

CHAPTER 109
(SB 19)

AN ACT relating to sex offenses.

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

➔Section 1. 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 *or she* engages in sexual intercourse with another person less than fourteen (14) years old; or
 - (b) He *or she* engages in sexual intercourse with another person who is mentally incapacitated *or who is incapable of consent because he or she is an individual with an intellectual disability*.
- (2) Rape in the second degree is a Class C felony.

➔Section 2. KRS 510.060 is amended to read as follows:

- (1) A person is guilty of rape in the third degree when:
- (a) ~~He or she engages in sexual intercourse with another person who is incapable of consent because he or she is an individual with an intellectual disability;~~
 - ~~(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;
 - ~~(b)~~~~(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;
 - ~~(c)~~~~(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 eighteen (18) years old with whom he or she comes into contact as a result of that position; or
 - ~~(d)~~~~(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 3. 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 *or she* engages in deviate sexual intercourse with another person less than fourteen (14) years old; or
 - (b) He *or she* engages in deviate sexual intercourse with another person who is mentally incapacitated *or who is incapable of consent because he or she is an individual with an intellectual disability*.
- (2) Sodomy in the second degree is a Class C felony.

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

- (1) A person is guilty of sodomy in the third degree when:
- (a) ~~He or she engages in deviate sexual intercourse with another person who is incapable of consent because he or she is an individual with an intellectual disability;~~
 - ~~(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

- ~~(b)(e)~~ 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;
- ~~(c)(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 eighteen (18) years old with whom he or she comes into contact as a result of that position; or
- ~~(d)(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 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 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
 4. ***Is an individual with an intellectual disability; 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;
 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 6. 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 an individual with an intellectual disability;~~
- ~~(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
- ~~(b)(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 is at least eighteen (18) years old and 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 contact.

- (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.

➔Section 7. KRS 510.020 is amended to read as follows:

- (1) Whether or not specifically stated, it is an element of every offense defined in this chapter that the sexual act was committed without consent of the victim.
- (2) Lack of consent results from:
- (a) Forcible compulsion;
 - (b) Incapacity to consent; or
 - (c) If the offense charged is sexual abuse, any circumstances in addition to forcible compulsion or incapacity to consent in which the victim does not expressly or impliedly acquiesce in the actor's conduct.
- (3) A person is deemed incapable of consent when he or she is:
- (a) Less than sixteen (16) years old;
 - (b) An individual ***unable to communicate consent or lack of consent, or unable to understand the nature of the act or its consequences, due to***~~with~~ an intellectual disability or~~an individual that suffers from~~ a mental illness;
 - (c) Mentally incapacitated;
 - (d) Physically helpless; or
 - (e) Under the care or custody of a state or local agency pursuant to court order and the actor is employed by or working on behalf of the state or local agency.
- (4) The provisions of subsection (3)(e) of this section shall not apply to persons who are lawfully married to each other and no court order is in effect prohibiting contact between the parties.

Signed by Governor April 10, 2018.