

By Senator Stewart

13-00876-22

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1 A bill to be entitled
2 An act relating to sexual offenses definitions;
3 amending s. 39.01, F.S.; creating and revising a
4 definition relating to sexual abuse of a child;
5 amending ss. 365.161 and 775.0847, F.S.; creating and
6 revising definitions relating to obscene telephone
7 communications and possession or promotion of certain
8 images of child pornography, respectively; amending s.
9 794.011, F.S.; creating and revising definitions
10 relating to sexual battery; conforming provisions to
11 changes made by the act; amending ss. 827.071 and
12 847.001, F.S.; creating and revising definitions
13 relating to sexual performance by a child and
14 obscenity definitions, respectively; amending s.
15 872.06, F.S.; creating and revising definitions
16 relating to abuse of a dead human body; amending ss.
17 288.1254, 395.0197, 415.102, and 847.0141, F.S.;
18 conforming cross-references; providing an effective
19 date.

20
21 Be It Enacted by the Legislature of the State of Florida:

22
23 Section 1. Subsection (77) of section 39.01, Florida
24 Statutes, is amended to read:

25 39.01 Definitions.—When used in this chapter, unless the
26 context otherwise requires:

27 (77) "Sexual abuse of a child" for purposes of finding a
28 child to be dependent means one or more of the following acts:

29 (a) Any penetration, however slight, of the genitals ~~vagina~~

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30 or anal opening of one person by the penis of another person,
31 whether or not there is the emission of semen.

32 (b) Any sexual contact between the genitals or anal opening
33 of one person and the mouth or tongue of another person.

34 (c) Any intrusion by one person into the genitals or anal
35 opening of another person, including the use of any object for
36 this purpose, except that this does not include any act intended
37 for a valid medical purpose.

38 (d) The intentional touching of the genitals or intimate
39 parts, including the breasts, genital area, groin, inner thighs,
40 and buttocks, or the clothing covering them, of either the child
41 or the perpetrator, except that this does not include:

42 1. Any act which may reasonably be construed to be a normal
43 caregiver responsibility, any interaction with, or affection for
44 a child; or

45 2. Any act intended for a valid medical purpose.

46 (e) The intentional masturbation of the perpetrator's
47 genitals in the presence of a child.

48 (f) The intentional exposure of the perpetrator's genitals
49 in the presence of a child, or any other sexual act
50 intentionally perpetrated in the presence of a child, if such
51 exposure or sexual act is for the purpose of sexual arousal or
52 gratification, aggression, degradation, or other similar
53 purpose.

54 (g) The sexual exploitation of a child, which includes the
55 act of a child offering to engage in or engaging in
56 prostitution, or the act of allowing, encouraging, or forcing a
57 child to:

58 1. Solicit for or engage in prostitution;

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59 2. Engage in a sexual performance, as defined by chapter
60 827; or

61 3. Participate in the trade of human trafficking as
62 provided in s. 787.06(3)(g).

63

64 As used in this subsection, the term "genitals" includes the
65 labia minora, labia majora, vulva, hymen, and vagina.

66 Section 2. Subsection (1) of section 365.161, Florida
67 Statutes, is amended to read:

68 365.161 Prohibition of certain obscene telephone
69 communications; penalty.—

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

71 (c)~~(a)~~ "Obscene" means that status of a communication
72 which:

73 1. The average person applying contemporary community
74 standards would find, taken as a whole, appeals to the prurient
75 interests;

76 2. Describes, in a patently offensive way, deviate sexual
77 intercourse, sadomasochistic abuse, sexual battery, bestiality,
78 sexual conduct, or sexual excitement; and

79 3. Taken as a whole, lacks serious literary, artistic,
80 political, or scientific value.

81 (a)~~(b)~~ "Deviate sexual intercourse" means sexual conduct
82 between persons consisting of contact between the penis and the
83 anus, the mouth and the penis, or the mouth and the vulva.

84 (b) "Genitals" includes the labia minora, labia majora,
85 vulva, hymen, and vagina.

86 (d)~~(e)~~ "Sadomasochistic abuse" means flagellation or
87 torture by or upon a person, or the condition of being fettered,

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88 bound, or otherwise physically restrained, for the purpose of
89 deriving sexual satisfaction from inflicting harm on another or
90 receiving such harm oneself.

91 (e)~~(d)~~ "Sexual battery" means oral, anal, or genital
92 ~~vaginal~~ penetration by, or union with, the sexual organ of
93 another or the anal or genital ~~vaginal~~ penetration of another by
94 any other object.

95 (f)~~(e)~~ "Sexual bestiality" means any sexual act between a
96 person and an animal involving the sex organ of the one and the
97 mouth, anus, or genitals ~~vagina~~ of the other.

98 (g)~~(f)~~ "Sexual conduct" means actual or simulated sexual
99 intercourse, deviate sexual intercourse, sexual bestiality,
100 masturbation, or sadomasochistic abuse; or any act or conduct
101 which constitutes sexual battery.

