

1 AN ACT relating to sexual offenses against children.

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

3 ➔Section 1. KRS 510.040 is amended to read as follows:

- 4 (1) A person is guilty of rape in the first degree when:
- 5 (a) He *or she* engages in sexual intercourse with another person by forcible
- 6 compulsion; or
- 7 (b) He *or she* engages in sexual intercourse with another person who is incapable
- 8 of consent because he *or she*:
- 9 1. Is physically helpless; or
- 10 2. Is less than twelve (12) years old.

11 (2) Rape in the first degree is a Class B felony unless the victim:

12 ***(a) Receives a serious physical injury, in which case it is a Class A felony; or***

13 ***(b) Is under twelve (12) years old, in which case it is a capital offense*** ~~is under~~

14 ~~twelve (12) years old or receives a serious physical injury in which case it is a~~

15 ~~Class A felony~~.

16 ➔Section 2. KRS 510.070 is amended to read as follows:

17 (1) A person is guilty of sodomy in the first degree when:

- 18 (a) He *or she* engages in deviate sexual intercourse with another person by
- 19 forcible compulsion; or
- 20 (b) He *or she* engages in deviate sexual intercourse with another person who is
- 21 incapable of consent because he *or she*:
- 22 1. Is physically helpless; or
- 23 2. Is less than twelve (12) years old.

24 (2) Sodomy in the first degree is a Class B felony unless the victim:

25 ***(a) Receives a serious physical injury, in which case it is a Class A felony; or***

26 ***(b) Is under twelve (12) years old, in which case it is a capital offense*** ~~is under~~

27 ~~twelve (12) years old or receives a serious physical injury in which case it is a~~

1 ~~Class A felony].~~

2 ➔Section 3. KRS 510.110 is amended to read as follows:

- 3 (1) A person is guilty of sexual abuse in the first degree when:
- 4 (a) He or she subjects another person to sexual contact by forcible compulsion; or
- 5 (b) He or she subjects another person to sexual contact who is incapable of
- 6 consent because he or she:
- 7 1. Is physically helpless;
- 8 2. Is less than twelve (12) years old;
- 9 3. Is mentally incapacitated; or
- 10 4. Is an individual with an intellectual disability; or
- 11 (c) Being twenty-one (21) years old or more, he or she:
- 12 1. Subjects another person who is less than sixteen (16) years old to sexual
- 13 contact;
- 14 2. Engages in masturbation in the presence of another person who is less
- 15 than sixteen (16) years old and knows or has reason to know the other
- 16 person is present; or
- 17 3. Engages in masturbation while using the internet, telephone, or other
- 18 electronic communication device while communicating with a minor
- 19 who the person knows is less than sixteen (16) years old, and the minor
- 20 can see or hear the person masturbate; or
- 21 (d) Being a person in a position of authority or position of special trust, as defined
- 22 in KRS 532.045, he or she, regardless of his or her age, subjects a minor who
- 23 is less than eighteen (18) years old, with whom he or she comes into contact
- 24 as a result of that position, to sexual contact or engages in masturbation in the
- 25 presence of the minor and knows or has reason to know the minor is present
- 26 or engages in masturbation while using the internet, telephone, or other
- 27 electronic communication device while communicating with a minor who the

1 person knows is less than sixteen (16) years old, and the minor can see or hear
2 the person masturbate.

3 (2) Sexual abuse in the first degree is a Class D felony, unless the victim is less than
4 twelve (12) years old, in which case the offense shall be a capital offense~~[Class C~~
5 ~~felony]~~.

6 ➔Section 4. KRS 532.025 is amended to read as follows:

7 (1) (a) Upon conviction of a defendant in cases where the death penalty may be
8 imposed, a hearing shall be conducted. In such hearing, the judge shall hear
9 additional evidence in extenuation, mitigation, and aggravation of
10 punishment, including the record of any prior criminal convictions and pleas
11 of guilty or pleas of nolo contendere of the defendant, or the absence of any
12 prior conviction and pleas; provided, however, that only such evidence in
13 aggravation as the state has made known to the defendant prior to his or her
14 trial shall be admissible. Subject to the Kentucky Rules of Evidence, juvenile
15 court records of adjudications of guilt of a child for an offense that would be a
16 felony if committed by an adult shall be admissible in court at any time the
17 child is tried as an adult, or after the child becomes an adult, at any
18 subsequent criminal trial relating to that same person. Juvenile court records
19 made available pursuant to this section may be used for impeachment
20 purposes during a criminal trial and may be used during the sentencing phase
21 of a criminal trial; however, the fact that a juvenile has been adjudicated
22 delinquent of an offense that would be a felony if the child had been an adult
23 shall not be used in finding the child to be a persistent felony offender based
24 upon that adjudication. Release of the child's treatment, medical, mental, or
25 psychological records is prohibited unless presented as evidence in Circuit
26 Court. Release of any records resulting from the child's prior abuse and
27 neglect under Title IV-E or IV-B of the Federal Social Security Act is also

1 prohibited. The judge shall also hear argument by the defendant or his or her
2 counsel and the prosecuting attorney, as provided by law, regarding the
3 punishment to be imposed. The prosecuting attorney shall open and the
4 defendant shall conclude the argument. In cases in which the death penalty
5 may be imposed, the judge when sitting without a jury shall follow the
6 additional procedure provided in subsection (2) of this section. Upon the
7 conclusion of the evidence and arguments, the judge shall impose the sentence
8 or shall recess the trial for the purpose of taking the sentence within the limits
9 prescribed by law. If the trial court is reversed on appeal because of error only
10 in the presentence hearing, the new trial which may be ordered shall apply
11 only to the issue of punishment.

