



516686

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/21/2022	.	
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The Committee on Criminal Justice (Stewart) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (c) of subsection (2) of section
90.404, Florida Statutes, is amended to read:

90.404 Character evidence; when admissible.—

(2) OTHER CRIMES, WRONGS, OR ACTS.—

(c)1. In a criminal case in which the defendant is charged
with a sexual offense, evidence of the defendant's commission of



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11 other crimes, wrongs, or acts involving a sexual offense is
12 admissible and may be considered for its bearing on any matter
13 to which it is relevant.

14 2. For the purposes of this paragraph, the term "sexual
15 offense" means conduct proscribed by s. 787.025(2)(c), s.
16 787.06(3)(b), (d), (f), or (g), former s. 787.06(3)(h), s.
17 794.011, excluding s. 794.011(10), s. 794.05, former s. 796.03,
18 former s. 796.035, s. 825.1025(2)(b), s. 827.071, s.
19 847.0135(5), s. 847.0145, or s. 985.701(1).

20 3. Substantial similarity is not required for admission of
21 other crimes, wrongs, or acts when identity is not at issue.

22 Section 2. Paragraphs (d) and (e) of subsection (1) of
23 section 365.161, Florida Statutes, are amended to read:

24 365.161 Prohibition of certain obscene telephone
25 communications; penalty.—

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

27 (d) "Sexual battery" means oral, anal, or female genital
28 ~~vaginal~~ penetration by, or union with, the sexual organ of
29 another or the anal or female genital ~~vaginal~~ penetration of
30 another by any other object.

31 (e) "Sexual bestiality" means any sexual act between a
32 person and an animal involving the sex organ of the one and the
33 mouth, anus, or female genitals ~~vagina~~ of the other.

34 Section 3. Paragraph (c) of subsection (4) of section
35 491.0112, Florida Statutes, is amended to read:

36 491.0112 Sexual misconduct by a psychotherapist;
37 penalties.—

38 (4) For the purposes of this section:

39 (c) "Sexual misconduct" means the oral, anal, or female



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40 genital ~~vaginal~~ penetration of another by, or contact with, the
41 sexual organ of another or the anal or female genital ~~vaginal~~
42 penetration of another by any object.

43 Section 4. Paragraphs (d) and (e) of subsection (1) of
44 section 775.0847, Florida Statutes, are amended to read:

45 775.0847 Possession or promotion of certain images of child
46 pornography; reclassification.—

47 (1) For purposes of this section:

48 (d) "Sexual battery" means oral, anal, or female genital
49 ~~vaginal~~ penetration by, or union with, the sexual organ of
50 another or the anal or female genital ~~vaginal~~ penetration of
51 another by any other object; however, sexual battery does not
52 include an act done for a bona fide medical purpose.

53 (e) "Sexual bestiality" means any sexual act, actual or
54 simulated, between a person and an animal involving the sex
55 organ of the one and the mouth, anus, or female genitals ~~vagina~~
56 of the other.

57
58 For purposes of sentencing under chapter 921 and determining
59 incentive gain-time eligibility under chapter 944, a felony
60 offense that is reclassified under this section is ranked one
61 level above the ranking under s. 921.0022 or s. 921.0023 of the
62 offense committed.

63 Section 5. Subsection (21) is added to section 775.15,
64 Florida Statutes, to read:

65 775.15 Time limitations; general time limitations;
66 exceptions.—

67 (21) In addition to the time periods prescribed in this
68 section, a prosecution for sexual battery in violation of s.



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69 794.011, where the victim was unaware of the sexual battery due
70 to the victim being mentally defective, mentally incapacitated,
71 or physically helpless, may be commenced within 1 year after the
72 date on which the victim obtains actual knowledge of the offense
73 or the date on which the offense is reported to law enforcement,
74 whichever occurs first. Any dissemination of a recording of such
75 offense before the victim obtains actual knowledge thereof or
76 before its confiscation by a law enforcement agency does not
77 affect any provision of this subsection. This subsection applies
78 to any offense that is not otherwise barred from prosecution on
79 or before October 1, 2022.

