

By the Committees on Rules; and Criminal Justice; and Senators  
Stewart and Harrell

595-03057-22

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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, 800.04, and 825.1025, F.S.; revising  
22          the definition of the term "sexual activity"; amending  
23          ss. 827.071 and 847.001, F.S.; revising the  
24          definitions of the terms "sexual battery" and "sexual  
25          bestiality"; amending s. 872.06, F.S.; revising the  
26          definition of the term "sexual abuse"; amending s.  
27          944.35, F.S.; revising the definition of the term  
28          "sexual misconduct"; amending s. 951.27, F.S.;  
29          requiring that HIV test results performed on inmates

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30 arrested for sexual offenses involving female genital  
31 penetration be disclosed under certain circumstances;  
32 amending ss. 395.0197, 415.102, and 847.0141, F.S.;  
33 conforming cross-references; providing an effective  
34 date.

35  
36 Be It Enacted by the Legislature of the State of Florida:

37  
38 Section 1. Paragraph (c) of subsection (2) of section  
39 90.404, Florida Statutes, is amended to read:

40 90.404 Character evidence; when admissible.—

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

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

47 2. For the purposes of this paragraph, the term "sexual  
48 offense" means conduct proscribed by s. 787.025(2)(c), s.  
49 787.06(3)(b), (d), (f), or (g), former s. 787.06(3)(h), s.  
50 794.011, excluding s. 794.011(10), s. 794.05, former s. 796.03,  
51 former s. 796.035, s. 825.1025(2)(b), s. 827.071, s.  
52 847.0135(5), s. 847.0145, or s. 985.701(1).

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

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

57 365.161 Prohibition of certain obscene telephone  
58 communications; penalty.—

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

60 (d) "Sexual battery" means oral, anal, or female genital  
61 ~~vaginal~~ penetration by, or union with, the sexual organ of  
62 another or the anal or female genital ~~vaginal~~ penetration of  
63 another by any other object.

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

67 Section 3. Paragraph (c) of subsection (4) of section  
68 491.0112, Florida Statutes, is amended to read:

69 491.0112 Sexual misconduct by a psychotherapist;  
70 penalties.—

71 (4) For the purposes of this section:

72 (c) "Sexual misconduct" means the oral, anal, or female  
73 genital ~~vaginal~~ penetration of another by, or contact with, the  
74 sexual organ of another or the anal or female genital ~~vaginal~~  
75 penetration of another by any object.

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

78 775.0847 Possession or promotion of certain images of child  
79 pornography; reclassification.—

80 (1) For purposes of this section:

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

86 (e) "Sexual bestiality" means any sexual act, actual or  
87 simulated, between a person and an animal involving the sex

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88 organ of the one and the mouth, anus, or female genitals ~~vagina~~  
89 of the other.

90

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

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

98 775.15 Time limitations; general time limitations;  
99 exceptions.—

100 (21) In addition to the time periods prescribed in this  
101 section, a prosecution for sexual battery in violation of s.  
102 794.011, where the victim was unaware of the sexual battery due  
103 to the victim being mentally defective, mentally incapacitated,  
104 or physically helpless, may be commenced within 1 year after the  
105 date on which the victim obtains actual knowledge of the offense  
106 or the date on which the offense is reported to law enforcement,  
107 whichever occurs first. Any dissemination of a recording of such  
108 offense before the victim obtains actual knowledge thereof or  
109 before its confiscation by a law enforcement agency does not  
110 affect any provision of this subsection. This subsection applies  
111 to any offense that is not otherwise barred from prosecution on  
112 or before October 1, 2022.

113 Section 6. Subsections (1), (3), and (8) of section  
114 794.011, Florida Statutes, are amended to read:

115 794.011 Sexual battery.—

116 (1) As used in this chapter:

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

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

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

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

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

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

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

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

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

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

148        (g)~~(j)~~ "Physically incapacitated" means bodily impaired or  
149 handicapped and substantially limited in ability to resist or  
150 flee.

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

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

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

157  
158 commits a life felony, punishable as provided in s. 775.082, s.  
159 775.083, s. 775.084, or s. 794.0115.

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

165        (a) Solicits that person to engage in any act which would  
166 constitute sexual battery ~~under paragraph (1)(h)~~ commits a  
167 felony of the third degree, punishable as provided in s.  
168 775.082, s. 775.083, or s. 775.084.

