

1 AN ACT relating to criminal offenses committed during a declared emergency.

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

3 ➔Section 1. KRS 500.080 is amended to read as follows:

4 As used in the Kentucky Penal Code, unless the context otherwise requires:

- 5 (1) "Actor" means any natural person and, where relevant, a corporation or an
6 unincorporated association;
- 7 (2) "Crime" means a misdemeanor or a felony;
- 8 (3) "Dangerous instrument" means any instrument, including parts of the human body
9 when a serious physical injury is a direct result of the use of that part of the human
10 body, article, or substance which, under the circumstances in which it is used,
11 attempted to be used, or threatened to be used, is readily capable of causing death or
12 serious physical injury;
- 13 (4) "Deadly weapon" means any of the following:
- 14 (a) A weapon of mass destruction;
- 15 (b) Any weapon from which a shot, readily capable of producing death or other
16 serious physical injury, may be discharged;
- 17 (c) Any knife other than an ordinary pocket knife or hunting knife;
- 18 (d) Billy, nightstick, or club;
- 19 (e) Blackjack or slapjack;
- 20 (f) Nunchaku karate sticks;
- 21 (g) Shuriken or death star; or
- 22 (h) Artificial knuckles made from metal, plastic, or other similar hard material;
- 23 (5) "Felony" means an offense for which a sentence to a term of imprisonment of at
24 least one (1) year in the custody of the Department of Corrections may be imposed;
- 25 (6) "Government" means the United States, any state, county, municipality, or other
26 political unit, or any department, agency, or subdivision of any of the foregoing, or
27 any corporation or other association carrying out the functions of government;

- 1 (7) "He" means any natural person and, where relevant, a corporation or an
2 unincorporated association;
- 3 (8) "Law" includes statutes, ordinances, and properly adopted regulatory provisions.
4 Unless the context otherwise clearly requires, "law" also includes the common law;
- 5 (9) "Minor" means any person who has not reached the age of majority as defined in
6 KRS 2.015;
- 7 (10) "Misdemeanor" means an offense, other than a traffic infraction, for which a
8 sentence to a term of imprisonment of not more than twelve (12) months can be
9 imposed;
- 10 (11) **"Natural or man-made disaster" means a tornado, storm, or other severe**
11 **weather, earthquake, flood, or fire that poses a significant threat to human health**
12 **and safety, property, or critical infrastructure;**
- 13 **(12)** "Offense" means conduct for which a sentence to a term of imprisonment or to a
14 fine is provided by any law of this state or by any law, local law, or ordinance of a
15 political subdivision of this state or by any law, order, rule, or regulation of any
16 governmental instrumentality authorized by law to adopt the same;
- 17 **(13)**~~(12)~~ "Person" means a human being, and where appropriate, a public or private
18 corporation, an unincorporated association, a partnership, a government, or a
19 governmental authority;
- 20 **(14)**~~(13)~~ "Physical injury" means substantial physical pain or any impairment of
21 physical condition;
- 22 **(15)**~~(14)~~ "Possession" means to have actual physical possession or otherwise to
23 exercise actual dominion or control over a tangible object;
- 24 **(16)**~~(15)~~ "Serious physical injury" means physical injury which creates a substantial
25 risk of death, or which causes serious and prolonged disfigurement, prolonged
26 impairment of health, or prolonged loss or impairment of the function of any bodily
27 organ. For a child twelve (12) years of age or less at the time of the injury, a serious

1 physical injury includes but is not limited to the following:

