

By the Committee on Criminal Justice; and Senators Stewart and Harrell

591-02800A-22

2022692c1

1 A bill to be entitled
2 An act relating to sexual offenses; amending s.
3 90.404, F.S.; providing that substantial similarity is
4 not required for the admissibility of certain evidence
5 in a criminal case in which the defendant is charged
6 with a sexual offense; amending s. 365.161, F.S.;
7 revising the definitions of the terms "sexual battery"
8 and "sexual bestiality"; amending s. 491.0112, F.S.;
9 revising the definition of the term "sexual
10 misconduct"; amending s. 775.0847, F.S.; revising the
11 definitions of the terms "sexual battery" and "sexual
12 bestiality"; amending s. 775.15, F.S.; providing a
13 time limitation for the prosecution of specified
14 sexual battery offenses; providing applicability;
15 amending s. 794.011, F.S.; defining the term "female
16 genitals"; revising the definition of the term "sexual
17 battery"; providing that a person who threatens to use
18 actual physical force likely to cause serious bodily
19 injury or death while committing specified sexual
20 battery offenses commits a life felony; amending ss.
21 794.05, 796.07, and 800.04, F.S.; revising the
22 definition of the term "sexual activity"; creating s.
23 800.06, F.S.; creating the offense of lewd or
24 lascivious molestation of a person 16 years of age or
25 older; providing criminal penalties; amending s.
26 825.1025, F.S.; revising the definition of the term
27 "sexual activity"; amending ss. 827.071 and 847.001,
28 F.S.; revising the definitions of the terms "sexual
29 battery" and "sexual bestiality"; amending s. 872.06,

591-02800A-22

2022692c1

30 F.S.; revising the definition of the term "sexual
31 abuse"; amending s. 944.35, F.S.; revising the
32 definition of the term "sexual misconduct"; amending
33 s. 951.27, F.S.; requiring that HIV test results
34 performed on inmates arrested for sexual offenses
35 involving female genital penetration be disclosed
36 under certain circumstances; amending ss. 395.0197,
37 415.102, and 847.0141, F.S.; conforming cross-
38 references; providing an effective date.

39
40 Be It Enacted by the Legislature of the State of Florida:

41
42 Section 1. Paragraph (c) of subsection (2) of section
43 90.404, Florida Statutes, is amended to read:

44 90.404 Character evidence; when admissible.—

45 (2) OTHER CRIMES, WRONGS, OR ACTS.—

46 (c)1. In a criminal case in which the defendant is charged
47 with a sexual offense, evidence of the defendant's commission of
48 other crimes, wrongs, or acts involving a sexual offense is
49 admissible and may be considered for its bearing on any matter
50 to which it is relevant.

51 2. For the purposes of this paragraph, the term "sexual
52 offense" means conduct proscribed by s. 787.025(2)(c), s.
53 787.06(3)(b), (d), (f), or (g), former s. 787.06(3)(h), s.
54 794.011, excluding s. 794.011(10), s. 794.05, former s. 796.03,
55 former s. 796.035, s. 825.1025(2)(b), s. 827.071, s.
56 847.0135(5), s. 847.0145, or s. 985.701(1).

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

591-02800A-22

2022692c1

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

61 365.161 Prohibition of certain obscene telephone
62 communications; penalty.—

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

64 (d) "Sexual battery" means oral, anal, or female genital
65 ~~vaginal~~ penetration by, or union with, the sexual organ of
66 another or the anal or female genital ~~vaginal~~ penetration of
67 another by any other object.

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

71 Section 3. Paragraph (c) of subsection (4) of section
72 491.0112, Florida Statutes, is amended to read:

73 491.0112 Sexual misconduct by a psychotherapist;
74 penalties.—

75 (4) For the purposes of this section:

76 (c) "Sexual misconduct" means the oral, anal, or female
77 genital ~~vaginal~~ penetration of another by, or contact with, the
78 sexual organ of another or the anal or female genital ~~vaginal~~
79 penetration of another by any object.

