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1                   A bill to be entitled  
2           An act relating to sexual offenses definitions;  
3           amending s. 365.161, F.S.; defining the term "female  
4           genitals" and revising the definitions of the terms  
5           "sexual battery" and "sexual bestiality"; amending s.  
6           491.0112, F.S.; defining the term "female genitals"  
7           and revising the definition of the term "sexual  
8           misconduct"; amending s. 775.0847, F.S.; defining the  
9           term "female genitals" and revising the definitions of  
10          the terms "sexual battery" and "sexual bestiality";  
11          amending s. 794.011, F.S.; defining the term "female  
12          genitals"; revising the definition of the term "sexual  
13          battery"; amending ss. 794.05, 796.07, 800.04, and  
14          825.1025, F.S.; defining the term "female genitals"  
15          and revising the definition of the term "sexual  
16          activity"; amending ss. 827.071 and 847.001, F.S.;  
17          defining the term "female genitals" and revising the  
18          definitions of the terms "sexual battery" and "sexual  
19          bestiality"; amending s. 872.06, F.S.; defining the  
20          term "female genitals" and revising the definition of  
21          the term "sexual abuse"; amending s. 944.35, F.S.;  
22          defining the term "female genitals" and revising the  
23          definition of the term "sexual misconduct"; amending  
24          s. 951.27, F.S.; requiring that HIV test results  
25          performed on inmates arrested for sexual offenses  
26          involving female genital penetration be disclosed  
27          under certain circumstances; defining the term "female  
28          genitals"; amending ss. 288.1254, 395.0197, 415.102,  
29          and 847.0141, F.S.; conforming cross-references;

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30 providing an effective date.

31  
32 Be It Enacted by the Legislature of the State of Florida:

33  
34 Section 1. Subsection (1) of section 365.161, Florida  
35 Statutes, is amended to read:

36 365.161 Prohibition of certain obscene telephone  
37 communications; penalty.—

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

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

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

44 (c)~~(a)~~ "Obscene" means that status of a communication  
45 which:

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

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

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

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

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

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

66           ~~(g)(f)~~ "Sexual conduct" means actual or simulated sexual  
67 intercourse, deviate sexual intercourse, sexual bestiality,  
68 masturbation, or sadomasochistic abuse; or any act or conduct  
69 which constitutes sexual battery.

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

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

75           491.0112 Sexual misconduct by a psychotherapist;  
76 penalties.—

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

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

80           ~~(b)~~ "Female genitals" includes the labia minora, labia  
81 majora, clitoris, vulva, hymen, and vagina.

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

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88        (d)~~(e)~~ "Sexual misconduct" means the oral, anal, or female  
89 genital ~~vaginal~~ penetration of another by, or contact with, the  
90 sexual organ of another or the anal or female genital ~~vaginal~~  
91 penetration of another by any object.

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

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

100        775.0847 Possession or promotion of certain images of child  
101 pornography; reclassification.—

102        (1) For purposes of this section:

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

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

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

114

115        For purposes of sentencing under chapter 921 and determining  
116 incentive gain-time eligibility under chapter 944, a felony

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117 offense that is reclassified under this section is ranked one  
118 level above the ranking under s. 921.0022 or s. 921.0023 of the  
119 offense committed.

120 Section 4. Subsections (1), (3), and (8) of section  
121 794.011, Florida Statutes, are amended to read:

122 794.011 Sexual battery.—

123 (1) As used in this chapter:

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

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

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

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

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

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

143 (g)~~(j)~~ "Physically incapacitated" means bodily impaired or  
144 handicapped and substantially limited in ability to resist or  
145 flee.

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

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

151        (j)~~(h)~~ "Sexual battery" means oral, anal, or female genital  
152 ~~vaginal~~ penetration by, or union with, the sexual organ of  
153 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        (k)~~(i)~~ "Victim" means a person who has been the object of a  
157 sexual offense.

