

1 AN ACT relating to firearms.

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

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 237 IS CREATED TO
4 READ AS FOLLOWS:

5 *As used in Sections 1 to 12 of this Act:*

6 *(1) "Dangerous" means:*

7 *(a) An individual poses an imminent risk of personal injury to himself or*
8 *herself or to another individual; or*

9 *(b) It is probable that an individual will present a risk of personal injury to*
10 *himself or herself or another individual in the future, and the individual:*

11 *1. Has a mental illness that may be controlled by medication, and the*
12 *individual has not demonstrated a pattern of voluntarily and*
13 *consistently taking his or her medication while not under supervision;*

14 *or*

15 *2. Is the subject of documented evidence that would give rise to a*
16 *reasonable belief that the individual has a propensity for violent or*
17 *suicidal conduct.*

18 *The fact that an individual has been released from a mental health facility*
19 *or has a mental illness that is currently controlled by medication does not*
20 *establish that the individual is dangerous for purposes of this chapter;*

21 *(2) "Mental illness" has the same meaning as in KRS 504.060;*

22 *(3) "Respondent" means a person from whom the removal of a firearm is sought or*
23 *has been sought under Sections 1 to 12 of this Act; and*

24 *(4) "Responsible third party" means an individual who:*

25 *(a) Does not cohabit with a respondent found to be dangerous in the hearing*
26 *conducted under Section 4 of this Act;*

27 *(b) May lawfully possess a firearm; and*

1 (c) Is willing to enter into a written court agreement to accept the transfer of
2 the firearm as a responsible third party under Section 8 of this Act.

3 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 237 IS CREATED TO
4 READ AS FOLLOWS:

5 (1) A District Court may issue a warrant to search for and seize a firearm in the
6 possession of a respondent who is dangerous if:

7 (a) A law enforcement officer provides the court a sworn affidavit that:

8 1. States why the law enforcement officer believes the respondent is
9 dangerous and in possession of a firearm;

10 2. Describes the law enforcement officer's interactions and conversations
11 with the respondent, or other individuals, that have led the law
12 enforcement officer to believe that the respondent is dangerous and in
13 possession of a firearm;

14 3. If the law enforcement officer had interactions and conversations with
15 other individuals, describes why the law enforcement officer believes
16 the statements of those individuals to be credible and reliable
17 regarding the respondent; and

18 4. Specifically describes the location of the firearm; and

19 (b) The District Court determines that probable cause exists to believe that the
20 respondent is:

21 1. Dangerous; and

22 2. In possession of a firearm.

23 (2) If a District Court issues a warrant to search for and seize a firearm under this
24 section, the law enforcement officer who served the warrant shall file a search
25 warrant return with the court within forty-eight (48) hours after the warrant was
26 served setting forth the:

27 (a) Time and date on which the warrant was served;

1 (b) Name and address of the respondent named in the warrant; and

2 (c) Quantity and type of any firearm seized.

3 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 237 IS CREATED TO
4 READ AS FOLLOWS:

5 (1) If a law enforcement officer seizes a firearm from a respondent whom the law
6 enforcement officer believes to be dangerous without obtaining a warrant, the
7 law enforcement officer shall submit to a District Court having jurisdiction over
8 the respondent an affidavit describing the basis for the law enforcement officer's
9 belief that the respondent is dangerous.

10 (2) An affidavit described in subsection (1) shall:

11 (a) State why the law enforcement officer believes the respondent is dangerous
12 and in possession of a firearm;

13 (b) Describe the law enforcement officer's interactions and conversations with
14 the respondent, or other individuals, that have led the law enforcement
15 officer to believe that the respondent is dangerous and in possession of a
16 firearm;

17 (c) If the law enforcement officer had interactions and conversations with
18 other individuals, describe why the law enforcement officer believes the
19 statements of those individuals to be credible and reliable regarding the
20 respondent;

21 (d) Set forth the quantity and type of each firearm seized from the respondent;
22 and

23 (e) Be submitted to a District Court having jurisdiction over the respondent not
24 later than forty-eight (48) hours after the seizure of the firearm.

