

CHAPTER 2022-165

Committee Substitute for Committee Substitute for Senate Bill No. 692

An act relating to sexual offenses definitions; amending s. 365.161, F.S.; defining the term “female genitals” and revising the definitions of the terms “sexual battery” and “sexual bestiality”; amending s. 491.0112, F.S.; defining the term “female genitals” and revising the definition of the term “sexual misconduct”; amending s. 775.0847, F.S.; defining the term “female genitals” and revising the definitions of the terms “sexual battery” and “sexual bestiality”; amending s. 794.011, F.S.; defining the term “female genitals”; revising the definition of the term “sexual battery”; amending ss. 794.05, 796.07, 800.04, and 825.1025, F.S.; defining the term “female genitals” and revising the definition of the term “sexual activity”; amending ss. 827.071 and 847.001, F.S.; defining the term “female genitals” and revising the definitions of the terms “sexual battery” and “sexual bestiality”; amending s. 872.06, F.S.; defining the term “female genitals” and revising the definition of the term “sexual abuse”; amending s. 944.35, F.S.; defining the term “female genitals” and revising the definition of the term “sexual misconduct”; amending s. 951.27, F.S.; requiring that HIV test results performed on inmates arrested for sexual offenses involving female genital penetration be disclosed under certain circumstances; defining the term “female genitals”; amending ss. 288.1254, 395.0197, 415.102, and 847.0141, F.S.; conforming cross-references; providing an effective date.

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

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

365.161 Prohibition of certain obscene telephone communications; penalty.—

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

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

(b) “Female genitals” includes the labia minora, labia majora, clitoris, vulva, hymen, and vagina.

~~(c)~~(a) “Obscene” means that status of a communication which:

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

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

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

~~(d)~~(e) “Sadomasochistic abuse” means flagellation or torture by or upon a person, or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction from inflicting harm on another or receiving such harm oneself.

~~(e)~~(d) “Sexual battery” means oral, anal, or female genital vaginal penetration by, or union with, the sexual organ of another or the anal or female genital vaginal penetration of another by any other object.

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

~~(g)~~(f) “Sexual conduct” means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; or any act or conduct which constitutes sexual battery.

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

Section 2. Subsection (4) of section 491.0112, Florida Statutes, is amended to read:

491.0112 Sexual misconduct by a psychotherapist; penalties.—

(4) For the purposes of this section, the term:

~~(a)~~(d) “Client” means a person to whom the services of a psychotherapist are provided.

~~(b)~~ “Female genitals” includes the labia minora, labia majora, clitoris, vulva, hymen, and vagina.

~~(c)~~(a) ~~The term~~ “Psychotherapist” means any person licensed pursuant to chapter 458, chapter 459, part I of chapter 464, chapter 490, or chapter 491, or any other person who provides or purports to provide treatment, diagnosis, assessment, evaluation, or counseling of mental or emotional illness, symptom, or condition.

~~(d)~~(e) “Sexual misconduct” means the oral, anal, or female genital vaginal penetration of another by, or contact with, the sexual organ of another or the anal or female genital vaginal penetration of another by any object.

~~(e)~~(b) “Therapeutic deception” means a representation to the client that sexual contact by the psychotherapist is consistent with or part of the treatment of the client.

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

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

(1) For purposes of this section:

(c) “Female genitals” includes the labia minora, labia majora, clitoris, vulva, hymen, and vagina.

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

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

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

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

794.011 Sexual battery.—

(1) As used in this chapter:

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

(b) “Female genitals” includes the labia minora, labia majora, clitoris, vulva, hymen, and vagina.

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

~~(d)~~(e) “Mentally incapacitated” means temporarily incapable of appraising or controlling a person’s own conduct due to the influence of a narcotic,

anesthetic, or intoxicating substance administered without his or her consent or due to any other act committed upon that person without his or her consent.

(e)(d) “Offender” means a person accused of a sexual offense in violation of a provision of this chapter.