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

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

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

164  
165 commits a life felony, punishable as provided in s. 775.082, s.  
166 775.083, s. 775.084, or s. 794.0115.

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

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

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175 775.082, s. 775.083, or s. 775.084.

176 (b) Engages in any act with that person while the person is  
177 12 years of age or older but younger than 18 years of age which  
178 constitutes sexual battery ~~under paragraph (1)(h)~~ commits a  
179 felony of the first degree, punishable by a term of years not  
180 exceeding life or as provided in s. 775.082, s. 775.083, or s.  
181 775.084.

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

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

191 794.05 Unlawful sexual activity with certain minors.—

192 (1) A person 24 years of age or older who engages in sexual  
193 activity with a person 16 or 17 years of age commits a felony of  
194 the second degree, punishable as provided in s. 775.082, s.  
195 775.083, or s. 775.084.

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

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

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

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

209 796.07 Prohibiting prostitution and related acts.—

210 (1) As used in this section:

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

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

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

222 800.04 Lewd or lascivious offenses committed upon or in the  
223 presence of persons less than 16 years of age.—

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

225 (a)~~(e)~~ "Coercion" means the use of exploitation, bribes,  
226 threats of force, or intimidation to gain cooperation or  
227 compliance.

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

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

232 (d)~~(a)~~ "Sexual activity" means the oral, anal, or female



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233 genital ~~vaginal~~ penetration by, or union with, the sexual organ  
234 of another or the anal or female genital ~~vaginal~~ penetration of  
235 another by any other object; however, sexual activity does not  
236 include an act done for a bona fide medical purpose.

237 (e) ~~(d)~~ "Victim" means a person upon whom an offense  
238 described in this section was committed or attempted or a person  
239 who has reported a violation of this section to a law  
240 enforcement officer.

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

243 825.1025 Lewd or lascivious offenses committed upon or in  
244 the presence of an elderly person or disabled person.—

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

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

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

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

258 827.071 Sexual performance by a child; penalties.—

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

261 (b) "Female genitals" includes the labia minora, labia

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262 majora, clitoris, vulva, hymen, and vagina.

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

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

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

275 Section 10. Subsections (6) through (20) of section  
276 847.001, Florida Statutes, are renumbered as subsections (7)  
277 through (21), respectively, a new subsection (6) is added to  
278 that section, and present subsections (14), (15), and (19) of  
279 that section are amended, to read:

280 847.001 Definitions.—As used in this chapter, the term:

281 (6) "Female genitals" includes the labia minora, labia  
282 majora, clitoris, vulva, hymen, and vagina.

283 (15)~~(14)~~ "Sexual battery" means oral, anal, or female  
284 genital ~~vaginal~~ penetration by, or union with, the sexual organ  
285 of another or the anal or female genital ~~vaginal~~ penetration of  
286 another by any other object; however, "sexual battery" does not  
287 include an act done for a bona fide medical purpose.

288 (16)~~(15)~~ "Sexual bestiality" means any sexual act, actual  
289 or simulated, between a person and an animal involving the sex  
290 organ of the one and the mouth, anus, or female genitals ~~vagina~~

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291 of the other.

292 ~~(20)~~~~(19)~~ "Simulated" means the explicit depiction of  
293 conduct described in subsection (17) ~~(16)~~ which creates the  
294 appearance of such conduct and which exhibits any uncovered  
295 portion of the breasts, genitals, or buttocks.

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

298 872.06 Abuse of a dead human body; penalty.—

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

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

302 (b) "Sexual abuse" means:

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

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

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

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

317 Section 12. Paragraph (b) of subsection (3) of section  
318 944.35, Florida Statutes, is amended to read:

319 944.35 Authorized use of force; malicious battery and

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320 sexual misconduct prohibited; reporting required; penalties.—

321 (3)

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

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

325 b. "Sexual misconduct" means the oral, anal, or female  
326 genital vaginal penetration by, or union with, the sexual organ  
327 of another or the anal or female genital ~~vaginal~~ penetration of  
328 another by any other object, but does not include an act done  
329 for a bona fide medical purpose or an internal search conducted  
330 in the lawful performance of the employee's duty.

