

By Senator Smith

14-782-05

1 A bill to be entitled

2 An act relating to sexual offenses; amending s.

3 365.161, F.S.; redefining the term "sexual

4 battery" for purposes of a prohibition on

5 obscene communications; amending ss. 794.011,

6 827.071, and 847.001, F.S.; redefining the term

7 "sexual battery" and defining the terms "sexual

8 organ" and "union" for purposes of the offense

9 of sexual battery and provisions prohibiting

10 sexual performance by a child and unlawful

11 activity involving obscenity; amending ss.

12 796.07, 800.04, and 825.1025, F.S.; redefining

13 the term "sexual activity" and defining the

14 terms "sexual organ" and "union" for purposes

15 of prohibitions on prostitution and lewd and

16 lascivious conduct; revising the elements of

17 the offense of lewd and lascivious molestation;

18 reenacting ss. 395.0197(10) and 415.102(24),

19 F.S., relating to internal risk management

20 programs and adult protective services, to

21 incorporate the amendment made to s. 794.011,

22 F.S., in references thereto; providing an

23 effective date.

24

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

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27 Section 1. Paragraph (d) of subsection (1) of section

28 365.161, Florida Statutes, is amended to read:

29 365.161 Prohibition of certain obscene telephone

30 communications; penalty.--

31 (1) For purposes of this section, the term:

1 (d) "Sexual battery" means oral, anal, or vaginal
2 penetration by, or union with, the sexual organ or anus of
3 another or the anal or vaginal penetration of another by any
4 other object, or the union of the sexual organ of one person
5 with the sexual organ of another.

6 Section 2. Subsection (1) of section 794.011, Florida
7 Statutes, is amended to read:

8 794.011 Sexual battery.--

9 (1) As used in this chapter:

10 (a) "Consent" means intelligent, knowing, and
11 voluntary consent and does not include coerced submission.
12 "Consent" may ~~shall~~ not be deemed or construed to mean the
13 failure by the alleged victim to offer physical resistance to
14 the offender.

15 (b) "Mentally defective" means a mental disease or
16 defect which renders a person temporarily or permanently
17 incapable of appraising the nature of his or her conduct.

18 (c) "Mentally incapacitated" means temporarily
19 incapable of appraising or controlling a person's own conduct
20 due to the influence of a narcotic, anesthetic, or
21 intoxicating substance administered without his or her consent
22 or due to any other act committed upon that person without his
23 or her consent.

24 (d) "Offender" means a person accused of a sexual
25 offense in violation of a provision of this chapter.

26 (e) "Physically helpless" means unconscious, asleep,
27 or for any other reason physically unable to communicate
28 unwillingness to an act.

29 (f) "Retaliation" includes, but is not limited to,
30 threats of future physical punishment, kidnapping, false
31 imprisonment or forcible confinement, or extortion.

1 (g) "Serious personal injury" means great bodily harm
2 or pain, permanent disability, or permanent disfigurement.

3 (h) "Sexual battery" means oral, anal, or vaginal
4 penetration by, or union with, the sexual organ or anus of
5 another or the anal or vaginal penetration of another by any
6 other object, or the union of the sexual organ of one person
7 with the sexual organ of another; however, sexual battery does
8 not include an act done for a bona fide medical purpose.

9 (i) "Sexual organ" means, for a male, the penis and
10 scrotum, and for a female, the vagina, vulva, labia, and
11 clitoris.

12 (j) "Union" means contact.

13 ~~(k)(i)~~ "Victim" means a person who has been the object
14 of a sexual offense.

15 ~~(l)(j)~~ "Physically incapacitated" means bodily
16 impaired or handicapped and substantially limited in ability
17 to resist or flee.

18 Section 3. Subsection (1) of section 796.07, Florida
19 Statutes, is amended to read:

20 796.07 Prohibiting prostitution, etc.; evidence;
21 penalties; definitions.--

22 (1) As used in this section:

23 (a) "Prostitution" means the giving or receiving of
24 the body for sexual activity for hire but excludes sexual
25 activity between spouses.