25 (3) The court shall review the affidavit described in subsection (1) of this section as
26 soon as possible.

27 (4) If the court finds that probable cause exists to believe that the respondent is

1 dangerous, the court shall order the law enforcement agency having custody of
2 the firearm to retain the firearm until a hearing can be held under Section 4 of
3 this Act.

4 (5) If the court finds that there is no probable cause to believe that the respondent is
5 dangerous, the court shall order the law enforcement agency having custody of
6 the firearm to return the firearm to the respondent as quickly as practicable, but
7 not later than five (5) days after the date of the order.

8 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 237 IS CREATED TO
9 READ AS FOLLOWS:

10 (1) After the filing of a search warrant return under Section 2 of this Act or the filing
11 of an affidavit under Section 3 of this Act, the District Court shall conduct a
12 hearing.

13 (2) The Commonwealth has the burden of proving all material facts by clear and
14 convincing evidence.

15 (3) The county attorney shall represent the Commonwealth at the hearing.

16 (4) The respondent may be represented by an attorney.

17 (5) The court shall make a good faith effort to conduct the hearing not later than
18 fourteen (14) days after the filing of a search warrant return under Section 2 of
19 this Act or the filing of an affidavit under Section 3 of this Act. If the hearing
20 cannot be conducted within fourteen (14) days after the filing of the search
21 warrant return or affidavit, the court shall conduct the hearing as soon as
22 possible. However, a request by the respondent for a continuance of the hearing
23 described in this subsection for a period of not more than sixty (60) days shall be
24 liberally granted. The court shall inform the county attorney and the respondent
25 of the date, time, and location of the hearing. The court may conduct the hearing
26 at a facility or other suitable place not likely to have a harmful effect upon the
27 health or well-being of the respondent.

1 (6) If the court determines that the Commonwealth has proved by clear and
2 convincing evidence that the respondent is dangerous, the court shall issue a
3 written order:

4 (a) Finding the respondent is dangerous;

5 (b) Ordering the law enforcement agency having custody of the seized firearm
6 to retain the firearm;

7 (c) Ordering the respondent's license to carry a concealed firearm, if
8 applicable, suspended; and

9 (d) Enjoining the respondent from:

10 1. Renting;

11 2. Receiving transfer of;

12 3. Owning; or

13 4. Possessing;

14 a firearm; and

15 (e) Determining whether the respondent should be referred to further
16 proceedings to consider whether the respondent should be involuntarily
17 hospitalized or ordered treatment under KRS Chapter 202A.

18 (7) If the court finds that the individual is dangerous under subsection (6) of this
19 section, the clerk shall transmit the order of the court to the Administrative Office
20 of the Courts for transmission to the National Instant Criminal Background
21 Check System.

22 (8) If the court determines that the Commonwealth has failed to prove by clear and
23 convincing evidence that the respondent is dangerous, the court shall issue a
24 written order that:

25 (a) The respondent is not dangerous under Section 1 of this Act; and

26 (b) The law enforcement agency having custody of the firearm shall return the
27 firearm as quickly as practicable, but not later than five (5) days after the

1 *date of the order, to the respondent.*

2 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 237 IS CREATED TO
3 READ AS FOLLOWS:

4 *If the District Court, in a hearing conducted under Section 4 of this Act, determines*
5 *that:*

6 *(1) The respondent is dangerous; and*

7 *(2) The firearm seized from the respondent is owned by another individual who may*
8 *lawfully possess a firearm;*

9 *the court may order the law enforcement agency having custody of the firearm to*
10 *return the firearm to the rightful owner of the firearm.*

11 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 237 IS CREATED TO
12 READ AS FOLLOWS:

13 *(1) At least one hundred eighty (180) days after the date on which a District Court*
14 *ordered a law enforcement agency to retain a respondent's firearm under Section*
15 *4 of this Act, the respondent may petition the District Court for a finding that he*
16 *or she is no longer dangerous.*

17 *(2) Upon receipt of a petition described in subsection (1) of this section, the court*
18 *shall:*

