

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. 395.0197 and  
 12          415.102, F.S.; conforming cross-references; amending  
 13          ss. 827.071 and 847.001, F.S.; creating and revising  
 14          definitions relating to sexual performance by a child  
 15          and obscenity, respectively; amending s. 847.0141,  
 16          F.S.; conforming cross-references; amending s. 872.06,  
 17          F.S.; creating and revising definitions relating to  
 18          abuse of a dead human body; 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  
30 | ~~vagina~~ or anal opening of one person by the penis of another  
31 | person, whether or not there is the emission of semen.

32 |       (b) Any sexual contact between the genitals or anal  
33 | opening 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  
43 | normal caregiver responsibility, any interaction with, or  
44 | affection for 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;
- 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 (a)~~(b)~~ "Deviate sexual intercourse" means sexual conduct  
 72 between persons consisting of contact between the penis and the  
 73 anus, the mouth and the penis, or the mouth and the vulva.

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

76        ~~(c)~~(a) "Obscene" means that status of a communication  
77 which:

78            1. The average person applying contemporary community  
79 standards would find, taken as a whole, appeals to the prurient  
80 interests;

81            2. Describes, in a patently offensive way, deviate sexual  
82 intercourse, sadomasochistic abuse, sexual battery, bestiality,  
83 sexual conduct, or sexual excitement; and

84            3. Taken as a whole, lacks serious literary, artistic,  
85 political, or scientific value.

86        ~~(d)~~(e) "Sadomasochistic abuse" means flagellation or  
87 torture by or upon a person, or the condition of being fettered,  
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  
 103 human male or female genitals when in a state of sexual  
 104 stimulation or arousal.

105 Section 3. Paragraphs (c) through (f) of subsection (1) of  
 106 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  
 111 child 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  
 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  
144 incapable of appraising or controlling a person's own conduct  
145 due to the influence of a narcotic, anesthetic, or intoxicating  
146 substance administered without his or her consent or due to any  
147 other act 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 (g)~~(j)~~ "Physically incapacitated" means bodily impaired or  
 154 handicapped and substantially limited in ability to resist or  
 155 flee.

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

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

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

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

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

174  
 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  
 187 is 12 years of age or older but younger than 18 years of age  
 188 which constitutes sexual battery as defined in this section  
 189 ~~under 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  
 193 is 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. Subsection (10) of section 395.0197, Florida  
 199 Statutes, is amended to read:

200 395.0197 Internal risk management program.—



201 (10) Any witness who witnessed or who possesses actual  
 202 knowledge of the act that is the basis of an allegation of  
 203 sexual abuse shall:

204 (a) Notify the local police; and

205 (b) Notify the hospital risk manager and the  
 206 administrator.

207  
 208 For purposes of this subsection, "sexual abuse" means acts of a  
 209 sexual nature committed for the sexual gratification of anyone  
 210 upon, or in the presence of, a vulnerable adult, without the  
 211 vulnerable adult's informed consent, or a minor. "Sexual abuse"  
 212 includes, but is not limited to, the acts defined in s.  
 213 794.011(1)(j) ~~s. 794.011(1)(h)~~, fondling, exposure of a  
 214 vulnerable adult's or minor's sexual organs, or the use of the  
 215 vulnerable adult or minor to solicit for or engage in  
 216 prostitution or sexual performance. "Sexual abuse" does not  
 217 include any act intended for a valid medical purpose or any act  
 218 which may reasonably be construed to be a normal caregiving  
 219 action.

220 Section 6. Subsection (26) of section 415.102, Florida  
 221 Statutes, is amended to read:

222 415.102 Definitions of terms used in ss. 415.101-415.113.—  
 223 As used in ss. 415.101-415.113, the term:

224 (26) "Sexual abuse" means acts of a sexual nature  
 225 committed in the presence of a vulnerable adult without that

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226 person's informed consent. "Sexual abuse" includes, but is not  
227 limited to, the acts defined in s. 794.011(1)(j) ~~s.~~  
228 ~~794.011(1)(h)~~, fondling, exposure of a vulnerable adult's sexual  
229 organs, or the use of a vulnerable adult to solicit for or  
230 engage in prostitution or sexual performance. "Sexual abuse"  
231 does not include any act intended for a valid medical purpose or  
232 any act that may reasonably be construed to be normal caregiving  
233 action or appropriate display of affection.