80 Section 6. Subsections (1), (3), and (8) of section
81 794.011, Florida Statutes, are amended to read:

82 794.011 Sexual battery.—

83 (1) As used in this chapter:

84 (a) "Consent" means intelligent, knowing, and voluntary
85 consent and does not include coerced submission. "Consent" shall
86 not be deemed or construed to mean the failure by the alleged
87 victim to offer physical resistance to the offender.

88 (b) "Female genitals" means the labia majora, labia minora,
89 clitoris, vulva, hymen, and vagina.

90 (c) ~~(b)~~ "Mentally defective" means a mental disease or
91 defect which renders a person temporarily or permanently
92 incapable of appraising the nature of his or her conduct.

93 (d) ~~(e)~~ "Mentally incapacitated" means temporarily incapable
94 of appraising or controlling a person's own conduct due to the
95 influence of a narcotic, anesthetic, or intoxicating substance
96 administered without his or her consent or due to any other act
97 committed upon that person without his or her consent.



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98 (e)~~(d)~~ "Offender" means a person accused of a sexual
99 offense in violation of a provision of this chapter.

100 (f)~~(e)~~ "Physically helpless" means unconscious, asleep, or
101 for any other reason physically unable to communicate
102 unwillingness to an act.

103 (h)~~(f)~~ "Retaliation" includes, but is not limited to,
104 threats of future physical punishment, kidnapping, false
105 imprisonment or forcible confinement, or extortion.

106 (i)~~(g)~~ "Serious personal injury" means great bodily harm or
107 pain, permanent disability, or permanent disfigurement.

108 (j)~~(h)~~ "Sexual battery" means oral, anal, or female genital
109 ~~vaginal~~ penetration by, or union with, the sexual organ of
110 another or the anal or female genital ~~vaginal~~ penetration of
111 another by any other object; however, sexual battery does not
112 include an act done for a bona fide medical purpose.

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

115 (g)~~(j)~~ "Physically incapacitated" means bodily impaired or
116 handicapped and substantially limited in ability to resist or
117 flee.

118 (3) A person who commits sexual battery upon a person 12
119 years of age or older, without that person's consent, and in the
120 process thereof:

121 (a) Uses or threatens to use a deadly weapon; or

122 (b) Uses or threatens to use actual physical force likely
123 to cause serious personal injury or death

124
125 commits a life felony, punishable as provided in s. 775.082, s.
126 775.083, s. 775.084, or s. 794.0115.



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127 (8) Without regard to the willingness or consent of the
128 victim, which is not a defense to prosecution under this
129 subsection, a person who is in a position of familial or
130 custodial authority to a person less than 18 years of age and
131 who:

132 (a) Solicits that person to engage in any act which would
133 constitute sexual battery as defined in this section ~~under~~
134 ~~paragraph (1)(h)~~ commits a felony of the third degree,
135 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

136 (b) Engages in any act with that person while the person is
137 12 years of age or older but younger than 18 years of age which
138 constitutes sexual battery as defined in this section ~~under~~
139 ~~paragraph (1)(h)~~ commits a felony of the first degree,
140 punishable by a term of years not exceeding life or as provided
141 in s. 775.082, s. 775.083, or s. 775.084.

142 (c) Engages in any act with that person while the person is
143 less than 12 years of age which constitutes sexual battery as
144 defined in this section ~~under paragraph (1)(h)~~, or in an attempt
145 to commit sexual battery injures the sexual organs of such
146 person commits a capital or life felony, punishable pursuant to
147 subsection (2).

148 Section 7. Subsection (1) of section 794.05, Florida
149 Statutes, is amended to read:

150 794.05 Unlawful sexual activity with certain minors.—

151 (1) A person 24 years of age or older who engages in sexual
152 activity with a person 16 or 17 years of age commits a felony of
153 the second degree, punishable as provided in s. 775.082, s.
154 775.083, or s. 775.084. As used in this section, "sexual
155 activity" means oral, anal, or female genital ~~vaginal~~



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156 penetration by, or union with, the sexual organ of another or
157 the anal or female genital ~~vaginal~~ penetration of another by any
158 other object; however, sexual activity does not include an act
159 done for a bona fide medical purpose.