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

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

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

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

351 951.27 Blood tests of inmates.—

352 (2) Except as otherwise provided in this subsection,  
353 serologic blood test results obtained pursuant to subsection (1)  
354 are confidential and exempt from ~~the provisions of~~ s. 119.07(1)  
355 and s. 24(a), Art. I of the State Constitution. However, such  
356 results may be provided to employees or officers of the sheriff  
357 or chief correctional officer who are responsible for the  
358 custody and care of the affected inmate and have a need to know  
359 such information, and as provided in ss. 775.0877 and 960.003.  
360 In addition, upon request of the victim or the victim's legal  
361 guardian, or the parent or legal guardian of the victim if the  
362 victim is a minor, the results of any HIV test performed on an  
363 inmate ~~who has been~~ arrested for any sexual offense involving  
364 oral, anal, or female genital vaginal penetration by, or union  
365 with, the sexual organ of another, must ~~shall~~ be disclosed to  
366 the victim or the victim's legal guardian, or to the parent or  
367 legal guardian of the victim if the victim is a minor. In such  
368 cases, the county or municipal detention facility shall furnish  
369 the test results to the Department of Health, which is  
370 responsible for disclosing the results to public health agencies  
371 as provided in s. 775.0877 and to the victim or the victim's  
372 legal guardian, or the parent or legal guardian of the victim if  
373 the victim is a minor, as provided in s. 960.003(3). As used in  
374 this subsection, the term "female genitals" includes the labia  
375 minora, labia majora, clitoris, vulva, hymen, and vagina.

376 Section 14. Paragraph (j) of subsection (1) of section  
377 288.1254, Florida Statutes, is amended to read:

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378 288.1254 Entertainment industry financial incentive  
379 program.—

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

381 (j) “Qualified production” means a production in this state  
382 meeting the requirements of this section. The term does not  
383 include a production:

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

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

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

398 395.0197 Internal risk management program.—

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

402 (a) Notify the local police; and

403 (b) Notify the hospital risk manager and the administrator.  
404

405 For purposes of this subsection, “sexual abuse” means acts of a  
406 sexual nature committed for the sexual gratification of anyone

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407 upon, or in the presence of, a vulnerable adult, without the  
408 vulnerable adult's informed consent, or a minor. "Sexual abuse"  
409 includes, but is not limited to, the acts defined in s.  
410 794.011(1)(j) ~~s. 794.011(1)(h)~~, fondling, exposure of a  
411 vulnerable adult's or minor's sexual organs, or the use of the  
412 vulnerable adult or minor to solicit for or engage in  
413 prostitution or sexual performance. "Sexual abuse" does not  
414 include any act intended for a valid medical purpose or any act  
415 which may reasonably be construed to be a normal caregiving  
416 action.

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

419 415.102 Definitions of terms used in ss. 415.101-415.113.—  
420 As used in ss. 415.101-415.113, the term:

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

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

433 847.0141 Sexting; prohibited acts; penalties.—

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

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436 (a) Uses a computer, or any other device capable of  
437 electronic data transmission or distribution, to transmit or  
438 distribute to another minor any photograph or video of any  
439 person which depicts nudity, as defined in s. 847.001 ~~s.~~  
440 ~~847.001(9)~~, and is harmful to minors, as defined in s. 847.001  
441 ~~s. 847.001(6)~~.

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

- 447 1. The minor did not solicit the photograph or video.
- 448 2. The minor took reasonable steps to report the photograph  
449 or video to the minor's legal guardian or to a school or law  
450 enforcement official.
- 451 3. The minor did not transmit or distribute the photograph  
452 or video to a third party.

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