169        (b) Engages in any act with that person while the person is  
170 12 years of age or older but younger than 18 years of age which  
171 constitutes sexual battery ~~under paragraph (1)(h)~~ commits a  
172 felony of the first degree, punishable by a term of years not  
173 exceeding life or as provided in s. 775.082, s. 775.083, or s.  
174 775.084.

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

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

182 794.05 Unlawful sexual activity with certain minors.—

183 (1) A person 24 years of age or older who engages in sexual  
184 activity with a person 16 or 17 years of age commits a felony of  
185 the second degree, punishable as provided in s. 775.082, s.  
186 775.083, or s. 775.084. As used in this section, "sexual  
187 activity" means oral, anal, or female genital ~~vaginal~~  
188 penetration by, or union with, the sexual organ of another or  
189 the anal or female genital ~~vaginal~~ penetration of another by any  
190 other object; however, sexual activity does not include an act  
191 done for a bona fide medical purpose.

192 Section 8. Paragraph (d) of subsection (1) of section  
193 796.07, Florida Statutes, is amended to read:

194 796.07 Prohibiting prostitution and related acts.—

195 (1) As used in this section:

196 (d) "Sexual activity" means oral, anal, or female genital  
197 ~~vaginal~~ penetration by, or union with, the sexual organ of  
198 another; anal or female genital ~~vaginal~~ penetration of another  
199 by any other object; or the handling or fondling of the sexual  
200 organ of another for the purpose of masturbation; however, the  
201 term does not include acts done for bona fide medical purposes.

202 Section 9. Paragraph (a) of subsection (1) of section  
203 800.04, Florida Statutes, is amended to read:

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204 800.04 Lewd or lascivious offenses committed upon or in the  
205 presence of persons less than 16 years of age.—

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

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

212 Section 10. Subsection (1) of section 825.1025, Florida  
213 Statutes, is amended to read:

214 825.1025 Lewd or lascivious offenses committed upon or in  
215 the presence of an elderly person or disabled person.—

216 (1) As used in this section, the term "sexual activity"  
217 means the oral, anal, or female genital ~~vaginal~~ penetration by,  
218 or union with, the sexual organ of another or the anal or female  
219 genital ~~vaginal~~ penetration of another by any other object;  
220 however, sexual activity does not include an act done for a bona  
221 fide medical purpose.

222 Section 11. Paragraphs (f) and (g) of subsection (1) of  
223 section 827.071, Florida Statutes, are amended to read:

224 827.071 Sexual performance by a child; penalties.—

225 (1) As used in this section, the following definitions  
226 shall apply:

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

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



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

235 Section 12. Subsections (14) and (15) of section 847.001,  
236 Florida Statutes, are amended to read:

237 847.001 Definitions.—As used in this chapter, the term:

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

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

247 Section 13. Subsection (1) of section 872.06, Florida  
248 Statutes, is amended to read:

249 872.06 Abuse of a dead human body; penalty.—

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

251 (a) Anal or female genital ~~vaginal~~ penetration of a dead  
252 human body by the sexual organ of a person or by any other  
253 object;

254 (b) Contact or union of the penis, female genitals ~~vagina~~,  
255 or anus of a person with the mouth, penis, female genitals  
256 ~~vagina~~, or anus of a dead human body; or

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

259 Section 14. Paragraph (b) of subsection (3) of section  
260 944.35, Florida Statutes, is amended to read:

261 944.35 Authorized use of force; malicious battery and

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262 sexual misconduct prohibited; reporting required; penalties.—

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

270 2. Any employee of the department or a private correctional  
271 facility as defined in s. 944.710 who engages in sexual  
272 misconduct with an inmate or an offender supervised by the  
273 department in the community, without committing the crime of  
274 sexual battery, commits a felony of the third degree, punishable  
275 as provided in s. 775.082, s. 775.083, or s. 775.084.

276 3. The consent of the inmate or offender supervised by the  
277 department in the community to any act of sexual misconduct may  
278 not be raised as a defense to a prosecution under this  
279 paragraph.

280 4. This paragraph does not apply to any employee of the  
281 department or any employee of a private correctional facility  
282 who is legally married to an inmate or an offender supervised by  
283 the department in the community, nor does it apply to any  
284 employee who has no knowledge, and would have no reason to  
285 believe, that the person with whom the employee has engaged in  
286 sexual misconduct is an inmate or an offender under community  
287 supervision of the department.

