

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 79 HIV Prevention  
**SPONSOR(S):** Criminal Justice Subcommittee, Duran  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 846

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	10 Y, 3 N, As CS	Mawn	Hall
2) Appropriations Committee			
3) Judiciary Committee			

### SUMMARY ANALYSIS

Human immunodeficiency virus (HIV) attacks the body's immune system, reducing its ability to fight off infections and disease. Florida law criminalizes certain conduct committed by an HIV-positive person who is aware of their status. A person commits a third degree felony when he or she:

- Has sexual intercourse after being informed of the risk of HIV transmission, unless the other person has consented after being informed of the diagnosis;
- Donates blood, plasma, organs, skin, or other human tissue after being informed that HIV can spread through such donation;
- Tested positive for HIV, is informed of the possibility of HIV transmission through sexual activity, and commits or offers to commit prostitution or procures another for prostitution;
- Tested positive for HIV after a conviction for or plea to a specified offense involving the transmission of bodily fluids, and commits a subsequent specified offense;
- Maliciously disseminates false information or reports concerning the existence of any sexually transmitted disease or infection (STI), including HIV;
- Obtains information identifying an individual with an STI, including HIV, knew or should have known the nature of the information, and maliciously, or for monetary gain, disseminates the information to anyone other than to specified persons.

Florida Department of Health (DOH) rules regulate STI testing, confidentiality of information, disease reporting, quarantine orders, and notification requirements, and impose a \$500 fine for each violation of such rules.

No effective cure for HIV currently exists, but antiretroviral therapy can slow or prevent disease progression and reduce the amount of HIV in a person's blood (viral load), which in turn reduces the likelihood of transmission. To reflect the reduced risk of HIV transmission due to advances in medical treatment, CS/HB 79:

- Reduces from a third degree felony to a first degree misdemeanor:
  - A first-time HIV non-disclosure offense;
  - Offenses involving the donation of blood, organs, and other human tissue by persons with HIV not deemed medically appropriate by a licensed physician; and
  - Offenses involving the release of information relating to STIs, including HIV;
- Makes a second or subsequent non-disclosure offense for any STI a third degree felony;
- Permits the donation of blood, organs, and other human tissue by a person with HIV if a licensed physician deems the donation medically appropriate; and
- Deletes the fine for a violation of DOH rules regarding STIs.

The bill may have a negative indeterminate impact on state government by reducing prison beds and a positive indeterminate impact on local governments by increasing jail beds.

The bill provides an effective date of October 1, 2019.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h0079a.CRJ

**DATE:** 2/22/2019

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

Human immunodeficiency virus (HIV) spreads through the transfer of blood, semen, pre-seminal fluid, rectal fluids, vaginal fluids, and breast milk from an infected person to the mucous membranes or damaged tissue of a non-infected person.<sup>1</sup> Common methods of HIV transmission include unprotected anal or vaginal sex and sharing needles or syringes for drug injections.<sup>2</sup> Less common methods of transmission include the passage of HIV from mother to child during pregnancy, birth, or breastfeeding and being stuck with an HIV-contaminated needle or other sharp object, usually in a healthcare setting.<sup>3</sup> Rare methods of transmission include oral sex, receiving blood transfusions, blood products, or organ or tissue transplants contaminated with HIV, bites, and kissing.<sup>4</sup>

Once transmitted, HIV attacks the infected person's immune system, specifically, the lymphocytes known as CD4 cells or T Cells, which participate in an immune response.<sup>5</sup> Untreated, HIV reduces a body's ability to fight off infections and disease and can lead to acquired immunodeficiency syndrome (AIDS), the most severe form of HIV infection.<sup>6</sup> There is no effective cure for HIV, but antiretroviral therapy (ART) can slow or prevent the disease's progression and dramatically prolong the lifespan of an infected person.<sup>7</sup> When treated, an infected person can expect to live nearly as long as a person without HIV.<sup>8</sup> ART can also reduce the amount of HIV in a person's blood, known as the viral load.<sup>9</sup> Persons who attain an undetectable viral load have effectively no risk of transmitting HIV through sexual conduct.<sup>10</sup>