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

82 775.0847 Possession or promotion of certain images of child
83 pornography; reclassification.—

84 (1) For purposes of this section:

85 (d) "Sexual battery" means oral, anal, or female genital
86 ~~vaginal~~ penetration by, or union with, the sexual organ of
87 another or the anal or female genital ~~vaginal~~ penetration of

591-02800A-22

2022692c1

88 another by any other object; however, sexual battery does not
89 include an act done for a bona fide medical purpose.

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

94
95 For purposes of sentencing under chapter 921 and determining
96 incentive gain-time eligibility under chapter 944, a felony
97 offense that is reclassified under this section is ranked one
98 level above the ranking under s. 921.0022 or s. 921.0023 of the
99 offense committed.

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

102 775.15 Time limitations; general time limitations;
103 exceptions.—

104 (21) In addition to the time periods prescribed in this
105 section, a prosecution for sexual battery in violation of s.
106 794.011, where the victim was unaware of the sexual battery due
107 to the victim being mentally defective, mentally incapacitated,
108 or physically helpless, may be commenced within 1 year after the
109 date on which the victim obtains actual knowledge of the offense
110 or the date on which the offense is reported to law enforcement,
111 whichever occurs first. Any dissemination of a recording of such
112 offense before the victim obtains actual knowledge thereof or
113 before its confiscation by a law enforcement agency does not
114 affect any provision of this subsection. This subsection applies
115 to any offense that is not otherwise barred from prosecution on
116 or before October 1, 2022.

591-02800A-22

2022692c1

117 Section 6. Subsections (1), (3), and (8) of section
118 794.011, Florida Statutes, are amended to read:

119 794.011 Sexual battery.—

120 (1) As used in this chapter:

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

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

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

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

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

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

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

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

145 (j) ~~(h)~~ "Sexual battery" means oral, anal, or female genital

591-02800A-22

2022692c1

146 ~~vaginal~~ penetration by, or union with, the sexual organ of
147 another or the anal or female genital ~~vaginal~~ penetration of
148 another by any other object; however, sexual battery does not
149 include an act done for a bona fide medical purpose.

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

152 (g) ~~(j)~~ "Physically incapacitated" means bodily impaired or
153 handicapped and substantially limited in ability to resist or
154 flee.

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

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

159 (b) Uses or threatens to use actual physical force likely
160 to cause serious personal injury or death,

161
162 commits a life felony, punishable as provided in s. 775.082, s.
163 775.083, s. 775.084, or s. 794.0115.

164 (8) Without regard to the willingness or consent of the
165 victim, which is not a defense to prosecution under this
166 subsection, a person who is in a position of familial or
167 custodial authority to a person less than 18 years of age and
168 who:

169 (a) Solicits that person to engage in any act which would
170 constitute sexual battery ~~under paragraph (1)(h)~~ commits a
171 felony of the third degree, punishable as provided in s.
172 775.082, s. 775.083, or s. 775.084.

173 (b) Engages in any act with that person while the person is
174 12 years of age or older but younger than 18 years of age which

591-02800A-22

2022692c1

175 constitutes sexual battery ~~under paragraph (1)(h)~~ commits a
176 felony of the first degree, punishable by a term of years not
177 exceeding life or as provided in s. 775.082, s. 775.083, or s.
178 775.084.

179 (c) Engages in any act with that person while the person is
180 less than 12 years of age which constitutes sexual battery ~~under~~
181 ~~paragraph (1)(h)~~, or in an attempt to commit sexual battery
182 injures the sexual organs of such person commits a capital or
183 life felony, punishable pursuant to subsection (2).

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

186 794.05 Unlawful sexual activity with certain minors.—

187 (1) A person 24 years of age or older who engages in sexual
188 activity with a person 16 or 17 years of age commits a felony of
189 the second degree, punishable as provided in s. 775.082, s.
190 775.083, or s. 775.084. As used in this section, "sexual
191 activity" means oral, anal, or female genital ~~vaginal~~
192 penetration by, or union with, the sexual organ of another or
193 the anal or female genital ~~vaginal~~ penetration of another by any
194 other object; however, sexual activity does not include an act
195 done for a bona fide medical purpose.