288 Section 15. Subsection (2) of section 951.27, Florida  
289 Statutes, is amended to read:

290 951.27 Blood tests of inmates.—

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291 (2) Except as otherwise provided in this subsection,  
292 serologic blood test results obtained pursuant to subsection (1)  
293 are confidential and exempt from ~~the provisions of~~ s. 119.07(1)  
294 and s. 24(a), Art. I of the State Constitution. However, such  
295 results may be provided to employees or officers of the sheriff  
296 or chief correctional officer who are responsible for the  
297 custody and care of the affected inmate and have a need to know  
298 such information, and as provided in ss. 775.0877 and 960.003.  
299 In addition, upon request of the victim or the victim's legal  
300 guardian, or the parent or legal guardian of the victim if the  
301 victim is a minor, the results of any HIV test performed on an  
302 inmate ~~who has been~~ arrested for any sexual offense involving  
303 oral, anal, or female genital vaginal penetration by, or union  
304 with, the sexual organ of another, must ~~shall~~ be disclosed to  
305 the victim or the victim's legal guardian, or to the parent or  
306 legal guardian of the victim if the victim is a minor. In such  
307 cases, the county or municipal detention facility shall furnish  
308 the test results to the Department of Health, which is  
309 responsible for disclosing the results to public health agencies  
310 as provided in s. 775.0877 and to the victim or the victim's  
311 legal guardian, or the parent or legal guardian of the victim if  
312 the victim is a minor, as provided in s. 960.003(3).

313 Section 16. Subsection (10) of section 395.0197, Florida  
314 Statutes, is amended to read:

315 395.0197 Internal risk management program.—

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

319 (a) Notify the local police; and

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

321  
322 For purposes of this subsection, "sexual abuse" means acts of a  
323 sexual nature committed for the sexual gratification of anyone  
324 upon, or in the presence of, a vulnerable adult, without the  
325 vulnerable adult's informed consent, or a minor. "Sexual abuse"  
326 includes, but is not limited to, the acts defined in s.  
327 794.011(1)(j) ~~s. 794.011(1)(h)~~, fondling, exposure of a  
328 vulnerable adult's or minor's sexual organs, or the use of the  
329 vulnerable adult or minor to solicit for or engage in  
330 prostitution or sexual performance. "Sexual abuse" does not  
331 include any act intended for a valid medical purpose or any act  
332 which may reasonably be construed to be a normal caregiving  
333 action.

334 Section 17. Subsection (26) of section 415.102, Florida  
335 Statutes, is amended to read:

336 415.102 Definitions of terms used in ss. 415.101-415.113.-  
337 As used in ss. 415.101-415.113, the term:

338 (26) "Sexual abuse" means acts of a sexual nature committed  
339 in the presence of a vulnerable adult without that person's  
340 informed consent. "Sexual abuse" includes, but is not limited  
341 to, the acts defined in s. 794.011(1)(j) ~~s. 794.011(1)(h)~~,  
342 fondling, exposure of a vulnerable adult's sexual organs, or the  
343 use of a vulnerable adult to solicit for or engage in  
344 prostitution or sexual performance. "Sexual abuse" does not  
345 include any act intended for a valid medical purpose or any act  
346 that may reasonably be construed to be normal caregiving action  
347 or appropriate display of affection.

348 Section 18. Subsection (1) of section 847.0141, Florida

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349 Statutes, is amended to read:

350 847.0141 Sexting; prohibited acts; penalties.—

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

353 (a) Uses a computer, or any other device capable of  
354 electronic data transmission or distribution, to transmit or  
355 distribute to another minor any photograph or video of any  
356 person which depicts nudity, ~~as defined in s. 847.001(9)~~, and is  
357 harmful to minors, as those terms are defined in s. 847.001 ~~s.~~  
358 ~~847.001(6)~~.

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

364 1. The minor did not solicit the photograph or video.

365 2. The minor took reasonable steps to report the photograph  
366 or video to the minor's legal guardian or to a school or law  
367 enforcement official.

368 3. The minor did not transmit or distribute the photograph  
369 or video to a third party.

370 Section 19. This act shall take effect October 1, 2022.