

CS/HB 79 – HIV Prevention

Amends s. 381.0041, F.S., creating an exception for “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, etc.” That exception is “when the donation is deemed medically appropriate by a licensed physician.” It also reduces the current Level 5, 3rd degree felony to a 1st degree misdemeanor.

Per DOC, in FY 17-18, no offenders were sentenced for these offenses.

CONFERENCE ADOPTED ESTIMATE: **Negative Insignificant**

This bill also amends s. 384.23, F.S. (defining sexual conduct and substantial risk of transmission) and s. 384.24(1), F.S., adding the exposure of another to human immunodeficiency virus infection (HIV) to unlawful acts committed by a person who has been notified that he or she may communicate a disease through sexual intercourse. It also redefines the act as an “act with the intent to transmit the disease, to engage in sexual conduct that poses a substantial risk of transmission to another person when the other person is unaware that the person is a carrier of the disease, and to transmit the disease to the other person.” Furthermore, under s. 384.24(2), F.S., it adds that a “person does not act with the intent...if he or she in good faith complies with a treatment regimen prescribed by his or her health care provider or with the behavioral recommendations of his or her health care provider or public health officials to limit the risk of transmission, or if he or she offers to comply with such behavioral recommendations, but such offer is rejected by the other person with whom he or she is engaging in sexual conduct. For purposes of this section, the term "behavioral recommendations" includes, but is not limited to, the use of a prophylactic device to limit the risk of transmission of the disease. Evidence of the person's failure to comply with such a treatment regimen or such behavioral recommendations is not, in and of itself, sufficient to establish that he or she acted with the intent.” Originally, HIV was included in the second subsection, but this now deletes that part of this subsection and moves HIV into the first subsection, including it with the other diseases.

It also amends multiple penalties in s. 384.34, F.S. First, it amends s. 384.34(1), F.S., adding an **unranked, 3rd degree felony** for a second or subsequent violation of s. 384.24, F.S. Additionally, it amends s. 384.34(3), F.S., reducing the unranked, 3rd degree felony to a 1st degree misdemeanor for “any person who maliciously disseminates any false information or report concerning the existence of any sexually transmissible disease.” Also, it deletes s. 384.34(5), F.S., the unranked, 3rd degree felony for a violation of the originally defined s. 384.24(2), F.S. and the unranked, 1st degree felony for multiple violations. With s. 384.24(2), F.S. already redefined, and HIV moved to the first subsection, this has the effect of reducing all acts to 1st degree misdemeanors, although a second offense of s. 384.24, F.S. is a felony. Finally, it reduces the unranked, 3rd degree felony to a 1st degree misdemeanor for “any person

who obtains information that identifies an individual who has a sexually transmissible disease, who knew or should have known the nature of the information and maliciously, or for monetary gain disseminates this information or otherwise makes this information known to any other person.”

Per FDLE, in FY 17-18, there were 3 arrest charges for the 1st degree misdemeanor described in s. 384.34(1), F.S., with no convictions and 2 adjudications withheld. None of these were for a second or subsequent offense. Also, there were 2 guilty convictions for a violation of s. 384.34(5), F.S. with a second or subsequent conviction. Per DOC, in FY 17-18, no offenders were sentenced for offenses under s. 384.34(3), F.S. There were 12 (adj.) offenders sentenced for the unranked, 3rd degree felony under s. 384.34(5), F.S., with one (adj.) offender sentenced to prison (sentence length=48.0 m, incarceration rate: 8.3% adj.-9.1% unadj.). Five (adj.) offenders were sentenced for the unranked, 1st degree felony, and four (adj.) were sentenced to prison (mean sentence length=53.3 m, incarceration rate: 80.0% adj.-80.0% unadj.). Two (adj.) offenders were sentenced under s. 384.34(6), F.S., and one (adj.) offender received a prison sentence (sentence length=48.0 m, incarceration rate: 50.0% adj.-50.0% unadj.).

CONFERENCE ADOPTED ESTIMATE: Negative Insignificant

Amends s. 775.0877, F.S., deleting “donation of blood, plasma, organs, skin, or other human tissue” from the list of offenses where a court can order an offender to undergo HIV testing. Criminal transmission of HIV for a second or subsequent event, where the offender has undergone HIV testing and to whom positive test results have been disclosed, is an unranked, 3rd degree felony.

Per DOC, in FY 17-18, there were no offenders sentenced for criminal transmission of HIV.

CONFERENCE ADOPTED ESTIMATE: Negative Insignificant

CONFERENCE ADOPTED ESTIMATE FOR ENTIRE BILL: Negative Insignificant

Requested by: House