102 (h)~~(g)~~ "Sexual excitement" means the condition of the human
103 male or female genitals when in a state of sexual stimulation or
104 arousal.

105 Section 3. Present paragraphs (c) through (f) of subsection
106 (1) of section 775.0847, Florida Statutes, are redesignated as
107 paragraphs (d) through (g), respectively, a new paragraph (c) is
108 added to that subsection, and present paragraphs (d) and (e) of
109 that subsection are amended, to read:

110 775.0847 Possession or promotion of certain images of child
111 pornography; reclassification.—

112 (1) For purposes of this section:

113 (c) "Genitals" includes the labia minora, labia majora,
114 vulva, hymen, and vagina.

115 (e)~~(d)~~ "Sexual battery" means oral, anal, or genital
116 ~~vaginal~~ penetration by, or union with, the sexual organ of

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117 another or the anal or genital ~~vaginal~~ penetration of another by
118 any other object; however, sexual battery does not include an
119 act done for a bona fide medical purpose.

120 ~~(f)-(e)~~ "Sexual bestiality" means any sexual act, actual or
121 simulated, between a person and an animal involving the sex
122 organ of the one and the mouth, anus, or genitals ~~vagina~~ of the
123 other.

124

125 For purposes of sentencing under chapter 921 and determining
126 incentive gain-time eligibility under chapter 944, a felony
127 offense that is reclassified under this section is ranked one
128 level above the ranking under s. 921.0022 or s. 921.0023 of the
129 offense committed.

130 Section 4. Subsections (1), (3), and (8) of section
131 794.011, Florida Statutes, are amended to read:

132 794.011 Sexual battery.—

133 (1) As used in this chapter:

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

138 (b) "Genitals" includes the labia minora, labia majora,
139 vulva, hymen, and vagina.

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

143 ~~(d)-(e)~~ "Mentally incapacitated" means temporarily incapable
144 of appraising or controlling a person's own conduct due to the
145 influence of a narcotic, anesthetic, or intoxicating substance

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146 administered without his or her consent or due to any other act
147 committed upon that person without his or her consent.

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

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

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

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

158 (j)~~(h)~~ "Sexual battery" means oral, anal, or genital
159 ~~vaginal~~ penetration by, or union with, the sexual organ of
160 another or the anal or genital ~~vaginal~~ penetration of another by
161 any other object; however, sexual battery does not include an
162 act done for a bona fide medical purpose.

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

165 (g)~~(j)~~ "Physically incapacitated" means bodily impaired or
166 handicapped and substantially limited in ability to resist or
167 flee.

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

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

172 (b) Uses actual physical force likely to cause serious
173 personal injury

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175 commits a life felony, punishable as provided in s. 775.082, s.
176 775.083, s. 775.084, or s. 794.0115.

177 (8) Without regard to the willingness or consent of the
178 victim, which is not a defense to prosecution under this
179 subsection, a person who is in a position of familial or
180 custodial authority to a person less than 18 years of age and
181 who:

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

186 (b) Engages in any act with that person while the person is
187 12 years of age or older but younger than 18 years of age which
188 constitutes sexual battery as defined in this section ~~under~~
189 ~~paragraph (1)(h)~~ commits a felony of the first degree,
190 punishable by a term of years not exceeding life or as provided
191 in s. 775.082, s. 775.083, or s. 775.084.

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

198 Section 5. Present paragraphs (b) through (j) of subsection
199 (1) of section 827.071, Florida Statutes, are redesignated as
200 paragraphs (c) through (k), respectively, a new paragraph (b) is
201 added to that subsection, and present paragraphs (f), (g), and
202 (j) of that subsection are amended, to read:

203 827.071 Sexual performance by a child; penalties.—

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204 (1) As used in this section, the following definitions
205 shall apply:

206 (b) "Genitals" includes the labia minora, labia majora,
207 vulva, hymen, and vagina.

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

213 (h)~~(g)~~ "Sexual bestiality" means any sexual act between a
214 person and an animal involving the sex organ of the one and the
215 mouth, anus, or genitals ~~vagina~~ of the other.

216 (k)~~(j)~~ "Simulated" means the explicit depiction of conduct
217 set forth in paragraph (i) ~~(h)~~ which creates the appearance of
218 such conduct and which exhibits any uncovered portion of the
219 breasts, genitals, or buttocks.

220 Section 6. Present subsections (6) through (20) of section
221 847.001, Florida Statutes, are redesignated as subsections (7)
222 through (21), respectively, a new subsection (6) is added to
223 that section, and present subsections (14), (15), and (19) of
224 that section are amended, to read:

225 847.001 Definitions.—As used in this chapter, the term:

226 (6) "Genitals" includes the labia minora, labia majora,
227 vulva, hymen, and vagina.

228 (15)~~(14)~~ "Sexual battery" means oral, anal, or genital
229 ~~vaginal~~ penetration by, or union with, the sexual organ of
230 another or the anal or genital ~~vaginal~~ penetration of another by
231 any other object; however, "sexual battery" does not include an
232 act done for a bona fide medical purpose.

