

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 692

INTRODUCER: Senator Stewart

SUBJECT: Sexual Offenses Definitions

DATE: January 31, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stokes	Cox	CF	Favorable
2.	_____	_____	CJ	_____
3.	_____	_____	RC	_____

I. Summary:

SB 692 amends multiple statutes relating to various sexual offenses, to replace the terms “vagina” or “vaginal” with “genital” or “genitals.” Additionally, this bill provides that “genitals” include the labia minora, labia majora, vulva, hymen, and vagina.

The bill amends the following sections to create and revise such definitions:

- Section 39.01(77), F.S., which provides the definition of “sexual abuse of a child” for purposes of finding a child to be dependent.
- Section 365.161(1), F.S., which provides definitions relating to the prohibition of certain obscene telephone communications.
- Section 775.0847(1), F.S., which provides definitions relating to the possession or promotion of certain images of child pornography.
- Section 794.011(1), F.S., which provides definitions relating to sexual battery.
- Section 827.071, F.S., which provides definitions relating to sexual performance by a child.
- Section 847.001, F.S., which provides definitions relating to obscenity.
- Section 872.06(1), F.S., which provides definitions relating to abuse of a dead human body.

Additionally the bill amends ss. 288.1254, 395.0197, 415.102, and 847.0141, F.S., to make conforming cross-reference changes to comply with the act.

This bill is effective October 1, 2022.

II. Present Situation:

The term “vagina” is used to describe prohibited sexual conduct in various sections of the Florida Statutes, but is not statutorily defined. Currently, the Florida District Courts of Appeals (DCA) have conflicting opinions on the definition of the term “vagina.” Specifically, the Second and Fourth DCAs have held that the vagina has a specific anatomical meaning, and that it is

internal.¹ However, the Fifth DCA has held the term vagina includes the entire vulva area not just the internal passageway.²

Florida Statutes

Florida law currently contains a variety of statutes that prohibit acts relating to sexual battery, sexual conduct, obscenity, and sexual abuse. A summary of these laws follows.

Sexual battery

Section 794.011, F.S., defines the crime of “sexual battery” to mean oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose.³

Sexual battery is a capital felony⁴ or life felony⁵ when:

- A person 18 years of age or older commits a sexual battery on, or in an attempt to commit a sexual battery injures the sexual organs of, a person less than 12 years of age.⁶
- A person less than 18 years of age commits sexual battery on, or in an attempt to commit sexual battery injures the sexual organs of, a person less than 12 years of age.⁷
- A person commits sexual battery on a person 12 years of age or older, without that person’s consent, and in the process thereof uses or threatens to use a deadly weapon or uses actual physical force likely to cause serious personal injury.⁸
- Without regard to the willingness or consent of the victim, a person who is in a position of familial or custodial authority to a person less than 18 years of age engages in any act, which constitutes sexual battery, with that person while the person is less than 12 years of age, or in an attempt to commit sexual battery injures the sexual organs of the person.⁹

¹ See *Richards v. State*, 738 So. 2d 415, 419 (Fla. 2nd DCA, 1999)(holding that the vagina should be defined as “the canal between the vulva and the uterus.”); *Firekey v. State*, 557 So. 2d 582 (Fla. 4th DCA, 1989)(holding that penetration of the labia does not constitute sexual battery).

² See *Palumbo v. State*, 52 So. 3d 834 (Fla. 5th DCA, 2011).

³ Section 794.011(1)(h), F.S.

⁴ A capital felony is generally punishable by death or life imprisonment. Section 775.082, F.S. The courts have held that the death penalty may not be imposed for sex offenses. In Florida, the only crime for which the death penalty may be imposed is murder in the first degree. See *Rowe v. State*, 417 So. 2d 981, 982 (Fla. 1982). See also *Buford v. State*, 403 So. 2d 943, 951 (Fla. 1981)(holding that the Eighth Amendment prohibits death penalty for rape or sexual battery, even of a child).

⁵ A life felony is generally punishable by a term of imprisonment for life or by imprisonment for a term of years not exceeding life imprisonment and a fine not exceeding \$15,000. Sections 775.082 and 775.083, F.S.

⁶ Section 794.011(2)(a), F.S.

⁷ Section 794.011(2)(b), F.S.

⁸ Section 794.011(3), F.S.

⁹ Section 794.011(8)(c), F.S.

