

## **SB 626 – HIV Prevention (Identical HB 427)**

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.” First, it clarifies that the donation is “for use in another person,” then follows it with the exception: “This paragraph does not apply if the donation is made specifically for a recipient who knows that the donor is infected with human immunodeficiency virus.” This is a Level 5, 3<sup>rd</sup> degree felony.

Per DOC, in FY 17-18, no offenders were sentenced for this offense. In FY 18-19, there were no new commitments to prison for this offense.

### **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., redefining unlawful acts committed by a person who has been notified that he or she may communicate a disease through sexual intercourse 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.” Under s. 384.24(2), F.S., it includes the same language for any person who has human immunodeficiency virus infection. It also adds s. 384.24(3), F.S., stating that a “person does not act with the intent set forth in subsection (1) or subsection (2) if he or she complies in good faith 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. 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 set forth in subsection (1) or subsection (2). For purposes of this subsection, 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.”

Additionally, it amends s. 384.34, F.S., deleting s. 384.34(5), F.S., the unranked, 3<sup>rd</sup> degree felony for a violation of the originally defined s. 384.24(2), F.S. and the unranked, 1<sup>st</sup> degree felony for multiple violations. S. 384.34(2), F.S. is also amended to replace the deleted subsection (5) penalties with a **1<sup>st</sup> degree misdemeanor** for a violation of s. 384.24(2), F.S., and “any person who is convicted of a violation of s. 384.24(2), F.S. based on conduct occurring after July 1, 2020, and who subsequently commits a second or subsequent violation of s. 384.24(2), F.S.” commits an **unranked, 3<sup>rd</sup> degree felony (Level 1 by default)**. These changes to statute would serve to reduce the number of future offenders facing potential prison sentences.

Per DOC, in FY 17-18, there were 12 (adj.) offenders sentenced for the unranked, 3<sup>rd</sup> 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, 1<sup>st</sup> degree felony, and four (adj.) were sentenced to prison (mean sentence length=53.3 m, incarceration rate: 80.0% adj.-80.0% unadj.). In FY 18-19, there was one new commitment to prison for a first violation, and 3 new commitments for a second or subsequent violation.

**CONFERENCE ADOPTED ESTIMATE: Negative Insignificant**

**CONFERENCE ADOPTED ESTIMATE FOR ENTIRE BILL:  
Negative Insignificant**

**Requested by: House**