(f)(e) “Physically helpless” means unconscious, asleep, or for any other reason physically unable to communicate unwillingness to an act.

(g)(j) “Physically incapacitated” means bodily impaired or handicapped and substantially limited in ability to resist or flee.

(h)(f) “Retaliation” includes, but is not limited to, threats of future physical punishment, kidnapping, false imprisonment or forcible confinement, or extortion.

(i)(g) “Serious personal injury” means great bodily harm or pain, permanent disability, or permanent disfigurement.

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

(k)(i) “Victim” means a person who has been the object of a sexual offense.

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

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

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

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

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

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

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

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

Section 5. Subsections (2) through (4) of section 794.05, Florida Statutes, are renumbered as subsections (3) through (5), respectively, and subsection (1) of that section is amended to read:

794.05 Unlawful sexual activity with certain minors.—

(1) A person 24 years of age or older who engages in sexual activity with a person 16 or 17 years of age commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) As used in this section, the term:

(a) “Female genitals” includes the labia minora, labia majora, clitoris, vulva, hymen, and vagina.

(b) “Sexual activity” means oral, anal, or female genital vaginal penetration by, or union with, the sexual organ of another or the anal or female genital vaginal penetration of another by any other object; however, sexual activity does not include an act done for a bona fide medical purpose.

Section 6. Paragraphs (a) through (d) of subsection (1) of section 796.07, Florida Statutes, are redesignated as paragraphs (b) through (e), respectively, a new paragraph (a) is added to that subsection, and present paragraph (d) of that subsection is amended, to read:

796.07 Prohibiting prostitution and related acts.—

(1) As used in this section:

(a) “Female genitals” includes the labia minora, labia majora, clitoris, vulva, hymen, and vagina.

(e)(d) “Sexual activity” means oral, anal, or female genital vaginal penetration by, or union with, the sexual organ of another; anal or female genital vaginal penetration of another by any other object; or the handling or fondling of the sexual organ of another for the purpose of masturbation; however, the term does not include acts done for bona fide medical purposes.

Section 7. Subsection (1) of section 800.04, Florida Statutes, is amended to read:

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

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

(a)(e) “Coercion” means the use of exploitation, bribes, threats of force, or intimidation to gain cooperation or compliance.

(b) “Consent” means intelligent, knowing, and voluntary consent, and does not include submission by coercion.

(c) “Female genitals” includes the labia minora, labia majora, clitoris, vulva, hymen, and vagina.

(d)(a) “Sexual activity” means the oral, anal, or female genital vaginal penetration by, or union with, the sexual organ of another or the anal or female genital vaginal penetration of another by any other object; however, sexual activity does not include an act done for a bona fide medical purpose.

(e)(d) “Victim” means a person upon whom an offense described in this section was committed or attempted or a person who has reported a violation of this section to a law enforcement officer.

Section 8. Subsection (1) of section 825.1025, Florida Statutes, is amended to read:

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

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

(a) “Female genitals” includes the labia minora, labia majora, clitoris, vulva, hymen, and vagina.

(b) “Sexual activity” means the oral, anal, or female genital vaginal penetration by, or union with, the sexual organ of another or the anal or female genital vaginal penetration of another by any other object; however, sexual activity does not include an act done for a bona fide medical purpose.

Section 9. Paragraphs (b) through (j) of subsection (1) of section 827.071, Florida Statutes, are redesignated as paragraphs (c) through (k), respectively, a new paragraph (b) is added to that subsection, and present paragraphs (f), (g), and (j) of that subsection are amended, to read:

827.071 Sexual performance by a child; penalties.—

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

(b) “Female genitals” includes the labia minora, labia majora, clitoris, vulva, hymen, and vagina.

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

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

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

Section 10. Subsections (6) through (20) of section 847.001, Florida Statutes, are renumbered as subsections (7) through (21), respectively, a new subsection (6) is added to that section, and present subsections (14), (15), and (19) of that section are amended, to read:

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

(6) “Female genitals” includes the labia minora, labia majora, clitoris, vulva, hymen, and vagina.