Sexual battery is a first degree felony, punishable by a term of years not exceeding life,¹⁰ when:

- A person 18 years of age or older commits sexual battery on a person 12 years of age or older, but younger than 18 years of age without that person's consent, under specified circumstances.¹¹
- A person commits sexual battery on a person 12 years of age or older without that person's consent, under specified circumstances, and that person was previously convicted of specified crimes.¹²
- Without regard to the willingness or consent of the victim, a person who is in a position of familial or custodial authority to a person less than 18 years of age engages in any act, which constitutes sexual battery, with that person while the person is 12 years of age or older but younger than 18 years of age.¹³

¹⁰ A first degree felony may be punishable by a term of years not exceeding life imprisonment when specifically provided by statute and a fine not exceeding \$10,000. Sections 775.082 and 775.083 F.S.

¹¹ Section 794.011(4)(a), F.S. Further, s. 794.011(4)(e)1.-7., F.S., provides the following circumstances apply to certain crimes of sexual battery: the victim is physically helpless to resist; the offender coerces the victim to submit by threatening to use force or violence likely to cause serious personal injury on the victim, and the victim reasonably believes that the offender has the present ability to execute the threat; the offender coerces the victim to submit by threatening to retaliate against the victim or any other person, and the victim reasonably believes that the offender has the ability to execute the threat in the future; the offender, without prior knowledge or consent of the victim, administers or has knowledge of someone else administering to the victim any narcotic, anesthetic, or other intoxicating substance that mentally or physically incapacitates the victim; the victim is mentally defective, and the offender has reason to believe this or has actual knowledge of this fact; the victim is physically incapacitated; the offender is in a specified profession or a person is acting in such a manner as to lead the victim to reasonably believe that the offender is in a position of control or authority as an agent or employee of government.

¹² Section 794.011(4)(d), F.S. Specified crimes include: s. 787.01(2), F.S., relating to kidnapping, or s. 787.02(2), F.S., relating to false imprisonment, when the violation involved a victim who was a minor and, in the course of committing that violation, the defendant committed against the minor a sexual battery under this chapter or a lewd act under s. 800.04 or s. 847.0135(5), F.S.; s. 787.01(3)(a)2. or 3., F.S., relating to kidnapping; s. 787.02(3)(a)2. or 3., F.S., relating to false imprisonment; s. 800.04, F.S., relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age; s. 825.1025, F.S., relating to lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person; s. 847.0135(5), F.S., relating to computer pornography; or ch. 794, F.S., relating to sexual battery, except s. 794.011(10), F.S., which criminalizes false allegations against specified persons.

¹³ Section 794.011(8)(b), F.S.

Sexual battery is a first degree felony, punishable by a term of imprisonment not exceeding 30 years,¹⁴ when:

- A person 18 years of age or older commits sexual battery on a person 18 years of age or older without that person's consent, under specified circumstances.^{15, 16}
- A person younger than 18 years of age commits sexual battery on a person 12 years of age or older without that person's consent, under specified circumstances.^{17, 18}
- A person 18 years of age or older commits sexual battery on a person 12 years of age or older but younger than 18 years of age, without that person's consent, and in the process does not use physical force and violence likely to cause serious personal injury.¹⁹
- A person commits sexual battery on a person 12 years of age or older, without that person's consent, and in the process does not use physical force and violence likely to cause serious personal injury and the person was previously convicted of specified crimes.²⁰

Sexual battery is a second degree felony²¹ when:

¹⁴ The maximum term of imprisonment for a first degree felony is generally 30 years imprisonment and a fine not exceeding \$10,000. Sections 775.082 and 775.083 F.S.

¹⁵Section 794.011(4)(e)1.-7., F.S., provides the following circumstances apply to certain crimes of sexual battery: the victim is physically helpless to resist; the offender coerces the victim to submit by threatening to use force or violence likely to cause serious personal injury on the victim, and the victim reasonably believes that the offender has the present ability to execute the threat; the offender coerces the victim to submit by threatening to retaliate against the victim or any other person, and the victim reasonably believes that the offender has the ability to execute the threat in the future; the offender, without prior knowledge or consent of the victim, administers or has knowledge of someone else administering to the victim any narcotic, anesthetic, or other intoxicating substance that mentally or physically incapacitates the victim; the victim is mentally defective, and the offender has reason to believe this or has actual knowledge of this fact; the victim is physically incapacitated; the offender is in a specified profession or a person is acting in such a manner as to lead the victim to reasonably believe that the offender is in a position of control or authority as an agent or employee of government.

