

Florida

Analysis

People living with HIV (PLHIV) may face felony charges for failing to disclose their status to sexual partners.

In Florida, a PLHIV may be prosecuted for not disclosing their HIV status to sexual partners. It is a third-degree felony, punishable by up to five years in prison and/or a \$5,000 fine, if a PLHIV (1) knows their HIV status, (2) has been informed that HIV may be transmitted through sexual intercourse,¹ and (3) has sexual intercourse² with any other person without disclosing their HIV status.³ It is a first-degree felony punishable by up to 30 years' imprisonment if there is a failure to disclose one's HIV status on multiple occasions.⁴

It is an affirmative defense if a person is aware of their sexual partner's HIV status and consents to engage in sexual conduct with that knowledge.⁵ It is not a defense to prosecution if protection, such as a condom, was used during sex. Neither the intent to transmit HIV nor actual transmission is required for prosecution.

The following cases illustrate prosecutions under this statute:

- In October 2016, a 64-year-old man was sentenced to three years in prison and two years' probation after he pled guilty to failing to disclose his status to three sexual partners.⁶
- In August 2016, a 38-year-old man living with HIV was arrested and charged for allegedly not disclosing his HIV status to a sexual partner who later tested positive for HIV.⁷
- In May 2015, a 47-year-old man was arrested after he allegedly failed to disclose his HIV status to sexual partner whom he met on Craigslist.⁸

¹ In *Debaun v. State of Florida*, 213 So.3d 747 (Fla. 2017), the Supreme of Florida, taking into consideration conflicting decisions in the lower district courts, ruled that "sexual intercourse," as used in Fla. Stat. §384.24(2), includes not only penile-vaginal intercourse, but also oral and anal intercourse.

² Currently limited to penile-vaginal sex.

³ FLA. STAT. ANN. §§ 775.082, 775.083, 384.24(2) (2016).

⁴ *Id.* §§ 384.34(5), 775.082 (2016).

⁵ *Id.* § 384.24(2) (2016).

⁶ *Ex-bus driver pleads guilty to failing to disclose HIV status*, NEWS 4 JAX, Oct. 12, 2016, available at <http://www.news4jax.com/health/partner-of-man-accused-of-failing-to-disclose-hiv-infection-speaks-out>.

⁷ *Francesca Amiker, Man accused of knowingly transmitting HIV*, NEWS 4 JAX, Aug. 19, 2016, available at <http://www.news4jax.com/news/man-accused-of-knowingly-transmitting-hiv>.

⁸ *Harrison Barus, Police: Man did not tell partner of HIV status*, NEWS 4 JAX, May 5, 2015, available at <http://www.news4jax.com/news/florida/clay-county/police-man-did-not-tell-partner-of-hiv-status>.

- In August 2014, a 52-year-old man living with HIV was arrested after allegedly not disclosing his HIV status to a sexual partner, though condoms were always used during the course of the sexual relationship.⁹
- In August 2013, a man living with HIV was arrested for allegedly not disclosing his HIV status to a sexual partner, who later tested positive for the virus.¹⁰
- In April 2013, a 46-year-old man living with HIV was charged with criminal transmission of HIV, among other things, after kidnapping and raping a 10-year-old boy.¹¹
- In January 2013, two men living with HIV were arrested after allegedly engaging in unprotected sex with a 16-year-old boy whom they met on Grindr without disclosing their status.¹²
- In December 2012, a 35-year-old man living with HIV was arrested after allegedly not disclosing his HIV status to sexual partners.¹³
- In September 2012, a 30-year-old man living with HIV was charged with attempted second-degree murder and criminal transmission of HIV, among other things, for allegedly having sex with a 15-year-old boy.¹⁴ The boy later tested positive for HIV.¹⁵
- In May 2011, a man living with HIV was charged with criminal transmission of HIV after he attempted to bite a deputy while being arrested for shoplifting.¹⁶
- In March 2011, a 47-year-old man living with HIV was charged with failing to disclose his status to a sexual partner, among other things, for allegedly raping a 13-year-old boy he met through Craigslist.¹⁷
- In February 2010, a 45-year-old man living with HIV was charged with the first-degree felony of unlawful acts related to HIV exposure after allegedly not disclosing his HIV status to his long-term sexual partner.¹⁸

⁹ Jeff Weiner, *HIV-positive man charged with having sex without alerting partner*, ORLANDO SENTINEL, Aug. 6, 2014, available at http://articles.orlandosentinel.com/2014-08-06/news/os-hiv-sex-arrest-orange-county-inmate-20140806_1_hiv-positive-man-state-prison-orange-county-jail.