160 Section 8. Paragraph (d) of subsection (1) of section
161 796.07, Florida Statutes, is amended to read:

162 796.07 Prohibiting prostitution and related acts.—

163 (1) As used in this section:

164 (d) "Sexual activity" means oral, anal, or female genital
165 ~~vaginal~~ penetration by, or union with, the sexual organ of
166 another; anal or female genital ~~vaginal~~ penetration of another
167 by any other object; or the handling or fondling of the sexual
168 organ of another for the purpose of masturbation; however, the
169 term does not include acts done for bona fide medical purposes.

170 Section 9. Paragraph (a) of subsection (1) of section
171 800.04, Florida Statutes, is amended to read:

172 800.04 Lewd or lascivious offenses committed upon or in the
173 presence of persons less than 16 years of age.—

174 (1) DEFINITIONS.—As used in this section:

175 (a) "Sexual activity" means the oral, anal, or female
176 genital ~~vaginal~~ penetration by, or union with, the sexual organ
177 of another or the anal or female genital ~~vaginal~~ penetration of
178 another by any other object; however, sexual activity does not
179 include an act done for a bona fide medical purpose.

180 Section 10. Section 800.06, Florida Statutes, is created to
181 read:

182 800.06 Lewd or lascivious offenses committed upon persons
183 16 years of age or older.—

184 (1) A person who intentionally touches in a lewd or



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185 lascivious manner, and without consent, the breasts, genitals,
186 genital area, or buttocks, or the clothing covering them, of a
187 person 16 years of age or older, or forces a person 16 years of
188 age or older to so touch the perpetrator, commits lewd or
189 lascivious molestation of a person 16 years of age or older.

190 (2) A person who violates subsection (1) commits a felony
191 of the third degree, punishable as provided in s. 775.082, s.
192 775.083, or s. 775.084.

193 Section 11. Subsection (1) of section 825.1025, Florida
194 Statutes, is amended to read:

195 825.1025 Lewd or lascivious offenses committed upon or in
196 the presence of an elderly person or disabled person.—

197 (1) As used in this section, the term "sexual activity"
198 means the oral, anal, or female genital ~~vaginal~~ penetration by,
199 or union with, the sexual organ of another or the anal or female
200 genital ~~vaginal~~ penetration of another by any other object;
201 however, sexual activity does not include an act done for a bona
202 fide medical purpose.

203 Section 12. Paragraphs (f) and (g) of subsection (1) of
204 section 827.071, Florida Statutes, are amended to read:

205 827.071 Sexual performance by a child; penalties.—

206 (1) As used in this section, the following definitions
207 shall apply:

208 (f) "Sexual battery" means oral, anal, or female genital
209 ~~vaginal~~ penetration by, or union with, the sexual organ of
210 another or the anal or female genital ~~vaginal~~ penetration of
211 another by any other object; however, "sexual battery" does not
212 include an act done for a bona fide medical purpose.

213 (g) "Sexual bestiality" means any sexual act between a



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214 person and an animal involving the sex organ of the one and the
215 mouth, anus, or female genitals ~~vagina~~ of the other.

216 Section 13. Subsections (14) and (15) of section 847.001,
217 Florida Statutes, are amended to read:

218 847.001 Definitions.—As used in this chapter, the term:

219 (14) "Sexual battery" means oral, anal, or female genital
220 ~~vaginal~~ penetration by, or union with, the sexual organ of
221 another or the anal or female genital ~~vaginal~~ penetration of
222 another by any other object; however, "sexual battery" does not
223 include an act done for a bona fide medical purpose.

224 (15) "Sexual bestiality" means any sexual act, actual or
225 simulated, between a person and an animal involving the sex
226 organ of the one and the mouth, anus, or female genitals ~~vagina~~
227 of the other.

228 Section 14. Subsection (1) of section 872.06, Florida
229 Statutes, is amended to read:

230 872.06 Abuse of a dead human body; penalty.—

231 (1) As used in this section, the term "sexual abuse" means:

232 (a) Anal or female genital ~~vaginal~~ penetration of a dead
233 human body by the sexual organ of a person or by any other
234 object;

235 (b) Contact or union of the penis, female genitals ~~vagina~~,
236 or anus of a person with the mouth, penis, female genitals
237 ~~vagina~~, or anus of a dead human body; or

238 (c) Contact or union of a person's mouth with the penis,
239 female genitals ~~vagina~~, or anus of a dead human body.