26 (b) "Lewdness" means any indecent or obscene act.

27 (c) "Assignment" means the making of any appointment
28 or engagement for prostitution or lewdness, or any act in
29 furtherance of the ~~such~~ appointment or engagement.

30 (d) "Sexual activity" means oral, anal, or vaginal
31 penetration by, or union with, the sexual organ or anus of

1 another; anal or vaginal penetration of another by any other
2 object, or the union of the sexual organ of one person with
3 the sexual organ of another; or the handling or fondling of
4 the sexual organ of another for the purpose of masturbation;
5 however, the term does not include acts done for bona fide
6 medical purposes.

7 (e) "Sexual organ" means for a male, the penis and
8 scrotum and for a female, the vagina, vulva, labia, and
9 clitoris.

10 (f) "Union" means contact.

11 Section 4. Subsection (1) and paragraph (a) of
12 subsection (5) of section 800.04, Florida Statutes, are
13 amended to read:

14 800.04 Lewd or lascivious offenses committed upon or
15 in the presence of persons less than 16 years of age.--

16 (1) DEFINITIONS.--As used in this section:

17 (a) "Sexual activity" means the oral, anal, or vaginal
18 penetration by, or union with, the sexual organ or anus of
19 another or the anal or vaginal penetration of another by any
20 other object, or the union of the sexual organ of one person
21 with the sexual organ of another; however, sexual activity
22 does not include an act done for a bona fide medical purpose.

23 (b) "Consent" means intelligent, knowing, and
24 voluntary consent, and does not include submission by
25 coercion.

26 (c) "Coercion" means the use of exploitation, bribes,
27 threats of force, or intimidation to gain cooperation or
28 compliance.

29 (d) "Sexual organ" means, for a male, the penis and
30 scrotum, and for a female, the vagina, vulva, labia, and
31 clitoris.

1 (e) "Union" means contact.

2 ~~(f)(d)~~ "Victim" means a person upon whom an offense
3 described in this section was committed or attempted or a
4 person who has reported a violation of this section to a law
5 enforcement officer.

6 (5) LEWD OR LASCIVIOUS MOLESTATION.--

7 (a) A person who intentionally touches in a lewd or
8 lascivious manner the breasts, genitals, genital area, anus,
9 or buttocks, or the clothing covering them, of a person less
10 than 16 years of age, or forces or entices a person under 16
11 years of age to so touch the perpetrator, commits lewd or
12 lascivious molestation.

13 Section 5. Paragraph (e) of subsection (1) of section
14 827.071, Florida Statutes, is amended, and paragraphs (j) and
15 (k) are added to that subsection, to read:

16 827.071 Sexual performance by a child; penalties.--

17 (1) As used in this section, the following definitions
18 shall apply:

19 (a) "Deviate sexual intercourse" means sexual conduct
20 between persons not married to each other consisting of
21 contact between the penis and the anus, the mouth and the
22 penis, or the mouth and the vulva.

23 (b) "Performance" means any play, motion picture,
24 photograph, or dance or any other visual representation
25 exhibited before an audience.

26 (c) "Promote" means to procure, manufacture, issue,
27 sell, give, provide, lend, mail, deliver, transfer, transmute,
28 publish, distribute, circulate, disseminate, present, exhibit,
29 or advertise or to offer or agree to do the same.

30 (d) "Sadomasochistic abuse" means flagellation or
31 torture by or upon a person, or the condition of being

1 fettered, bound, or otherwise physically restrained, for the
2 purpose of deriving sexual satisfaction from inflicting harm
3 on another or receiving such harm oneself.

4 (e) "Sexual battery" means oral, anal, or vaginal
5 penetration by, or union with, the sexual organ or anus of
6 another or the anal or vaginal penetration of another by any
7 other object, or the union of the sexual organ of one person
8 with the sexual organ of another; however, "sexual battery"
9 does not include an act done for a bona fide medical purpose.