In the United States, about 51 percent of an estimated 1.1 million people with HIV<sup>11</sup> had achieved an undetectable viral load by the end of 2015.<sup>12</sup> In Florida, 62 percent of the 116,944 people living with HIV<sup>13</sup> had achieved an undetectable viral load.<sup>14</sup>

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<sup>1</sup> Centers for Disease Control and Prevention (CDC), *HIV Transmission*, <https://www.cdc.gov/hiv/basics/transmission.html> (last visited Feb. 15, 2019).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Centers for Disease Control and Prevention (CDC), *About HIV/AIDS*, <https://www.cdc.gov/hiv/basics/whatishiv.html> (last visited Feb. 15, 2019).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Centers for Disease Control and Prevention (CDC), *HIV Care Saves Lives infographic*, <https://www.cdc.gov/vitalsigns/hiv-aids-medical-care/infographic.html> (last visited Feb. 15, 2019).

<sup>9</sup> CDC, *supra* at FN 5.

<sup>10</sup> *Id.*

<sup>11</sup> The annual number of new HIV diagnoses in the United States remained stable between 2012 and 2017, with 2017 resulting in approximately 38,739 new HIV diagnoses. Centers for Disease Control and Prevention (CDC), *HIV in the United States and Dependent Areas*, <https://www.cdc.gov/hiv/pdf/statistics/overview/cdc-hiv-us-ataglance.pdf> (last visited Feb. 15, 2019).

<sup>12</sup> Centers for Disease Control and Prevention (CDC), *HIV in the United States and Dependent Areas*, <https://www.cdc.gov/hiv/pdf/statistics/overview/cdc-hiv-us-ataglance.pdf> (last visited Feb. 15, 2019).

<sup>13</sup> Florida reported an estimated 4,949 new HIV diagnoses in 2017. Florida Department of Health, *HIV Data Center*, <http://www.floridahealth.gov/diseases-and-conditions/aids/surveillance/index.html> (last visited Feb. 15, 2019).

<sup>14</sup> Florida Department of Health, *HIV Data Center*, <http://www.floridahealth.gov/diseases-and-conditions/aids/surveillance/index.html> (last visited Feb. 15, 2019).

