

1 AN ACT relating to crimes and administration of punishments.

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

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 196 IS CREATED TO  
4 READ AS FOLLOWS:

5 *(1) No inmate housed in a jail, penitentiary, or local or state correctional or*  
6 *detention facility, residential center, or reentry center who is known to be*  
7 *pregnant or in the immediate postpartum period shall be placed in restrictive*  
8 *housing, in administrative segregation, or in solitary confinement for medical*  
9 *observation. This prohibition shall not include placing an inmate in a cell or*  
10 *hospital room by herself.*

11 *(2) As used in this section, "immediate postpartum period" means the six (6) week*  
12 *period following childbirth by the inmate. However, the six (6) week period may*  
13 *be extended by a physician should the inmate experience birth-related*  
14 *complications.*

15 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 196 IS CREATED TO  
16 READ AS FOLLOWS:

17 *For any inmate housed in a jail, penitentiary, or local or state correctional or detention*  
18 *facility, residential center, or reentry center who is known to be pregnant:*

19 *(1) The facility shall provide the inmate notice of, access to, and a written application*  
20 *for community-based programs serving pregnant, birthing, or lactating inmates.*  
21 *At a minimum, the notice shall contain how to qualify for the programs as well as*  
22 *timelines for applying and the process for appealing a denial. If a community-*  
23 *based program accepts the inmate but is denied access to the facility, the facility*  
24 *shall provide to the inmate, in writing within fifteen (15) days of the request, the*  
25 *safety or security concerns for the inmate, infant, public, or staff that led to the*  
26 *denial.*

27 *(2) The facility shall refer the inmate to a social worker who shall:*

- 1        (a) Discuss with the inmate the options available for feeding, placement, and  
 2        care of the infant, including the benefits of lactation;  
 3        (b) Provide the inmate access to a phone to contact family regarding placement  
 4        of the infant; and  
 5        (c) Oversee the placement of the infant.  
 6        (3) For seventy-two (72) hours after the birth, the facility shall ensure that:  
 7        (a) The infant is allowed to remain with the inmate, unless a medical  
 8        professional determines that doing so would pose a health or safety risk to  
 9        the inmate or infant; and  
 10       (b) The inmate has access to nutritional or hygiene-related products necessary  
 11       to care for the infant, including but not limited to diapers. Such products  
 12       shall be provided free of charge to indigent inmates.

13       ➔ Section 3. KRS 439.3110 is amended to read as follows:

- 14       (1) As used in this section:  
 15       (a) "Eligible person" means a person who is:  
 16            1. A pregnant woman;  
 17            2. Reasonably believed by a court or the department to have a substance  
 18            use disorder;  
 19            3. Not charged or convicted of an offense that would qualify the person as  
 20            a violent offender under KRS 439.3401; and  
 21            4. Not charged or convicted of an offense under KRS Chapter 510, KRS  
 22            529.100 involving commercial sexual activity, KRS 530.020,  
 23            530.064(1)(a), 531.310, or 531.320; and  
 24       (b) "Pregnancy release conditions" means conditions of release set by a court or  
 25       the department for eligible persons which shall include:  
 26            1. Completing inpatient residential treatment for substance use disorders;  
 27            2. Not being charged with a new local, state, or federal misdemeanor or

- 1                   felony offense;
- 2                   3. If not yet sentenced, appearing for all required court appearances;
- 3                   4. If not yet sentenced, avoiding all contact with any alleged victim and any
- 4                   potential witness who may testify concerning the charge, unless or until
- 5                   the court removes this condition; and
- 6                   5. If not yet sentenced, maintaining a current address with the court.

7 (2) Except as provided in subsection (3) of this section and notwithstanding any other

8 statute to the contrary, when an eligible person is charged or convicted of any

9 violation of KRS Chapter 218A, the person shall be released from custody upon her

10 own recognizance so long as the person successfully meets the pregnancy release

11 conditions. If the pregnancy release conditions are violated, the eligible person shall

12 be returned to custody to await sentencing or to serve the sentence for the original

13 conviction under KRS Chapter 218A as well as the sentence for any subsequent

14 charges or convictions, if any.

15 ~~[(3) If an eligible person is housed in a jail that provides treatment for substance use~~

16 ~~disorders or in a jail that transports prisoners for treatment, this section shall not~~

17 ~~apply.]~~

18 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 196 IS CREATED TO

19 READ AS FOLLOWS:

20 **(1) The department shall provide an annual restricted housing report to the**

21 **Legislative Research Commission and the Judiciary Committee by January 31.**

22 **The report shall include for the preceding year:**

23 **(a) The age, gender, and ethnicity of every inmate placed in restricted housing;**

24 **(b) The reason each inmate was placed in restricted housing; and**

25 **(c) The dates each inmate was placed in and released from restricted housing.**

26 **(2) The annual restricted housing report shall be published on the Legislative**

27 **Research Commission's Web site.**

1           ➔Section 5. KRS 510.060 is amended to read as follows:

2       (1) A person is guilty of rape in the third degree when:

3           (a) Being twenty-one (21) years old or more, he or she engages in sexual  
4           intercourse with another person less than sixteen (16) years old;

5           (b) Being at least ten (10) years older than a person who is sixteen (16) or  
6           seventeen (17) years old at the time of sexual intercourse, he or she engages in  
7           sexual intercourse with the person;

8           (c) Being twenty-one (21) years old or more, he or she engages in sexual  
9           intercourse with another person less than eighteen (18) years old and for  
10          whom he or she provides a foster family home as defined in KRS 600.020;

11          (d) Being a person in a position of authority or position of special trust, as defined  
12          in KRS 532.045, he or she engages in sexual intercourse with a minor under  
13          eighteen (18) years old with whom he or she comes into contact as a result of  
14          that position;~~or~~

