

CHAPTER 135**(SB 52)**

AN ACT relating to sexual offenses by peace officers.

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) 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) Being at least ten (10) years older than a person who is sixteen (16) or seventeen (17) years old at the time of sexual intercourse, he or she engages in sexual intercourse with the person;
 - (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;
 - (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~~
 - (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; *or*
 - (f) ***Being a peace officer, while serving in his or her official capacity, he or she subjects a person who the officer:***
 - 1. Arrested, held in custody, or investigated for commission of a traffic or criminal offense; or***
 - 2. Knew or should have known was under arrest, held in custody, or being investigated for commission of a traffic or criminal offense;******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) 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;
 - (b) Being at least ten (10) years older than a person who is sixteen (16) or seventeen (17) years old at the time of deviate sexual intercourse, he or she engages in deviate sexual intercourse with the person;
 - (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;
 - (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~~
 - (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; *or*

(f) ***Being a peace officer, while serving in his or her official capacity, he or she subjects a person who the officer:***

1. ***Arrested, held in custody, or investigated for commission of a traffic or criminal offense; or***
2. ***Knew or should have known was under arrest, held in custody, or being investigated for commission of a traffic or criminal offense;***

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 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) 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; *or*

(c) ***Being a peace officer, while serving in his or her official capacity, he or she subjects a person who the officer:***

1. ***Arrested, held in custody, or investigated for commission of a traffic or criminal offense; or***
2. ***Knew or should have known was under arrest, held in custody, or being investigated for commission of a traffic or criminal offense;***

to sexual contact.

(2) In any prosecution under subsection (1)(a) 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 Governor March 25, 2021.