19 *(a) Enter an order setting a date for a hearing on the petition; and*

20 *(b) Inform the county attorney and the respondent of the date, time, and*
21 *location of the hearing.*

22 *(3) The county attorney shall represent the Commonwealth at the hearing on a*
23 *petition under this section.*

24 *(4) The respondent may be represented by an attorney at the hearing on a petition*
25 *under this section.*

26 *(5) If a petition under this section is filed:*

27 *(a) One (1) year or more after the date of the order issued under Section 4 of*

1 *this Act, the respondent must prove by a preponderance of the evidence that*
 2 *he or she is no longer dangerous; or*

3 *(b) Less than one (1) year after the date of the order issued under Section 4 of*
 4 *this Act, the Commonwealth must prove by clear and convincing evidence*
 5 *that the respondent is still dangerous.*

6 *(6) If, upon the completion of the hearing and consideration of the record, the court*
 7 *finds that the respondent is no longer dangerous, the court shall:*

8 *(a) Issue a court order finding that the respondent is no longer dangerous;*

9 *(b) Order the law enforcement agency having custody of any firearm seized*
 10 *from the respondent to return the firearm as quickly as practicable to the*
 11 *respondent, but not later than five (5) days after the date of the order;*

12 *(c) Terminate any injunction issued under Section 4 of this Act; and*

13 *(d) Terminate the suspension of the respondent's license to carry a concealed*
 14 *firearm so that the respondent may reapply for a license.*

15 *(7) If the court denies a petition under this section, the respondent may not file a*
 16 *subsequent petition until at least one hundred eighty (180) days after the date on*
 17 *which the court denied the petition.*

18 *(8) If a District Court issues an order under subsection (6) of this section, the court's*
 19 *order shall be transmitted, as soon as practicable, to the Administrative Office of*
 20 *the Courts for transmission to the National Instant Criminal Background Check*
 21 *System.*

22 ➔SECTION 7. A NEW SECTION OF KRS CHAPTER 237 IS CREATED TO
 23 READ AS FOLLOWS:

24 *If at least five (5) years have passed since a District Court conducted the first hearing*
 25 *to retain a firearm under Section 4 of this Act, and a petition has not been filed under*
 26 *Section 8 of this Act, the court, after giving notice to the parties and conducting a*
 27 *hearing, may order the law enforcement agency having custody of the firearm to*

1 dispose of the firearm in accordance with Section 13 of this Act.

2 ➔SECTION 8. A NEW SECTION OF KRS CHAPTER 237 IS CREATED TO
3 READ AS FOLLOWS:

4 (1) If a court has ordered a law enforcement agency to retain a respondent's firearm
5 under Section 4 of this Act, the respondent or the rightful owner of the firearm,
6 as applicable, may petition the court to order the law enforcement agency to:

7 (a) Transfer the firearm to a responsible third party;

8 (b) Transfer the firearm to an individual who possesses a valid federal firearms
9 license issued under 18 U.S.C. sec. 923 for storage or an eventual lawful
10 sale whose terms are mutually agreed upon between the licensee and the
11 respondent or rightful owner, as applicable; or

12 (c) Sell the firearm at auction under Section 13 of this Act and return the
13 proceeds to the respondent or the rightful owner of the firearm, as
14 applicable.

15 (2) A responsible third party who accepts transfer of a firearm under subsection
16 (1)(a) of this section shall enter into a written court agreement obligating the
17 responsible third party to the reasonable care and storage of the firearm,
18 including prohibiting all access to the firearm by the respondent.

19 (3) A respondent or rightful owner of the firearm may petition the court as described
20 in subsection (1) of this section:

21 (a) At the hearing described in Section 4 of this Act; or

22 (b) At any time before the hearing under Section 4 or 7 of this Act is held.

23 (4) If a respondent or rightful owner timely requests a sale or transfer of the firearm
24 under subsection (1) of this section, the court shall order the law enforcement
25 agency having custody of the firearm to transfer the firearm or sell the firearm at
26 auction under Section 13 of this Act, unless:

27 (a) The serial number of the firearm has been obliterated;

1 (b) The transfer of the firearm would be unlawful; or

2 (c) The requirements of subsection (1) of this section have not been met.