¹⁶ Section 794.011(4)(b), F.S.

¹⁷See s. 794.011(4)(e)1.-7., F.S., provides the following circumstances apply to certain crimes of sexual battery: the victim is physically helpless to resist; the offender coerces the victim to submit by threatening to use force or violence likely to cause serious personal injury on the victim, and the victim reasonably believes that the offender has the present ability to execute the threat; the offender coerces the victim to submit by threatening to retaliate against the victim or any other person, and the victim reasonably believes that the offender has the ability to execute the threat in the future; the offender, without prior knowledge or consent of the victim, administers or has knowledge of someone else administering to the victim any narcotic, anesthetic, or other intoxicating substance that mentally or physically incapacitates the victim; the victim is mentally defective, and the offender has reason to believe this or has actual knowledge of this fact; the victim is physically incapacitated; the offender is in a specified profession or a person is acting in such a manner as to lead the victim to reasonably believe that the offender is in a position of control or authority as an agent or employee of government.

¹⁸ Section 794.011(4)(c), F.S.

¹⁹ Section 794.011(5)(a), F.S.

²⁰ Section 794.011(5)(d), F.S. Specified crimes include: s. 787.01(2), F.S., relating to kidnapping, or s. 787.02(2), F.S., relating to false imprisonment, when the violation involved a victim who was a minor and, in the course of committing that violation, the defendant committed against the minor a sexual battery under this chapter or a lewd act under s. 800.04 or s. 847.0135(5), F.S.; s. 787.01(3)(a)2. or 3. F.S., relating to kidnapping; s. 787.02(3)(a)2. or 3., F.S., relating to false imprisonment; s. 800.04, F.S., relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age; s. 825.1025, F.S., relating to lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person; s. 847.0135(5), F.S., relating to computer pornography; or ch. 794, F.S., relating to sexual battery, except s. 794.011(10), F.S., which criminalizes false allegations against specified persons.

²¹ The maximum term of imprisonment for a second degree felony is 15 years imprisonment and a fine not exceeding \$10,000. Sections 775.082 and 775.083, F.S.

- A person 18 years of age or older commits sexual battery on a person 18 years of age or older, without that person's consent, and in the process does not use physical force and violence likely to cause serious personal injury.²²
- A person younger than 18 years of age commits sexual battery on a person 12 years of age or older, without that person's consent, and in the process does not use physical force and violence likely to cause serious personal injury.²³

Sexual battery is a third degree felony²⁴ when:

- Without regard to the willingness or consent of the victim, a person who is in a position of familial or custodial authority to a person less than 18 years of age solicits that person to engage in any act which constitutes sexual battery.²⁵

Obscenity, child pornography, sexual performance by a child

Obscenity

Chapter 847, F.S., governs obscenity, which includes in part, laws relating to: the prohibition of certain acts in connection with obscene, lewd, etc. materials; the regulation of harmful materials and the sale or distribution to minors; and computer pornography, prohibited computer usage, and traveling to meet minors.

For purposes of this chapter the term "obscene," means the status of material which:

- The average person, applying contemporary community standards, would find, taken as a whole, appeals to the prurient interests;
- Depicts or describes, in a patently offensive way, sexual conduct; and
- Taken as a whole, lacks serious literary, artistic, political, or scientific value.²⁶

Sexual performance by a child

Section 827.071, F.S., provides that it is a second degree felony to employ, authorize, or induce a child younger than 18 years of age to engage in a sexual performance,²⁷ or for a parent, legal guardian, or custodian of such child to consent to the participation by such child in a sexual performance.²⁸ It is also a second degree felony for any person to produce, direct, or promote any performance which includes sexual conduct by a child less than 18 years of age.²⁹

²² Section 794.011(5)(b), F.S.

²³ Section 794.011(5)(c), F.S.

²⁴ The maximum term of imprisonment for a third degree felony is 5 years imprisonment and a fine not exceeding \$5,000. Sections 775.082 and 775.083 F.S.

²⁵ Section 794.011(8)(a), F.S.

²⁶ Section 847.001(10), F.S. A mother's breastfeeding of her baby is not under any circumstance "obscene."

²⁷ Section 827.071(1)(i), F.S., defines "sexual performance" to mean any performance or part therefor which includes sexual conduct by a child less than 18 years of age. Additionally, s. 827.071(1)(c), F.S., defines "performance" to mean any play, motion picture, photograph, or dance or any other visual representation exhibited before an audience.