- 2 (a) Bruising near the eyes, or on the head, neck, or lower back overlying the
3 kidneys;
- 4 (b) Any bruising severe enough to cause underlying muscle damage as
5 determined by elevated creatine kinase levels in the blood;
- 6 (c) Any bruising or soft tissue injury to the genitals that affects the ability to
7 urinate or defecate;
- 8 (d) Any testicular injury sufficient to put fertility at risk;
- 9 (e) Any burn near the eyes or involving the mouth, airway, or esophagus;
- 10 (f) Any burn deep enough to leave scarring or dysfunction of the body;
- 11 (g) Any burn requiring hospitalization, debridement in the operating room, IV
12 fluids, intubation, or admission to a hospital's intensive care unit;
- 13 (h) Rib fracture;
- 14 (i) Scapula or sternum fractures;
- 15 (j) Any broken bone that requires surgery;
- 16 (k) Head injuries that result in intracranial bleeding, skull fracture, or brain injury;
- 17 (l) A concussion that results in the child becoming limp, unresponsive, or results
18 in seizure activity;
- 19 (m) Abdominal injuries that indicate internal organ damage regardless of whether
20 surgery is required;
- 21 (n) Any injury requiring surgery;
- 22 (o) Any injury that requires a blood transfusion; and
- 23 (p) Any injury requiring admission to a hospital's critical care unit;

24 (17)~~(16)~~ "Unlawful" means contrary to law or, where the context so requires, not
25 permitted by law. It does not mean wrongful or immoral;

26 (18)~~(17)~~ "Violation" means an offense, other than a traffic infraction, for which a
27 sentence to a fine only can be imposed; and

1 ~~(18)~~ (19) "Weapon of mass destruction" means:

- 2 (a) Any destructive device as defined in KRS 237.030, but not fireworks as
3 defined in KRS 227.700;
- 4 (b) Any weapon that is designed or intended to cause death or serious physical
5 injury through the release, dissemination, or impact of toxic or poisonous
6 chemicals or their precursors;
- 7 (c) Any weapon involving a disease organism; or
- 8 (d) Any weapon that is designed to release radiation or radioactivity at a level
9 dangerous to human life.

10 ➔Section 2. KRS 508.025 is amended to read as follows:

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

- 12 (a) Recklessly, with a deadly weapon or dangerous instrument, or intentionally
13 causes or attempts to cause physical injury to:
- 14 1. A state, county, city, or federal peace officer;
- 15 2. An employee of a detention facility, or state residential treatment facility
16 or state staff secure facility for residential treatment which provides for
17 the care, treatment, or detention of a juvenile charged with or
18 adjudicated delinquent because of a public offense or as a youthful
19 offender;
- 20 3. An employee of the Department for Community Based Services
21 employed as a social worker to provide direct client services, if the event
22 occurs while the worker is performing job-related duties;
- 23 4. Paid or volunteer emergency medical services personnel certified or
24 licensed pursuant to KRS Chapter 311A, if the event occurs while
25 personnel are performing job-related duties;
- 26 5. A paid or volunteer member of an organized fire department, if the event
27 occurs while the member is performing job-related duties;

- 1 6. Paid or volunteer rescue squad personnel affiliated with the Division of
2 Emergency Management of the Department of Military Affairs or a local
3 disaster and emergency services organization pursuant to KRS Chapter
4 39F, if the event occurs while personnel are performing job-related
5 duties;
- 6 7. A probation and parole officer;
- 7 8. A transportation officer appointed by a county fiscal court or legislative
8 body of a consolidated local government, urban-county government, or
9 charter government to transport inmates when the county jail or county
10 correctional facility is closed while the transportation officer is
11 performing job-related duties;
- 12 9. A public or private elementary or secondary school or school district
13 classified or certified employee, school bus driver, or other school
14 employee acting in the course and scope of the employee's employment;
15 or
- 16 10. A public or private elementary or secondary school or school district
17 volunteer acting in the course and scope of that person's volunteer
18 service for the school or school district;
- 19 (b) Being a person confined in a detention facility, or a juvenile in a state
20 residential treatment facility or state staff secure facility for residential
21 treatment which provides for the care, treatment, or detention of a juvenile
22 charged with or adjudicated delinquent because of a public offense or as a
23 youthful offender, inflicts physical injury upon or throws or causes feces, or
24 urine, or other bodily fluid to be thrown upon an employee of the facility; or
- 25 (c) Intentionally causes a person, whom the actor knows or reasonably should
26 know to be a peace officer discharging official duties, to come into contact
27 with saliva, vomit, mucus, blood, seminal fluid, urine, or feces without the

1 consent of the peace officer.