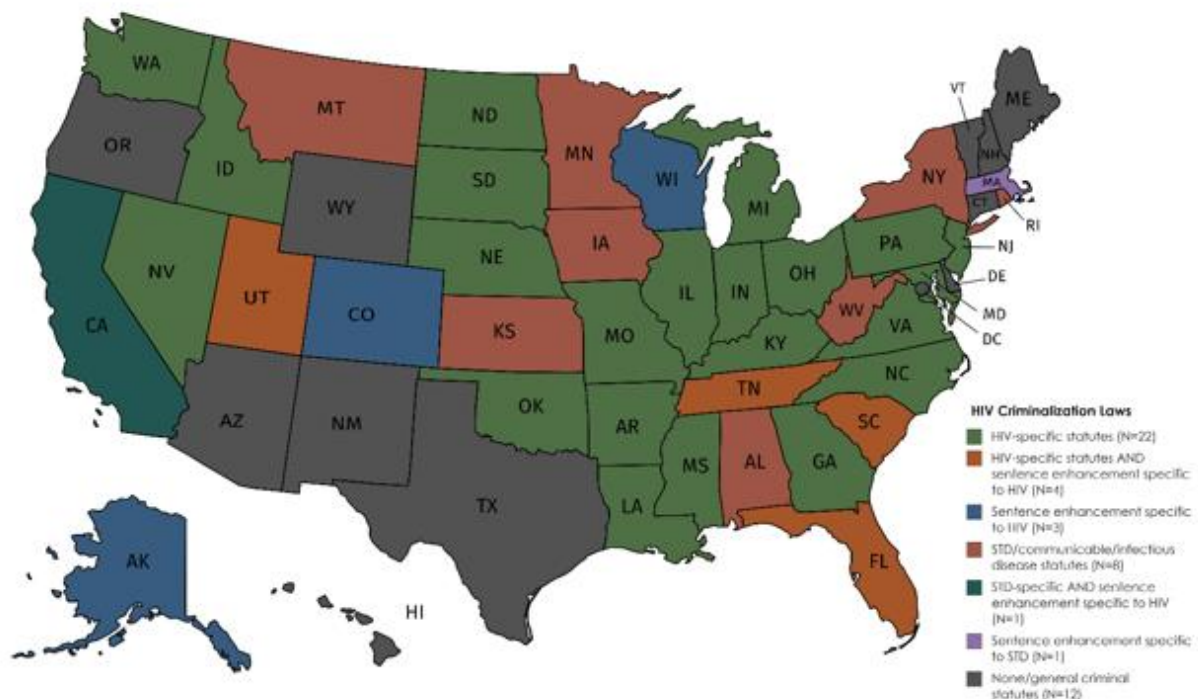
## Criminal HIV Exposure Laws

Nearly two-thirds of all states criminalize certain conduct related to HIV exposure.<sup>15</sup> Such laws attempt to deter HIV transmission by:

- Criminalizing behaviors that result in HIV exposure;
- Criminalizing behaviors that result in STI or other communicable or infectious disease exposure, which may include HIV exposure;
- Increasing sentence lengths for certain crimes committed by a person infected with HIV; and
- Increasing sentence lengths for certain crimes committed by a person infected with an STI, which may include HIV.<sup>16</sup>

Additionally, all 50 states have general criminal laws, such as assault, battery, reckless endangerment, and attempted murder, under which the state can prosecute a person with HIV for engaging in certain behaviors.<sup>17</sup>

Types of Criminalization Laws in the U.S.<sup>18</sup>



Opponents of criminal HIV exposure laws argue that such laws can lead to unintended consequences by encouraging the deferral of HIV testing, reinforcing hostility towards HIV-positive persons, exacerbating HIV-related stigma, and deterring HIV-positive status disclosure.<sup>19</sup> Opponents also point out that most criminal HIV exposure laws do not account for scientifically supported risk levels associated with the type of activity the offender engages in or any risk reduction measures. As a result, these laws may criminalize behaviors the Center for Disease Control and Prevention (CDC) regards as posing little or no risk for HIV transmission.<sup>20</sup>

<sup>15</sup> J. Stan Lehman, et al., *Prevalence and Public Health Implications of State Laws that Criminalize Potential HIV Exposure in the United States*, AIDS and Behavior (Mar. 15, 2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4019819/> (last visited Feb. 15, 2019).

<sup>16</sup> Centers for Disease Control and Prevention (CDC), *HIV and STD Criminal Laws*, <https://www.cdc.gov/hiv/policies/law/states/exposure.html> (last visited Feb. 15, 2019).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> C. Galletly, Z. Lazzarini, C. Sanders, and S.D. Pinkerton, *Criminal HIV Exposure Laws: Moving Forward*, AIDS and Behavior (June 2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4084714/> (last visited Feb. 15, 2019).

<sup>20</sup> U.S. Department of Justice (DOJ), *Best Practice Guide to Reform HIV-Specific Criminal Laws to Align with Scientifically-Supported Factors*, <https://www.hivlawandpolicy.org/sites/default/files/DOJ-HIV-Criminal-Law-Best-Practices-Guide.pdf> (last visited Feb. 15, 2019).

In light of scientific advancements in HIV treatment and prevention, the United States Department of Justice (DOJ) recommends that states reform HIV criminal exposure laws to eliminate HIV-specific penalties, except when a person knows he or she is HIV-positive and:

- Commits a sex crime with the risk of transmission (e.g., rape or other sexual assault); and
- Evidence clearly demonstrates that the person intended to transmit HIV and the person's behavior posed a significant risk of transmission.<sup>21</sup>

## Florida Law

### *Sex and Non-Disclosure*

A person commits a third degree felony<sup>22</sup> if the person knows he or she has HIV, has been informed of the risk of transmission through sexual intercourse, and has sexual intercourse with another person, unless that person consented with knowledge of the diagnosis.<sup>23</sup> A person commits a first degree felony<sup>24</sup> for a second or subsequent non-disclosure offense.<sup>25</sup> Conviction for a non-disclosure offense does not require the intent to transmit or the actual transmission of HIV.

