

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 421.510 is amended to read as follows:

4 (1) Where the victim is less than ***eighteen (18)***~~[sixteen (16)]~~ years old and the crime is
5 a sexual offense including violations of KRS 510.040 to 510.150, 530.020,
6 530.064(1)(a), 530.070, 531.310, 531.320, and 531.370, a speedy trial may be
7 scheduled as provided in subsection (2) of this section.

8 (2) The court, upon motion by the attorney for the Commonwealth for a speedy trial,
9 shall set a hearing date on the motion within ten (10) days of the date of the motion.
10 If the motion is granted, the trial shall be scheduled within ninety (90) days from
11 the hearing date.

12 (3) In ruling on any motion or other request for a delay or continuance of the
13 proceedings, the court shall consider and give weight to any adverse impact the
14 delay or continuance may have on the well-being of a child victim or witness.

15 ➔Section 2. KRS 510.020 is amended to read as follows:

16 (1) Whether or not specifically stated, it is an element of every offense defined in this
17 chapter that the sexual act was committed without consent of the victim.

18 (2) Lack of consent results from:

19 (a) Forcible compulsion;

20 (b) Incapacity to consent; or

21 (c) If the offense charged is sexual abuse, any circumstances in addition to
22 forcible compulsion or incapacity to consent in which the victim does not
23 expressly or impliedly acquiesce in the actor's conduct.

24 (3) A person is deemed incapable of consent when he or she is:

25 (a) Less than ***eighteen (18)***~~[sixteen (16)]~~ years old;

26 (b) ~~[Sixteen (16) or seventeen (17) years old and the actor is at least ten (10)
27 years older than the victim at the time of the sexual act;~~

1 (e)—} An individual unable to communicate consent or lack of consent, or unable to
 2 understand the nature of the act or its consequences, due to an intellectual
 3 disability or a mental illness;

4 ~~(c)~~~~(d)}~~ Mentally incapacitated;

5 ~~(d)~~~~(e)}~~ Physically helpless; or

6 ~~(e)~~~~(f)}~~ Under the care or custody of a state or local agency pursuant to court
 7 order and the actor is employed by or working on behalf of the state or local
 8 agency.

9 (4) The provisions of subsections~~[subsection]~~ (3)~~(a) and (e)~~~~(f)}~~ of this section shall
 10 not apply to persons who are lawfully married to each other and no court order is in
 11 effect prohibiting contact between the parties.

12 ➔Section 3. KRS 510.030 is amended to read as follows:

13 In any prosecution under this chapter in which the victim's lack of consent is based solely
 14 on his or her incapacity to consent because he or she was less than eighteen (18)~~[sixteen~~
 15 ~~(16)]~~ years old, an individual with an intellectual disability, mentally incapacitated, or
 16 physically helpless, the defendant may prove in exculpation that at the time he or she
 17 engaged in the conduct constituting the offense he or she did not know of the facts or
 18 conditions responsible for such incapacity to consent.

19 ➔Section 4. KRS 510.035 is amended to read as follows:

20 A person who engages in sexual intercourse or deviate sexual intercourse with another
 21 person to whom the person is married, or subjects another person to whom the person is
 22 married to sexual contact, does not commit an offense under this chapter regardless of the
 23 person's age solely because the other person is less than eighteen (18)~~[sixteen (16)]~~ years
 24 old or an individual with an intellectual disability.

25 ➔Section 5. KRS 510.040 is amended to read as follows:

26 (1) A person is guilty of rape in the first degree when:

27 (a) He or she engages in sexual intercourse with another person by forcible

1 compulsion; or

2 (b) He ***or she*** engages in sexual intercourse with another person who is incapable
3 of consent because he ***or she***:

4 1. Is physically helpless; or

5 2. Is less than twelve (12) years old.

6 (2) Rape in the first degree is a Class B felony unless the victim:

7 ***(a)*** Is under twelve (12) years old;~~[-or-]~~

8 ***(b)*** Receives a serious physical injury; ***or***

9 ***(c)*** ***Becomes pregnant as a result of the rape;***

10 in which case it is a Class A felony.

11 ➔Section 6. KRS 510.050 is amended to read as follows:

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

13 (a) Being eighteen (18) years old or more, he or she engages in sexual intercourse
14 with another person less than fourteen (14) years old; or

15 (b) He or she engages in sexual intercourse with another person who is mentally
16 incapacitated or who is incapable of consent because he or she is an individual
17 with an intellectual disability.