²⁸ Section 827.071(2), F.S.

²⁹ Section 827.071(3), F.S.

A person may not possess with the intent to promote any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, includes any sexual conduct by a child.³⁰

Additionally, it is a third degree felony for a person to knowingly possess, control, or intentionally view a photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation which, in whole or in part, he or she knows to include any sexual conduct by a child.³¹

Possession or promotion of child pornography

Section 775.0847, F.S., reclassifies violations of s. 827.071, F.S., relating to sexual performance by a child; s. 847.0135, F.S., relating to computer pornography, prohibited computer usage, and traveling to meet a minor; s. 847.0137, F.S., relating to transmission of pornography by electronic device or equipment; and s. 847.0138, F.S., relating to transmission of material harmful to minors to a minor by electronic device or equipment, to the next higher degree if:

- The offender possesses 10 or more images of any form of child pornography³² regardless of content; and
- The content of at least one image contains one or more of the following:
 - A child who is younger than the age of 5.
 - Sadomasochistic abuse³³ involving a child.
 - Sexual battery involving a child.
 - Sexual bestiality involving a child.
 - Any movie involving a child, regardless of length and whether the movie contains sound.³⁴

The following definitions apply to the above-described offenses:

- “Sexual battery” means oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, “sexual battery” does not include an act done for a bona fide medical purpose.³⁵
- “Sexual bestiality” means any sexual act, actual or simulated, between a person and an animal involving the sex organ of the one and the mouth, anus, or vagina of the other.³⁶
- “Sexual conduct” means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual lewd exhibition of the genitals; actual physical contact with a person’s clothed or unclothed genitals, pubic area, buttocks, or if such person is female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that

³⁰ Section 827.071(4), F.S.

³¹ Section 827.071(5), F.S.

³² Section 775.0847(1)(b), F.S., defines “child pornography” to mean any image depicting a minor engaged in sexual conduct.

³³ Section 775.0847(1)(c), F.S., defines “sadomasochistic abuse,” to mean flagellation or torture by or upon a person or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction, or satisfaction brought about as a result of sadistic violence, from inflicting harm on another or receiving such harm oneself.

³⁴ Section 775.0847(2), F.S.

³⁵ Sections 775.0847(1)(d), 827.071(1)(f), and 847.001(14), F.S.

³⁶ Sections 775.0847(1)(e), 827.071(1)(g), and 847.001(15), F.S.

sexual battery is being or will be committed. A mother's breastfeeding of her baby does not under any circumstances constitute "sexual conduct."³⁷

Prohibition of certain obscene telephone calls

A person commits a second degree misdemeanor³⁸ if he or she makes, or knowingly permits the use of a telephone or telephone facility under his or her control to make any obscene or indecent communication by means of a telephone, in person or through an electronic recording device, in exchange for payment.³⁹

For purposes of s. 365.161, F.S., "obscene" means the status of communication which:

- The average person applying contemporary community standards would find, taken as a whole, appeals to the prurient interests;
- Describes, in a patently offensive way, deviate sexual intercourse, sadomasochistic abuse, sexual battery, bestiality, sexual conduct, or sexual excitement; and
- Taken as a whole, lacks serious literary, artistic, political, or scientific value.

Additionally, s. 365.161, F.S., provides, in part, the following definitions:

- "Sexual battery," means oral, anal, or vaginal penetration by, or union with, the sexual organ of the one and the mouth, anus, or vagina of the other.⁴⁰
- "Sexual bestiality," means any sexual act between a person and an animal involving the sex organ of the one and the mouth, anus, or vagina of the other.⁴¹

Abuse of a dead human body

A person who mutilates, commits sexual abuse upon, or otherwise grossly abuses the dead human body commits a second degree felony. An act done for a bona fide medical purpose or any other lawful purpose does not violate this law.⁴²

For purposes of this section, "sexual abuse" means:

- Anal or vaginal penetration of a dead human body by the sexual organ of a person or by any other object;
- Contact or union of the penis, vagina, or anus of a person with the mouth, penis, vagina, or anus of a dead human body; or
- Contact or union of a person's mouth with the penis, vagina, or anus of a dead human body.⁴³

³⁷ Sections 775.0847(1)(f), 827.071(1)(h), and 847.001(16), F.S.

³⁸ A second degree misdemeanor is punishable by a term of imprisonment up to 60 days and a fine not exceeding \$500. Sections 775.082 and 775.083, F.S.