240

241 Section 15. Paragraph (b) of subsection (3) of section
242 944.35, Florida Statutes, is amended to read:



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243 944.35 Authorized use of force; malicious battery and
244 sexual misconduct prohibited; reporting required; penalties.-

245 (3) (b) 1. As used in this paragraph, the term "sexual
246 misconduct" means the oral, anal, or female genital ~~vaginal~~
247 penetration by, or union with, the sexual organ of another or
248 the anal or female genital ~~vaginal~~ penetration of another by any
249 other object, but does not include an act done for a bona fide
250 medical purpose or an internal search conducted in the lawful
251 performance of the employee's duty.

252 2. Any employee of the department or a private correctional
253 facility as defined in s. 944.710 who engages in sexual
254 misconduct with an inmate or an offender supervised by the
255 department in the community, without committing the crime of
256 sexual battery, commits a felony of the third degree, punishable
257 as provided in s. 775.082, s. 775.083, or s. 775.084.

258 3. The consent of the inmate or offender supervised by the
259 department in the community to any act of sexual misconduct may
260 not be raised as a defense to a prosecution under this
261 paragraph.

262 4. This paragraph does not apply to any employee of the
263 department or any employee of a private correctional facility
264 who is legally married to an inmate or an offender supervised by
265 the department in the community, nor does it apply to any
266 employee who has no knowledge, and would have no reason to
267 believe, that the person with whom the employee has engaged in
268 sexual misconduct is an inmate or an offender under community
269 supervision of the department.

270 Section 16. Subsection (2) of section 951.27, Florida
271 Statutes, is amended to read:



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272 951.27 Blood tests of inmates.—

273 (2) Except as otherwise provided in this subsection,
274 serologic blood test results obtained pursuant to subsection (1)
275 are confidential and exempt from ~~the provisions of~~ s. 119.07(1)
276 and s. 24(a), Art. I of the State Constitution. However, such
277 results may be provided to employees or officers of the sheriff
278 or chief correctional officer who are responsible for the
279 custody and care of the affected inmate and have a need to know
280 such information, and as provided in ss. 775.0877 and 960.003.
281 In addition, upon request of the victim or the victim's legal
282 guardian, or the parent or legal guardian of the victim if the
283 victim is a minor, the results of any HIV test performed on an
284 inmate ~~who has been~~ arrested for any sexual offense involving
285 oral, anal, or female genital ~~vaginal~~ penetration by, or union
286 with, the sexual organ of another, must ~~shall~~ be disclosed to
287 the victim or the victim's legal guardian, or to the parent or
288 legal guardian of the victim if the victim is a minor. In such
289 cases, the county or municipal detention facility shall furnish
290 the test results to the Department of Health, which is
291 responsible for disclosing the results to public health agencies
292 as provided in s. 775.0877 and to the victim or the victim's
293 legal guardian, or the parent or legal guardian of the victim if
294 the victim is a minor, as provided in s. 960.003(3).

295 Section 17. Subsection (10) of section 395.0197, Florida
296 Statutes, is amended to read:

297 395.0197 Internal risk management program.—

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



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- 301 (a) Notify the local police; and
- 302 (b) Notify the hospital risk manager and the administrator.

303

304 For purposes of this subsection, "sexual abuse" means acts of a
305 sexual nature committed for the sexual gratification of anyone
306 upon, or in the presence of, a vulnerable adult, without the
307 vulnerable adult's informed consent, or a minor. "Sexual abuse"
308 includes, but is not limited to, the acts defined in s.
309 794.011(1)(j) ~~s. 794.011(1)(h)~~, fondling, exposure of a
310 vulnerable adult's or minor's sexual organs, or the use of the
311 vulnerable adult or minor to solicit for or engage in
312 prostitution or sexual performance. "Sexual abuse" does not
313 include any act intended for a valid medical purpose or any act
314 which may reasonably be construed to be a normal caregiving
315 action.