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233 ~~(16)~~~~(15)~~ "Sexual bestiality" means any sexual act, actual
 234 or simulated, between a person and an animal involving the sex
 235 organ of the one and the mouth, anus, or genitals ~~vagina~~ of the
 236 other.

237 ~~(20)~~~~(19)~~ "Simulated" means the explicit depiction of
 238 conduct described in subsection (17) ~~(16)~~ which creates the
 239 appearance of such conduct and which exhibits any uncovered
 240 portion of the breasts, genitals, or buttocks.

241 Section 7. Section 872.06, Florida Statutes, is amended to
 242 read:

243 872.06 Abuse of a dead human body; penalty.—

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

245 (a) "Genitals" includes the labia minora, labia majora,
 246 vulva, hymen, and vagina.

247 (b) "Sexual abuse" means:

248 1.~~(a)~~ Anal or genital ~~vaginal~~ penetration of a dead human
 249 body by the sexual organ of a person or by any other object;

250 2.~~(b)~~ Contact or union of the penis, genitals ~~vagina~~, or
 251 anus of a person with the mouth, penis, genitals ~~vagina~~, or anus
 252 of a dead human body; or

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

255 (2) A person who mutilates, commits sexual abuse upon, or
 256 otherwise grossly abuses a dead human body commits a felony of
 257 the second degree, punishable as provided in s. 775.082, s.
 258 775.083, or s. 775.084. Any act done for a bona fide medical
 259 purpose or for any other lawful purpose does not under any
 260 circumstance constitute a violation of this section.

261 Section 8. Paragraph (j) of subsection (1) of section

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262 288.1254, Florida Statutes, is amended to read:

263 288.1254 Entertainment industry financial incentive
 264 program.—

265 (1) DEFINITIONS.—As used in this section, the term:

266 (j) “Qualified production” means a production in this state
 267 meeting the requirements of this section. The term does not
 268 include a production:

269 1. In which, for the first 2 years of the incentive
 270 program, less than 50 percent, and thereafter, less than 60
 271 percent, of the positions that make up its production cast and
 272 below-the-line production crew, or, in the case of digital media
 273 projects, less than 75 percent of such positions, are filled by
 274 legal residents of this state, whose residency is demonstrated
 275 by a valid Florida driver license or other state-issued
 276 identification confirming residency, or students enrolled full-
 277 time in a film-and-entertainment-related course of study at an
 278 institution of higher education in this state; or

279 2. That contains obscene content as defined in s.
 280 847.001(11) ~~s. 847.001(10)~~.

281 Section 9. Subsection (10) of section 395.0197, Florida
 282 Statutes, is amended to read:

283 395.0197 Internal risk management program.—

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

287 (a) Notify the local police; and

288 (b) Notify the hospital risk manager and the administrator.

289

290 For purposes of this subsection, “sexual abuse” means acts of a

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291 sexual nature committed for the sexual gratification of anyone
292 upon, or in the presence of, a vulnerable adult, without the
293 vulnerable adult's informed consent, or a minor. "Sexual abuse"
294 includes, but is not limited to, the acts defined in s.
295 794.011(1)(j) ~~s. 794.011(1)(h)~~, fondling, exposure of a
296 vulnerable adult's or minor's sexual organs, or the use of the
297 vulnerable adult or minor to solicit for or engage in
298 prostitution or sexual performance. "Sexual abuse" does not
299 include any act intended for a valid medical purpose or any act
300 which may reasonably be construed to be a normal caregiving
301 action.

302 Section 10. Subsection (26) of section 415.102, Florida
303 Statutes, is amended to read:

304 415.102 Definitions of terms used in ss. 415.101-415.113.-
305 As used in ss. 415.101-415.113, the term:

306 (26) "Sexual abuse" means acts of a sexual nature committed
307 in the presence of a vulnerable adult without that person's
308 informed consent. "Sexual abuse" includes, but is not limited
309 to, the acts defined in s. 794.011(1)(j) ~~s. 794.011(1)(h)~~,
310 fondling, exposure of a vulnerable adult's sexual organs, or the
311 use of a vulnerable adult 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 that may reasonably be construed to be normal caregiving action
315 or appropriate display of affection.

316 Section 11. Subsection (1) of section 847.0141, Florida
317 Statutes, is amended to read:

318 847.0141 Sexting; prohibited acts; penalties.-

319 (1) A minor commits the offense of sexting if he or she

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320 knowingly:

321 (a) Uses a computer, or any other device capable of
322 electronic data transmission or distribution, to transmit or
323 distribute to another minor any photograph or video of any
324 person which depicts nudity, ~~as defined in s. 847.001(9)~~, and is
325 harmful to minors, as those terms are defined in s. 847.001 ~~s.~~
326 ~~847.001(6)~~.

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

- 332 1. The minor did not solicit the photograph or video.
333 2. The minor took reasonable steps to report the photograph
334 or video to the minor's legal guardian or to a school or law
335 enforcement official.
336 3. The minor did not transmit or distribute the photograph
337 or video to a third party.

338 Section 12. This act shall take effect October 1, 2022.