

26 | misconduct"; amending s. 951.27, F.S.; requiring that
 27 | HIV test results performed on inmates arrested for
 28 | sexual offenses involving female genital penetration
 29 | be disclosed under certain circumstances; defining the
 30 | term "female genitals"; amending ss. 395.0197,
 31 | 415.102, and 847.0141, F.S.; conforming cross-
 32 | references; providing an effective date.

33 |

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

35 |

36 | Section 1. Subsection (77) of section 39.01, Florida
 37 | Statutes, is amended to read:

38 | 39.01 Definitions.—When used in this chapter, unless the
 39 | context otherwise requires:

40 | (77) "Sexual abuse of a child" for purposes of finding a
 41 | child to be dependent means one or more of the following acts:

42 | (a) Any penetration, however slight, of the female
 43 | genitals ~~vagina~~ or anal opening of one person by the penis of
 44 | another person, whether or not there is the emission of semen.

45 | (b) Any sexual contact between the genitals or anal
 46 | opening of one person and the mouth or tongue of another person.

47 | (c) Any intrusion by one person into the genitals or anal
 48 | opening of another person, including the use of any object for
 49 | this purpose, except that this does not include any act intended
 50 | for a valid medical purpose.

51 (d) The intentional touching of the genitals or intimate
 52 parts, including the breasts, genital area, groin, inner thighs,
 53 and buttocks, or the clothing covering them, of either the child
 54 or the perpetrator, except that this does not include:

55 1. Any act which may reasonably be construed to be a
 56 normal caregiver responsibility, any interaction with, or
 57 affection for a child; or

58 2. Any act intended for a valid medical purpose.

59 (e) The intentional masturbation of the perpetrator's
 60 genitals in the presence of a child.

61 (f) The intentional exposure of the perpetrator's genitals
 62 in the presence of a child, or any other sexual act
 63 intentionally perpetrated in the presence of a child, if such
 64 exposure or sexual act is for the purpose of sexual arousal or
 65 gratification, aggression, degradation, or other similar
 66 purpose.

67 (g) The sexual exploitation of a child, which includes the
 68 act of a child offering to engage in or engaging in
 69 prostitution, or the act of allowing, encouraging, or forcing a
 70 child to:

71 1. Solicit for or engage in prostitution;

72 2. Engage in a sexual performance, as defined by chapter
 73 827; or

74 3. Participate in the trade of human trafficking as
 75 provided in s. 787.06(3)(g).

76
 77 As used in this subsection, the term "female genitals" includes
 78 the labia minora, labia majora, clitoris, vulva, hymen, and
 79 vagina.

80 Section 2. Subsection (1) of section 365.161, Florida
 81 Statutes, is amended to read:

82 365.161 Prohibition of certain obscene telephone
 83 communications; penalty.—

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

85 (a)-(b) "Deviate sexual intercourse" means sexual conduct
 86 between persons consisting of contact between the penis and the
 87 anus, the mouth and the penis, or the mouth and the vulva.

88 (b) "Female genitals" includes the labia minora, labia
 89 majora, clitoris, vulva, hymen, and vagina.

90 (c)-(a) "Obscene" means that status of a communication
 91 which:

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

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

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

100 (d)-(e) "Sadomasochistic abuse" means flagellation or

101 torture by or upon a person, or the condition of being fettered,
 102 bound, or otherwise physically restrained, for the purpose of
 103 deriving sexual satisfaction from inflicting harm on another or
 104 receiving such harm oneself.

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

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

112 ~~(g)~~~~(f)~~ "Sexual conduct" means actual or simulated sexual
 113 intercourse, deviate sexual intercourse, sexual bestiality,
 114 masturbation, or sadomasochistic abuse; or any act or conduct
 115 which constitutes sexual battery.

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

119 Section 3. Subsection (4) of section 491.0112, Florida
 120 Statutes, is amended to read:

121 491.0112 Sexual misconduct by a psychotherapist;
 122 penalties.—

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

124 ~~(a)~~~~(d)~~ "Client" means a person to whom the services of a
 125 psychotherapist are provided.