2 (2) (a) For a violation~~[violations]~~ of subsection (1)(a) ~~[and (b)]~~ of this section,
 3 assault in the third degree is a Class D felony, unless the offense occurs
 4 during a declared emergency as defined by KRS 39A.020 arising from a
 5 natural or man-made disaster and within the area covered by the emergency
 6 declaration, in which case it is a Class C felony.

7 (b) For a violation of subsection (1)(b) of this section, assault in the third
 8 degree is a Class D felony.

9 (c) For violations of subsection (1)(c) of this section, assault in the third degree is
 10 a Class B misdemeanor, unless the assault is with saliva, vomit, mucus, blood,
 11 seminal fluid, urine, or feces from an adult who knows that he or she has a
 12 serious communicable disease and competent medical or epidemiological
 13 evidence demonstrates that the specific type of contact caused by the actor is
 14 likely to cause transmission of the disease or condition, in which case it is a
 15 Class A misdemeanor.

16 ~~(d)~~~~(e)~~ As used in paragraph ~~(c)~~~~(b)~~ of this subsection, "serious communicable
 17 disease" means a non-airborne disease that is transmitted from person to
 18 person and determined to have significant, long-term consequences on the
 19 physical health or life activities of the person infected.

20 ➔Section 3. KRS 511.020 is amended to read as follows:

21 (1) A person is guilty of burglary in the first degree when, with the intent to commit a
 22 crime, he or she knowingly enters or remains unlawfully in a building, and when in
 23 effecting entry or while in the building or in the immediate flight therefrom, he or
 24 she or another participant in the crime:

25 (a) Is armed with explosives or a deadly weapon;~~[or]~~

26 (b) Causes physical injury to any person who is not a participant in the crime; or

27 (c) Uses or threatens the use of a dangerous instrument against any person who is

1 not a participant in the crime.

2 (2) Burglary in the first degree is a Class B felony, unless the offense occurs during a
3 declared emergency as defined by KRS 39A.020 arising from a natural or man-
4 made disaster and within the area covered by the emergency declaration, in
5 which case it is a Class A felony.

6 ➔Section 4. KRS 511.030 is amended to read as follows:

7 (1) A person is guilty of burglary in the second degree when, with the intent to commit
8 a crime, he or she knowingly enters or remains unlawfully in a dwelling.

9 (2) Burglary in the second degree is a Class C felony, unless the offense occurs during
10 a declared emergency as defined by KRS 39A.020 arising from a natural or man-
11 made disaster and within the area covered by the emergency declaration, in
12 which case it is a Class B felony.

13 ➔Section 5. KRS 511.040 is amended to read as follows:

14 (1) A person is guilty of burglary in the third degree when, with the intent to commit a
15 crime, he or she knowingly enters or remains unlawfully in a building.

16 (2) Burglary in the third degree is a Class D felony, unless the offense occurs during a
17 declared emergency as defined by KRS 39A.020 arising from a natural or man-
18 made disaster and within the area covered by the emergency declaration, in
19 which case it is a Class C felony.

20 ➔Section 6. KRS 511.060 is amended to read as follows:

21 (1) A person is guilty of criminal trespass in the first degree when he or she knowingly
22 enters or remains unlawfully in a dwelling.

23 (2) Criminal trespass in the first degree is a Class A misdemeanor, unless the offense
24 occurs during a declared emergency as defined by KRS 39A.020 arising from a
25 natural or man-made disaster and within the area covered by the emergency
26 declaration, in which case it is a Class D felony.

27 ➔Section 7. KRS 511.070 is amended to read as follows:

1 (1) A person is guilty of criminal trespass in the second degree when he or she
2 knowingly enters or remains unlawfully in a building or upon premises as to which
3 notice against trespass is given by fencing or other enclosure.