15          (e) Being a jailer, or an employee, contractor, vendor, or volunteer of the  
16          Department of Corrections, Department of Juvenile Justice, or a detention  
17          facility as defined in KRS 520.010, or of an entity under contract with either  
18          department or a detention facility for the custody, supervision, evaluation, or  
19          treatment of offenders, he or she ***engages in sexual intercourse with***~~[subjects]~~  
20          a person who he or she knows is incarcerated, supervised, evaluated, or treated  
21          by the Department of Corrections, Department of Juvenile Justice, detention  
22          facility, or contracting entity~~[-, to sexual intercourse];~~ ***or***

23          ***(f) Being a peace officer, he or she engages in sexual intercourse with a person***  
24          ***who he or she:***

25               ***1. Was interacting with during the course of a traffic stop or in***  
26               ***connection with a criminal investigation;***

27               ***2. Knew or should have known was supervised, evaluated, or treated by***

1                   the Department of Corrections, Department of Juvenile Justice,  
 2                   detention facility, or by an entity under contract with either  
 3                   department or a detention facility for the supervision, evaluation, or  
 4                   treatment of offenders;

5                   3. Knew or should have known had active warrants;

6                   4. Arrested or otherwise held in custody; or

7                   5. Knew or should have known was under arrest or otherwise being held  
 8                   in custody.

9                   (2) Rape in the third degree is a Class D felony.

10                  ➔Section 6. KRS 510.090 is amended to read as follows:

11                  (1) A person is guilty of sodomy in the third degree when:

12                   (a) Being twenty-one (21) years old or more, he or she engages in deviate sexual  
 13                   intercourse with another person less than sixteen (16) years old;

14                   (b) Being at least ten (10) years older than a person who is sixteen (16) or  
 15                   seventeen (17) years old at the time of deviate sexual intercourse, he or she  
 16                   engages in deviate sexual intercourse with the person;

17                   (c) Being twenty-one (21) years old or more, he or she engages in deviate sexual  
 18                   intercourse with another person less than eighteen (18) years old and for  
 19                   whom he or she provides a foster family home as defined in KRS 600.020;

20                   (d) Being a person in a position of authority or position of special trust, as defined  
 21                   in KRS 532.045, he or she engages in deviate sexual intercourse with a minor  
 22                   less than eighteen (18) years old with whom he or she comes into contact as a  
 23                   result of that position;~~[-or]~~

24                   (e) Being a jailer, or an employee, contractor, vendor, or volunteer of the  
 25                   Department of Corrections, Department of Juvenile Justice, or a detention  
 26                   facility as defined in KRS 520.010, or of an entity under contract with either  
 27                   department or a detention facility for the custody, supervision, evaluation, or

1 treatment of offenders, he or she engages in deviate sexual intercourse  
 2 with~~[subjects]~~ a person who he or she knows is incarcerated, supervised,  
 3 evaluated, or treated by the Department of Corrections, Department of  
 4 Juvenile Justice, detention facility, or contracting entity~~[-, to deviate sexual~~  
 5 ~~intercourse];~~ or

6 (f) Being a peace officer, he or she engages in deviate sexual intercourse with a  
 7 person who he or she:

8 1. Was interacting with during the course of a traffic stop or in  
 9 connection with a criminal investigation;

10 2. Knew or should have known was supervised, evaluated, or treated by  
 11 the Department of Corrections, Department of Juvenile Justice,  
 12 detention facility, or by an entity under contract with either  
 13 department or a detention facility for the supervision, evaluation, or  
 14 treatment of offenders;

15 3. Knew or should have known had active warrants;

16 4. Arrested or otherwise held in custody; or

17 5. Knew or should have known was under arrest or otherwise being held  
 18 in custody.

19 (2) Sodomy in the third degree is a Class D felony.

20 ➔Section 7. KRS 510.120 is amended to read as follows:

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

22 (a) He or she is at least eighteen (18) years old but less than twenty-one (21) years  
 23 old and subjects another person who is less than sixteen (16) years old to  
 24 sexual contact;~~[-or]~~

25 (b) Being a jailer, or an employee, contractor, vendor, or volunteer of the  
 26 Department of Corrections, Department of Juvenile Justice, or a detention  
 27 facility as defined in KRS 520.010, or of an entity under contract with either

1 department or a detention facility for the custody, supervision, evaluation, or  
 2 treatment of offenders, he or she **engages in sexual contact with**~~[subjects]~~ a  
 3 person who is at least eighteen (18) years old and who he or she knows is  
 4 incarcerated, supervised, evaluated, or treated by the Department of  
 5 Corrections, Department of Juvenile Justice, detention facility, or contracting  
 6 entity~~[, to sexual contact]~~; **or**

7 **(c) Being a peace officer, he or she engages in sexual contact with a person**  
 8 **who is at least eighteen (18) years old and who he or she:**

9 **1. Was interacting with during the course of a traffic stop or in**  
 10 **connection with a criminal investigation;**

11 **2. Knew or should have known was supervised, evaluated, or treated by**  
 12 **the Department of Corrections, Department of Juvenile Justice,**  
 13 **detention facility, or by an entity under contract with either**  
 14 **department or a detention facility for the supervision, evaluation, or**  
 15 **treatment of offenders;**

16 **3. Knew or should have known had active warrants;**

17 **4. Arrested or otherwise held in custody; or**

18 **5. Knew or should have known was under arrest or otherwise being held**  
 19 **in custody.**

20 (2) In any prosecution under subsection (1)(a) of this section, it is a defense that:

21 (a) The other person's lack of consent was due solely to incapacity to consent by  
 22 reason of being less than sixteen (16) years old; and

23 (b) The other person was at least fourteen (14) years old; and

24 (c) The actor was less than five (5) years older than the other person.

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