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

128 ~~(c)-(a)~~ The term "Psychotherapist" means any person
 129 licensed pursuant to chapter 458, chapter 459, part I of chapter
 130 464, chapter 490, or chapter 491, or any other person who
 131 provides or purports to provide treatment, diagnosis,
 132 assessment, evaluation, or counseling of mental or emotional
 133 illness, symptom, or condition.

134 ~~(d)-(e)~~ "Sexual misconduct" means the oral, anal, or female
 135 genital vaginal penetration of another by, or contact with, the
 136 sexual organ of another or the anal or female genital vaginal
 137 penetration of another by any object.

138 ~~(e)-(b)~~ "Therapeutic deception" means a representation to
 139 the client that sexual contact by the psychotherapist is
 140 consistent with or part of the treatment of the client.

141 Section 4. Paragraphs (c) through (f) of subsection (1) of
 142 section 775.0847, Florida Statutes, are redesignated as
 143 paragraphs (d) through (g), respectively, a new paragraph (c) is
 144 added to that subsection, and present paragraphs (d) and (e) of
 145 that subsection are amended, to read:

146 775.0847 Possession or promotion of certain images of
 147 child pornography; reclassification.—

148 (1) For purposes of this section:

149 (c) "Female genitals" includes the labia minora, labia
 150 majora, clitoris, vulva, hymen, and vagina.

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

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

160
 161 For purposes of sentencing under chapter 921 and determining
 162 incentive gain-time eligibility under chapter 944, a felony
 163 offense that is reclassified under this section is ranked one
 164 level above the ranking under s. 921.0022 or s. 921.0023 of the
 165 offense committed.

166 Section 5. Subsections (1), (3), and (8) of section
 167 794.011, Florida Statutes, are amended to read:

168 794.011 Sexual battery.—

169 (1) As used in this chapter:

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

174 (b) "Female genitals" includes the labia minora, labia
 175 majora, clitoris, vulva, hymen, and vagina.

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

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

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

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

189 (g)~~(j)~~ "Physically incapacitated" means bodily impaired or
 190 handicapped and substantially limited in ability to resist or
 191 flee.

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

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

197 (j)~~(h)~~ "Sexual battery" means oral, anal, or female
 198 genital ~~vaginal~~ penetration by, or union with, the sexual organ
 199 of another or the anal or female genital ~~vaginal~~ penetration of
 200 another by any other object; however, sexual battery does not

201 include an act done for a bona fide medical purpose.

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

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

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

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

210
 211 commits a life felony, punishable as provided in s. 775.082, s.
 212 775.083, s. 775.084, or s. 794.0115.

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

218 (a) Solicits that person to engage in any act which would
 219 constitute sexual battery ~~under paragraph (1)(h)~~ commits a
 220 felony of the third degree, punishable as provided in s.
 221 775.082, s. 775.083, or s. 775.084.

222 (b) Engages in any act with that person while the person
 223 is 12 years of age or older but younger than 18 years of age
 224 which constitutes sexual battery ~~under paragraph (1)(h)~~ commits
 225 a felony of the first degree, punishable by a term of years not

226 | exceeding life or as provided in s. 775.082, s. 775.083, or s.
 227 | 775.084.

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

233 | Section 6. Subsections (2) through (4) of section 794.05,
 234 | Florida Statutes, are renumbered as subsections (3) through (5),
 235 | respectively, and subsection (1) of that section is amended to
 236 | read:

237 | 794.05 Unlawful sexual activity with certain minors.—

238 | (1) A person 24 years of age or older who engages in
 239 | sexual activity with a person 16 or 17 years of age commits a
 240 | felony of the second degree, punishable as provided in s.
 241 | 775.082, s. 775.083, or s. 775.084.

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

243 | (a) "Female genitals" includes the labia minora, labia
 244 | majora, clitoris, vulva, hymen, and vagina.

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

250 | Section 7. Paragraphs (a) through (d) of subsection (1) of

251 section 796.07, Florida Statutes, are redesignated as paragraphs
252 (b) through (e), respectively, a new paragraph (a) is added to
253 that subsection, and present paragraph (d) of that subsection is
254 amended, to read:

255 796.07 Prohibiting prostitution and related acts.—

256 (1) As used in this section:

257 (a) "Female genitals" includes the labia minora, labia
258 majora, clitoris, vulva, hymen, and vagina.