³⁹ Section 356.161(2), F.S.

⁴⁰ Section 365.161(1)(d), F.S.

⁴¹ Section 365.161(1)(e), F.S.

⁴² Section 872.06(2), F.S.

⁴³ Section 872.06(1), F.S.

Sexual abuse of a child in dependency proceedings

Chapter 39, F.S., governs proceedings relating to children who are abused, abandoned, or neglected. The goal is for the dependency court and all parties involved in the child's case to ensure the child remains safe.⁴⁴

The Department of Children and Families (DCF) operates the Florida central abuse hotline (hotline), which accepts reports of known or suspected child abuse,⁴⁵ abandonment,⁴⁶ or neglect,⁴⁷ 24 hours a day, seven days a week.⁴⁸ Any person who knows or suspects that a child has been abused, abandoned, or neglected must report such knowledge or suspicion to the hotline.⁴⁹ Similarly, any person who knows, or has reasonable cause to suspect that a child is the victim of sexual abuse or juvenile sexual abuse must make a report to the hotline.

A child protective investigation begins if the hotline determines the allegations meet the statutory definition of abuse, abandonment, or neglect.⁵⁰ If, after conducting an investigation in response to receiving a call to the hotline, the child protective investigator determines that the child is in need of protection and supervision that necessitates removal, the investigator may initiate formal proceedings to remove the child from his or her home. The proceeding, known as a shelter

⁴⁴ Section 39.001(1)(a), F.S.

⁴⁵ Section 39.01(2), F.S., defines "abuse" to mean any willful act or threatened act that results in any physical, mental, or sexual abuse, injury, or harm that causes or is likely to cause the child's physical, mental, or emotional health to be significantly impaired. Abuse of a child includes the birth of a new child into a family during the course of an open dependency case when the parent or caregiver has been determined to lack the protective capacity to safely care for the children in the home and has not substantially complied with the case plan towards successful reunification or met the conditions for return of the children into the home. Abuse of a child also includes acts or omissions. Corporal discipline of a child by a parent or legal custodian for disciplinary purposes does not in itself constitute abuse when it does not result in harm to the child.

⁴⁶ Section 39.01(1), F.S., defines "abandonment," in part, to mean a situation in which the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the caregiver, while being able, has made no significant contribution to the child's care and maintenance or has failed to establish or maintain a substantial and positive relationship with the child, or both. It further defines, "establish or maintain a substantial and positive relationship" to include, but not be limited to, frequent and regular contact with the child through frequent and regular visitation or frequent and regular communication to or with the child, and the exercise of parental rights and responsibilities. The definition specifically provides that marginal efforts and incidental or token visits or communications are not sufficient to establish or maintain a substantial and positive relationship with a child.

⁴⁷ Section 39.01(50), F.S., defines "neglect" to mean when a child is deprived of, or is allowed to be deprived of, necessary food, clothing, shelter, or medical treatment or a child is permitted to live in an environment when such deprivation or environment causes the child's physical, mental, or emotional health to be significantly impaired or to be in danger of being significantly impaired. Circumstances are not to be considered neglect if caused primarily by financial inability unless actual services for relief have been offered to and rejected. Further, a parent or legal custodian legitimately practicing religious beliefs in accordance with a recognized church or religious organization who thereby does not provide specific medical treatment for a child may not, for that reason alone, be considered a negligent parent or legal custodian, unless a court orders the following services to be provided, when the health of the child so requires: medical services from a licensed physician, dentist, optometrist, podiatric physician, or other qualified health care provider; or treatment by a duly accredited practitioner who relies solely on spiritual means for healing in accordance with the tenets and practices of a well-recognized church or religious organization. The definition further provides that neglect of a child includes acts or omissions.

⁴⁸ Section 39.101(1)(a), F.S.

⁴⁹ Section 39.201(1)(a)1., F.S.

