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DEFEND

1. You have the right to remain silent.
2. Anything you say can and will be used against you in court.
3. You have the right to an attorney before making any statement and may have your attorney with you during questioning.
4. If you cannot afford an attorney and desire one, the court will appoint one for you.
5. You may stop the questioning at any time by refusing to answer further or by requesting to consult with your attorney.

WAIVER

In order to secure a waiver, the following questions should be asked and an affirmative answer secured to each.

1. Do you understand each of these rights I have explained to you?
2. With these rights in mind, do you wish to talk to us now?

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KENTUCKY CRIMINAL LAW MANUAL



PROVIDED BY
BUREAU OF TRAINING
KENTUCKY DEPARTMENT OF JUSTICE

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INTRODUCTION

Many years ago Major William G. Kiefer of the Louisville Division of Police published a small volume containing Kentucky's criminal law and the elements of offenses. When the supply ran out it became evident that this was one of the most valuable tools for policemen throughout the Commonwealth. By now the book has become a museum piece, and time and changing legislation have robbed it of its usefulness.

Ever since we began training law enforcement officers they have been asking for a small manual — like Major Kiefer's book — that they could carry in a pocket and refer to on every necessary occasion. Kentucky's new Penal Code has offered an excellent opportunity to provide a volume like the one Major Kiefer provided so long ago. The Bureau of Training published the two-volume Penal Code Notebook, in April, 1974 — the same week that the Penal Code was passed by the General Assembly. It has proved to be an excellent training tool, and will continue to be valuable as a desk reference book. It cannot be purchased commercially but is very much in demand by all those who deal with the criminal law.

The Bureau of Training hopes that this manual will be equally helpful to you. The first printing of 5,000 copies was exhausted immediately. This second edition is being sold at campus bookstores throughout Kentucky at a price sufficient to cover the cost of printing and distribution. It must be emphasized that certain portions of the manual represent a summary of the law or the views of the authors. Concerning these portions, the reader should also refer to the KRS for the specific language of the statutes themselves.

Without the knowledge, experience, and dedication of Guy A. Bayes, Director of the Division of Judicial Training, this manual would not have been possible. Grateful acknowledgement is also extended to Dennis Mills, Rita Stratton, Vicki Shumard, and Tamara Leach of the Division of Judicial Training Staff; to Director Kay Alley, Judy Woods, Bill Thurman, and Carol Smith of the Kentucky Legal Information Service; and to Director William J.

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Robert Clark Stone

Commissioner
Bureau of Training
Kentucky Department of Justice

NOTE ON THE KENTUCKY LEGAL INFORMATION SERVICE

The Kentucky Legal Information Service is a research service within the Bureau of Training for all elements of the State Criminal Justice System. KLIS makes the criminal law research facilities of the University of Kentucky Law Library readily available to judges, prosecutors, other law enforcement officials, and attorneys throughout the state. The primary services include:

- (1) answering of criminal law reference questions;
- (2) supplying of photocopies of cases, statutes and other legal material (free to prosecutors, judges, law enforcement officials and public defenders);
- (3) loaning of books, reports, pamphlets, and tape cassettes;
- (4) preparation of bibliographies.

The Service maintains a toll-free line 24 hours per day to take incoming calls. Telephone requests during night and weekend hours are recorded and receive action at the earliest opportunity. Phone numbers of staff members are provided by taped message for those needing information promptly.

You may dial the Service toll-free from anywhere in Kentucky at 1-800-432-9529. When calling within Lexington, dial 258-5931.

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KIDNAPPING AND RELATED OFFENSES

relative of the victim in which case it is a Class misdemeanor.

Elements:

1. Defendant intentionally
2. Unlawfully takes, entices or keeps from lawful custody
3. a. an incompetent or
b. other person entrusted by law to the custody of another person or institution.
4. Knowing he has no right to do so.

CLASS D FELONY

CLASS A MISDEMEANOR If Defendant Voluntarily Person or if Defendant is a Relative.