¹⁰ *Fort Myers man arrested for knowingly spreading HIV*, NBC-2 NEWS, Aug. 19, 2013, available at <http://www.nbc-2.com/story/23174195/man-arrested-for-knowingly-spreading-hiv#.V45SCSMrJaQ>.

¹¹ Brian Hamacher, *HIV-Positive Man Raped 10-Year-Old Boy: BSO*, NBC 6 NEWS SOUTH FLORIDA, Apr. 4, 2013, available at <http://www.nbcmiami.com/news/HIV-Positive-Man-Raped-10-Year-Old-Boy-BSO-201269651.html>.

¹² Tonya Alanez, *Pines men accused of sex with boy, not revealing HIV status*, SUN SENTINEL, Jan. 17, 2013, available at http://articles.sun-sentinel.com/2013-01-17/news/fl-men-accused-of-hiv-crime-20130117_1_hiv-status-catherine-hanssens-grindr.

¹³ *Police: Man with HIV didn't tell sex partners – Investigators looking for other possible victims*, NEWS 4 JAX, Jan. 2, 2012, available at <http://www.news4jax.com/news/local/police-man-with-hiv-didnt-tell-sex-partners>.

¹⁴ Carli Teproff and Steve Rothaus, *Man, 30, charged with attempted murder after boy, 15, contracts HIV after sex*, MIAMI HERALD, Sept. 7, 2012, available at <http://www.miamiherald.com/2012/09/07/2989939/man-30-charged-with-attempted.html>.

¹⁵ *Id.*

¹⁶ Danielle A. Alavarez, *BSO accuses man with HIV of trying to bite deputy*, SUN SENTINEL, May 31, 2011, available at http://articles.sun-sentinel.com/2011-05-31/health/fl-home-depot-hiv-20110531_1_hiv-bso-deputy; see also *Jamerson v. State*, 77 So. 3d 737 (Fla. Dist. Ct. App. 2011) (affirming aggravated battery conviction – which requires intentionally or knowingly causing great bodily harm, permanent disability, or permanent disfigurement, or use of a deadly weapon – for defendant who bit a law enforcement officer while knowing he had HIV).

¹⁷ Rene Stutzman, *Judge orders Craigslist sex offender held on \$150,000 bail*, ORLANDO SENTINEL, Mar. 14, 2011, available at http://articles.orlandosentinel.com/2011-03-14/news/os-craigslist-sex-offender-20110314_1_casselberry-boy-craigslist-arrest-report.

¹⁸ Katie Thomas, *Equestrian Charged with H.I.V.-Related Offenses*, N.Y TIMES, Apr. 11, 2010, available at http://www.nytimes.com/2010/04/12/sports/12hiv.html?pagewanted=all&_r=0.

- In August 2009, a 39-year-old woman living with HIV was arrested after she allegedly had unprotected sex with a man and lied about her HIV status.¹⁹
- In May 2009, a woman living with HIV was arrested for allegedly not disclosing her HIV status to multiple sexual partners.²⁰ She was charged separately for each sexual encounter with each sexual partner.²¹
- In 2008, a 27-year-old woman living with HIV was sentenced to five years' imprisonment after biting a police officer during an arrest for a charge that was later dropped.²² She was diagnosed with cancer four months into her sentence, and, following a public campaign, she was granted a conditional release by the Florida Parole Commission, allowing her to die at home.²³

Donation of blood, organs, or other human tissues to others is a third-degree felony.

PLHIV in Florida should be aware that they may receive up to five years in prison and/or a \$5,000 fine if they know their HIV status and donate blood, plasma, organs, skin, or human tissues.²⁴ It is a defense if the person has not been informed that HIV can be transmitted through human blood, plasma, organ, and tissue donations.²⁵ Neither the intent to transmit HIV nor actual transmission of the virus is required for prosecution.

Engaging in prostitution with knowledge of one's HIV status is a felony.

Up to five years imprisonment and/or a \$5,000 fine can be imposed upon conviction if an individual (1) has tested positive for HIV, (2) been informed that HIV can be transmitted through sexual activity, and (3) commits prostitution, offers to commit prostitution, or procures another for prostitution by engaging in sexual activity in a manner likely to transmit HIV.²⁶

Neither the intent to transmit HIV, actual transmission of HIV, nor engaging in activities known to transmit HIV is required for prosecution.

