persons who have already~~
327 ~~suffered trauma. The Legislature further finds that since~~
328 ~~medical science now recognizes that early diagnosis is a~~
329 ~~critical factor in the treatment of hepatitis and HIV infection,~~
330 ~~both the victim and the person charged with or alleged by~~
331 ~~petition for delinquency to have committed the offense benefit~~
332 ~~from prompt disclosure of hepatitis and HIV test results.~~

333 (2) REFERRAL TO MEDICAL SERVICES REQUIRED TESTING OF
334 PERSON CHARGED WITH OR ALLEGED BY PETITION FOR DELINQUENCY TO
335 HAVE COMMITTED CERTAIN OFFENSES.—

336 ~~(a)~~ In The Department of Health shall refer for medical
337 services any case in which a person who alleges that he or she
338 has been the victim of a sexual assault involving an exchange of
339 bodily fluids that presents a substantial risk of transmission
340 of the human immunodeficiency virus (HIV). Such services must
341 include the offer of postexposure prophylaxis (PEP) to prevent
342 the acquisition of HIV. The Department of Health shall ensure
343 that any person electing to take PEP under this subsection does
344 not incur out-of-pocket expenses of more than \$30 in obtaining
345 this medication ~~has been charged by information or indictment~~
346 ~~with or alleged by petition for delinquency to have committed~~
347 ~~any offense enumerated in s. 775.0877(1)(a)-(n), which involves~~
348 ~~the transmission of body fluids from one person to another, upon~~
349 ~~request of the victim or the victim's legal guardian, or of the~~
350 ~~parent or legal guardian of the victim if the victim is a minor,~~

351 ~~the court shall order such person to undergo hepatitis and HIV~~
352 ~~testing within 48 hours after the information, indictment, or~~
353 ~~petition for delinquency is filed. In the event the victim or,~~
354 ~~if the victim is a minor, the victim's parent or legal guardian~~
355 ~~requests hepatitis and HIV testing after 48 hours have elapsed~~
356 ~~from the filing of the indictment, information, or petition for~~
357 ~~delinquency, the testing shall be done within 48 hours after the~~
358 ~~request.~~

359 ~~(b) However, when a victim of any sexual offense~~
360 ~~enumerated in s. 775.0877(1)(a)-(n) is under the age of 18 at~~
361 ~~the time the offense was committed or when a victim of any~~
362 ~~sexual offense enumerated in s. 775.0877(1)(a)-(n) or s.~~
363 ~~825.1025 is a disabled adult or elderly person as defined in s.~~
364 ~~825.1025 regardless of whether the offense involves the~~
365 ~~transmission of bodily fluids from one person to another, then~~
366 ~~upon the request of the victim or the victim's legal guardian,~~
367 ~~or of the parent or legal guardian, the court shall order such~~
368 ~~person to undergo hepatitis and HIV testing within 48 hours~~
369 ~~after the information, indictment, or petition for delinquency~~
370 ~~is filed. In the event the victim or, if the victim is a minor,~~
371 ~~the victim's parent or legal guardian requests hepatitis and HIV~~
372 ~~testing after 48 hours have elapsed from the filing of the~~
373 ~~indictment, information, or petition for delinquency, the~~
374 ~~testing shall be done within 48 hours after the request. The~~
375 ~~testing shall be performed under the direction of the Department~~

376 ~~of Health in accordance with s. 381.004. The results of a~~
377 ~~hepatitis and HIV test performed on a defendant or juvenile~~
378 ~~offender pursuant to this subsection shall not be admissible in~~
379 ~~any criminal or juvenile proceeding arising out of the alleged~~
380 ~~offense.~~

381 ~~(c) If medically appropriate, followup HIV testing shall~~
382 ~~be provided when testing has been ordered under paragraph (a) or~~
383 ~~paragraph (b). The medical propriety of followup HIV testing~~
384 ~~shall be based upon a determination by a physician and does not~~
385 ~~require an additional court order. Notification to the victim,~~
386 ~~or to the victim's parent or legal guardian, and to the~~
387 ~~defendant of the results of each followup test shall be made as~~
388 ~~soon as practicable in accordance with this section.~~