3 (5) If the court issues an order under subsection (4) of this section, the court's order
4 shall require:

5 (a) That the firearm be sold not more than one (1) year after receipt of the
6 order; and

7 (b) That the proceeds of the sale be returned to the respondent or rightful
8 owner of the firearm.

9 (6) A law enforcement agency may retain not more than eight percent (8%) of the
10 sale price to pay the costs of the sale, including administrative costs and the
11 auctioneer's fee.

12 (7) The sale, disposal, or transfer of a firearm retained under Sections 1 to 12 of this
13 Act does not:

14 (a) Alter or terminate a respondent's designation as a dangerous person by a
15 court; or

16 (b) Constitute prima facie evidence that a respondent is no longer dangerous.

17 ➔SECTION 9. A NEW SECTION OF KRS CHAPTER 237 IS CREATED TO
18 READ AS FOLLOWS:

19 (1) A law enforcement agency storing a firearm seized under Sections 1 to 12 of this
20 Act shall use reasonable care to ensure that the firearm is not lost or damaged,
21 and the law enforcement agency is prohibited from marking the firearm for
22 identification or other purposes.

23 (2) A law enforcement agency shall be liable for any damage to or loss of the firearm
24 that results from the law enforcement agency's negligence in the storage or
25 handling of the firearm. Maximum recovery for damages shall not exceed the
26 fair market value of the firearm.

27 ➔SECTION 10. A NEW SECTION OF KRS CHAPTER 237 IS CREATED TO

1 READ AS FOLLOWS:

2 Nothing in Sections 1 to 12 of this Act may be construed to authorize a warrantless
3 search or seizure by a law enforcement officer if a warrant would otherwise be
4 required.

5 ➔SECTION 11. A NEW SECTION OF KRS CHAPTER 237 IS CREATED TO
6 READ AS FOLLOWS:

7 (1) The Administrative Office of the Courts shall collect and record the following
8 information:

9 (a) The law enforcement agency responsible for each confiscation of a firearm
10 under Sections 2 and 3 of this Act;

11 (b) For each county, per year, the number of:

12 1. Warrant-based firearms confiscations under Section 2 of this Act; and

13 2. Warrantless firearms confiscations under Section 3 of this Act;

14 (c) For each county, per year, the total number each of handguns and long
15 guns confiscated under Section 2 and 3 of this Act; and

16 (d) The county in which a court issued an order that found a respondent to be
17 dangerous under Section 4 of this Act.

18 (2) (a) The Administrative Office of the Courts shall, not later than January 1 of
19 each year, submit a report to the General Assembly that consolidates and
20 presents the information required by this section.

21 (b) The Administrative Office of the Courts shall make the report available to
22 the public.

23 (c) The report shall not include any personally identifying information of
24 respondents alleged or found to be dangerous, including but not limited to a
25 respondent's:

26 1. Name;

27 2. Date of birth;

1 3. Social Security number; or

2 4. Address.

3 (d) The report shall not include the make, model, or serial number of any
4 firearm seized, confiscated, retained, disposed of, or sold under Sections 1 to
5 12 of this Act.

6 ➔SECTION 12. A NEW SECTION OF KRS CHAPTER 237 IS CREATED TO
7 READ AS FOLLOWS:

8 (1) No person who has been found to be dangerous by a District Court having
9 jurisdiction over the person following a hearing under Section 4 of this Act shall
10 knowingly or intentionally:

11 (a) Rent;

12 (b) Purchase;

13 (c) Receive transfer of;

14 (d) Own; or

15 (e) Possess;

16 a firearm.

17 (2) No person shall knowingly or intentionally:

18 (a) Rent;

19 (b) Sell;

20 (c) Transfer; or

21 (d) Offer for sale;

22 a firearm to another person when he or she knows that person was found to be
23 dangerous by a court following a hearing under Section 4 of this Act.

24 (3) Any person who violates subsection (1) of this section is guilty of a Class A
25 misdemeanor.

26 (4) Any person who violates subsection (2) of this section is guilty of a Class D
27 felony.