Florida defines "prostitution" as "the giving or receiving of the body for sexual activity for hire . . ."²⁷ Much of what Florida defines as "sexual activity" carries zero, or very low, HIV transmission risk, including: oral penetration by the sexual organ of another, anal or vaginal penetration of another by *any object* other than the sexual organ of another, and the handling or fondling of the sexual organ of

¹⁹ *HIV positive woman arrested*, OCALA STAR BANNER, Aug. 14, 2009, available at <http://www.ocala.com/article/20090814/ARTICLES/908149971>.

²⁰ *US: Florida Woman Accused of HIV Exposure*, HIV JUSTICE NETWORK, May 9, 2009, available at <http://www.hivjustice.net/case/us-florida-woman-accused-of-hiv-exposure/>.

²¹ *Id.*

²² *HIV-Positive Woman Released from Prison Dies at Home*, CBS MIAMI, Feb. 1, 2011, available at <http://miami.cbslocal.com/2011/02/01/hiv-positive-woman-released-from-prison-dies-at-home/>.

²³ *Id.*

²⁴ FLA. STAT. ANN. §§ 381.0041(11)(b), 775.082(3)(e), 775.083(1)(c) (2016).

²⁵ § 381.0041(11)(b) (2016) (stating "[a]ny 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 . . ." (emphasis added)).

²⁶ §§ 796.08(5), 775.082(3)(e), 775.083(1)(c) (2016).

²⁷ § 796.07(1)(a) (2016).

another for the purpose of masturbation.²⁸ Under this statute, sex workers can face penalties for conduct that poses absolutely no risk of exposing another to HIV. In HIV exposure cases involving prostitution, disclosure of HIV status is not a defense, whether condoms or other forms of protection were used is not a consideration, and ejaculation or the exchange of bodily fluids known to transmit HIV is not required for prosecution.²⁹

Prosecutions of PLHIV engaged in sex work in Florida include:

- In August 2009, a 32-year-old PLHIV engaged in sex work was arrested under Florida's criminal exposure prostitution statute after allegedly offering to perform a sexual act on an undercover officer for \$20.³⁰
- In June 2013, a 19-year-old PLHIV engaged in sex work was arrested after allegedly offering to perform a sex act on an undercover police officer.³¹ She was charged with offering to commit prostitution and criminal transmission of HIV.³²
- In February 2012, a 36-year-old woman living with HIV was arrested during an undercover prostitution sting.³³ She was charged with failing to disclose her HIV status to her sexual partners.³⁴

Prosecution under this statute is also possible if a PLHIV "procures" another for prostitution by engaging in sexual activity in a "manner likely to transmit" HIV.³⁵ At least one case in Florida suggests that "procurement" goes beyond mere solicitation and that it instead requires bringing about the result sought by the initial solicitation, such as obtaining someone to provide sexual services to a third party (i.e., a pimp).³⁶ The meaning of "likely to transmit HIV" is not defined. If "likely" is construed to mean more probable than not, few if any sexual activities would be likely to transmit HIV.³⁷ However, the criminal transmission of HIV, which includes both prostitution provisions as enumerated offenses, applies strict liability for second- or subsequent- defendants who test positive for HIV and who are convicted or plead no contest or guilty to the underlying offense.³⁸

²⁸ *Id.* § 796.07(1)(d) (2016).

²⁹ §§ 796.08(5), 775.082(3)(e), 775.083(1)(c) (2016).

³⁰ *HIV-Positive Florida Woman Arrested on Prostitution Charges for Third Time*, POZ, Aug. 24, 2009, available at http://www.poz.com/articles/prostitution_charge_hiv_florida_1_17141.shtml.

³¹ *Police: Nebraska Avenue prostitute didn't disclose HIV*, TAMPA BAY TIMES, June 30, 2013, available at <http://www.tampabay.com/news/publicsafety/crime/police-nebraska-avenue-prostitute-didnt-disclose-hiv/2129361>.

³² *Id.*

³³ *Cops: Woman hooking with HIV, arrested*, WPTV NBC5 WEST PALM BEACH, Feb. 8, 2012, available at <http://www.clipsyndicate.com/video/play/3258487>.

³⁴ *Id.*

³⁵ FLA. STAT. ANN. § 796.08(5) (2016).

³⁶ See generally *Register v. State*, 715 So. 2d 274, 276 (Fla. Dist. Ct. App. 1998) (comparing the meanings of "solicitation" and "procurement" under a statute criminalizing procurement of a minor for prostitution).

³⁷ Carol L. Galletly & Steven D. Pinkerton, *Toward Rational Criminal HIV Exposure Laws*, 32 J.L. MED. & ETHICS 327, 330 (2004).

³⁸ FLA. STAT. ANN. § 775.0877(1)(M), (2), (3) (2016).

Prosecution for HIV exposure in Florida has occurred under general criminal laws.