18 (2) Rape in the second degree is a Class C felony ***unless the victim becomes pregnant***
19 ***as a result of the rape, in which case it is a Class B felony.***

20 ➔Section 7. KRS 510.060 is amended to read as follows:

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

22 (a) Being ***eighteen (18)***~~twenty one (21)]~~ years old or more, he or she engages in
23 sexual intercourse with another person ***who is fourteen (14) years old or more***
24 ***but*** less than ***eighteen (18)***~~sixteen (16)]~~ years old, ***unless the persons are***
25 ***married to each other in accordance with KRS 402.210;***

26 (b)~~Being at least ten (10) years older than a person who is sixteen (16) or~~
27 ~~seventeen (17) years old at the time of sexual intercourse, he or she engages in~~

1 sexual intercourse with the person;

2 ~~(e) Being twenty one (21) years old or more, He or she engages in sexual~~
 3 ~~intercourse with another person less than eighteen (18) years old and for~~
 4 ~~whom he or she provides a foster family home as defined in KRS 600.020;~~

5 ~~(d) Being a person in a position of authority or position of special trust, as defined~~
 6 ~~in KRS 532.045, he or she engages in sexual intercourse with a minor under~~
 7 ~~eighteen (18) years old with whom he or she comes into contact as a result of~~
 8 ~~that position;~~

9 ~~(e)}~~ Being a jailer, or an employee, contractor, vendor, or volunteer of the
 10 Department of Corrections, Department of Juvenile Justice, or a detention
 11 facility as defined in KRS 520.010, or of an entity under contract with either
 12 department or a detention facility for the custody, supervision, evaluation, or
 13 treatment of offenders, he or she subjects a person who he or she knows is
 14 incarcerated, supervised, evaluated, or treated by the Department of
 15 Corrections, Department of Juvenile Justice, detention facility, or contracting
 16 entity, to sexual intercourse; or

17 ~~(c)~~~~(f)}~~ Being a peace officer, while serving in his or her official capacity, he or
 18 she subjects a person who the officer:

- 19 1. Arrested, held in custody, or investigated for commission of a traffic or
 20 criminal offense; or
 - 21 2. Knew or should have known was under arrest, held in custody, or being
 22 investigated for commission of a traffic or criminal offense;
- 23 to sexual intercourse.

24 (2) Rape in the third degree is a Class D felony, **unless the victim becomes pregnant as**
 25 **a result of the rape in which case it is a Class C felony.**

26 ➔Section 8. KRS 510.090 is amended to read as follows:

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

1 (a) Being **eighteen (18)**~~[twenty one (21)]~~ years old or more, he or she engages in
 2 deviate sexual intercourse with another person **who is fourteen (14) years old**
 3 **or more, but** less than **eighteen (18)**~~[sixteen (16)]~~ years old, **unless the**
 4 **persons are married to each other in accordance with KRS 402.210;**

5 ~~(b) [Being at least ten (10) years older than a person who is sixteen (16) or~~
 6 ~~seventeen (17) years old at the time of deviate sexual intercourse, he or she~~
 7 ~~engages in deviate sexual intercourse with the person;~~

8 ~~(c) [Being twenty one (21) years old or more, He or she engages in deviate sexual~~
 9 ~~intercourse with another person less than eighteen (18) years old and for~~
 10 ~~whom he or she provides a foster family home as defined in KRS 600.020;~~

11 ~~(d) [Being a person in a position of authority or position of special trust, as defined~~
 12 ~~in KRS 532.045, he or she engages in deviate sexual intercourse with a minor~~
 13 ~~less than eighteen (18) years old with whom he or she comes into contact as a~~
 14 ~~result of that position;~~

15 ~~(e) [~~ Being a jailer, or an employee, contractor, vendor, or volunteer of the
 16 Department of Corrections, Department of Juvenile Justice, or a detention
 17 facility as defined in KRS 520.010, or of an entity under contract with either
 18 department or a detention facility for the custody, supervision, evaluation, or
 19 treatment of offenders, he or she subjects a person who he or she knows is
 20 incarcerated, supervised, evaluated, or treated by the Department of
 21 Corrections, Department of Juvenile Justice, detention facility, or contracting
 22 entity, to deviate sexual intercourse; or

23 ~~(c) [(f) [~~ Being a peace officer, while serving in his or her official capacity, he or
 24 she subjects a person who the officer:

- 25 1. Arrested, held in custody, or investigated for commission of a traffic or
- 26 criminal offense; or
- 27 2. Knew or should have known was under arrest, held in custody, or being

1 investigated for commission of a traffic or criminal offense;
2 to deviate sexual intercourse.