KEY WORDS: Intentionally, unlawfully, relative

KRS 509.080 Criminal Coercion

- (1) A person is guilty of criminal coercion when with intent to compel another person to engage in or refrain from conduct, he unlawfully threatens to:
 - (a) Commit any crime; or
 - (b) Accuse anyone of a crime; or
 - (c) Expose any secret tending to subject any person to hatred, contempt or ridicule or to impair another's credit or business repute; or
 - (d) Take or withhold action as an official or cause an official to take or withhold action.
- (2) Defendant may prove in exculpation of criminal coercion committed under subsection (1)(b), (c) or (d) that he believed the accusation or secret to be true or the proposed official action justified and that his sole purpose was to compel or induce the victim to desist from misbehavior or to make good a wrong done by him.

Elements:

1. Defendant unlawfully,

KIDNAPPING AND RELATED OFFENSES

2. With intent to force another to take action or to stop conduct,
3. Threatens:
 - a. to commit a crime, or
 - b. to expose embarrassing or credit-damaging secret, or
 - c. to cause or withhold official action.

KEY WORDS: Unlawfully

NOTE: The Code passed in 1974 omits any mention of a criminal penalty for criminal coercion. As a result, the language on the crime does exist in the law but it is doubtful whether a person may legally be arrested and convicted for this offense.

SEXUAL OFFENSES

KRS 510.010 Definitions

KRS 510.020 Lack of Consent

- (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; or
 - (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 is:
 - (a) Less than 16 years old; or

SEXUAL OFFENSES

- (b) Mentally defective; or
- (c) Mentally incapacitated; or
- (d) Physically helpless.

KRS 510.030 Defenses

KRS 510.040 Rape in the First Degree

- (1) A person is guilty of rape in the first degree when:
- (a) He engages in sexual intercourse with another person by forcible compulsion; or
 - (b) He engages in sexual intercourse with another person who is incapable of consent because he:
 - (i) Is physically helpless; or
 - (ii) Is less than twelve years old.

- (2) Rape in the first degree is a Class B felony unless the victim is under twelve years old or receives a serious physical injury in which case it is a Class A felony.

Elements:

1. Defendant engages in
2. Sexual intercourse
3. a. by forcible compulsion or
 - b. when victim is incapable of consent because:
 - (i) physically helpless or
 - (ii) less than 12 years old.

CLASS B FELONY

CLASS A FELONY when victim is less than 12 years old or receives serious physical injury.

KEY WORDS: Sexual intercourse, forcible compulsion, incapable of consent, physically helpless, serious physical injury.

SEXUAL OFFENSES

KRS 510.050 Rape in the Second Degree

- (1) A person is guilty of rape in the second degree when, being eighteen years old or more, he engages in sexual intercourse with another person less than fourteen years old.
- (2) Rape in the second degree is a Class C felony.

Elements:

1. Defendant is 18 years old or more
2. Engages in sexual intercourse
3. With person less than 14 years old.

CLASS C FELONY

KEY WORDS: Sexual Intercourse

KRS 510.060 Rape in the Third Degree

- (1) A person is guilty of rape in the third degree when:
- (a) He engages in sexual intercourse with another person who is incapable of consent because he is mentally defective or mentally incapacitated; or
 - (b) Being twenty-one years old or more, he engages in sexual intercourse with another person less than sixteen years old.
- (2) Rape in the third degree is a Class D felony.

Elements:

1. Defendant engages in
2. Sexual intercourse
3. With another person incapable of consent because he is
 - a. mentally defective or
 - b. mentally incapacitated.

OR

1. Defendant is 18 years old or more,
2. Engages in sexual intercourse,
3. With another person less than 16 years old.

SEXUAL OFFENSES

CLASS D FELONY

KEY WORDS: Sexual intercourse, incapable of consent, mentally defective, mentally incapacitated.

KRS 510.070 Sodomy in the First Degree

- (1) A person is guilty of sodomy in the first degree when:
- (a) He engages in deviate sexual intercourse with another person by forcible compulsion; or
 - (b) He engages in deviate sexual intercourse with another person who is incapable of consent because he:
 - (i) Is physically helpless; or
 - (ii) Is less than twelve years old.
- (2) Sodomy in the first degree is a Class B felony unless the victim is under twelve years old or receives a serious physical injury in which case it is a Class A felony.