389 ~~(3) DISCLOSURE OF RESULTS.—~~

390 ~~(a) The results of the test shall be disclosed no later~~
391 ~~than 2 weeks after the court receives such results, under the~~
392 ~~direction of the Department of Health, to the person charged~~
393 ~~with or alleged by petition for delinquency to have committed or~~
394 ~~to the person convicted of or adjudicated delinquent for any~~
395 ~~offense enumerated in s. 775.0877(1)(a)–(n), which involves the~~
396 ~~transmission of body fluids from one person to another, and,~~
397 ~~upon request, to the victim or the victim's legal guardian, or~~
398 ~~the parent or legal guardian of the victim if the victim is a~~
399 ~~minor, and to public health agencies pursuant to s. 775.0877. If~~
400 ~~the alleged offender is a juvenile, the test results shall also~~

401 ~~be disclosed to the parent or guardian. When the victim is a~~
402 ~~victim as described in paragraph (2) (b), the test results must~~
403 ~~also be disclosed no later than 2 weeks after the court receives~~
404 ~~such results, to the person charged with or alleged by petition~~
405 ~~for delinquency to have committed or to the person convicted of~~
406 ~~or adjudicated delinquent for any offense enumerated in s.~~
407 ~~775.0877(1) (a) - (n), or s. 825.1025 regardless of whether the~~
408 ~~offense involves the transmission of bodily fluids from one~~
409 ~~person to another, and, upon request, to the victim or the~~
410 ~~victim's legal guardian, or the parent or legal guardian of the~~
411 ~~victim, and to public health agencies pursuant to s. 775.0877.~~
412 ~~Otherwise, hepatitis and HIV test results obtained pursuant to~~
413 ~~this section are confidential and exempt from the provisions of~~
414 ~~s. 119.07(1) and s. 24(a), Art. I of the State Constitution and~~
415 ~~shall not be disclosed to any other person except as expressly~~
416 ~~authorized by law or court order.~~

417 ~~(b) At the time that the results are disclosed to the~~
418 ~~victim or the victim's legal guardian, or to the parent or legal~~
419 ~~guardian of a victim if the victim is a minor, the same~~
420 ~~immediate opportunity for face-to-face counseling which must be~~
421 ~~made available under s. 381.004 to those who undergo hepatitis~~
422 ~~and HIV testing shall also be afforded to the victim or the~~
423 ~~victim's legal guardian, or to the parent or legal guardian of~~
424 ~~the victim if the victim is a minor.~~

425 ~~(4) POSTCONVICTION TESTING. - If, for any reason, the~~

426 ~~testing requested under subsection (2) has not been undertaken,~~
427 ~~then upon request of the victim or the victim's legal guardian,~~
428 ~~or the parent or legal guardian of the victim if the victim is a~~
429 ~~minor, the court shall order the offender to undergo hepatitis~~
430 ~~and HIV testing following conviction or delinquency~~
431 ~~adjudication. The testing shall be performed under the direction~~
432 ~~of the Department of Health, and the results shall be disclosed~~
433 ~~in accordance with the provisions of subsection (3).~~

434 ~~(5) EXCEPTIONS. Subsections (2) and (4) do not apply if:~~

435 ~~(a) The person charged with or convicted of or alleged by~~
436 ~~petition for delinquency to have committed or been adjudicated~~
437 ~~delinquent for an offense described in subsection (2) has~~
438 ~~undergone hepatitis and HIV testing voluntarily or pursuant to~~
439 ~~procedures established in s. 381.004(2)(h)6. or s. 951.27, or~~
440 ~~any other applicable law or rule providing for hepatitis and HIV~~
441 ~~testing of criminal defendants, inmates, or juvenile offenders,~~
442 ~~subsequent to his or her arrest, conviction, or delinquency~~
443 ~~adjudication for the offense for which he or she was charged or~~
444 ~~alleged by petition for delinquency to have committed; and~~

445 ~~(b) The results of such hepatitis and HIV testing have~~
446 ~~been furnished to the victim or the victim's legal guardian, or~~
447 ~~the parent or legal guardian of the victim if the victim is a~~
448 ~~minor.~~