⁵⁰ Section 39.201(4), F.S.

hearing, results in a court determining if probable cause exists to keep a child in shelter⁵¹ status pending further investigation of the circumstances leading to the detention of a child.⁵² When the DCF removes a child from the home, a series of dependency court proceedings must occur before a child may be found to be dependent.⁵³

“Sexual abuse of a child,” for purposes of finding a child to be dependent means one or more of the following acts:

- Any penetration, however slight, of the vagina or anal opening of one person by the penis of another person, whether or not there is the emission of semen;
- Any sexual contact between the genitals or anal opening of one person and the mouth or tongue of another person.
- Any intrusion by one person into the genitals or anal opening of another person including the use of any object for this purpose, except that this does not include any act intended for a valid medical purpose.
- The intentional touching of the genitals or intimate parts, including the breasts, genital area, groin, inner thighs, and buttocks, or the clothing covering them, of either the child or the perpetrator, except that this does not include any act which may reasonably be construed to be a normal caregiver responsibility, any interaction with, or affection for a child, or any act intended for a valid medical purpose.
- The intentional masturbation of the perpetrator’s genitals in the presence of a child.
- The intentional exposure of the perpetrator’s genitals in the presence of a child, or any other sexual act intentionally perpetrated in the presence of a child, if such exposure or sexual act is for the purpose of sexual arousal or gratification, aggression, degradation, or other similar purpose.
- The sexual exploitation of a child, which includes the act of a child offering to engage in or engaging in prostitution, or the act of allowing, encouraging, or forcing a child to solicit for or engage in prostitution, engage in sexual performance, or participate in the trade of human trafficking.⁵⁴

Sexual abuse of a child must be reported immediately to the hotline, including any alleged incident involving a child who is in the custody of or under the protective supervision of the DCF.⁵⁵ Within 48 hours after the hotline receives a report, the DCF must conduct an assessment, assist the family in receiving appropriate services, and make a written report to the appropriate county sheriff’s office.⁵⁶

⁵¹ Section 39.01(78), F.S., defines “shelter” to mean a placement with a relative or a nonrelative, or in a licensed home or facility, for the temporary care of a child who is alleged to be or who has been found to be dependent, pending court disposition before or after adjudication.

⁵² Section 39.01(79), F.S.

⁵³ See s. 39.01(14), F.S., for the definition of “child who is found to be dependent”.

⁵⁴ Section 39.01(77), F.S.

⁵⁵ Section 39.201(5), F.S.

⁵⁶ *Id.*

III. Effect of Proposed Changes:

This bill amends multiple statutes relating to various sexual offenses, to replace the terms “vagina” or “vaginal” with “genital” or “genitals.” Additionally, this bill provides that “genitals” include the labia minora, labia majora, vulva, hymen, and vagina.

The bill amends the following sections to create and revise such definitions:

- Section 39.01(77), F.S., which provides the definition of “sexual abuse of a child” for purposes of finding a child to be dependent.
- Section 365.161(1), F.S., which provides definitions relating to the prohibition of certain obscene telephone communications.
- Section 775.0847(1), F.S., which provides definitions relating to the possession or promotion of certain images of child pornography.
- Section 794.011(1), F.S., which provides definitions relating to sexual battery.
- Section 827.071, F.S., which provides definitions relating to sexual performance by a child.
- Section 847.001, F.S., which provides definitions relating to obscenity.
- Section 872.06(1), F.S., which provides definitions relating to abuse of a dead human body.

As a result, the bill remedies the current conflict within the Florida DCAs on the definition of “vagina” by removing the term and replacing it with the term “genital” and provide that “genitals” includes the labia minora, labia majora, vulva, hymen, and vagina.

Additionally, the bill amends ss. 288.1254, 395.0197, 415.102, and 847.0141, F.S., to make conforming cross-reference changes to comply with the act.

This bill is effective October 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The following statutes also use the term “vagina” or “vaginal penetration,” in the definitions of terms relating to sexual conduct; however are not amended by the bill:

- Section 491.0112, F.S., Sexual misconduct by a psychotherapist.
- Section 794.05, F.S., Unlawful sexual activity with certain minors.
- Section 796.07, F.S., Prohibiting prostitution and related acts.
- Section 800.04, F.S., Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age.
- Section 825.1025, F.S., Lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person.
- Section 944.35, F.S., Authorized use of force; malicious battery and sexual misconduct prohibited; reporting required; penalties.
- Section 951.27, F.S., Blood tests of inmates.

Additionally, the term “genitals,” as defined throughout the bill, includes only the female genital parts. Current law, specifically, s. 39.01, F.S., relating to sexual abuse of a child, uses the term genitals to refer to male and female genitalia. Defining “genitals,” to only relate to the female anatomy may exclude behavior involving the male genitals that is covered under current law.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 39.01, 288.1254, 365.161, 395.0197, 415.102, 775.0847, 794.011, 827.071, 847.001, 847.0141 and 872.06.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