Florida law does not currently define "sexual intercourse." However, the Florida Supreme Court has defined sexual intercourse to include penile-vaginal penetration and acts of oral and anal intercourse.<sup>26</sup>

### *Penalties for Sex Workers*

A person who engages in sexual activity for hire, except as between spouses, commits the offense of prostitution.<sup>27</sup> The severity of the offense depends in part on the existence of any prior conviction for prostitution. Prostitution is a second degree misdemeanor for a first offense<sup>28</sup>, a first degree misdemeanor for a second offense<sup>29</sup>, and a third degree felony for a third or subsequent offense.<sup>30</sup> A person convicted of prostitution must undergo STI screening, including HIV screening.<sup>31</sup>

A person who commits or offers to commit prostitution, or who procures another for prostitution by engaging in sexual activity in a manner likely to transmit HIV, commits a third degree felony if, prior to the offense, he or she tested positive for HIV and was informed of the positive result and the risk of transmission through sexual activity.<sup>32</sup> An offender may be convicted of and sentenced separately for this offense and for prostitution.<sup>33</sup> A conviction for this offense does not require the intent to transmit or the actual transmission of HIV.

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<sup>21</sup> *Id.*

<sup>22</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Ss. 775.082(3)(e) and 775.083(1)(c), F.S.

<sup>23</sup> Ss. 384.24(2) and 384.34(5), F.S.

<sup>24</sup> A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Ss. 775.082(3)(b)1. and 775.083(1)(b), F.S.

<sup>25</sup> *Id.*

<sup>26</sup> *Debaun v. State*, 213 So. 3d 747 (Fla. 2017).

<sup>27</sup> S. 796.07(1)(a), F.S.

<sup>28</sup> A second degree misdemeanor is punishable by up to 60 days in jail and a \$500 fine. Ss. 775.082(4)(b) and 775.083(1)(e), F.S.

<sup>29</sup> A first degree misdemeanor is punishable by up to one year in jail and a \$1,000 fine. Ss. 775.082(4)(a) and 775.083(1)(d), F.S.

<sup>30</sup> Ss. 796.07(4)(a)1.- 3., F.S.

<sup>31</sup> S. 775.0877(1), F.S.

<sup>32</sup> Ss. 796.08(5)(a)-(b), F.S.

<sup>33</sup> S. 775.0877(5), F.S.

### *Criminal Transmission of HIV*

A person convicted of committing or attempting to commit a specified offense involving the transmission of bodily fluids from one person to another must undergo HIV testing.<sup>34</sup> Specified offenses include.<sup>35</sup>

- Sexual battery;<sup>36</sup>
- Incest;<sup>37</sup>
- Lewd or lascivious offenses on a person under 16;<sup>38</sup>
- Assault<sup>39</sup> or aggravated assault;<sup>40</sup>
- Battery<sup>41</sup> or aggravated battery;<sup>42</sup>
- Child abuse<sup>43</sup> or aggravated child abuse;<sup>44</sup>
- Abuse of an elderly person or disabled adult<sup>45</sup> or aggravated abuse of an elderly person or disabled adult;<sup>46</sup>
- Sexual performance of a minor;<sup>47</sup>
- Prostitution,<sup>48</sup>
- Human trafficking;<sup>49</sup> and
- Donation of blood, plasma, organs, skin, or other human tissue under certain conditions.<sup>50</sup>

A person who tests positive for HIV following a conviction for a specified offense, who is informed of the result, and who later commits another specified offense commits criminal transmission of HIV.<sup>51</sup> An offender may be convicted of and sentenced separately for criminal transmission of HIV and for the underlying offense.<sup>52</sup> A conviction for criminal transmission of HIV does not require the intent to transmit or the actual transmission of HIV.<sup>53</sup>

### *Court-Ordered Hepatitis and HIV Testing*

At the request of a victim,<sup>54</sup> a court must order an offender charged with the commission of a specified offense to undergo Hepatitis and HIV testing if the offense:

- Involves the transmission of bodily fluids from one person to another;<sup>55</sup> or
- Is a sexual offense and the victim was a minor, a disabled adult, or an elderly person.<sup>56</sup>

The specified offenses include all the offenses that form the basis for a conviction of criminal transmission of HIV, except human trafficking.<sup>57</sup>

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<sup>34</sup> S. 775.0877(1), F.S.