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

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

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

Section 11. Section 872.06, Florida Statutes, is amended to read:

872.06 Abuse of a dead human body; penalty.—

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

(a) “Female genitals” includes the labia minora, labia majora, clitoris, vulva, hymen, and vagina.

(b) “Sexual abuse” means:

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

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

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

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

Section 12. Paragraph (b) of subsection (3) of section 944.35, Florida Statutes, is amended to read:

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

(3)

(b)1. As used in this paragraph, the term:

a. “Female genitals” includes the labia minora, labia majora, clitoris, vulva, hymen, and vagina.

b. “Sexual misconduct” means the oral, anal, or female genital vaginal penetration by, or union with, the sexual organ of another or the anal or female genital vaginal penetration of another by any other object, but does not include an act done for a bona fide medical purpose or an internal search conducted in the lawful performance of the employee’s duty.

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

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

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

Section 13. Subsection (2) of section 951.27, Florida Statutes, is amended to read:

951.27 Blood tests of inmates.—

(2) Except as otherwise provided in this subsection, serologic blood test results obtained pursuant to subsection (1) are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

However, such results may be provided to employees or officers of the sheriff or chief correctional officer who are responsible for the custody and care of the affected inmate and have a need to know such information, and as provided in ss. 775.0877 and 960.003. In addition, upon request of the victim or the victim's legal guardian, or the parent or legal guardian of the victim if the victim is a minor, the results of any HIV test performed on an inmate ~~who has been arrested for any sexual offense involving oral, anal, or female genital vaginal~~ penetration by, or union with, the sexual organ of another, ~~must shall~~ be disclosed to the victim or the victim's legal guardian, or to the parent or legal guardian of the victim if the victim is a minor. In such cases, the county or municipal detention facility shall furnish the test results to the Department of Health, which is responsible for disclosing the results to public health agencies as provided in s. 775.0877 and to the victim or the victim's legal guardian, or the parent or legal guardian of the victim if the victim is a minor, as provided in s. 960.003(3). As used in this subsection, the term "female genitals" includes the labia minora, labia majora, clitoris, vulva, hymen, and vagina.

Section 14. Paragraph (j) of subsection (1) of section 288.1254, Florida Statutes, is amended to read:

288.1254 Entertainment industry financial incentive program.—

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

(j) "Qualified production" means a production in this state meeting the requirements of this section. The term does not include a production:

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

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

Section 15. Subsection (10) of section 395.0197, Florida Statutes, is amended to read:

395.0197 Internal risk management program.—

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

(a) Notify the local police; and

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

For purposes of this subsection, “sexual abuse” means acts of a sexual nature committed for the sexual gratification of anyone upon, or in the presence of, a vulnerable adult, without the vulnerable adult’s informed consent, or a minor. “Sexual abuse” includes, but is not limited to, the acts defined in s. 794.011(1)(j) ~~s. 794.011(1)(h)~~, fondling, exposure of a vulnerable adult’s or minor’s sexual organs, or the use of the vulnerable adult or minor to solicit for or engage in prostitution or sexual performance. “Sexual abuse” does not include any act intended for a valid medical purpose or any act which may reasonably be construed to be a normal caregiving action.

Section 16. Subsection (26) of section 415.102, Florida Statutes, is amended to read:

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

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

Section 17. Subsection (1) of section 847.0141, Florida Statutes, is amended to read:

847.0141 Sexting; prohibited acts; penalties.—

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

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

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

1. The minor did not solicit the photograph or video.
2. The minor took reasonable steps to report the photograph or video to the minor’s legal guardian or to a school or law enforcement official.
3. The minor did not transmit or distribute the photograph or video to a third party.

Section 18. This act shall take effect October 1, 2022.

Approved by the Governor June 3, 2022.

Filed in Office Secretary of State June 3, 2022.