10 (f) "Sexual bestiality" means any sexual act between a
11 person and an animal involving the sex organ of the one and
12 the mouth, anus, or vagina of the other.

13 (g) "Sexual conduct" means actual or simulated sexual
14 intercourse, deviate sexual intercourse, sexual bestiality,
15 masturbation, or sadomasochistic abuse; actual lewd exhibition
16 of the genitals; actual physical contact with a person's
17 clothed or unclothed genitals, pubic area, buttocks, or, if
18 such person is a female, breast, with the intent to arouse or
19 gratify the sexual desire of either party; or any act or
20 conduct which constitutes sexual battery or simulates that
21 sexual battery is being or will be committed. A mother's
22 breastfeeding of her baby does not under any circumstance
23 constitute "sexual conduct."

24 (h) "Sexual performance" means any performance or part
25 thereof which includes sexual conduct by a child of less than
26 18 years of age.

27 (i) "Simulated" means the explicit depiction of
28 conduct set forth in paragraph (g) which creates the
29 appearance of such conduct and which exhibits any uncovered
30 portion of the breasts, genitals, or buttocks.

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1 (j) "Sexual organ" means, for a male, the penis and
2 scrotum, and for a female, the vagina, vulva, labia, and
3 clitoris.

4 (k) "Union" means contact.

5 Section 6. Subsection (1) of section 825.1025, Florida
6 Statutes, is amended to read:

7 825.1025 Lewd or lascivious offenses committed upon or
8 in the presence of an elderly person or disabled person.--

9 (1) As used in this section, the term:

10 (a) "Sexual activity" means the oral, anal, or vaginal
11 penetration by, or union with, the sexual organ or anus of
12 another or the anal or vaginal penetration of another by any
13 other object, or the union of the sexual organ of one person
14 with the sexual organ of another; however, sexual activity
15 does not include an act done for a bona fide medical purpose.

16 (b) "Sexual organ" means, for a male, the penis and
17 scrotum, and for a female, the vagina, vulva, labia, and
18 clitoris.

19 (c) "Union" means contact.

20 Section 7. Subsection (14) of section 847.001, Florida
21 Statutes, is amended, and subsections (21) and (22) are added
22 to that section, to read:

23 847.001 Definitions.--As used in this chapter, the
24 term:

25 (14) "Sexual battery" means oral, anal, or vaginal
26 penetration by, or union with, the sexual organ or anus of
27 another or the anal or vaginal penetration of another by any
28 other object, or the union of the sexual organ of one person
29 with the sexual organ of another; however, "sexual battery"
30 does not include an act done for a bona fide medical purpose.
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1 (21) "Sexual organ" means, for a male, the penis and
2 scrotum, and for a female, the vagina, vulva, labia, and
3 clitoris.

4 (22) "Union" means contact.

5 Section 8. For the purpose of incorporating the
6 amendment made by this act to section 794.011, Florida
7 Statutes, in a reference thereto, subsection (10) of section
8 395.0197, Florida Statutes, is reenacted to read:

9 395.0197 Internal risk management program.--

10 (10) Any witness who witnessed or who possesses actual
11 knowledge of the act that is the basis of an allegation of
12 sexual abuse shall:

13 (a) Notify the local police; and

14 (b) Notify the hospital risk manager and the
15 administrator.

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17 For purposes of this subsection, "sexual abuse" means acts of
18 a sexual nature committed for the sexual gratification of
19 anyone upon, or in the presence of, a vulnerable adult,
20 without the vulnerable adult's informed consent, or a minor.

21 "Sexual abuse" includes, but is not limited to, the acts
22 defined in s. 794.011(1)(h), fondling, exposure of a
23 vulnerable adult's or minor's sexual organs, or the use of the
24 vulnerable adult or minor to solicit for or engage in
25 prostitution or sexual performance. "Sexual abuse" does not
26 include any act intended for a valid medical purpose or any
27 act which may reasonably be construed to be a normal
28 caregiving action.

29 Section 9. For the purpose of incorporating the
30 amendment made by this act to section 794.011, Florida
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