

## CHAPTER 88

## ( SB 64 )

AN ACT relating to crimes and punishments.

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

➔Section 1. 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 any body part or a foreign object manipulated by another person. "Deviate sexual intercourse" does not include penetration of the anus by any body part or 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) "Individual with an intellectual disability" 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 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 any body part or 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 any body part or 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;
- (10) *"Registrant" has the same meaning as in KRS 17.500; and*
- (11) *"Adult intermediary" means a person who is age eighteen (18) years or older, who communicates with another for the purpose of procuring or promoting the use of a minor in violation of Section 2 of this Act.*

➔Section 2. KRS 510.155 is amended to read as follows:

- (1) It shall be unlawful for any person to knowingly use a communications system, including computers, computer networks, computer bulletin boards, cellular telephones, or any other electronic means, for the purpose of:
  - (a) Procuring or promoting the use of a minor, ~~including~~ a peace officer, *or a person working in coordination with law enforcement*, posing as a minor if the person believes that the peace officer *or the person working in coordination with law enforcement* is a minor or is wanton or reckless in that belief;~~;~~ *or*

- (b) ***Procuring or promoting the use of a minor from an adult intermediary, including a peace officer, or a person working in coordination with law enforcement, posing as an adult intermediary for a minor if the person believes that the peace officer or the person working in coordination with law enforcement is an adult intermediary for a minor or is wanton or reckless in that belief;***

for any activity in violation of KRS 510.040, 510.050, 510.060, 510.070, 510.080, 510.090, 510.110, 529.100 where that offense involves commercial sexual activity, or 530.064(1)(a), or KRS Chapter 531.

- (2) No person shall be convicted of this offense and an offense specified in KRS 506.010, 506.030, 506.040, or 506.080 for a single course of conduct intended to consummate in the commission of the same offense with the same minor or peace officer.
- (3) ***Each day a person knowingly uses a communications system for the purpose of procuring or promoting the use of a minor shall be a separate violation of this section.***
- ~~(4)~~~~(3)~~ The solicitation of a minor through electronic communication under subsection (1) of this section shall be prima facie evidence of the person's intent to commit the offense, and the offense is complete at that point without regard to whether the person met or attempted to meet the minor.
- ~~(5)~~~~(4)~~ This section shall apply to electronic communications originating within or received within the Commonwealth.
- ~~(6)~~~~(5)~~ ***Except as provided in subsection (7) of this section,*** a violation of this section is punishable as a Class D felony.
- (7) ***A violation of this section is punishable as a Class C felony if:***
- (a) ***The minor or perceived minor procured or promoted is under twelve (12) years old;***
- (b) ***The offender is a registrant; or***
- (c) ***A person enters into the Commonwealth from another jurisdiction for the purpose of procuring or promoting the use of a minor or perceived minor in violation of this section.***

Signed by Governor March 23, 2021.