1 (5) Any firearm transferred in violation of this section shall be subject to forfeiture
2 and shall be disposed of pursuant to KRS 237.090.

3 ➔Section 13. KRS 16.220 is amended to read as follows:

4 (1) Subject to the duty to return confiscated firearms to innocent owners pursuant to
5 KRS 500.090, all firearms confiscated by the Department of Kentucky State Police
6 and not retained for official use pursuant to KRS 500.090 shall be sold at public
7 auction to federally licensed firearms dealers holding a license appropriate for the
8 type of firearm sold. Any provision of KRS Chapter 45 or 45A relating to
9 disposition of property to the contrary notwithstanding, the Department of Kentucky
10 State Police shall:

11 (a) Conduct any auction specified by this section;

12 (b) Retain for departmental use twenty percent (20%) of the gross proceeds from
13 any auction specified by this section; and

14 (c) Transfer remaining proceeds of the sale to the account of the Kentucky Office
15 of Homeland Security for use as provided in subsection (4) of this section.

16 (2) Prior to the sale of any firearm, the Department of Kentucky State Police shall make
17 an attempt to determine if the firearm to be sold has been stolen or otherwise
18 unlawfully obtained from an innocent owner and return the firearm to its lawful
19 innocent owner, unless that person is ineligible to purchase a firearm under federal
20 law.

21 (3) The Department of Kentucky State Police shall receive firearms and ammunition
22 confiscated by or abandoned to every law enforcement agency in Kentucky. The
23 department shall dispose of the firearms received in the manner specified in
24 subsection (1) of this section. However, firearms which are not retained for official
25 use, returned to an innocent lawful owner, or transferred to another government
26 agency or public museum shall be sold as provided in subsections (1) and (3) of this
27 section.

- 1 (4) *Except as provided in Section 8 of this Act,* the proceeds of firearms sales shall be
2 utilized by the Kentucky Office of Homeland Security to provide grants to city,
3 county, charter county, unified local government, urban-county government, and
4 consolidated local government police departments; university safety and security
5 departments organized pursuant to KRS 164.950; school districts that employ
6 special law enforcement officers as defined in KRS 61.900; and sheriff's
7 departments for the purchase of:
- 8 (a) Body armor for sworn peace officers of those departments and service
9 animals, as defined in KRS 525.010, of those departments;
 - 10 (b) Firearms or ammunition;
 - 11 (c) Electronic control devices, electronic control weapons, or electro-muscular
12 disruption technology; and
 - 13 (d) Body-worn cameras.

14 In awarding grants under this section, the Kentucky Office of Homeland Security
15 shall give first priority to providing and replacing body armor and second priority to
16 providing firearms and ammunition, with residual funds available for the purchase
17 of body-worn cameras, electronic control devices, electronic control weapons, or
18 electro-muscular disruption technology. Body armor purchased by the department
19 receiving grant funds shall meet or exceed the standards issued by the National
20 Institute of Justice for body armor. No police or sheriff's department shall apply for
21 a grant to replace existing body armor unless that body armor has been in actual use
22 for a period of five (5) years or longer. Any department applying for grant funds for
23 body-worn cameras shall develop a policy for their use and shall submit that policy
24 with its application for the grant funds to the Office of Homeland Security as part of
25 the application process.

- 26 (5) The Department of Kentucky State Police may transfer a machine gun, short-
27 barreled shotgun, short-barreled rifle, silencer, pistol with a shoulder stock, any

1 other weapon, or destructive device as defined by the National Firearms Act which
2 is subject to registration under the National Firearms Act and is not properly
3 registered in the national firearms transfer records for those types of weapons, to the
4 Bureau of Alcohol, Tobacco, and Firearms of the United States Department of
5 Justice, after a reasonable attempt has been made to transfer the firearm to an
6 eligible state or local law enforcement agency or to an eligible museum and no
7 eligible recipient will take the firearm or weapon. National Firearms Act firearms
8 and weapons which are properly registered and not returned to an innocent lawful
9 owner or retained for official use as provided in this section shall be sold to properly
10 licensed dealers under subsection (3) of this section.