<sup>35</sup> *Id.*

<sup>36</sup> S. 794.011, F.S.

<sup>37</sup> S. 826.04, F.S.

<sup>38</sup> S. 800.04, F.S.

<sup>39</sup> Ss. 784.011, 784.07(2)(a), and 784.08(2)(d), F.S.

<sup>40</sup> Ss. 784.021, 784.07(2)(c), and 784.08(2)(b), F.S.

<sup>41</sup> Ss. 784.03, 784.07(2)(b), 784.08(2)(c), F.S.

<sup>42</sup> Ss. 784.045, 784.07(2)(d), and 784.08(2)(a), F.S.

<sup>43</sup> S. 827.03(2)(c), F.S.

<sup>44</sup> S. 827.03(2)(a), F.S.

<sup>45</sup> S. 825.102(1), F.S.

<sup>46</sup> S. 825.102(2), F.S.

<sup>47</sup> S. 827.071, F.S.

<sup>48</sup> Ss. 796.07 and 796.08, F.S.

<sup>49</sup> Ss. 787.06(3)(b), (d), (f), and (g), F.S.

<sup>50</sup> S. 381.0041(11)(b), F.S.

<sup>51</sup> S. 775.0877(3), F.S.

<sup>52</sup> *Id.*

<sup>53</sup> S. 775.0877(5), F.S.

<sup>54</sup> A request may also come from a victim's legal guardian or the parents of a minor victim.

<sup>55</sup> S. 960.003(2)(a), F.S.

<sup>56</sup> S. 960.003(2)(b), F.S.

<sup>57</sup> *Id.*

## *Organ, Blood, and Tissue Donation*

Due to increased life expectancy, the number of HIV-positive persons in need of organ transplants has increased.<sup>58</sup> However, the number of people on the organ transplant waiting list far outweighs the number of available organs.<sup>59</sup> This shortage disproportionately affects persons with HIV, who have a higher mortality rate than persons without HIV on the organ transplant waiting list.<sup>60</sup>

For decades, federal law prohibited persons with HIV from donating organs for transplantation, even to HIV-positive recipients.<sup>61</sup> However, in 2013, the HIV Organ Policy Equity (HOPE) Act legalized HIV-positive organ donations for transplantation into HIV-positive candidates under approved research protocols designed to evaluate the feasibility, effectiveness, and safety of such organ transplants.<sup>62</sup>

Although authorized by federal law, it is a third degree felony in Florida for an HIV-positive person to donate blood, plasma, organs, skin, or other human tissue when he or she knew of the HIV infection and was informed that transmission could occur through such donation.<sup>63</sup> Florida prohibits HIV-positive persons from donating human tissue to other HIV-positive recipients or as part of a clinical research study.<sup>64</sup>

## *Release of Information*

A person who maliciously disseminates any false information or report about the existence of any STI, including HIV, commits a third degree felony.<sup>65</sup> A person who obtains information identifying a person with an STI, including HIV, who knew or should have known the nature of the information and who maliciously, or for monetary gain, spreads such information to anyone other than a physician or a nurse employed by the Florida Department of Health (DOH) or to a law enforcement agency commits a third degree felony.<sup>66</sup>

DOH promulgates rules regulating STI testing, confidentiality of information, disease reporting, quarantine orders, and notification requirements.<sup>67</sup> A person who violates DOH rules related to STIs<sup>68</sup> is subject to a \$500 fine for each violation.<sup>69</sup> DOH can impose the fine in addition to other penalties provided by ch. 384, F.S.<sup>70</sup>

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<sup>58</sup> Christine Durand, M.D., *The Transformation of Transplantation*, HIV Specialist (July 2018), [https://aahivm.org/wp-content/uploads/2018/07/FINALHIVspecialist\\_July2018FINAL-1.pdf](https://aahivm.org/wp-content/uploads/2018/07/FINALHIVspecialist_July2018FINAL-1.pdf) (last visited Feb. 15, 2019).