In at least one Florida case, HIV was considered a deadly weapon for prosecution under general criminal laws. In August 2009, a 35-year-old man living with HIV in Florida was charged with attempted murder when he allegedly yelled that he had HIV and threatened to kill a police officer before biting him in the shin and leaving a permanent bruise.³⁹ He was convicted of the lesser included offense of aggravated battery on a law enforcement officer and sentenced to 15 years in prison, the maximum possible sentence.⁴⁰ The officer did not test positive for HIV.⁴¹ The crime of aggravated battery requires that a person intentionally and knowingly cause great bodily harm or use a deadly weapon.⁴²

During the trial, the Florida prosecutor told the jury that the police officer had to avoid intimate “contact with his wife or children for fear he could severely affect them,” for eight months before he was cleared by doctors as being HIV negative.⁴³ The prosecutor’s statement ignores the fact that the CDC has concluded there exists only a negligible risk of HIV infection from a bite.⁴⁴ The scientific and factual misrepresentations created by criminal HIV exposure laws and the prosecution of PLHIV only increase the risk that PLHIV may be prosecuted for conduct that cannot transmit HIV.

PLHIV may face additional felony penalties for committing or attempting to commit an identified crime(s) after a previous conviction for a similar offense.

PLHIV who commit one of the crimes enumerated by statute after a previous conviction for a statutorily enumerated offense can face additional felony charges. Under Florida law, an individual must be tested for HIV if they are convicted of, plead guilty to, or plead no contest to, an offense or attempted offense involving the transmission of bodily fluids (i.e., the sex-based or assault/battery offenses noted in the statute).⁴⁵ If an individual tests positive for HIV, knows of their HIV status, and commits another such offense involving the transmission of bodily fluids, they are guilty of an additional felony, punishable by up to five years in prison and/or a \$5,000 fine.⁴⁶ Although this statute is labeled a “criminal transmission” law, actual transmission of HIV is not required.⁴⁷

Felonies that may trigger additional penalties under this statute include:

- Sexual battery
- Incest

³⁹ *Jamerson v. State*, 77 So. 3d 737 (Fla. Dist. Ct. App. 2011) (review subsequently denied by the Supreme Court of Florida in *Jamerson v. State*, 103 So. 3d 140 (Fla. 2012)).

⁴⁰ *Id.*; FLA. STAT. ANN. §§ 784.045, 775.082(3)(d) (2016).

⁴¹ *HIV-Positive Miami Man Sentenced 15 Years for Biting Police Officer*, POZ, August 31, 2009, available at <https://www.poz.com/article/miami-bite-officer-hiv-17196-3690>.

⁴² FLA. STAT. ANN. §§ 784.045, 775.082(3)(d) (2016).

⁴³ *Jamerson*, 77 So. 3d at 738; *Miami Man Gets 15 Years in Prison for Biting Cop*, HIV JUSTICE NETWORK, Aug. 17, 2009, available at <http://www.hivjustice.net/news/us-miami-man-gets-15-years-in-prison-for-biting-cop/>.

⁴⁴ CTR. FOR DISEASE CONTROL & PREVENTION, *HIV Risk Behaviors, Estimated Per-Act Probability of Acquiring HIV from an Infected Source, by Exposure Act*, (July 1, 2014) available at <http://www.cdc.gov/hiv/policies/law/risk.html> (last visited July 20, 2016).

⁴⁵ FLA. STAT. ANN. § 775.0877 (2016).

⁴⁶ §§ 775.0877(3), 775.082, 775.083 (2016).

⁴⁷ § 775.0877(5) (2016).

- Lewd or lascivious offenses committed upon or in the presence of any person less than 16 years of age
- Assault or aggravated assault
- Battery or aggravated battery
- Child abuse or aggravated child abuse
- Abuse or aggravated abuse of any elderly person or disabled adult
- Sexual performance by a person less than 18 years of age
- Prostitution
- Donation of blood, plasma, organs, skin, or other human tissue
- Human trafficking.⁴⁸

It is an affirmative defense to prosecution under this statute if the person exposed knew that the offender was infected with HIV, knew that the action being taken could result in transmission of the HIV infection, and voluntarily consented to the action.⁴⁹

Although the statute enumerates several underlying offenses, the authors are only aware of this law applying in prosecutions of sex workers, despite the fact that there is a separate HIV-specific prostitution statute. Such prosecutions include:

- In May 2012, a 41-year-old woman living with HIV was charged with felony prostitution and criminal transmission of HIV.⁵⁰
- In 2007, a sex worker was charged with criminal transmission of HIV for offering oral sex to an undercover police officer.⁵¹

Florida courts have also imposed sentencing enhancements based on HIV status.