449 ~~(6) TESTING DURING INCARCERATION, DETENTION, OR PLACEMENT;~~
450 ~~DISCLOSURE. In any case in which a person convicted of or~~

451 ~~adjudicated delinquent for an offense described in subsection~~
452 ~~(2) has not been tested under subsection (2), but undergoes~~
453 ~~hepatitis and HIV testing during his or her incarceration,~~
454 ~~detention, or placement, the results of the initial hepatitis~~
455 ~~and HIV testing shall be disclosed in accordance with subsection~~
456 ~~(3). Except as otherwise requested by the victim or the victim's~~
457 ~~legal guardian, or the parent or guardian of the victim if the~~
458 ~~victim is a minor, if the initial test is conducted within the~~
459 ~~first year of the imprisonment, detention, or placement, the~~
460 ~~request for disclosure shall be considered a standing request~~
461 ~~for any subsequent hepatitis and HIV test results obtained~~
462 ~~within 1 year after the initial hepatitis and HIV tests are~~
463 ~~performed, and need not be repeated for each test~~
464 ~~administration. Where the inmate or juvenile offender has~~
465 ~~previously been tested pursuant to subsection (2) the request~~
466 ~~for disclosure under this subsection shall be considered a~~
467 ~~standing request for subsequent hepatitis and HIV results~~
468 ~~conducted within 1 year of the test performed pursuant to~~
469 ~~subsection (2). If the hepatitis and HIV testing is performed by~~
470 ~~an agency other than the Department of Health, that agency shall~~
471 ~~be responsible for forwarding the test results to the Department~~
472 ~~of Health for disclosure in accordance with the provisions of~~
473 ~~subsection (3). This subsection shall not be limited to results~~
474 ~~of hepatitis and HIV tests administered subsequent to June 27,~~
475 ~~1990, but shall also apply to the results of all hepatitis and~~

476 ~~HIV tests performed on inmates convicted of or juvenile~~
477 ~~offenders adjudicated delinquent for sex offenses as described~~
478 ~~in subsection (2) during their incarceration, detention, or~~
479 ~~placement prior to June 27, 1990.~~

480 Section 8. Paragraphs (f) and (h) of subsection (2) of
481 section 381.004, Florida Statutes, are amended to read:

482 381.004 HIV testing.—

483 (2) HUMAN IMMUNODEFICIENCY VIRUS TESTING; INFORMED
484 CONSENT; RESULTS; COUNSELING; CONFIDENTIALITY.—

485 (f) Except as provided in this section, the identity of a
486 person upon whom a test has been performed is confidential and
487 exempt from the provisions of s. 119.07(1). No person to whom
488 the results of a test have been disclosed may disclose the test
489 results to another person except as authorized by this
490 subsection and by s. 951.27 ~~ss. 951.27 and 960.003~~. Whenever
491 disclosure is made pursuant to this subsection, it shall be
492 accompanied by a statement in writing which includes the
493 following or substantially similar language: "This information
494 has been disclosed to you from records whose confidentiality is
495 protected by state law. State law prohibits you from making any
496 further disclosure of such information without the specific
497 written consent of the person to whom such information pertains,
498 or as otherwise permitted by state law. A general authorization
499 for the release of medical or other information is NOT
500 sufficient for this purpose." An oral disclosure shall be

501 accompanied by oral notice and followed by a written notice
502 within 10 days, except that this notice shall not be required
503 for disclosures made pursuant to subparagraphs (e)3. and 4.

504 (h) Paragraph (a) does not apply:

505 1. When testing for sexually transmissible diseases is
506 required by state or federal law, or by rule, including the
507 following situations:

508 ~~a. HIV testing pursuant to s. 796.08 of persons convicted~~
509 ~~of prostitution or of procuring another to commit prostitution.~~

510 ~~b.~~ HIV testing of inmates pursuant to s. 945.355 before
511 their release from prison by reason of parole, accumulation of
512 gain-time credits, or expiration of sentence.