4 (2) Criminal trespass in the second degree is a Class B misdemeanor, unless the
5 offense occurs during a declared emergency as defined by KRS 39A.020 arising
6 from a natural or man-made disaster and within the area covered by the
7 emergency declaration, in which case it is a Class A misdemeanor.

8 ➔Section 8. KRS 511.080 is amended to read as follows:

9 (1) A person is guilty of criminal trespass in the third degree when he knowingly enters
10 or remains unlawfully in or upon premises.

11 (2) Criminal trespass in the third degree is a violation, unless the offense occurs
12 during a declared emergency as defined by KRS 39A.020 arising from a natural
13 or man-made disaster and within the area covered by the emergency declaration,
14 in which case it is a Class B misdemeanor.

15 ➔Section 9. KRS 512.020 is amended to read as follows:

16 (1) A person is guilty of criminal mischief in the first degree when, having no right to
17 do so or any reasonable ground to believe that he or she has such right, he or she
18 intentionally or wantonly:

19 (a) Defaces, destroys, or damages any property causing pecuniary loss of one
20 thousand dollars (\$1,000) or more;

21 (b) Tampers with the operations of a key infrastructure asset, as defined in KRS
22 511.100, in a manner that renders the operations harmful or dangerous; or

23 (c) As a tenant, intentionally or wantonly defaces, destroys, or damages
24 residential rental property causing pecuniary loss of one thousand dollars
25 (\$1,000) or more.

26 (2) Criminal mischief in the first degree is a Class D felony, unless the offense occurs
27 during a declared emergency as defined by KRS 39A.020 arising from a natural

1 or man-made disaster and within the area covered by the emergency declaration,
2 in which case it is a Class C felony.

3 ➔Section 10. KRS 512.030 is amended to read as follows:

4 (1) A person is guilty of criminal mischief in the second degree when, having no right
5 to do so or any reasonable ground to believe that he or she has such right, he or she:

6 (a) Intentionally or wantonly defaces, destroys, or damages any property causing
7 pecuniary loss of five hundred dollars (\$500) or more but less than one
8 thousand dollars (\$1,000); or

9 (b) As a tenant, intentionally or wantonly defaces, destroys, or damages
10 residential rental property causing pecuniary loss of five hundred dollars
11 (\$500) or more but less than one thousand dollars (\$1,000).

12 (2) Criminal mischief in the second degree is a Class A misdemeanor, unless the
13 offense occurs during a declared emergency as defined by KRS 39A.020 arising
14 from a natural or man-made disaster and within the area covered by the
15 emergency declaration, in which case it is a Class D felony.

16 ➔Section 11. KRS 512.040 is amended to read as follows:

17 (1) A person is guilty of criminal mischief in the third degree when:

18 (a) Having no right to do so or any reasonable ground to believe that he or she has
19 such right, he or she intentionally or wantonly defaces, destroys, or damages
20 any property causing pecuniary loss of less than five hundred dollars (\$500);

21 (b) He or she tampers with property so as knowingly to endanger the person or
22 property of another; or

23 (c) He or she as a tenant, and having no right to do so or any reasonable grounds
24 to believe that he or she has such right, intentionally or wantonly defaces,
25 destroys, or damages residential rental property causing pecuniary loss of less
26 than five hundred dollars (\$500).

27 (2) Criminal mischief in the third degree is a Class B misdemeanor, unless the offense

1 occurs during a declared emergency as defined by KRS 39A.020 arising from a
2 natural or man-made disaster and within the area covered by the emergency
3 declaration, in which case it is a Class A misdemeanor.

4 →Section 12. KRS 514.030 is amended to read as follows:

5 (1) Except as otherwise provided in KRS 217.181, a person is guilty of theft by
6 unlawful taking or disposition when he or she unlawfully:

7 (a) Takes or exercises control over movable property of another with intent to
8 deprive him or her thereof; or

9 (b) Obtains immovable property of another or any interest therein with intent to
10 benefit himself or herself or another not entitled thereto.