196 Section 8. Paragraph (d) of subsection (1) of section
197 796.07, Florida Statutes, is amended to read:

198 796.07 Prohibiting prostitution and related acts.—

199 (1) As used in this section:

200 (d) "Sexual activity" means oral, anal, or female genital
201 ~~vaginal~~ penetration by, or union with, the sexual organ of
202 another; anal or female genital ~~vaginal~~ penetration of another
203 by any other object; or the handling or fondling of the sexual

591-02800A-22

2022692c1

204 organ of another for the purpose of masturbation; however, the
205 term does not include acts done for bona fide medical purposes.

206 Section 9. Paragraph (a) of subsection (1) of section
207 800.04, Florida Statutes, is amended to read:

208 800.04 Lewd or lascivious offenses committed upon or in the
209 presence of persons less than 16 years of age.—

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

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

216 Section 10. Section 800.06, Florida Statutes, is created to
217 read:

218 800.06 Lewd or lascivious offenses committed upon persons
219 16 years of age or older.—

220 (1) A person who intentionally touches in a lewd or
221 lascivious manner, and without consent, the breasts, genitals,
222 genital area, or buttocks, or the clothing covering them, of a
223 person 16 years of age or older, or forces a person 16 years of
224 age or older to so touch the perpetrator, commits lewd or
225 lascivious molestation of a person 16 years of age or older.

226 (2) A person who violates subsection (1) commits a felony
227 of the third degree, punishable as provided in s. 775.082, s.
228 775.083, or s. 775.084.

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

231 825.1025 Lewd or lascivious offenses committed upon or in
232 the presence of an elderly person or disabled person.—

591-02800A-22

2022692c1

233 (1) As used in this section, the term "sexual activity"
234 means the oral, anal, or female genital ~~vaginal~~ penetration by,
235 or union with, the sexual organ of another or the anal or female
236 genital ~~vaginal~~ penetration of another by any other object;
237 however, sexual activity does not include an act done for a bona
238 fide medical purpose.

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

241 827.071 Sexual performance by a child; penalties.—

242 (1) As used in this section, the following definitions
243 shall apply:

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

249 (g) "Sexual bestiality" means any sexual act between a
250 person and an animal involving the sex organ of the one and the
251 mouth, anus, or female genitals ~~vagina~~ of the other.

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

254 847.001 Definitions.—As used in this chapter, the term:

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

260 (15) "Sexual bestiality" means any sexual act, actual or
261 simulated, between a person and an animal involving the sex

591-02800A-22

2022692c1

262 organ of the one and the mouth, anus, or female genitals ~~vagina~~
263 of the other.

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

266 872.06 Abuse of a dead human body; penalty.—

267 (1) As used in this section, the term “sexual abuse” means:

268 (a) Anal or female genital ~~vaginal~~ penetration of a dead
269 human body by the sexual organ of a person or by any other
270 object;

271 (b) Contact or union of the penis, female genitals ~~vagina~~,
272 or anus of a person with the mouth, penis, female genitals
273 ~~vagina~~, or anus of a dead human body; or

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

276 Section 15. Paragraph (b) of subsection (3) of section
277 944.35, Florida Statutes, is amended to read:

278 944.35 Authorized use of force; malicious battery and
279 sexual misconduct prohibited; reporting required; penalties.—

280 (3)(b)1. As used in this paragraph, the term “sexual
281 misconduct” means the oral, anal, or female genital ~~vaginal~~
282 penetration by, or union with, the sexual organ of another or
283 the anal or female genital ~~vaginal~~ penetration of another by any
284 other object, but does not include an act done for a bona fide
285 medical purpose or an internal search conducted in the lawful
286 performance of the employee’s duty.

287 2. Any employee of the department or a private correctional
288 facility as defined in s. 944.710 who engages in sexual
289 misconduct with an inmate or an offender supervised by the
290 department in the community, without committing the crime of

591-02800A-22

2022692c1

291 sexual battery, commits a felony of the third degree, punishable
292 as provided in s. 775.082, s. 775.083, or s. 775.084.

293 3. The consent of the inmate or offender supervised by the
294 department in the community to any act of sexual misconduct may
295 not be raised as a defense to a prosecution under this
296 paragraph.

297 4. This paragraph does not apply to any employee of the
298 department or any employee of a private correctional facility
299 who is legally married to an inmate or an offender supervised by
300 the department in the community, nor does it apply to any
301 employee who has no knowledge, and would have no reason to
302 believe, that the person with whom the employee has engaged in
303 sexual misconduct is an inmate or an offender under community
304 supervision of the department.

