

By Senator Harrell

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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, 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 s. 872.06, F.S.; revising  
28      the definition of the term "sexual abuse"; amending  
29      ss. 827.071 and 847.001, F.S.; revising the

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30 definitions of the terms "sexual battery" and "sexual  
31 bestiality"; 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 and  
37 415.102, F.S.; conforming cross-references; providing  
38 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.

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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

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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 assault 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.

115 Section 6. Subsections (1), (3), and (8) of section  
116 794.011, Florida Statutes, are amended to read:

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117 794.011 Sexual battery.—

118 (1) As used in this chapter:

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

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

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

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

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

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

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

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

143 (j)~~(h)~~ "Sexual battery" means oral, anal, or female genital  
144 ~~vaginal~~ penetration by, or union with, the sexual organ of  
145 another or the anal or female genital ~~vaginal~~ penetration of

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

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

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

153 (3) A person who commits sexual battery upon a person 12  
154 years of age or older, without that person's consent, and in the  
155 process thereof uses or threatens to use a deadly weapon or uses  
156 or threatens to use actual physical force likely to cause  
157 serious personal injury or death commits a life felony,  
158 punishable as provided in s. 775.082, s. 775.083, s. 775.084, or  
159 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 as defined in this section ~~under~~  
167 ~~paragraph (1)(h)~~ commits a felony of the third degree,  
168 punishable as provided in s. 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 as defined in this section ~~under~~  
172 ~~paragraph (1)(h)~~ commits a felony of the first degree,  
173 punishable by a term of years not exceeding life or as provided  
174 in s. 775.082, s. 775.083, or s. 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 as  
177 defined in this section ~~under paragraph (1)(h)~~, or in an attempt  
178 to commit sexual battery injures the sexual organs of such  
179 person commits a capital or life felony, punishable pursuant to  
180 subsection (2).

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

183 794.05 Unlawful sexual activity with certain minors.—

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

193 Section 8. Paragraph (d) of subsection (1) of section  
194 796.07, Florida Statutes, is amended to read:

195 796.07 Prohibiting prostitution and related acts.—

196 (1) As used in this section:

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

203 Section 9. Paragraph (a) of subsection (1) of section

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204 800.04, Florida Statutes, is amended to read:

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

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

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

213 Section 10. Section 800.06, Florida Statutes, is created to  
214 read:

215 800.06 Lewd or lascivious offenses committed upon persons  
216 16 years of age or older.—

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

223 (2) A person who violates subsection (1) commits a felony  
224 of the third degree, punishable as provided in s. 775.082, s.  
225 775.083, or s. 775.084.

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

228 825.1025 Lewd or lascivious offenses committed upon or in  
229 the presence of an elderly person or disabled person.—

230 (1) As used in this section, the term "sexual activity"  
231 means the oral, anal, or female genital ~~vaginal~~ penetration by,  
232 or union with, the sexual organ of another or the anal or female



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233 genital ~~vaginal~~ penetration of another by any other object;  
234 however, sexual activity does not include an act done for a bona  
235 fide medical purpose.

236 Section 12. Subsection (1) of section 872.06, Florida  
237 Statutes, is amended to read:

238 872.06 Abuse of a dead human body; penalty.—

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

240 (a) Anal or female genital ~~vaginal~~ penetration of a dead  
241 human body by the sexual organ of a person or by any other  
242 object;

243 (b) Contact or union of the penis, female genitals ~~vagina~~,  
244 or anus of a person with the mouth, penis, female genitals  
245 ~~vagina~~, or anus of a dead human body; or

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

248 Section 13. Paragraphs (f) and (g) of subsection (1) of  
249 section 827.071, Florida Statutes, are amended to read:

250 827.071 Sexual performance by a child; penalties.—

251 (1) As used in this section, the following definitions  
252 shall apply:

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

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

261 Section 14. Subsections (14) and (15) of section 847.001,

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262 Florida Statutes, are amended to read:

263 847.001 Definitions.—As used in this chapter, the term:

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

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

273 Section 15. Paragraph (b) of subsection (3) of section  
274 944.35, Florida Statutes, is amended to read:

275 944.35 Authorized use of force; malicious battery and  
276 sexual misconduct prohibited; reporting required; penalties.—

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

284 2. Any employee of the department or a private correctional  
285 facility as defined in s. 944.710 who engages in sexual  
286 misconduct with an inmate or an offender supervised by the  
287 department in the community, without committing the crime of  
288 sexual battery, commits a felony of the third degree, punishable  
289 as provided in s. 775.082, s. 775.083, or s. 775.084.

290 3. The consent of the inmate or offender supervised by the

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291 department in the community to any act of sexual misconduct may  
292 not be raised as a defense to a prosecution under this  
293 paragraph.

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

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

304 951.27 Blood tests of inmates.—

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

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320 legal guardian of the victim if the victim is a minor. In such  
321 cases, the county or municipal detention facility shall furnish  
322 the test results to the Department of Health, which is  
323 responsible for disclosing the results to public health agencies  
324 as provided in s. 775.0877 and to the victim or the victim's  
325 legal guardian, or the parent or legal guardian of the victim if  
326 the victim is a minor, as provided in s. 960.003(3).

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

329 395.0197 Internal risk management program.—

330 (10) Any witness who witnessed or who possesses actual  
331 knowledge of the act that is the basis of an allegation of  
332 sexual abuse shall:

333 (a) Notify the local police; and

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

335  
336 For purposes of this subsection, "sexual abuse" means acts of a  
337 sexual nature committed for the sexual gratification of anyone  
338 upon, or in the presence of, a vulnerable adult, without the  
339 vulnerable adult's informed consent, or a minor. "Sexual abuse"  
340 includes, but is not limited to, the acts defined in s.  
341 794.011(1)(j) ~~s. 794.011(1)(h)~~, fondling, exposure of a  
342 vulnerable adult's or minor's sexual organs, or the use of the  
343 vulnerable adult or minor 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 which may reasonably be construed to be a normal caregiving  
347 action.

348 Section 18. Subsection (26) of section 415.102, Florida

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349 Statutes, is amended to read:

350 415.102 Definitions of terms used in ss. 415.101-415.113.—

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

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

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