Early in the epidemic, Florida courts imposed sentence enhancements based on a person's HIV status. The cases noted here are from the late 1980s and mid-1990s, and there are no recent cases, to the authors' knowledge, demonstrating that Florida courts continue to apply sentence enhancements based on HIV status. The following cases are included as a comprehensive review of Florida's approach to HIV criminalization, but are not necessarily reflective of current trends in criminal sentencing in Florida.

In *Morrison v. State*, the defendant was convicted of aggravated battery and was sentenced to ten years' imprisonment and ten years of parole.⁵² The trial court justified its departure from the sentencing guidelines because in the course of the robbery the defendant bit a 90-year-old man to the bone who later tested positive for HIV.⁵³ Confirming the lower court's sentencing, the court of appeals held that

⁴⁸ §§ 775.0877(1)(a)-(n) (2016).

⁴⁹ § 775.0877(6) (2016).

⁵⁰ *Manatee Sheriff: Prostitute transmitted HIV*, HERALD-TRIBUNE, May 27, 2012, available at <http://www.heraldtribune.com/article/20120527/BREAKING/120529620/2071/NEWS?Title=Manatee-Sheriff-Prostitute-transmitted-HIV>.

⁵¹ Michael Scarcella, *Woman Charged With Exposing Men to HIV*, TAMPA BAY TIMES, Oct. 10, 2007, available at <http://www.tbo.com/news/breaking-news/2007/oct/10/woman-charged-exposing-men-hiv-ar-177190/>.

⁵² 673 So.2d 953, 954 (Fla. Dist. Ct. App. 1996).

⁵³ *Id.*

the departure was justified due to the nature of the crime and that HIV could give rise to AIDS, a “fatal disease.”⁵⁴

One Florida case held a defendant’s sentence could be enhanced even if there was no proof that he knew his HIV status at the time of the crime. In *Cooper v. State*, the defendant was convicted of aggravated battery, solicitation, and sexual battery and sentenced to 30 years’ imprisonment and ten years’ probation, reflecting an upward departure from the sentencing guidelines.⁵⁵ Four days prior to trial, the defendant received test results that showed he had tested positive for HIV.⁵⁶ Though the jury never received this information, the sentencing judge found that the defendant’s total disregard of the likelihood that the complainant would be exposed to HIV through the sexual contact supported an enhanced sentence.⁵⁷ On appeal, the court agreed with the sentencing, holding that “[b]ecause of his lifestyle, [the defendant] knew or should have known that he had been exposed to the AIDS virus and that by sexual battery upon his victim there was a strong likelihood that the victim would be exposed to AIDS.”⁵⁸ By “lifestyle” the court was referring to the fact that the defendant had been an “admitted homosexual for years.”⁵⁹ There was no evidence presented that showed the defendant knew of his HIV status at the time of the assault and, in fact, had only tested positive immediately before trial.⁶⁰ This opinion rests on the assumption that gay men should know they have been exposed to HIV even if they have not tested positive.

In *Brooks v. State*, a judge sentenced a sex worker convicted of theft to a sentence above the state sentencing guidelines because she had AIDS, despite the fact that the crime had nothing to do with her HIV status.⁶¹ On appeal, the sentence was reversed because the court found that her HIV status was in no way relevant to the crime.⁶²

The Florida Department of Health may quarantine or isolate people living with HIV or another STD.

The State Department of Health may petition a court to hospitalize or isolate persons in order to prevent the spread of sexually transmitted disease,⁶³ including HIV.⁶⁴ Some procedural safeguards are in place, such as the requirement that quarantine or isolation be the least restrictive means necessary to accomplish prevention of transmission, written notification at least 72 hours before a hearing, and certain other rights, including the right to legal representation.⁶⁵

⁵⁴ *Id.*

⁵⁵ 539 So. 2d 508, 509-10 (Fla. Dist. Ct. App. 1989).

⁵⁶ *Id.* at 510.

⁵⁷ *Id.*

⁵⁸ *Id.* at 511.

⁵⁹ *Id.* at 512.

⁶⁰ *See generally id.*

⁶¹ 519 So.2d 1156, 1156 (Fla. Dist. Ct. App. 1988).

⁶² *Id.*

⁶³ FLA. STAT. ANN. § 384.23 (2016); *See also* FLA. ADMIN CODE r. 64D-3.038 (2016)

⁶⁴ FLA. ADMIN CODE r. 64D-3.028 (23) (2016).

⁶⁵ FLA. STAT. ANN. § 384.28 (2016).