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

266 Section 8. Subsection (1) of section 800.04, Florida
267 Statutes, is amended to read:

268 800.04 Lewd or lascivious offenses committed upon or in
269 the presence of persons less than 16 years of age.—

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

271 (a)~~(e)~~ "Coercion" means the use of exploitation, bribes,
272 threats of force, or intimidation to gain cooperation or
273 compliance.

274 (b) "Consent" means intelligent, knowing, and voluntary
275 consent, and does not include submission by coercion.

276 (c) "Female genitals" includes the labia minora, labia
 277 majora, clitoris, vulva, hymen, and vagina.

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

283 (e)-(d) "Victim" means a person upon whom an offense
 284 described in this section was committed or attempted or a person
 285 who has reported a violation of this section to a law
 286 enforcement officer.

287 Section 9. Subsection (1) of section 825.1025, Florida
 288 Statutes, is amended to read:

289 825.1025 Lewd or lascivious offenses committed upon or in
 290 the presence of an elderly person or disabled person.—

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

292 (a) "Female genitals" includes the labia minora, labia
 293 majora, clitoris, vulva, hymen, and vagina.

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

299 Section 10. Paragraphs (b) through (j) of subsection (1)
 300 of section 827.071, Florida Statutes, are redesignated as

301 paragraphs (c) through (k), respectively, a new paragraph (b) is
 302 added to that subsection, and present paragraphs (f), (g), and
 303 (j) of that subsection are amended, to read:

304 827.071 Sexual performance by a child; penalties.—

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

307 (b) "Female genitals" includes the labia minora, labia
 308 majora, clitoris, vulva, hymen, and vagina.

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

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

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

321 Section 11. Subsections (6) through (20) of section
 322 847.001, Florida Statutes, are renumbered as subsections (7)
 323 through (21), respectively, a new subsection (6) is added to
 324 that section, and present subsections (14), (15), and (19) of
 325 that section are amended, to read:

326 847.001 Definitions.—As used in this chapter, the term:
 327 (6) "Female genitals" includes the labia minora, labia
 328 majora, clitoris, vulva, hymen, and vagina.

329 (15)~~(14)~~ "Sexual battery" means oral, anal, or female
 330 genital ~~vaginal~~ penetration by, or union with, the sexual organ
 331 of another or the anal or female genital ~~vaginal~~ penetration of
 332 another by any other object; however, "sexual battery" does not
 333 include an act done for a bona fide medical purpose.

334 (16)~~(15)~~ "Sexual bestiality" means any sexual act, actual
 335 or simulated, between a person and an animal involving the sex
 336 organ of the one and the mouth, anus, or female genitals ~~vagina~~
 337 of the other.

338 (20)~~(19)~~ "Simulated" means the explicit depiction of
 339 conduct described in subsection (17) ~~(16)~~ which creates the
 340 appearance of such conduct and which exhibits any uncovered
 341 portion of the breasts, genitals, or buttocks.

342 Section 12. Section 872.06, Florida Statutes, is amended
 343 to read:

344 872.06 Abuse of a dead human body; penalty.—

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

346 (a) "Female genitals" includes the labia minora, labia
 347 majora, clitoris, vulva, hymen, and vagina.

348 (b) "Sexual abuse" means:

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

351 object;

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

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

357 (2) A person who mutilates, commits sexual abuse upon, or
 358 otherwise grossly abuses a dead human body commits a felony of
 359 the second degree, punishable as provided in s. 775.082, s.
 360 775.083, or s. 775.084. Any act done for a bona fide medical
 361 purpose or for any other lawful purpose does not under any
 362 circumstance constitute a violation of this section.

363 Section 13. Paragraph (b) of subsection (3) of section
 364 944.35, Florida Statutes, is amended to read:

365 944.35 Authorized use of force; malicious battery and
 366 sexual misconduct prohibited; reporting required; penalties.-

367 (3)

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

369 a. "Female genitals" includes the labia minora, labia
 370 majora, clitoris, vulva, hymen, and vagina.

371 b. "Sexual misconduct" means the oral, anal, or female
 372 genital ~~vaginal~~ penetration by, or union with, the sexual organ
 373 of another or the anal or female genital ~~vaginal~~ penetration of
 374 another by any other object, but does not include an act done
 375 for a bona fide medical purpose or an internal search conducted

376 in the lawful performance of the employee's duty.