513 ~~b.e.~~ Testing for HIV by a medical examiner in accordance
514 with s. 406.11.

515 ~~c.d.~~ HIV testing of pregnant women pursuant to s. 384.31.

516 2. To those exceptions provided for blood, plasma, organs,
517 skin, semen, or other human tissue pursuant to s. 381.0041.

518 3. For the performance of an HIV-related test by licensed
519 medical personnel in bona fide medical emergencies if the test
520 results are necessary for medical diagnostic purposes to provide
521 appropriate emergency care or treatment to the person being
522 tested and the patient is unable to consent, as supported by
523 documentation in the medical record. Notification of test
524 results in accordance with paragraph (c) is required.

525 4. For the performance of an HIV-related test by licensed

526 | medical personnel for medical diagnosis of acute illness where,
527 | in the opinion of the attending physician, providing
528 | notification would be detrimental to the patient, as supported
529 | by documentation in the medical record, and the test results are
530 | necessary for medical diagnostic purposes to provide appropriate
531 | care or treatment to the person being tested. Notification of
532 | test results in accordance with paragraph (c) is required if it
533 | would not be detrimental to the patient. This subparagraph does
534 | not authorize the routine testing of patients for HIV infection
535 | without notification.

536 | 5. If HIV testing is performed as part of an autopsy for
537 | which consent was obtained pursuant to s. 872.04.

538 | 6. For the performance of an HIV test upon a defendant
539 | pursuant to the victim's request in a prosecution for any type
540 | of sexual battery where a blood sample is taken from the
541 | defendant voluntarily, pursuant to court order for any purpose,
542 | or pursuant to s. 775.0877 or s. 951.27, ~~or s. 960.003~~;
543 | however, the results of an HIV test performed shall be disclosed
544 | solely to the victim and the defendant, except as provided in
545 | ss. 775.0877 and 951.27, ~~and 960.003~~.

546 | 7. If an HIV test is mandated by court order.

547 | 8. For epidemiological research pursuant to s. 381.0031,
548 | for research consistent with institutional review boards created
549 | by 45 C.F.R. part 46, or for the performance of an HIV-related
550 | test for the purpose of research, if the testing is performed in

551 a manner by which the identity of the test subject is not known
552 and may not be retrieved by the researcher.

553 9. If human tissue is collected lawfully without the
554 consent of the donor for corneal removal as authorized by s.
555 765.5185 or enucleation of the eyes as authorized by s. 765.519.

556 10. For the performance of an HIV test upon an individual
557 who comes into contact with medical personnel in such a way that
558 a significant exposure has occurred during the course of
559 employment, within the scope of practice, or during the course
560 of providing emergency medical assistance to the individual. The
561 term "medical personnel" includes a licensed or certified health
562 care professional; an employee of a health care professional or
563 health care facility; employees of a laboratory licensed under
564 chapter 483; personnel of a blood bank or plasma center; a
565 medical student or other student who is receiving training as a
566 health care professional at a health care facility; and a
567 paramedic or emergency medical technician certified by the
568 department to perform life-support procedures under s. 401.23.

569 a. The occurrence of a significant exposure shall be
570 documented by medical personnel under the supervision of a
571 licensed physician and recorded only in the personnel record of
572 the medical personnel.

573 b. Costs of an HIV test shall be borne by the medical
574 personnel or the employer of the medical personnel. However,
575 costs of testing or treatment not directly related to the

576 initial HIV tests or costs of subsequent testing or treatment
577 may not be borne by the medical personnel or the employer of the
578 medical personnel.

579 c. In order to use the provisions of this subparagraph,
580 the medical personnel must be tested for HIV pursuant to this
581 section or provide the results of an HIV test taken within 6
582 months before the significant exposure if such test results are
583 negative.

584 d. A person who receives the results of an HIV test
585 pursuant to this subparagraph shall maintain the confidentiality
586 of the information received and of the persons tested. Such
587 confidential information is exempt from s. 119.07(1).