Elements:

1. Defendant engages in
2. Deviate sexual intercourse
3. With another person
4. By:
 - a. forcible compulsion or
 - b. person incapable of consent because
 1. he is physically helpless or
 2. he is less than 12 years old.

CLASS B FELONY

CLASS A FELONY if victim is less than 12 years old or receives a serious physical injury.

KEY WORDS: Deviate sexual intercourse, forcible compulsion, incapable of consent, physically helpless, serious physical injury.

SEXUAL OFFENSES

KRS 510.080 Sodomy in the Second Degree

- (1) A person is guilty of sodomy in the second degree when, being eighteen years old or more, he engages in deviate sexual intercourse with another person less than fourteen years old.
- (2) Sodomy in the second degree is a Class C felony.

Elements:

1. Defendant being 18 years old or older engages in
2. Deviate sexual intercourse and
3. The victim is less than 14 years old.

CLASS C FELONY

KEY WORDS: Deviate sexual intercourse

KRS 510.090 Sodomy in the Third Degree

- (1) A person is guilty of sodomy in the third degree when:
- (a) He engages in deviate sexual intercourse with another person who is incapable of consent because he is mentally defective or mentally incapacitated; or
 - (b) Being twenty-one years old or more, he engages in deviate sexual intercourse with another person less than sixteen years old.
- (2) Sodomy in the third degree is a Class D felony.

Elements:

1. Defendant engages in
2. Deviate sexual intercourse
3. With another person incapable of consent because:
 - a. he is mentally defective or
 - b. he is mentally incapacitated.

OR

1. Defendant being 21 years old or older engages in
2. Deviate sexual intercourse with

SEXUAL OFFENSES

3. Another person less than 16 years old.

CLASS D FELONY

KEY WORDS: Deviate sexual intercourse, incapable of consent, mentally defective, mentally incapacitated

KRS 510.100 Sodomy in the Fourth Degree

- (1) A person is guilty of sodomy in the fourth degree when he engages in deviate sexual intercourse with another person of the same sex.
- (2) Notwithstanding the provisions of KRS 510.020, consent of the other person shall not be a defense under this section, nor shall lack of consent of the other person be an element of this offense.
- (3) Sodomy in the fourth degree is a Class A misdemeanor.

Elements:

1. Defendant engages in
2. Deviate sexual intercourse
3. With another person of same sex.

CLASS A MISDEMEANOR

KEY WORDS: Deviate sexual intercourse

KRS 510.110 Sexual Abuse in the First Degree

- (1) A person is guilty of sexual abuse in the first degree when:
 - (a) He subjects another person to sexual contact by forcible compulsion; or
 - (b) He subjects another person to sexual contact who is incapable of consent because he:
 - (i) Is physically helpless; or
 - (ii) Is less than twelve years old.
- (2) Sexual abuse in the first degree is a Class D felony.

SEXUAL OFFENSES

Elements:

1. Defendant subjects
2. Another person
3. To sexual contact by
 - a. forcible compulsion or
 - b. other person is incapable of consent because
 - (i) he is physically helpless
 - (ii) he is less than 12 years old.

CLASS D FELONY

KEY WORDS: Sexual contact, forcible compulsion, incapable of consent, physically helpless

KRS 510.120 Sexual Abuse in the Second Degree

- (1) A person is guilty of sexual abuse in the second degree when:
 - (a) He subjects another person to sexual contact who is incapable of consent because he is mentally defective or mentally incapacitated; or
 - (b) He subjects another person who is less than fourteen years old to sexual contact.
- (2) Sexual Abuse in the second degree is a Class A misdemeanor.

Elements:

1. Defendant subjects
2. Another person
3. To sexual contact and
4. a. the other person is incapable of consent because
 - (i) he is mentally defective
 - (ii) he is mentally incapacitated or
- b. the other person is less than 14 years old.