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

4 ➔Section 9. KRS 510.110 is amended to read as follows:

5 (1) A person is guilty of sexual abuse in the first degree when:

6 (a) He or she subjects another person to sexual contact by forcible compulsion; or

7 (b) He or she subjects another person to sexual contact who is incapable of
8 consent because he or she:

9 1. Is physically helpless;

10 2. Is less than twelve (12) years old;

11 3. Is mentally incapacitated; or

12 4. Is an individual with an intellectual disability; or

13 (c) Being ***eighteen (18)***~~[twenty one (21)]~~ years old or more, he or she:

14 1. Subjects another person who is less than ***eighteen (18)***~~[sixteen (16)]~~
15 years old to sexual contact;

16 2. Engages in masturbation in the presence of another person who is less
17 than ***eighteen (18)***~~[sixteen (16)]~~ years old and knows or has reason to
18 know the other person is present; or

19 3. Engages in masturbation while using the Internet, telephone, or other
20 electronic communication device while communicating with a minor
21 who the person knows is less than ***eighteen (18)***~~[sixteen (16)]~~ years old,
22 and the minor can see or hear the person masturbate; or

23 (d) Being a person in a position of authority or position of special trust, as defined
24 in KRS 532.045, he or she, regardless of his or her age, subjects a minor who
25 is less than eighteen (18) years old, with whom he or she comes into contact
26 as a result of that position, to sexual contact or engages in masturbation in the
27 presence of the minor and knows or has reason to know the minor is present

1 or engages in masturbation while using the Internet, telephone, or other
2 electronic communication device while communicating with a minor who the
3 person knows is less than eighteen (18)~~sixteen (16)~~ years old, and the minor
4 can see or hear the person masturbate.

5 (2) Sexual abuse in the first degree is a Class D felony, unless the victim is less than
6 twelve (12) years old, in which case the offense shall be a Class C felony.

7 ➔Section 10. KRS 510.120 is amended to read as follows:

8 (1) A person is guilty of sexual abuse in the second degree when:

9 (a) He or she is at least eighteen (18) years old but less than twenty-one (21)
10 years old and subjects another person who is less than eighteen (18)~~sixteen~~
11 ~~(16)~~ years old to sexual contact;

12 (b) Being a jailer, or an employee, contractor, vendor, or volunteer of the
13 Department of Corrections, Department of Juvenile Justice, or a detention
14 facility as defined in KRS 520.010, or of an entity under contract with either
15 department or a detention facility for the custody, supervision, evaluation, or
16 treatment of offenders, he or she subjects a person who is at least eighteen
17 (18) years old and who he or she knows is incarcerated, supervised, evaluated,
18 or treated by the Department of Corrections, Department of Juvenile Justice,
19 detention facility, or contracting entity, to sexual contact; or

20 (c) Being a peace officer, while serving in his or her official capacity, he or she
21 subjects a person who the officer:

22 1. Arrested, held in custody, or investigated for commission of a traffic or
23 criminal offense; or

24 2. Knew or should have known was under arrest, held in custody, or being
25 investigated for commission of a traffic or criminal offense;

26 to sexual contact.

27 (2) In any prosecution under subsection (1)(a) of this section, it is a defense that:

- 1 (a) The other person's lack of consent was due solely to incapacity to consent by
2 reason of being less than ***eighteen (18)***~~[sixteen (16)]~~ years old; and
3 (b) The other person was at least fourteen (14) years old; and
4 (c) The actor was less than five (5) years older than the other person.

5 (3) Sexual abuse in the second degree is a Class A misdemeanor.

6 ➔Section 11. KRS 510.130 is amended to read as follows:

7 (1) A person is guilty of sexual abuse in the third degree when he or she subjects
8 another person to sexual contact without the latter's consent.