234 Section 7. Paragraphs (b) through (j) of subsection (1) of  
235 section 827.071, Florida Statutes, are redesignated as  
236 paragraphs (c) through (k), respectively, a new paragraph (b) is  
237 added to that subsection, and present paragraphs (f), (g), and  
238 (j) of that subsection are amended, to read:

239 827.071 Sexual performance by a child; penalties.—

240 (1) As used in this section, the following definitions  
241 shall apply:

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

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

249 (h) ~~(g)~~ "Sexual bestiality" means any sexual act between a  
250 person and an animal involving the sex organ of the one and the

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251 mouth, anus, or genitals ~~vagina~~ of the other.

252 ~~(k)-(j)~~ "Simulated" means the explicit depiction of conduct  
253 set forth in paragraph (i) ~~(h)~~ which creates the appearance of  
254 such conduct and which exhibits any uncovered portion of the  
255 breasts, genitals, or buttocks.

256 Section 8. Subsections (6) through (20) of section  
257 847.001, Florida Statutes, are renumbered as subsections (7)  
258 through (21), respectively, a new subsection (6) is added to  
259 that section, and present subsections (14), (15), and (19) of  
260 that section are amended, to read:

261 847.001 Definitions.—As used in this chapter, the term:

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

264 ~~(15)-(14)~~ "Sexual battery" means oral, anal, or genital  
265 ~~vaginal~~ penetration by, or union with, the sexual organ of  
266 another or the anal or genital ~~vaginal~~ penetration of another by  
267 any other object; however, "sexual battery" does not include an  
268 act done for a bona fide medical purpose.

269 ~~(16)-(15)~~ "Sexual bestiality" means any sexual act, actual  
270 or simulated, between a person and an animal involving the sex  
271 organ of the one and the mouth, anus, or genitals ~~vagina~~ of the  
272 other.

273 (20)-(19) "Simulated" means the explicit depiction of  
274 conduct described in subsection (17) ~~(16)~~ which creates the  
275 appearance of such conduct and which exhibits any uncovered

276 | portion of the breasts, genitals, or buttocks.

277 | Section 9. Subsection (1) of section 847.0141, Florida  
 278 | Statutes, is amended to read:

279 | 847.0141 Sexting; prohibited acts; penalties.—

280 | (1) A minor commits the offense of sexting if he or she  
 281 | knowingly:

282 | (a) Uses a computer, or any other device capable of  
 283 | electronic data transmission or distribution, to transmit or  
 284 | distribute to another minor any photograph or video of any  
 285 | person which depicts nudity, ~~as defined in s. 847.001(9),~~ and is  
 286 | harmful to minors, as those terms are defined in s. 847.001 ~~s.~~  
 287 | ~~847.001(6)~~.

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

- 293 | 1. The minor did not solicit the photograph or video.
- 294 | 2. The minor took reasonable steps to report the  
 295 | photograph or video to the minor's legal guardian or to a school  
 296 | or law enforcement official.
- 297 | 3. The minor did not transmit or distribute the photograph  
 298 | or video to a third party.

299 | Section 10. Section 872.06, Florida Statutes, is amended  
 300 | to read:

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301 872.06 Abuse of a dead human body; penalty.—

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

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

305 (b) "Sexual abuse" means:

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

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

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

313 (2) A person who mutilates, commits sexual abuse upon, or  
 314 otherwise grossly abuses a dead human body commits a felony of  
 315 the second degree, punishable as provided in s. 775.082, s.  
 316 775.083, or s. 775.084. Any act done for a bona fide medical  
 317 purpose or for any other lawful purpose does not under any  
 318 circumstance constitute a violation of this section.

319 Section 11. This act shall take effect October 1, 2022.