

Executive Powers Pursuant to KRS 39A

June 4, 2020
Interim Joint Committee on Judiciary

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KRS 39A Overview

- **KRS 39A.010: Legislative Intent**
- **KRS 39A.090: Executive Orders**
 - The Governor may make, amend, and rescind any executive orders as deemed necessary to carry out the provisions of KRS Chapters 39A to 39F.
- **KRS 39A.100: Emergency Powers of Governor and Local Chief Executive Officers**
 - (a) To enforce all laws, and administration regulations relating to disaster and emergency response and to assume direct operational control of all disaster and emergency response forces and activities in the Commonwealth.
 - (b)-(i) To seize property, order persons to disperse, declare curfews, prohibit the sale of goods.
 - (j) Except as prohibited by this section or other law, to perform and exercise other functions, powers, and duties deemed necessary to promote and secure the safety and protection of the civilian population.



KRS 39A Overview

- **KRS 39A.180: Orders and administrative regulations of political subdivisions**
 - All existing laws, ordinances, and administrative regulations inconsistent with the provisions of KRS Chapters 39A to 39F , or any order or administrative regulation issued under the authority [of them], shall be suspended....”
- **KRS 39A.190: Power of arrest for violation of order or administrative regulation**
 - A peace officer....may arrest without a warrant any person violating or attempting to violate in the officer’s presence any order or administrative regulation made pursuant to this chapter, or KRS 39B, 39C, 39D, 39E, or 39F.
- **KRS 39A.990: Penalty**
 - Any person violating any provision of this chapter or any administrative regulation or order promulgated pursuant to this chapter for which another penalty is not specified shall be guilty of a Class A misdemeanor.



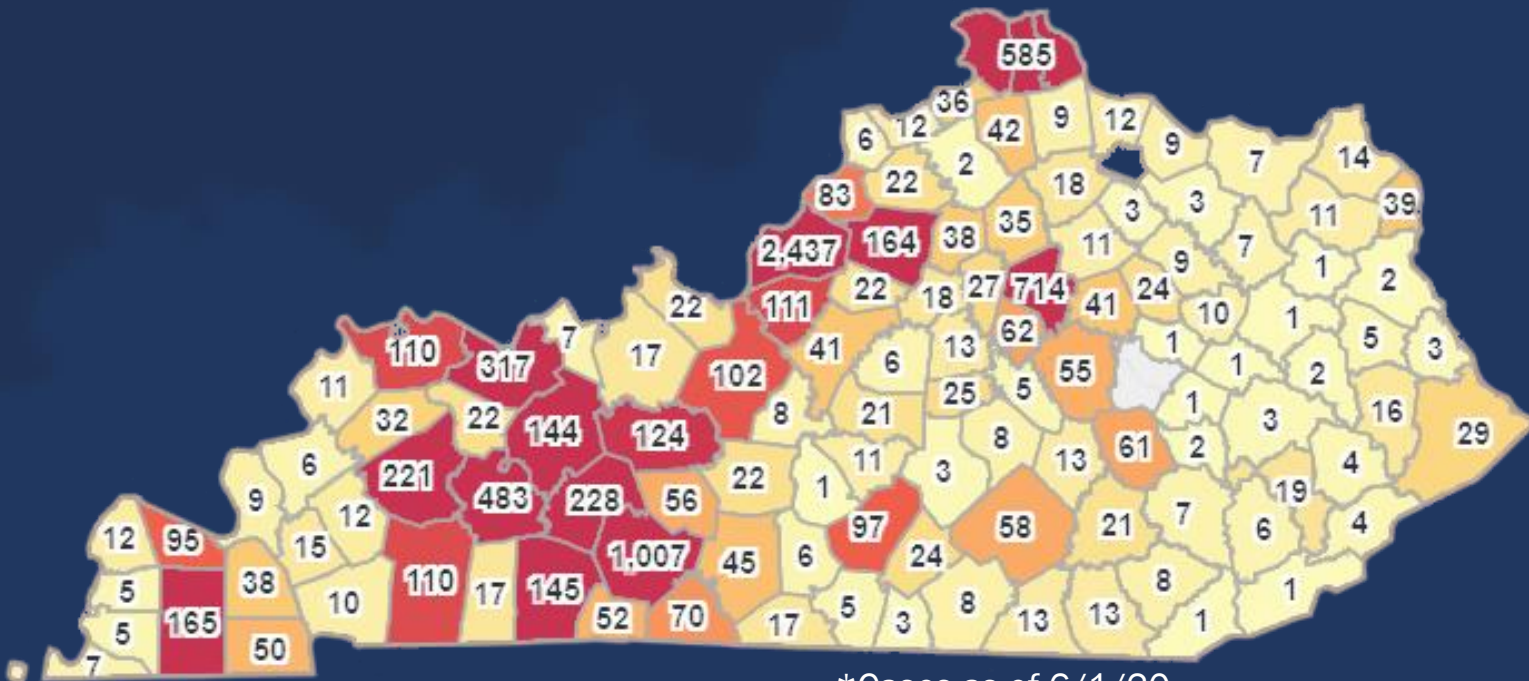
KRS 39A During COVID-19 Pandemic

- State of emergency unprecedented in scope
- Suspended statutes and regulations without Legislative oversight
- Closed “non-essential” businesses indefinitely without due process
 - Nearly 40 percent of the workforce forced to apply for unemployment
 - Highest unemployment in the nation
- Banned faith-based gatherings
- Banned out of state travel
- Limited public assembly at the Capitol



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COVID-19 Cases



*Cases as of 6/1/20



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Concerns During COVID-19 Pandemic

<u>Topic</u>	<u>Contacts</u>
Reopening Kentucky	897
Liberty Concerns	852
Unemployment	742
Masks	442
Miscellaneous	420
Contract Tracing	379
Absentee Voting	227
Houses of Worship/Faith-Based Gatherings	218
Elective Procedures/EMW Clinic	197
Eviction Concerns	132
COVID Lawsuits	82



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KRS 39A Concerns During COVID-19 Pandemic

- Houses of Worship/Faith-Based Gatherings
 - A pastor of a Jefferson County church expressed his desire to comply with CDC guidelines to protect the physical health of his congregants and to ensure he cares for their essential spiritual needs. He said, “We don’t want to be part of the spread of Coronavirus, rather, our desire is to provide a safe place for our members and members of our community to worship. Our gatherings and worship services are essential to our members. Many have struggled with addictions and need the community of church.”
- Elective Procedures
 - A Henderson County woman stated that Kentuckians deserve the right to receive essential medical care and explained that chiropractic care is essential to her health. She stated, “they are essential to my well-being and overall health. This will also keep KY residents from crossing over the state borders to receive care. It will also help keep our ER departments from being flooded with unnecessary patients, who could just pay a visit to their chiropractor, rather than the ER, which needs to be available for pandemic patients.”



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KRS 39A Concerns During COVID-19 Pandemic

- Elected Officials and Law Enforcement
 - Enforcement of Executive Orders
 - Applicability of Executive Orders and Recommendations
 - Travel ban
 - Local business operations
 - Public Safety and Conditional Commutation of Sentences
 - Regional Health Departments
 - Assistance to Constituents



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KRS 39A Limiting Principles

- Specify exceptions and protections for Constitutional Rights
- Create time limits for emergency orders and renewal requirements
- Limit authority to suspend existing statutes and regulations
- Require comment and appeal process for emergency orders and regulations
- Provide for improved public notice
- Revise statutory scheme for public health emergencies
- Establish effective oversight by General Assembly



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Questions



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