9 (2) In any prosecution under this section, it is a defense that:

- 10 (a) The other person's lack of consent was due solely to incapacity to consent by
11 reason of being less than ***eighteen (18)***~~[sixteen (16)]~~ years old; and
12 (b) The other person was at least fourteen (14) years old; and
13 (c) The actor was less than eighteen (18) years old.

14 (3) Sexual abuse in the third degree is a Class B misdemeanor.

15 ➔Section 12. KRS 530.020 is amended to read as follows:

16 (1) A person is guilty of incest when he or she has sexual intercourse or deviate sexual
17 intercourse, as defined in KRS 510.010, with a person whom he or she knows to be
18 an ancestor, descendant, uncle, aunt, brother, or sister. The relationships referred to
19 herein include blood relationships of either the whole or half blood without regard
20 to legitimacy, relationship of parent and child by adoption, relationship of
21 stepparent and stepchild, and relationship of stepgrandparent and stepgrandchild.

22 (2) (a) Incest is a Class C felony if the act is committed by consenting adults, ***unless***
23 ***a person becomes pregnant as a result of the incestuous act in which case it***
24 ***is a Class B felony.***

25 (b) Incest is a Class B felony if committed:

- 26 1. By forcible compulsion as defined in KRS 510.010(2); or
27 2. On a victim who is:

- 1 a. Less than eighteen (18) years of age;~~[-or]~~
- 2 b. Incapable of consent because he or she is physically helpless or
- 3 mentally incapacitated.
- 4 (c) Incest is a Class A felony if:
- 5 1. Committed on a victim less than twelve (12) years of age;~~[-or]~~
- 6 2. The victim receives serious physical injury; **or**
- 7 **3. The victim becomes pregnant as a result of the incestuous act.**

8 ➔Section 13. KRS 530.064 is amended to read as follows:

- 9 (1) A person is guilty of unlawful transaction with a minor in the first degree when he
- 10 or she knowingly induces, assists, or causes a minor to engage in:
- 11 (a) Illegal sexual activity; or
- 12 (b) Illegal controlled substances activity other than activity involving marijuana
- 13 or salvia, as defined in KRS 218A.010;
- 14 Except those offenses involving minors in KRS Chapter 531 and in KRS 529.100
- 15 where that offense involves commercial sexual activity.
- 16 (2) Unlawful transaction with a minor in the first degree is a:
- 17 (a) Class C felony if the minor so used is less than eighteen (18) years old at the
- 18 time the minor engages in the prohibited activity;
- 19 (b) Class B felony if the minor so used is less than sixteen (16) years old at the
- 20 time the minor engages in the prohibited activity; and
- 21 (c) Class A felony if the minor so used incurs physical injury **or becomes**
- 22 **pregnant as a result of the prohibited activity**~~[thereby].~~

23 ➔Section 14. KRS 531.310 is amended to read as follows:

- 24 (1) A person is guilty of the use of a minor in a sexual performance if he employs,
- 25 consents to, authorizes or induces a minor to engage in a sexual performance.
- 26 (2) Use of a minor in a sexual performance is:
- 27 (a) A Class C felony if the minor so used is less than eighteen (18) years old at

- 1 the time the minor engages in the prohibited activity;
- 2 (b) A Class B felony if the minor so used is less than sixteen (16) years old at the
- 3 time the minor engages in the prohibited activity; and
- 4 (c) A Class A felony if the minor so used incurs physical injury or becomes
- 5 pregnant as a result of the prohibited activity~~[thereby]~~.

6 ➔Section 15. KRS 531.320 is amended to read as follows:

- 7 (1) A person is guilty of promoting a sexual performance by a minor when, knowing
- 8 the character and content thereof, he produces, directs or promotes any performance
- 9 which includes sexual conduct by a minor.
- 10 (2) Promoting a sexual performance by a minor is:
 - 11 (a) A Class C felony if the minor involved in the sexual performance is less than
 - 12 eighteen (18) years old at the time the minor engages in the prohibited
 - 13 activity;
 - 14 (b) A Class B felony if the minor involved in the sexual performance is less than
 - 15 sixteen (16) years old at the time the minor engages in the prohibited activity;
 - 16 and
 - 17 (c) A Class A felony if the minor involved in the sexual performance incurs
 - 18 physical injury or becomes pregnant as a result of the prohibited
 - 19 activity~~[thereby]~~.