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> UNOS, *At Two Years, HOPE Act Still Offering Hope*, <https://unos.org/at-two-years-hope-act-still-offering-hope/> (last visited Feb. 15, 2019).

<sup>62</sup> *Id.*

<sup>63</sup> S. 381.0041(11)(b), F.S.

<sup>64</sup> *Id.*

<sup>65</sup> S. 384.34(3), F.S.

<sup>66</sup> S. 384.34(6), F.S.

<sup>67</sup> R. 64D-3, F.A.C.

<sup>68</sup> For example, r. 64D-3.029, F.A.C., requires practitioners, hospitals, and laboratories to report to DOH diseases or conditions identified by DOH as being of public health significance, including HIV, within specified timeframes.

<sup>69</sup> S. 384.34(4), F.S.

<sup>70</sup> *Id.* Other penalties include criminal misdemeanor penalties for violations of s. 384.29, F.S., relating to the confidentiality of information and records held by DOH, and for violations of s. 384.26, F.S., relating to the confidentiality of information gathered by DOH during an investigation into the source and spread of an STI.

## Effect of the Proposed Changes

### Definitions

CS/HB 79 defines two terms previously undefined by statute. The definition for “sexual conduct,” similar to that set forth by the Florida Supreme Court, means conduct between persons, regardless of gender, which is capable of transmitting a sexually transmissible disease, including, but not limited to, contact between a:

- Penis and a vulva or an anus; or
- Mouth and a penis, a vulva, or an anus.

The bill defines “substantial risk of transmission” as a reasonable probability of disease transmission as proven by competent medical or epidemiological evidence.

### Sex and Non-Disclosure

The bill amends ss. 384.24 and 384.34, F.S., to replace the undefined phrase “sexual intercourse” with the defined phrase “sexual conduct” and to reduce the offense of engaging in sex while knowingly HIV-positive without the informed consent of the other party from a third degree felony to a first degree misdemeanor. This change makes non-disclosure of HIV the same offense level as non-disclosure of other enumerated STIs. However, the bill makes a second or subsequent non-disclosure offense under s. 384.24, F.S., for any enumerated STI a third degree felony.

The bill requires the state to prove additional elements for a conviction under s. 384.24, F.S., including that the offender:

- Acted with intent to transmit HIV or another specified STI;
- Engaged in conduct that imposed a substantial risk of transmission of HIV or another specified STI when the other person was unaware of the HIV or specified STI diagnosis; and
- Actually transmitted HIV or another specified STI.

Finally, the bill specifies that a person does not act with the intent to transmit HIV or a specified STI if he or she:

- In good faith complies with a prescribed treatment regimen or with the behavioral recommendations of a health care provider or public health officials to limit the risk of transmission; or
- Offers to comply with such behavioral recommendations, but the sexual partner rejects the offer.

The bill defines “behavioral recommendations” to include the use of a prophylactic device, such as a condom, and that evidence of person’s failure to comply with a treatment regimen or behavioral recommendations does not, in and of itself, constitute sufficient evidence of intent to transmit HIV or another specified STI.

### Penalties for Sex Workers

Under the bill, the non-disclosure of HIV in connection with prostitution remains a third degree felony. As a result, the bill makes the non-disclosure of HIV in connection with prostitution a more severe offense than a first-time non-disclosure of HIV offense not connected with prostitution, now reduced to a first degree misdemeanor. Further, a conviction under this section still does not require the intent to transmit or the actual transmission of HIV, though these elements are required for conviction of a non-disclosure offense not involving prostitution.

### Criminal Transmission of HIV

The bill removes the donation of blood, plasma, organs, skin, or other human tissue from the list of specified offenses in s. 775.0877, F.S. As a result, a person convicted of donation of human tissue by an HIV-positive person does not have to submit to HIV testing as part of his or her sentence, and a second or subsequent offense would not constitute criminal transmission of HIV.

However, a second or subsequent conviction for any of the remaining enumerated crimes constitutes criminal transmission of HIV, a third degree felony. A conviction for this offense still does not require the intent to transmit or the actual transmission of HIV.