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

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

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

395 Section 14. Subsection (2) of section 951.27, Florida
396 Statutes, is amended to read:

397 951.27 Blood tests of inmates.—

398 (2) Except as otherwise provided in this subsection,
399 serologic blood test results obtained pursuant to subsection (1)
400 are confidential and exempt from ~~the provisions of~~ s. 119.07(1)

401 and s. 24(a), Art. I of the State Constitution. However, such
 402 results may be provided to employees or officers of the sheriff
 403 or chief correctional officer who are responsible for the
 404 custody and care of the affected inmate and have a need to know
 405 such information, and as provided in ss. 775.0877 and 960.003.
 406 In addition, upon request of the victim or the victim's legal
 407 guardian, or the parent or legal guardian of the victim if the
 408 victim is a minor, the results of any HIV test performed on an
 409 inmate ~~who has been~~ arrested for any sexual offense involving
 410 oral, anal, or female genital ~~vaginal~~ penetration by, or union
 411 with, the sexual organ of another, must ~~shall~~ be disclosed to
 412 the victim or the victim's legal guardian, or to the parent or
 413 legal guardian of the victim if the victim is a minor. In such
 414 cases, the county or municipal detention facility shall furnish
 415 the test results to the Department of Health, which is
 416 responsible for disclosing the results to public health agencies
 417 as provided in s. 775.0877 and to the victim or the victim's
 418 legal guardian, or the parent or legal guardian of the victim if
 419 the victim is a minor, as provided in s. 960.003(3). As used in
 420 this subsection, the term "female genitals" includes the labia
 421 minora, labia majora, clitoris, vulva, hymen, and vagina.

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

424 395.0197 Internal risk management program.—

425 (10) Any witness who witnessed or who possesses actual

426 | knowledge of the act that is the basis of an allegation of
 427 | sexual abuse shall:

428 | (a) Notify the local police; and

429 | (b) Notify the hospital risk manager and the
 430 | administrator.

431 |
 432 | For purposes of this subsection, "sexual abuse" means acts of a
 433 | sexual nature committed for the sexual gratification of anyone
 434 | upon, or in the presence of, a vulnerable adult, without the
 435 | vulnerable adult's informed consent, or a minor. "Sexual abuse"
 436 | includes, but is not limited to, the acts defined in s.
 437 | 794.011(1)(j) ~~s. 794.011(1)(h)~~, fondling, exposure of a
 438 | vulnerable adult's or minor's sexual organs, or the use of the
 439 | vulnerable adult or minor to solicit for or engage in
 440 | prostitution or sexual performance. "Sexual abuse" does not
 441 | include any act intended for a valid medical purpose or any act
 442 | which may reasonably be construed to be a normal caregiving
 443 | action.

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

446 | 415.102 Definitions of terms used in ss. 415.101-415.113.—

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

448 | (26) "Sexual abuse" means acts of a sexual nature
 449 | committed in the presence of a vulnerable adult without that
 450 | person's informed consent. "Sexual abuse" includes, but is not

451 limited to, the acts defined in s. 794.011(1)(j) ~~s.~~
 452 ~~794.011(1)(h)~~, fondling, exposure of a vulnerable adult's sexual
 453 organs, or the use of a vulnerable adult to solicit for or
 454 engage in prostitution or sexual performance. "Sexual abuse"
 455 does not include any act intended for a valid medical purpose or
 456 any act that may reasonably be construed to be normal caregiving
 457 action or appropriate display of affection.

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

460 847.0141 Sexting; prohibited acts; penalties.—

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

463 (a) Uses a computer, or any other device capable of
 464 electronic data transmission or distribution, to transmit or
 465 distribute to another minor any photograph or video of any
 466 person which depicts nudity, ~~as defined in s. 847.001(9)~~, and is
 467 harmful to minors, as those terms are defined in s. 847.001 ~~s.~~
 468 ~~847.001(6)~~.

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

- 474 1. The minor did not solicit the photograph or video.
- 475 2. The minor took reasonable steps to report the

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476 | photograph or video to the minor's legal guardian or to a school
477 | or law enforcement official.

478 | 3. The minor did not transmit or distribute the photograph
479 | or video to a third party.

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