CLASS A MISDEMEANOR

KEY WORDS: Sexual contact, incapable of consent, mentally defective, mentally incapacitated

SEXUAL OFFENSES

KRS 510.130 Sexual Abuse in the Third Degree

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

(a) He subjects another person to sexual contact without the latter's consent.

(b) In any prosecution under this section, it is a defense that:

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

(ii) The other person was at least fourteen years old; and

(iii) The actor was less than five years older than the other person.

(2) Sexual abuse in the third degree is a Class B misdemeanor.

Elements:

1. Defendant subjects
2. Another person to sexual contact
3. Without the victim's consent.

CLASS B MISDEMEANOR

KEY WORDS: Sexual contact

KRS 510.140 Sexual Misconduct

(1) A person is guilty of sexual misconduct when he engages in sexual intercourse or deviate sexual intercourse with another person without the latter's consent.

(2) Sexual misconduct is a Class A misdemeanor.

Elements:

1. Defendant engages in
2. a. sexual intercourse or
b. deviate sexual intercourse

SEXUAL OFFENSES

3. With another person without his consent.

CLASS A MISDEMEANOR

KEY WORDS: Sexual intercourse, deviate sexual intercourse

KRS 510.150 Indecent Exposure

(1) A person is guilty of indecent exposure when he intentionally exposes his genitals under circumstances in which he knows or should know his conduct is likely to cause affront or alarm.

(2) Indecent exposure is a Class B misdemeanor.

Elements:

1. Defendant intentionally
2. Exposes his genitals, and
3. He knows or should know conduct is likely to cause affront or alarm.

CLASS B MISDEMEANOR

KEY WORDS: Intentionally, genitals

SEX OFFENSE AGE CHART

Offense	Age of Victim	Age of Defendant
Rape or Sodomy First Degree	Any age if by force	
A Felony	Under 12 or serious physical injury	Any
B Felony	12 or over and no serious physical injury	Any

SEX OFFENSE AGE CHART

Offense	Age of Victim	Age of Defendant
Second Degree C Felony	Under 14	Over 17
Third Degree D Felony	Under 16 (Or any age if mentally incapacitated)	Over 20
Fourth Degree Sodomy Only A Misdemeanor	Any	Any
Sexual Abuse First Degree D Felony	Any age if by force OR Under 12	Any
Second Degree A Misdemeanor	Under 14 (Or any age if mentally incapacitated)	Any
Third Degree B Misdemeanor	14-15	19-20
Sexual Misconduct A Misdemeanor Primarily for . . .	Any 12-15	Any Under 16
Indecent Exposure B Misdemeanor	Any	Any

NOTE: Critical ages were chosen to protect pre-pubescent victims. When a child arrives at the physical capacity to engage in intercourse, there still remains a deficiency in comprehension of the social, psychological, emotional and physical significance of sexuality.

Age 16 was chosen to cover the period of late adolescence when the chief significance of sexual behavior is its contravention of the moral standards of the community.

This age chart is included for the purpose of clarification of the age elements of the offenses.

BURGLARY AND RELATED OFFENSES

KRS 511.010 Definitions

KRS 511.020 Burglary in the First Degree

(1) A person is guilty of burglary in the first degree when he knowingly enters or remains unlawfully in a dwelling with the intent to commit a crime and when:

- (a) In effecting entry or while in the dwelling or in immediate flight therefrom, he or another participant in the offense;
 - (i) Is armed with explosives or a deadly weapon; or
 - (ii) Causes physical injury to any person who is not a participant in the crime; or
 - (iii) Uses or threatens the use of a dangerous instrument against some person who is not a participant in the crime; or
- (b) The entering or remaining occurs at night.

(2) Burglary in the first degree is a Class B felony.

Elements:

1. Defendant knowingly
 2. Enters or remains unlawfully
 3. In a dwelling
 4. With intent to commit a crime and
 5. In entering, while inside or in flight from, either he or another participant
 - a. is armed with deadly weapon or explosive or
 - b. causes physical injury to any person who is not a participant or
 - c. uses or threatens use of dangerous instrument
- OR**
6. Entering or remaining is at night.

CLASS B FELONY

KEY WORDS: Knowingly enters or remains unlawfully,