588 e. If the source of the exposure is not available and will
589 not voluntarily present himself or herself to a health facility
590 to be tested for HIV, the medical personnel or the employer of
591 such person acting on behalf of the employee may seek a court
592 order directing the source of the exposure to submit to HIV
593 testing. A sworn statement by a physician licensed under chapter
594 458 or chapter 459 that a significant exposure has occurred and
595 that, in the physician's medical judgment, testing is medically
596 necessary to determine the course of treatment constitutes
597 probable cause for the issuance of an order by the court. The
598 results of the test shall be released to the source of the
599 exposure and to the person who experienced the exposure.

600 11. For the performance of an HIV test upon an individual

601 | who comes into contact with nonmedical personnel in such a way
602 | that a significant exposure has occurred while the nonmedical
603 | personnel provides emergency medical assistance during a medical
604 | emergency. For the purposes of this subparagraph, a medical
605 | emergency means an emergency medical condition outside of a
606 | hospital or health care facility that provides physician care.
607 | The test may be performed only during the course of treatment
608 | for the medical emergency.

609 | a. The occurrence of a significant exposure shall be
610 | documented by medical personnel under the supervision of a
611 | licensed physician and recorded in the medical record of the
612 | nonmedical personnel.

613 | b. Costs of any HIV test shall be borne by the nonmedical
614 | personnel or the employer of the nonmedical personnel. However,
615 | costs of testing or treatment not directly related to the
616 | initial HIV tests or costs of subsequent testing or treatment
617 | may not be borne by the nonmedical personnel or the employer of
618 | the nonmedical personnel.

619 | c. In order to use the provisions of this subparagraph,
620 | the nonmedical personnel shall be tested for HIV pursuant to
621 | this section or shall provide the results of an HIV test taken
622 | within 6 months before the significant exposure if such test
623 | results are negative.

624 | d. A person who receives the results of an HIV test
625 | pursuant to this subparagraph shall maintain the confidentiality

626 of the information received and of the persons tested. Such
627 confidential information is exempt from s. 119.07(1).

628 e. If the source of the exposure is not available and will
629 not voluntarily present himself or herself to a health facility
630 to be tested for HIV, the nonmedical personnel or the employer
631 of the nonmedical personnel acting on behalf of the employee may
632 seek a court order directing the source of the exposure to
633 submit to HIV testing. A sworn statement by a physician licensed
634 under chapter 458 or chapter 459 that a significant exposure has
635 occurred and that, in the physician's medical judgment, testing
636 is medically necessary to determine the course of treatment
637 constitutes probable cause for the issuance of an order by the
638 court. The results of the test shall be released to the source
639 of the exposure and to the person who experienced the exposure.

640 12. For the performance of an HIV test by the medical
641 examiner or attending physician upon an individual who expired
642 or could not be resuscitated while receiving emergency medical
643 assistance or care and who was the source of a significant
644 exposure to medical or nonmedical personnel providing such
645 assistance or care.

646 a. HIV testing may be conducted only after appropriate
647 medical personnel under the supervision of a licensed physician
648 documents in the medical record of the medical personnel or
649 nonmedical personnel that there has been a significant exposure
650 and that, in accordance with the written protocols based on the

651 National Centers for Disease Control and Prevention guidelines
652 on HIV postexposure prophylaxis and in the physician's medical
653 judgment, the information is medically necessary to determine
654 the course of treatment for the medical personnel or nonmedical
655 personnel.

656 b. Costs of an HIV test performed under this subparagraph
657 may not be charged to the deceased or to the family of the
658 deceased person.

659 c. For this subparagraph to be applicable, the medical
660 personnel or nonmedical personnel must be tested for HIV under
661 this section or must provide the results of an HIV test taken
662 within 6 months before the significant exposure if such test
663 results are negative.

664 d. A person who receives the results of an HIV test
665 pursuant to this subparagraph shall comply with paragraph (e).

666 13. For the performance of an HIV-related test medically
667 indicated by licensed medical personnel for medical diagnosis of
668 a hospitalized infant as necessary to provide appropriate care
669 and treatment of the infant if, after a reasonable attempt, a
670 parent cannot be contacted to provide consent. The medical
671 records of the infant must reflect the reason consent of the
672 parent was not initially obtained. Test results shall be
673 provided to the parent when the parent is located.