12 (b) In all cases in which the death penalty may be imposed and which are tried by
13 a jury, upon a return of a verdict of guilty by the jury, the court shall resume
14 the trial and conduct a presentence hearing before the jury. Such hearing shall
15 be conducted in the same manner as presentence hearings conducted before
16 the judge as provided in paragraph (a) of this subsection, including the record
17 of any prior criminal convictions and pleas of guilty or pleas of nolo
18 contendere of the defendant. Upon the conclusion of the evidence and
19 arguments, the judge shall give the jury appropriate instructions, and the jury
20 shall retire to determine whether any mitigating or aggravating circumstances,
21 as defined in subsection (2) of this section, exist and to recommend a sentence
22 for the defendant. Upon the findings of the jury, the judge shall fix a sentence
23 within the limits prescribed by law.

24 (2) In all cases of offenses for which the death penalty may be authorized, the judge
25 shall consider, or ~~he or she shall~~ include in his or her instructions to the jury for it
26 to consider, any mitigating circumstances or aggravating circumstances otherwise
27 authorized by law and any of the following statutory aggravating or mitigating

1 circumstances which may be supported by the evidence:

2 (a) Aggravating circumstances:

- 3 1. The offense of murder or kidnapping was committed by a person with a
4 prior record of conviction for a capital offense, or the offense of murder
5 was committed by a person who has a substantial history of serious
6 assaultive criminal convictions;
- 7 2. The offense of murder or kidnapping was committed while the offender
8 was engaged in the commission of arson in the first degree, robbery in
9 the first degree, burglary in the first degree, rape in the first degree, or
10 sodomy in the first degree;
- 11 3. The offender by his or her act of murder, armed robbery, or kidnapping
12 knowingly created a great risk of death to more than one (1) person in a
13 public place by means of a weapon of mass destruction, weapon, or
14 other device which would normally be hazardous to the lives of more
15 than one (1) person;
- 16 4. The offender committed the offense of murder for himself, herself, or
17 another, for the purpose of receiving money or any other thing of
18 monetary value, or for other profit;
- 19 5. The offense of murder was committed by a person who was a prisoner
20 and the victim was a prison employee engaged at the time of the act in
21 the performance of his or her duties;
- 22 6. The offender's act or acts of killing were intentional and resulted in
23 multiple deaths;
- 24 7. The offender's act of killing was intentional and the victim was a state or
25 local public official or police officer, sheriff, or deputy sheriff engaged
26 at the time of the act in the lawful performance of his or her duties;
- 27 8. The offender murdered the victim when an emergency protective order

1 or a domestic violence order was in effect, or when any other order
 2 designed to protect the victim from the offender, such as an order issued
 3 as a condition of a bond, conditional release, probation, parole, or
 4 pretrial diversion, was in effect;~~and~~

5 9. The offender's act of killing was intentional and resulted in the death of
 6 a child under twelve (12) years old; **and**

7 **10. The offense of rape in the first degree, sodomy in the first degree, or**
 8 **sexual abuse in the first degree was committed against a child under**
 9 **twelve (12) years old.**

10 (b) Mitigating circumstances:

- 11 1. The defendant has no significant history of prior criminal activity;
- 12 2. The capital offense was committed while the defendant was under the
 13 influence of extreme mental or emotional disturbance even though the
 14 influence of extreme mental or emotional disturbance is not sufficient to
 15 constitute a defense to the crime;
- 16 3. The victim was a participant in the defendant's criminal conduct or
 17 consented to the criminal act;
- 18 4. The capital offense was committed under circumstances which the
 19 defendant believed to provide a moral justification or extenuation for his
 20 or her conduct even though the circumstances which the defendant
 21 believed to provide a moral justification or extenuation for his or her
 22 conduct are not sufficient to constitute a defense to the crime;
- 23 5. The defendant was an accomplice in a capital offense committed by
 24 another person and his or her participation in the capital offense was
 25 relatively minor;
- 26 6. The defendant acted under duress or under the domination of another
 27 person even though the duress or the domination of another person is not

- 1 sufficient to constitute a defense to the crime;
- 2 7. At the time of the capital offense, the capacity of the defendant to
- 3 appreciate the criminality of his or her conduct to the requirements of
- 4 law was impaired as a result of mental illness or an intellectual disability
- 5 or intoxication even though the impairment of the capacity of the
- 6 defendant to appreciate the criminality of his or her conduct or to
- 7 conform the conduct to the requirements of law is insufficient to
- 8 constitute a defense to the crime; and
- 9 8. The youth of the defendant at the time of the crime.
- 10 (3) The instructions as determined by the trial judge to be warranted by the evidence or
- 11 as required by KRS 532.030(4) shall be given in charge and in writing to the jury
- 12 for its deliberation. The jury, if its verdict be a recommendation of death, or
- 13 imprisonment for life without benefit of probation or parole, or imprisonment for
- 14 life without benefit of probation or parole until the defendant has served a minimum
- 15 of twenty-five (25) years of his or her sentence, shall designate in writing, signed by
- 16 the foreman of the jury, the aggravating circumstance or circumstances which it
- 17 found beyond a reasonable doubt. In nonjury cases, the judge shall make such
- 18 designation. In all cases unless at least one (1) of the statutory aggravating
- 19 circumstances enumerated in subsection (2) of this section is so found, the death
- 20 penalty, or imprisonment for life without benefit of probation or parole, or the
- 21 sentence to imprisonment for life without benefit of probation or parole until the
- 22 defendant has served a minimum of twenty-five (25) years of his or her sentence,
- 23 shall not be imposed.