316 Section 18. Subsection (26) of section 415.102, Florida
317 Statutes, is amended to read:

318 415.102 Definitions of terms used in ss. 415.101-415.113.-
319 As used in ss. 415.101-415.113, the term:

320 (26) "Sexual abuse" means acts of a sexual nature committed
321 in the presence of a vulnerable adult without that person's
322 informed consent. "Sexual abuse" includes, but is not limited
323 to, the acts defined in s. 794.011(1)(j) ~~s. 794.011(1)(h)~~,
324 fondling, exposure of a vulnerable adult's sexual organs, or the
325 use of a vulnerable adult to solicit for or engage in
326 prostitution or sexual performance. "Sexual abuse" does not
327 include any act intended for a valid medical purpose or any act
328 that may reasonably be construed to be normal caregiving action
329 or appropriate display of affection.



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330 Section 19. Subsection (1) of section 847.0141, Florida
331 Statutes, is amended to read:

332 847.0141 Sexting; prohibited acts; penalties.—

333 (1) A minor commits the offense of sexting if he or she
334 knowingly:

335 (a) Uses a computer, or any other device capable of
336 electronic data transmission or distribution, to transmit or
337 distribute to another minor any photograph or video of any
338 person which depicts nudity, ~~as defined in s. 847.001(9),~~ and is
339 harmful to minors, as those terms are defined in s. 847.001 ~~s.~~
340 ~~847.001(6)~~.

341 (b) Possesses a photograph or video of any person that was
342 transmitted or distributed by another minor which depicts
343 nudity, ~~as defined in s. 847.001(9),~~ and is harmful to minors,
344 as those terms are defined in s. 847.001 ~~s. 847.001(6)~~. A minor
345 does not violate this paragraph if all of the following apply:

- 346 1. The minor did not solicit the photograph or video.
347 2. The minor took reasonable steps to report the photograph
348 or video to the minor's legal guardian or to a school or law
349 enforcement official.
350 3. The minor did not transmit or distribute the photograph
351 or video to a third party.

352 Section 20. This act shall take effect October 1, 2022.

353
354 ===== T I T L E A M E N D M E N T =====

355 And the title is amended as follows:

356 Delete everything before the enacting clause
357 and insert:

358 A bill to be entitled



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359 An act relating to sexual offenses; amending s.
360 90.404, F.S.; providing that substantial similarity is
361 not required for the admissibility of certain evidence
362 in a criminal case in which the defendant is charged
363 with a sexual offense; amending s. 365.161, F.S.;
364 revising the definitions of the terms "sexual battery"
365 and "sexual bestiality"; amending s. 491.0112, F.S.;
366 revising the definition of the term "sexual
367 misconduct"; amending s. 775.0847, F.S.; revising the
368 definitions of the terms "sexual battery" and "sexual
369 bestiality"; amending s. 775.15, F.S.; providing a
370 time limitation for the prosecution of specified
371 sexual battery offenses; providing applicability;
372 amending s. 794.011, F.S.; defining the term "female
373 genitals"; revising the definition of the term "sexual
374 battery"; providing that a person who threatens to use
375 actual physical force likely to cause serious bodily
376 injury or death while committing specified sexual
377 battery offenses commits a life felony; amending ss.
378 794.05, 796.07, and 800.04, F.S.; revising the
379 definition of the term "sexual activity"; creating s.
380 800.06, F.S.; creating the offense of lewd or
381 lascivious molestation of a person 16 years of age or
382 older; providing criminal penalties; amending s.
383 825.1025, F.S.; revising the definition of the term
384 "sexual activity"; amending ss. 827.071 and 847.001,
385 F.S.; revising the definitions of the terms "sexual
386 battery" and "sexual bestiality"; amending s. 872.06,
387 F.S.; revising the definition of the term "sexual



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388 abuse"; amending s. 944.35, F.S.; revising the
389 definition of the term "sexual misconduct"; amending
390 s. 951.27, F.S.; requiring that HIV test results
391 performed on inmates arrested for sexual offenses
392 involving female genital penetration be disclosed
393 under certain circumstances; amending ss. 395.0197,
394 415.102, and 847.0141, F.S.; conforming cross-
395 references; providing an effective date.