674 14. For the performance of HIV testing conducted to
675 monitor the clinical progress of a patient previously diagnosed

676 | to be HIV positive.

677 | 15. For the performance of repeated HIV testing conducted
678 | to monitor possible conversion from a significant exposure.

679 | Section 9. Paragraph (e) of subsection (3) of section
680 | 921.0022, Florida Statutes, is amended to read:

681 | 921.0022 Criminal Punishment Code; offense severity
682 | ranking chart.—

683 | (3) OFFENSE SEVERITY RANKING CHART

684 | (e) LEVEL 5

685 |

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.

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689	322.34 (6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
690	327.30 (5)	3rd	Vessel accidents involving personal injury; leaving scene.
691	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

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692	379.367 (4)	3rd	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.
693	379.407 (5) (b) 3.	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.
694	381.0041 (11) (b)	3rd	 Donate blood, plasma, or organs knowing HIV positive.
695	440.10 (1) (g)	2nd	Failure to obtain workers' compensation coverage.

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696	440.105 (5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
697	440.381 (2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
698	624.401 (4) (b) 2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
699	626.902 (1) (c)	2nd	Representing an unauthorized insurer; repeat offender.
700	790.01 (2)	3rd	Carrying a concealed

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708	800.04 (7) (b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
709	806.111 (1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
710	812.0145 (2) (b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
711	812.015 (8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
712	812.019 (1)	2nd	Stolen property; dealing in or trafficking in.
	812.131 (2) (b)	3rd	Robbery by sudden snatching.

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713	812.16 (2)	3rd	Owning, operating, or conducting a chop shop.
714	817.034 (4) (a) 2.	2nd	Communications fraud, value \$20,000 to \$50,000.
715	817.234 (11) (b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
716	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.
717	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.

718

817.611 (2) (a)

2nd

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

719

817.625 (2) (b)

2nd

Second or subsequent fraudulent use of scanning device or reencoder.

720

825.1025 (4)

3rd

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

721

827.071 (4)

2nd

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

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722	827.071 (5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.
723	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.
724	843.01	3rd	Resist officer with violence to person; resist arrest with violence.
725	847.0135 (5) (b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
726	847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
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728	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
729	874.05 (1) (b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
730	874.05 (2) (a)	2nd	Encouraging or recruiting person under 13 years of age to join a criminal gang.
731	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).
	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,
 school, or state, county,
 or municipal park or
 publicly owned
 recreational facility or
 community center.

732

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.

733

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.

734

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.

735

893.13(4)(b)

2nd

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

736

893.1351(1)

3rd

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

737

738

739 Section 10. Subsection (2) of section 951.27, Florida

740 Statutes, is amended to read:

741 951.27 Blood tests of inmates.—
742 (2) Except as otherwise provided in this subsection,
743 serologic blood test results obtained pursuant to subsection (1)
744 are confidential and exempt from the provisions of s. 119.07(1)
745 and s. 24(a), Art. I of the State Constitution. However, such
746 results may be provided to employees or officers of the sheriff
747 or chief correctional officer who are responsible for the
748 custody and care of the affected inmate and have a need to know
749 such information, and as provided in s. 775.0877 ~~ss. 775.0877~~
750 ~~and 960.003~~. In addition, upon request of the victim or the
751 victim's legal guardian, or the parent or legal guardian of the
752 victim if the victim is a minor, the results of any HIV test
753 performed on an inmate who has been arrested for any sexual
754 offense involving oral, anal, or vaginal penetration by, or
755 union with, the sexual organ of another, shall be disclosed to
756 the victim or the victim's legal guardian, or to the parent or
757 legal guardian of the victim if the victim is a minor. In such
758 cases, the county or municipal detention facility shall furnish
759 the test results to the Department of Health, which is
760 responsible for disclosing the results to public health agencies
761 as provided in s. 775.0877 and to the victim or the victim's
762 legal guardian, or the parent or legal guardian of the victim if
763 the victim is a minor, ~~as provided in s. 960.003(3)~~.
764 Section 11. This act shall take effect July 1, 2017.