Important note: *While we have made an effort to ensure that this information is current, the law is always changing and we cannot guarantee the accuracy of the information provided. This information may or may not be applicable to your specific situation and, as such, it should not be used as a substitute for legal advice.*

Code of Florida

Note: Provisions imposing punitive restrictions or listing criminal sentences are denoted with ** and are generally listed first. Thereafter, provisions within a particular title are listed numerically.

TITLE XLVI, CRIMES

FLA. STAT. ANN. § 775.0877 (2016) **

Criminal transmission of HIV; procedures; penalties

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

- (a) Section 794.011, relating to sexual battery;
- (b) Section 826.04, relating to incest;
- (c) Section 800.04, relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age;
- (d) Sections 784.011, 784.07(2)(a), and 784.08(2)(d), relating to assault;
- (e) Sections 784.021, 784.07(2)(c), and 784.08(2)(b), relating to aggravated assault;
- (f) Sections 784.03, 784.07(2)(b), and 784.08(2)(c), relating to battery;
- (g) Sections 784.045, 784.07(2)(d), and 784.08(2)(a), relating to aggravated battery;
- (h) Section 827.03(2)(c), relating to child abuse;
- (i) Section 827.03(2)(a), relating to aggravated child abuse;
- (j) Section 825.102(1), relating to abuse of an elderly person or disabled adult;
- (k) Section 825.102(2), relating to aggravated abuse of an elderly person or disabled adult;
- (l) Section 827.071, relating to sexual performance by person less than 18 years of age;
- (m) Sections 796.07 and 796.08, relating to prostitution;
- (n) Section 381.0041(11)(b), relating to donation of blood, plasma, organs, skin, or other human tissue; or
- (o) Sections 787.06(3)(b), (d), (f), and (g), relating to human trafficking,

the court shall order the offender to undergo HIV testing, to be performed under the direction of the Department of Health in accordance with s. 381.004, unless the offender has undergone HIV testing voluntarily or pursuant to procedures established in s. 381.004(2)(h)6. or s. 951.27, or any other applicable law or rule providing for HIV testing of criminal offenders or inmates, subsequent to her or his arrest for an offense enumerated in paragraphs (a)-(n) for which she or he was convicted or to which she or he pled nolo contendere or guilty. The results of an HIV test performed on an offender

pursuant to this subsection are not admissible in any criminal proceeding arising out of the alleged offense.

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

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

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

(5) Nothing in this section requires that an HIV infection have occurred in order for an offender to have committed criminal transmission of HIV.

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

FLA. STAT. ANN. § 775.082 (2016) **

Penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison

(3) A person who has been convicted of any other designated felony may be punished as follows:

(b) For a felony of the first degree, by a term of imprisonment not exceeding 30 years or, when specifically provided by statute, by imprisonment for a term of years not exceeding life imprisonment.

(e) For a felony of the third degree, by a term of imprisonment not exceeding 5 years.

(4) A person who has been convicted of a designated misdemeanor may be sentenced as follows:

(a) for a misdemeanor of the first degree, by a definite term of imprisonment not exceeding 1 year

FLA. STAT. ANN. § 775.083 (2016) **

Fines

(1) A person who has been convicted of an offense other than a capital felony may be sentenced to pay a fine in addition to any punishment described in s. 775.082; when specifically authorized by statute, he

or she may be sentenced to pay a fine in lieu of any punishment described in s. 775.082. A person who has been convicted of a noncriminal violation may be sentenced to pay a fine. Fines for designated crimes and for noncriminal violations shall not exceed:

(b) \$10,000, when the conviction is of a felony of the first or second degree.

(c) \$5,000, when the conviction of a felony is of the third degree.

(d) \$1,000, when the conviction is of a misdemeanor of the first degree.

FLA. STAT. ANN. § 796.08 (2016) **

Screening for HIV and sexually transmissible diseases; providing penalties

(1)

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

(b) In considering which diseases are designated as sexually transmissible diseases, the Department of Health shall consider such diseases as chancroid, gonorrhea, granuloma inguinale, lymphogranuloma venereum, genital herpes simplex, chlamydia, nongonococcal urethritis (NGU), pelvic inflammatory disease (PID)/acute salpingitis, syphilis, and human immunodeficiency virus infection for designation and shall consider the recommendations and classifications of the Centers for Disease Control and Prevention and other nationally recognized authorities. Not all diseases that are sexually transmissible need be designated for purposes of this section.

