

1 AN ACT relating to crimes and punishments.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 510.020 is amended to read as follows:

- 4 (1) Whether or not specifically stated, it is an element of every offense defined in this
5 chapter that the sexual act was committed without consent of the victim.
- 6 (2) Lack of consent results from:
- 7 (a) Forcible compulsion;
- 8 (b) Incapacity to consent; or
- 9 (c) If the offense charged is sexual abuse, any circumstances in addition to
10 forcible compulsion or incapacity to consent in which the victim does not
11 expressly or impliedly acquiesce in the actor's conduct.
- 12 (3) A person is deemed incapable of consent when he or she is:
- 13 (a) Less than sixteen (16) years old;
- 14 (b) **Sixteen (16) or seventeen (17) years old and the actor is twenty-eight (28)**
15 **years old or more;**
- 16 **(c)** An individual with an intellectual disability or an individual that suffers from
17 a mental illness;
- 18 **(d)**~~(e)~~ Mentally incapacitated;
- 19 **(e)**~~(d)~~ Physically helpless; or
- 20 **(f)**~~(e)~~ Under the care or custody of a state or local agency pursuant to court
21 order and the actor is employed by or working on behalf of the state or local
22 agency.
- 23 (4) The provisions of subsection (3)~~(f)~~~~(e)~~ of this section shall not apply to persons
24 who are lawfully married to each other and no court order is in effect prohibiting
25 contact between the parties.

26 ➔Section 2. KRS 510.030 is amended to read as follows:

27 In any prosecution under this chapter in which the victim's lack of consent is based solely

1 on his or her incapacity to consent because he or she was, at the time of the offense:

2 (1) Less than sixteen (16) years old;~~;~~

3 (2) *Sixteen (16) or seventeen (17) years old and the defendant was twenty-eight (28)*
 4 *years old or more;*

5 (3) An individual with an intellectual disability;~~;~~

6 (4) Mentally incapacitated;~~;~~ or

7 (5) Physically helpless;~~;~~

8 the defendant may prove in exculpation that at the time ~~of the engaged in~~ the conduct
 9 constituting the offense he or she did not know of the facts or conditions responsible for
 10 such incapacity to consent.

11 ➔Section 3. KRS 510.060 is amended to read as follows:

12 (1) A person is guilty of rape in the third degree when:

13 (a) He or she engages in sexual intercourse with another person who is incapable
 14 of consent because he or she is an individual with an intellectual disability;

15 (b) Being twenty-one (21) years old or more, he or she engages in sexual
 16 intercourse with another person less than sixteen (16) years old;

17 (c) *Being twenty-eight (28) years old or more, he or she engages in sexual*
 18 *intercourse with another person who is sixteen (16) or seventeen (17) years*
 19 *old;*

20 (d) Being twenty-one (21) years old or more, he or she engages in sexual
 21 intercourse with another person less than eighteen (18) years old and for
 22 whom he or she provides a foster family home as defined in KRS 600.020;

23 ~~(e)~~ Being a person in a position of authority or position of special trust, as
 24 defined in KRS 532.045, he or she engages in sexual intercourse with a minor
 25 under eighteen (18) years old with whom he or she comes into contact as a
 26 result of that position; or

27 ~~(f)~~ Being a jailer, or an employee, contractor, vendor, or volunteer of the

1 Department of Corrections, Department of Juvenile Justice, or a detention
2 facility as defined in KRS 520.010, or of an entity under contract with either
3 department or a detention facility for the custody, supervision, evaluation, or
4 treatment of offenders, he or she subjects a person who he or she knows is
5 incarcerated, supervised, evaluated, or treated by the Department of
6 Corrections, Department of Juvenile Justice, detention facility, or contracting
7 entity, to sexual intercourse.

8 (2) Rape in the third degree is a Class D felony.

9 ➔Section 4. KRS 510.090 is amended to read as follows:

10 (1) A person is guilty of sodomy in the third degree when:

11 (a) He or she engages in deviate sexual intercourse with another person who is
12 incapable of consent because he or she is an individual with an intellectual
13 disability;

14 (b) Being twenty-one (21) years old or more, he or she engages in deviate sexual
15 intercourse with another person less than sixteen (16) years old; or

16 (c) **Being twenty-eight (28) years old or more, he or she engages in deviate**
17 **sexual intercourse with another person who is sixteen (16) or seventeen (17)**
18 **years old;**

19 **(d)** Being twenty-one (21) years old or more, he or she engages in deviate sexual
20 intercourse with another person less than eighteen (18) years old and for
21 whom he or she provides a foster family home as defined in KRS 600.020;

22 **(e)**~~(d)~~ Being a person in a position of authority or position of special trust, as
23 defined in KRS 532.045, he or she engages in deviate sexual intercourse with
24 a minor less than eighteen (18) years old with whom he or she comes into
25 contact as a result of that position; or

26 **(f)**~~(e)~~ Being a jailer, or an employee, contractor, vendor, or volunteer of the
27 Department of Corrections, Department of Juvenile Justice, or a detention

1 facility as defined in KRS 520.010, or of an entity under contract with either
2 department or a detention facility for the custody, supervision, evaluation, or
3 treatment of offenders, he or she subjects a person who he or she knows is
4 incarcerated, supervised, evaluated, or treated by the Department of
5 Corrections, Department of Juvenile Justice, detention facility, or contracting
6 entity, to deviate sexual intercourse.

7 (2) Sodomy in the third degree is a Class D felony.

8 ➔Section 5. This Act may be cited as Jenna's Law.