

## CHAPTER 72

## (HB 211)

AN ACT relating to crimes and punishments.

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

➔Section 1. KRS 510.110 is amended to read as follows:

- (1) A person is guilty of sexual abuse in the first degree when:
- (a) He or she subjects another person to sexual contact by forcible compulsion; or
  - (b) He or she subjects another person to sexual contact who is incapable of consent because he or she:
    1. Is physically helpless;
    2. Is less than twelve (12) years old; or
    3. Is mentally incapacitated; *or*
  - (c) *Being twenty-one (21) years old or more, he or she:*
    1. *Subjects another person who is less than sixteen (16) years old to sexual contact; or*
    2. *Engages in masturbation in the presence of another person who is less than sixteen (16) years old and knows or has reason to know the other person is present; or*
    3. *Engages in masturbation while using the Internet, telephone, or other electronic communication device while communicating with a minor who the person knows is less than sixteen (16) years old, and the minor can see or hear the person masturbate; or*
  - (d) *Being a person in a position of authority or position of special trust, as defined in KRS 532.045, he or she, regardless of his or her age, subjects a minor who is less than eighteen (18) years old, with whom he or she comes into contact as a result of that position, to sexual contact or engages in masturbation in the presence of the minor and knows or has reason to know the minor is present or engages in masturbation while using the Internet, telephone, or other electronic communication device while communicating with a minor who the person knows is less than sixteen (16) years old, and the minor can see or hear the person masturbate.*
- (2) Sexual abuse in the first degree is a Class D felony, unless the victim is less than twelve (12) years old, in which case the offense shall be a Class C felony.

➔Section 2. KRS 510.120 is amended to read as follows:

- (1) A person is guilty of sexual abuse in the second degree when:
- (a) He or she subjects another person to sexual contact who is incapable of consent because he or she is mentally retarded;
  - (b) He or she *is at least eighteen (18) years old but less than twenty-one (21) years old and* subjects another person who is less than ~~sixteen (16)~~~~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 or she 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 or she engaged in the conduct constituting the offense, he or she and the offender were married to each other.~~;~~
  - (d) *In any prosecution under paragraph (b) of this section, it is a defense that:*
    1. *The other person's lack of consent was due solely to incapacity to consent by reason of being less than sixteen (16) years old; and*
    2. *The other person was at least fourteen (14) years old; and*

3. ~~*The actor was less than five (5) years older than the other person*~~~~[Being twenty one (21) years old or more, he or she subjects another person to sexual contact who is less than eighteen (18) years old and for whom he or she provides a foster family home as defined in KRS 600.020; or~~  
~~(e) — Being a person in a position of authority or position of special trust, as defined in KRS 532.045, he or she subjects a minor who is under sixteen (16) years old, with whom he or she comes into contact as a result of that position, to sexual contact].~~

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

➔Section 3. KRS 510.130 is amended to read as follows:

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

(a) He *or she* subjects another person to sexual contact without the latter's consent.

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

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

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

➔Section 4. KRS 620.030 is amended to read as follows:

(1) Any person who knows or has reasonable cause to believe that a child is dependent, neglected, or abused shall immediately cause an oral or written report to be made to a local law enforcement agency or the Department of Kentucky State Police; the cabinet or its designated representative; the Commonwealth's attorney or the county attorney; by telephone or otherwise. Any supervisor who receives from an employee a report of suspected dependency, neglect, or abuse shall promptly make a report to the proper authorities for investigation. If the cabinet receives a report of abuse or neglect allegedly committed by a person other than a parent, guardian, or person exercising custodial control or supervision, the cabinet shall refer the matter to the Commonwealth's attorney or the county attorney and the local law enforcement agency or the Department of Kentucky State Police. Nothing in this section shall relieve individuals of their obligations to report.

(2) Any person, including but not limited to a physician, osteopathic physician, nurse, teacher, school personnel, social worker, coroner, medical examiner, child-caring personnel, resident, intern, chiropractor, dentist, optometrist, emergency medical technician, paramedic, health professional, mental health professional, peace officer, or any organization or agency for any of the above, who knows or has reasonable cause to believe that a child is dependent, neglected, or abused, regardless of whether the person believed to have caused the dependency, neglect, or abuse is a parent, guardian, person exercising custodial control or supervision, or another person, or who has attended such child as a part of his or her professional duties shall, if requested, in addition to the report required in subsection (1) of this section, file with the local law enforcement agency or the Department of Kentucky State Police or the Commonwealth's or county attorney, the cabinet or its designated representative within forty-eight (48) hours of the original report a written report containing:

- (a) The names and addresses of the child and his or her parents or other persons exercising custodial control or supervision;
- (b) The child's age;
- (c) The nature and extent of the child's alleged dependency, neglect, or abuse, including any previous charges of dependency, neglect, or abuse, to this child or his or her siblings;
- (d) The name and address of the person allegedly responsible for the abuse or neglect; and
- (e) Any other information that the person making the report believes may be helpful in the furtherance of the purpose of this section.

(3) *Neither the husband-wife nor any professional-client/patient privilege, except the attorney-client and clergy-penitent privilege, shall be a ground for refusing to report under this section or for excluding evidence regarding a dependent, neglected, or abused child or the cause thereof, in any judicial proceedings*

*resulting from a report pursuant to this section. This subsection shall also apply in any criminal proceeding in District or Circuit Court regarding a dependent, neglected, or abused child.*

- (4) The cabinet upon request shall receive from any agency of the state or any other agency, institution, or facility providing services to the child or his or her family, such cooperation, assistance, and information as will enable the cabinet to fulfill its responsibilities under KRS 620.030, 620.040, and 620.050.
- (5) *Any person who intentionally violates the provisions of this section shall be guilty of a:*
  - (a) *Class B misdemeanor for the first offense;*
  - (b) *Class A misdemeanor for the second offense; and*
  - (c) *Class D felony for each subsequent offense.*

➔Section 5. KRS 620.990 is amended to read as follows:

- (1) *Except as otherwise provided in this chapter, any person intentionally violating the provisions of this chapter shall be guilty of a Class B misdemeanor.*
- (2) The use of information by public officers and by defense counsel for purposes of investigation and trial of cases or other proceedings under the provisions of KRS Chapters 600 to 645 or in any criminal prosecution or appeal shall not constitute a violation of this chapter.

➔Section 6. KRS 500.050 is amended to read as follows:

- (1) Except as otherwise expressly provided, the prosecution of a felony is not subject to a period of limitation and may be commenced at any time.
- (2) Except as otherwise expressly provided, the prosecution of an offense other than a felony must be commenced within one (1) year after it is committed.
- (3) *For a misdemeanor offense under KRS Chapter 510 when the victim is under the age of eighteen (18) at the time of the offense, the prosecution of the offense shall be commenced within five (5) years after the victim attains the age of eighteen (18) years.*
- (4) For purposes of this section, an offense is committed either when every element occurs, or if a legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the defendant's complicity therein is terminated.

**Signed by Governor April 11, 2008.**