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

(5) A person who:

(a) Commits or offers to commit prostitution; or

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

and who, prior to the commission of such crime, had tested positive for human immunodeficiency virus and knew or had been informed that he or she had tested positive for human immunodeficiency virus and could possibly communicate such disease to another person through sexual activity commits criminal transmission of HIV, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A person may be convicted and sentenced separately for a violation of this subsection and for the underlying crime of prostitution or procurement of prostitution.

TITLE XXIX, PUBLIC HEALTH

FLA. STAT. ANN. §381.0041 (2016)

HIV Testing

(1) Definitions. – As used in this section:

(f) “Significant exposure” means:

1. Exposure to blood or body fluids through needlestick, instruments, or sharps;
2. Exposure of mucous membranes to visible blood or body fluids to which universal precautions apply according to the National Centers for Disease Control and Prevention, including, without limitations, the following body fluids:
 - a. Blood.
 - b. Semen.
 - c. Vaginal secretions.
 - d. Cerebrospinal fluid (CSF).
 - e. Synovial fluid.
 - f. Pleural fluid.
 - g. Peritoneal fluid.
 - h. Pericardial fluid.
 - i. Amniotic fluid.
 - j. Laboratory specimens that contain HIV (e.g., suspensions of concentrated virus); or
3. Exposure of skin to visible blood or body fluids, especially when the exposed skin is chapped, abraded, or afflicted with dermatitis or the contact is prolonged or involving an extensive area.

(2) Human immunodeficiency virus testing; informed consent; results; counseling; confidentiality.

(a) Before performing an HIV test:

1. In a health care setting, the person to be tested shall be notified orally or in writing that the test is planned and that he or she has the right to decline the test. If the person to be tested declines the test, such decision shall be documented in the medical record. A person who has signed a general consent form for medical care is not required to sign or otherwise provide a separate consent for an HIV test during the period in which the general consent form is in effect.
2. In a nonhealth care setting, a provider shall obtain the informed consent of the person upon whom the test is to be performed. Informed consent shall be preceded by an

explanation of the right to confidential treatment of information identifying the subject of the test and the results of the test as provided by law.

The test subject shall also be informed that a positive HIV test result will be reported to the county health department with sufficient information to identify the test subject and of the availability and location of sites at which anonymous testing is performed. As required in paragraph (3)(c), each county health department shall maintain a list of sites at which anonymous testing is performed, including the locations, telephone numbers, and hours of operation of the sites.

(e) Except as provided in this section, the identity of any person upon whom a test has been performed and test results are confidential and exempt from the provisions of s. 119.07(1). No person who has obtained or has knowledge of a test result pursuant to this section may disclose or be compelled to disclose the identity of any person upon whom a test is performed, or the results of such a test in a manner which permits identification of the subject of the test, except to the following persons:

9. A person allowed access by a court order which is issued in compliance with the following provisions:

a. No court of this state shall issue such order unless the court finds that the person seeking the test results has demonstrated a compelling need for the test results which cannot be accommodated by other means. In assessing compelling need, the court shall weigh the need for disclosure against the privacy interest of the test subject and the public interest which may be disserved by disclosure which deters blood, organ, and semen donation and future human immunodeficiency virus-related testing or which may lead to discrimination. This paragraph shall not apply to blood bank donor records.

b. Pleadings pertaining to disclosure of test results shall substitute a pseudonym for the true name of the subject of the test. The disclosure to the parties of the subject's true name shall be communicated confidentially in documents not filed with the court.

c. Before granting any such order, the court shall provide the individual whose test result is in question with notice and a reasonable opportunity to participate in the proceedings if he or she is not already a party.

d. Court proceedings as to disclosure of test results shall be conducted in camera, unless the subject of the test agrees to a hearing in open court or unless the court determines that a public hearing is necessary to the public interest and the proper administration of justice.

e. Upon the issuance of an order to disclose test results, the court shall impose appropriate safeguards against unauthorized disclosure which shall specify the persons who may have access to the information, the purposes for which the information shall be used, and appropriate prohibitions on future disclosure.

(h) Paragraph (a) does not apply:

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

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

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

FLA. STAT. ANN. §381.0041(11)(B) (2016)

Donation and transfer of human tissue; testing requirements

(11)(b) 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 is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084

FLA. STAT. ANN. § 384.23 (2016)

Definitions

(1) “Department” means the Department of Health

(3) “Sexually transmissible disease” means a bacterial, viral, fungal, or parasitic disease determined by rule of the department to be sexually transmissible, to be a threat to the public health and welfare, and to be a disease for which a legitimate public interest will be served by providing for prevention, elimination, control, and treatment. The department must, by rule, determine which diseases are to be designated as sexually transmissible diseases and shall consider the recommendations and classifications of the Centers for Disease Control and Prevention and other nationally recognized medical authorities in that determination. Not all diseases that are sexually transmissible need be designated for the purposes of this act.