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

307 951.27 Blood tests of inmates.—

308 (2) Except as otherwise provided in this subsection,
309 serologic blood test results obtained pursuant to subsection (1)
310 are confidential and exempt from ~~the provisions of~~ s. 119.07(1)
311 and s. 24(a), Art. I of the State Constitution. However, such
312 results may be provided to employees or officers of the sheriff
313 or chief correctional officer who are responsible for the
314 custody and care of the affected inmate and have a need to know
315 such information, and as provided in ss. 775.0877 and 960.003.
316 In addition, upon request of the victim or the victim's legal
317 guardian, or the parent or legal guardian of the victim if the
318 victim is a minor, the results of any HIV test performed on an
319 inmate ~~who has been~~ arrested for any sexual offense involving

591-02800A-22

2022692c1

320 oral, anal, or female genital ~~vaginal~~ penetration by, or union
321 with, the sexual organ of another, must ~~shall~~ be disclosed to
322 the victim or the victim's legal guardian, or to the parent or
323 legal guardian of the victim if the victim is a minor. In such
324 cases, the county or municipal detention facility shall furnish
325 the test results to the Department of Health, which is
326 responsible for disclosing the results to public health agencies
327 as provided in s. 775.0877 and to the victim or the victim's
328 legal guardian, or the parent or legal guardian of the victim if
329 the victim is a minor, as provided in s. 960.003(3).

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

332 395.0197 Internal risk management program.—

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

336 (a) Notify the local police; and

337 (b) Notify the hospital risk manager and the administrator.
338

339 For purposes of this subsection, "sexual abuse" means acts of a
340 sexual nature committed for the sexual gratification of anyone
341 upon, or in the presence of, a vulnerable adult, without the
342 vulnerable adult's informed consent, or a minor. "Sexual abuse"
343 includes, but is not limited to, the acts defined in s.
344 794.011(1)(j) ~~s. 794.011(1)(h)~~, fondling, exposure of a
345 vulnerable adult's or minor's sexual organs, or the use of the
346 vulnerable adult or minor to solicit for or engage in
347 prostitution or sexual performance. "Sexual abuse" does not
348 include any act intended for a valid medical purpose or any act

591-02800A-22

2022692c1

349 which may reasonably be construed to be a normal caregiving
350 action.

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

353 415.102 Definitions of terms used in ss. 415.101-415.113.—

354 As used in ss. 415.101-415.113, the term:

355 (26) "Sexual abuse" means acts of a sexual nature committed
356 in the presence of a vulnerable adult without that person's
357 informed consent. "Sexual abuse" includes, but is not limited
358 to, the acts defined in s. 794.011(1)(j) ~~s. 794.011(1)(h)~~,
359 fondling, exposure of a vulnerable adult's sexual organs, or the
360 use of a vulnerable adult to solicit for or engage in
361 prostitution or sexual performance. "Sexual abuse" does not
362 include any act intended for a valid medical purpose or any act
363 that may reasonably be construed to be normal caregiving action
364 or appropriate display of affection.

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

367 847.0141 Sexting; prohibited acts; penalties.—

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

370 (a) Uses a computer, or any other device capable of
371 electronic data transmission or distribution, to transmit or
372 distribute to another minor any photograph or video of any
373 person which depicts nudity, ~~as defined in s. 847.001(9)~~, and is
374 harmful to minors, as those terms are defined in s. 847.001 ~~s.~~
375 ~~847.001(6)~~.

376 (b) Possesses a photograph or video of any person that was
377 transmitted or distributed by another minor which depicts

591-02800A-22

2022692c1

378 nudity, ~~as defined in s. 847.001(9),~~ and is harmful to minors,
379 as those terms are defined in s. 847.001 ~~s. 847.001(6)~~. A minor
380 does not violate this paragraph if all of the following apply:

- 381 1. The minor did not solicit the photograph or video.
- 382 2. The minor took reasonable steps to report the photograph
383 or video to the minor's legal guardian or to a school or law
384 enforcement official.
- 385 3. The minor did not transmit or distribute the photograph
386 or video to a third party.

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