### Court-Ordered Hepatitis and HIV Testing

The bill deletes all references to s. 775.0877(1)(n), F.S., from the list of offenses that qualify for mandatory Hepatitis and HIV testing at a victim's request if:

- The offense involves the transmission of bodily fluids from one person to another; or
- The offense is a sexual offense and the victim was a minor, a disabled adult, or an elderly person.

In effect, the commission of an offense involving the donation of human tissue by a person with HIV would not subject the offender to court-ordered Hepatitis or HIV testing at the request of a victim under this section. However, the donated tissue would still be tested for STIs and other communicable diseases.<sup>71</sup>

### Organ, Blood, and Tissue Donation

The bill amends s. 381.0041, F.S., to permit the donation of blood, plasma, organs, skin, or other human tissue by a person with HIV if a licensed physician deems the donation medically appropriate. This may authorize persons with HIV to donate human tissue to other persons with HIV and to participate in clinical research trials authorized by the HOPE Act.

The bill also reduces the offense level for the donation of blood, plasma, organs, skin, or other human tissue by a person with HIV when not deemed medically appropriate by a licensed physician from a third degree felony to a first degree misdemeanor. The severity of the offense for unauthorized tissue donation by an HIV-positive person aligns with most other HIV-exposure offenses.

### Release of Information

The bill amends s. 384.34, F.S., to downgrade from a third degree felony to a first degree misdemeanor the offenses of:

- Maliciously spreading any false information or report concerning the existence of any STI, including HIV; and
- Maliciously or for monetary gain spreading information identifying an individual with an STI, including HIV, when the offender knew or should have known the nature of the information.

Finally, the bill deletes the \$500 civil penalty for violating DOH rules regarding STIs.

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<sup>71</sup> S. 381.0041(1), F.S.  
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## Other

The bill amends s. 921.0022, F.S., to conform the Criminal Punishment Code offense severity ranking chart<sup>72</sup> to changes made by the bill. Specifically, the HIV-related offenses reduced by the bill from felonies to first degree misdemeanors are removed from the chart.<sup>73</sup>

The bill provides an effective date of July 1, 2019.

### B. SECTION DIRECTORY:

**Section 1:** Providing a short title.

**Section 2:** Amending s. 381.0041, F.S., relating to donation and transfer of human tissue; testing requirements.

**Section 3:** Amending s. 384.23, F.S., relating to definitions.

**Section 4:** Amending s. 384.24, F.S., relating to unlawful acts.

**Section 5:** Amending s. 384.34, F.S., relating to penalties.

**Section 6:** Amending s. 775.0877, F.S., relating to criminal transmission of HIV; procedures; penalties.

**Section 7:** Amending s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

**Section 8:** Amending s. 960.003, F.S., relating to Hepatitis and HIV testing for persons charged with or alleged by petition for delinquency to have committed certain offenses; disclosure of results to victims.

**Section 9:** Providing an effective date of July 1, 2019.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill may have a negative indeterminate impact on state government, as it reduces the offense severity of current felony offenses to misdemeanor offenses that do not carry prison sentences. The bill may reduce prison beds by an unknown amount.

#### 2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

The bill may have a positive indeterminate impact on local governments, as it reduces the offense severity of current felony offenses to misdemeanor offenses that may carry county jail sentences.

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<sup>72</sup> The Criminal Punishment Code offense severity ranking chart sets forth ten offense levels, ranked from least severe (level 1) to most severe (level 10). Each felony offense is assigned to an offense level according to the severity of the offense, and each offense level corresponds to a point value used to determine whether a felony offender must serve time in a state prison.

<sup>73</sup> As a misdemeanor offender will not serve time in a state prison, misdemeanor offenses are not ranked and do not appear in the chart. Ss. 775.082, 775.083, and 921.0022, F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill removes DOH's authority to promulgate rules regarding the enforcement of financial penalties for violating rules related to STIs.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 21, 2019, the Criminal Justice Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The amendments:

- Increased a second or subsequent non-disclosure offense under s. 384.24, F.S., for any enumerated STI from a first degree misdemeanor to a third degree felony; and
- Returned the offense of criminal transmission of HIV to a third degree felony, as it is under current law.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.