

## CHAPTER 26

## (SB 17)

AN ACT relating to crimes and punishments.

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

➔Section 1. 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 or she is mentally retarded;
  - (b) Being twenty-one (21) years old or more, he or she engages in sexual intercourse with another person less than sixteen (16) years old;
  - (c) Being twenty-one (21) years old or more, he or she engages in sexual intercourse with another person less than eighteen (18) years old and for whom he or she provides a foster family home as defined in KRS 600.020;~~{or}~~
  - (d) Being a person in a position of authority or position of special trust, as defined in KRS 532.045, he or she engages in sexual intercourse with a minor under sixteen (16) years old with whom he or she comes into contact as a result of that position; *or*
  - (e) *Being a jailer, or an employee, contractor, vendor, or volunteer of the Department of Corrections, Department of Juvenile Justice, or a detention facility as defined in KRS 520.010, or of an entity under contract with either department or a detention facility for the custody, supervision, evaluation, or treatment of offenders, he or she subjects a person who he or she knows is incarcerated, supervised, evaluated, or treated by the Department of Corrections, Department of Juvenile Justice, detention facility, or contracting entity, to sexual intercourse.*
- (2) Rape in the third degree is a Class D felony.

➔Section 2. 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 or she is mentally retarded;
  - (b) Being twenty-one (21) years old or more, he or she engages in deviate sexual intercourse with another person less than sixteen (16) years old; or
  - (c) Being twenty-one (21) years old or more, he or she engages in deviate sexual intercourse with another person less than eighteen (18) years old and for whom he or she provides a foster family home as defined in KRS 600.020;~~{or}~~
  - (d) Being a person in a position of authority or position of special trust, as defined in KRS 532.045, he or she engages in deviate sexual intercourse with a minor less than sixteen (16) years old with whom he or she comes into contact as a result of that position; *or*
  - (e) *Being a jailer, or an employee, contractor, vendor, or volunteer of the Department of Corrections, Department of Juvenile Justice, or a detention facility as defined in KRS 520.010, or of an entity under contract with either department or a detention facility for the custody, supervision, evaluation, or treatment of offenders, he or she subjects a person who he or she knows is incarcerated, supervised, evaluated, or treated by the Department of Corrections, Department of Juvenile Justice, detention facility, or contracting entity, to deviate sexual intercourse.*
- (2) Sodomy in the third degree is a Class D felony.

➔Section 3. 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;

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- (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) years old to sexual contact; or
  - (c) Being *a jailer, or* an employee, contractor, vendor, or volunteer of the Department of Corrections, *Department of Juvenile Justice*, 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 *a person who is at least eighteen (18) years old and*~~an offender~~ who *he or she knows* is incarcerated, supervised, evaluated, or treated by the Department of Corrections, *Department of Juvenile Justice*,~~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.]~~
- (2) In any prosecution under subsection (1)(b) of this section, it is a defense that:
- (a) 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
  - (b) The other person was at least fourteen (14) years old; and
  - (c) The actor was less than five (5) years older than the other person.
- (3) Sexual abuse in the second degree is a Class A misdemeanor.

**Signed by the Governor March 25, 2010.**