

CHAPTER 259**(SB 25)**

AN ACT relating to trafficking in, possession of, or use of drugs or controlled substances used to facilitate or used in furtherance of the commission of sexual offenses.

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

Section 1. KRS 218A.1412 is amended to read as follows:

- (1) A person is guilty of trafficking in a controlled substance in the first degree when he knowingly and unlawfully traffics in: a controlled substance, that is classified in Schedules I or II which is a narcotic drug; a controlled substance analogue; lysergic acid diethylamide; phencyclidine;~~[-or]~~ a controlled substance that contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers; ***gamma hydroxybutyric acid (GHB), including its salts, isomers, salts of isomers and analogues; or flunitrazepam, including its salts, isomers, and salts of isomers.***
- (2) Any person who violates the provisions of subsection (1) of this section shall:
 - (a) For the first offense be guilty of a Class C felony.
 - (b) For a second or subsequent offense be guilty of a Class B felony.

Section 2. KRS 218A.1415 is amended to read as follows:

- (1) A person is guilty of possession of a controlled substance in the first degree when he knowingly and unlawfully possesses: a controlled substance that contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers or, that is classified in Schedules I or II which is a narcotic drug; a controlled substance analogue; lysergic acid diethylamide;~~[-or]~~ phencyclidine; ***gamma hydroxybutyric acid (GHB), including its salts, isomers, salts of isomers and analogues; or flunitrazepam, including its salts, isomers, and salts of isomers.***
- (2) Possession of a controlled substance in the first degree is:
 - (a) For a first offense a Class D felony.
 - (b) For a second or subsequent offense a Class C felony.

Section 3. KRS 510.050 is amended to read as follows:

- (1) A person is guilty of rape in the second degree when:~~[-]~~
 - (a) Being eighteen (18) years old or more, he engages in sexual intercourse with another person less than fourteen (14) years old; ***or***
 - (b) ***He engages in sexual intercourse with another person who is mentally incapacitated.***
- (2) Rape in the second degree is a Class C felony.

Section 4. KRS 510.080 is amended to read as follows:

- (1) A person is guilty of sodomy in the second degree when:~~[-]~~
 - (a) Being eighteen (18) years old or more, he engages in deviate sexual intercourse with another person less than fourteen (14) years old; ***or***

(b) *He engages in deviate sexual intercourse with another person who is mentally incapacitated.*

(2) Sodomy in the second degree is a Class C felony.

Section 5. KRS 510.110 is amended to read as follows:

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

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

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

1. Is physically helpless;~~or~~

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

3. *Is mentally incapacitated.*

(2) Sexual abuse in the first degree is a Class D felony.

Section 6. KRS 510.010 is amended to read as follows:

The following definitions apply in this chapter unless the context otherwise requires:

(1) "Deviate sexual intercourse" means any act of sexual gratification involving the sex organs of one person and the mouth or anus of another; or penetration of the anus of one person by a foreign object manipulated by another person. "Deviate sexual intercourse" does not include penetration of the anus by a foreign object in the course of the performance of generally recognized health-care practices;

(2) "Forcible compulsion" means physical force or threat of physical force, express or implied, which places a person in fear of immediate death, physical injury to self or another person, fear of the immediate kidnap of self or another person, or fear of any offense under this chapter. Physical resistance on the part of the victim shall not be necessary to meet this definition;

(3) "Mental illness" means a diagnostic term that covers many clinical categories, typically including behavioral or psychological symptoms, or both, along with impairment of personal and social function, and specifically defined and clinically interpreted through reference to criteria contained in the Diagnostic and Statistical Manual of Mental Disorders (Third Edition) and any subsequent revision thereto, of the American Psychiatric Association;

(4) "Mentally retarded person" means a person with significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, as defined in KRS Chapter 202B;

(5) "Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his conduct as a result of the influence of ~~an~~~~uncontrolled~~~~or~~ intoxicating substance administered to him without his consent or as a result of any other act committed upon him without his consent;

(6) "Physically helpless" means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act. *"Physically helpless" also includes a person who has been rendered unconscious or for any other reason is physically unable to communicate an unwillingness to an act as a result of the influence of a controlled substance or legend drug;*

- (7) "Sexual contact" means any touching of the sexual or other intimate parts of a person done for the purpose of gratifying the sexual desire of either party;
- (8) "Sexual intercourse" means sexual intercourse in its ordinary sense and includes penetration of the sex organs of one person by a foreign object manipulated by another person. Sexual intercourse occurs upon any penetration, however slight; emission is not required. "Sexual intercourse" does not include penetration of the sex organ by a foreign object in the course of the performance of generally recognized health-care practices; and
- (9) "Foreign object" means anything used in commission of a sexual act other than the person of the actor.

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

- (1) A person is guilty of rape in the third degree when:
 - (a) He engages in sexual intercourse with another person who is incapable of consent because he is mentally retarded~~[or mentally incapacitated]~~; or
 - (b) Being twenty-one (21) years old or more, he engages in sexual intercourse with another person less than sixteen (16) years old.
- (2) Rape in the third degree is a Class D felony.

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

- (1) A person is guilty of sodomy in the third degree when:
 - (a) He engages in deviate sexual intercourse with another person who is incapable of consent because he is mentally retarded~~[or mentally incapacitated]~~; or
 - (b) Being twenty-one (21) years old or more, he engages in deviate sexual intercourse with another person less than sixteen (16) years old.
- (2) Sodomy in the third degree is a Class D felony.

Section 9. KRS 510.120 is amended to read as follows:

- (1) A person is guilty of sexual abuse in the second degree when:
 - (a) He subjects another person to sexual contact who is incapable of consent because he is mentally retarded~~[or mentally incapacitated]~~;
 - (b) He subjects another person who is less than fourteen (14) years old to sexual contact; or
 - (c) Being an employee, contractor, vendor, or volunteer of the Department of Corrections, or a detention facility as defined in KRS 520.010, or of an entity under contract with either the department or a detention facility for the custody, supervision, evaluation, or treatment of offenders, he subjects an offender who is incarcerated, supervised, evaluated, or treated by the Department of Corrections, the detention facility, or the contracting entity, to sexual contact. In any prosecution under this paragraph, the defendant may prove in exculpation that, at the time he engaged in the conduct constituting the offense, he and the offender were married to each other.
- (2) Sexual abuse in the second degree is a Class A misdemeanor.

Approved April 9, 2002