FLA. STAT. ANN. § 384.24 (2016) **

Unlawful acts

(1) It is unlawful for any person who has chancroid, gonorrhea, granuloma inguinale, lymphogranuloma venereum, genital herpes simplex, chlamydia, nongonococcal urethritis (NGU), pelvic inflammatory disease (PID)/acute salpingitis, or syphilis, when such person knows he or she is infected with one or more of these diseases and when such person has been informed that he or she may communicate this disease to another person through sexual intercourse, to have sexual intercourse with any other person, unless such other person has been informed of the presence of the sexually transmissible disease and has consented to the sexual intercourse.

(2) It is unlawful for any person who has human immunodeficiency virus infection, when such person knows he or she is infected with this disease and when such person has been informed that he or she may communicate this disease to another person through sexual intercourse, to have sexual intercourse with any other person, unless such other person has been informed of the presence of the sexually transmissible disease and has consented to the sexual intercourse.

FLA. STAT. ANN. §384.28 (2016)

Hospitalization, placement, and residential isolation.

(1) Subject to the provisions of subsections (2) and (3), the department may petition the circuit court to order a person to be isolated, hospitalized, placed in another health care or residential facility, or isolated from the general public in his or her own or another's residence, or a place to be made off limits to the public as a result of the probable spread of a sexually transmissible disease, until such time as the condition can be corrected or the threat to the public's health eliminated or reduced in such a manner that a substantial threat to the public's health no longer exists.

(2) No person may be ordered to be isolated, hospitalized, placed in another health care or residential facility, or isolated from the public in his or her own or another's residence, and no place may be ordered to be made off limits, except upon the order of a court of competent jurisdiction and upon proof:

(a) By the department by clear and convincing evidence that the public's health and welfare are significantly endangered by a person with a sexually transmissible disease or by a place where there is a significant amount of sexual activity likely to spread a sexually transmissible disease;

(b) That the person with the sexually transmissible disease has been counseled about the disease, about the significant threat the disease poses to other members of the public, and about methods to minimize the risk to the public and despite such counseling indicates an intent to expose the public to infection from the sexually transmissible disease; and

(c) That all other reasonable means of correcting the problem have been exhausted and no less restrictive alternative exists.

(3) No person may be ordered to be hospitalized, placed in another health care or residential facility, or isolated in his or her own or another's residence by a court unless:

(a) A hearing has been held of which the person has received at least 72 hours' prior written notification and unless the person has received a list of the proposed actions to be taken and the reasons for each one.

(b) The person has the right to attend the hearing, to cross-examine witnesses, and to present evidence.

(c) The person has a right to an attorney to represent him or her, and to have an attorney appointed on the person's behalf if he or she cannot afford one.

FLA. STAT. ANN. §384.34 (2016) **

Penalties

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

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

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

FLA. STAT. ANN. §395.3025 (2016)

Patient and personnel records; copies; examination

(4) Patient records are confidential and must not be disclosed without the consent of the patient or his or her legal representative, but appropriate disclosure may be made without such consent to:

(d) In any civil or criminal action, unless otherwise prohibited by law, upon the issuance of a subpoena from a court of competent jurisdiction and proper notice by the party seeking such records to the patient or his or her legal representative.

Florida Administrative Code

TITLE 64, DEPARTMENT OF HEALTH

FLA. ADMIN. CODE R. 64D-3.028 (2016)

Definitions

When used in Chapter 64D-3, F.A.C., the following terms shall mean:

(23) "Sexually Transmissible Disease" - Acquired Immune Deficiency Syndrome (AIDS), Chancroid, Chlamydia trachomatis, Gonorrhea, Granuloma Inguinale, Hepatitis A through D, Herpes simplex virus (HSV), Human immunodeficiency virus Infection (HIV), Human papillomavirus (HPV), Lymphogranuloma Venereum (LGV), and Syphilis.

FLA. ADMIN. CODE R. 64D-3.038 (2016)

Quarantine Orders and Requirements

(1) Quarantine orders shall be issued by the State Health Officer, or the county health department director or administrator, or their designee in writing; include an expiration date or specify condition(s) for ending of quarantine; and restrict or compel movement and actions by or regarding persons, animals or premises consistent with the protection of public health and accepted health practices except as otherwise governed by subsection (6).

(2) For the purpose of orders regarding quarantine, the term "actions" encompasses isolation, closure of premises, testing, destruction, disinfection, treatment, protocols during movement and preventive treatment, including immunization.