11 (2) Theft by unlawful taking or disposition is a Class B misdemeanor unless:

12 (a) The property is a firearm (regardless of the value of the firearm), in which
13 case it is a Class D felony;

14 (b) The property is anhydrous ammonia (regardless of the value of the ammonia),
15 in which case it is a Class D felony unless it is proven that the person violated
16 this section with the intent to manufacture methamphetamine in violation of
17 KRS 218A.1432, in which case it is a Class B felony for the first offense and a
18 Class A felony for each subsequent offense;

19 (c) The property is one (1) or more controlled substances valued collectively at
20 less than ten thousand dollars (\$10,000), in which case it is a Class D felony;

21 (d) The value of the property is five hundred dollars (\$500) or more but less than
22 one thousand dollars (\$1,000), in which case it is a Class A misdemeanor;

23 (e) The value of the property is one thousand dollars (\$1,000) or more but less
24 than ten thousand dollars (\$10,000), in which case it is a Class D felony;

25 (f) The person has three (3) or more convictions under paragraph (d) of this
26 subsection within the last five (5) years, in which case it is a Class D felony.

27 The five (5) year period shall be measured from the dates on which the

1 offenses occurred for which the judgments of conviction were entered;

2 (g) The value of the property is ten thousand dollars (\$10,000) or more but less
3 than one million dollars (\$1,000,000), in which case it is a Class C felony;

4 (h) The value of the property is one million dollars (\$1,000,000) or more but less
5 than ten million dollars (\$10,000,000), in which case it is a Class B felony;
6 ~~or~~

7 (i) The value of the property is ten million dollars (\$10,000,000) or more, in
8 which case it is a Class B felony; *or*

9 (j) *The offense occurs during a declared emergency as defined by KRS*
10 *39A.020 arising from a natural or man-made disaster and within the area*
11 *covered by the emergency declaration, in which case the person shall be*
12 *charged one (1) level higher than the level otherwise specified in this*
13 *subsection.*

14 (3) Any person convicted under subsection (2)(i) of this section shall not be released on
15 probation or parole until he or she has served at least fifty percent (50%) of the
16 sentence imposed, any statute to the contrary notwithstanding.

17 (4) If any person commits two (2) or more separate offenses of theft by unlawful taking
18 or disposition within ninety (90) days, the offenses may be combined and treated as
19 a single offense, and the value of the property in each offense may be aggregated for
20 the purpose of determining the appropriate charge.

21 ➔Section 13. KRS 514.040 is amended to read as follows:

22 (1) A person is guilty of theft by deception when the person obtains property or services
23 of another by deception with intent to deprive the person thereof. A person deceives
24 when the person intentionally:

25 (a) Creates or reinforces a false impression, including false impressions as to law,
26 value, intention, or other state of mind;

27 (b) Prevents another from acquiring information which would affect judgment of

- 1 a transaction;
- 2 (c) Fails to correct a false impression which the deceiver previously created or
3 reinforced or which the deceiver knows to be influencing another to whom the
4 person stands in a fiduciary or confidential relationship;
- 5 (d) Fails to disclose a known lien, adverse claim, or other legal impediment to the
6 enjoyment of property which the person transfers or encumbers in
7 consideration for the property obtained, whether the impediment is or is not
8 valid or is or is not a matter of official record; or
- 9 (e) Issues or passes a check or similar sight order for the payment of money,
10 knowing that it will not be honored by the drawee.
- 11 (2) The term "deceive" does not, however, include falsity as to matters having no
12 pecuniary significance or puffing by statements unlikely to deceive ordinary persons
13 in the group addressed.
- 14 (3) Deception as to a person's intention to perform a promise shall not be inferred from
15 the fact alone that he or she did not subsequently perform the promise.
- 16 (4) For purposes of subsection (1) of this section, a maker of a check or similar sight
17 order for the payment of money is presumed to know that the check or order, other
18 than a postdated check or order, would not be paid, if:
- 19 (a) The maker had no account with the drawee at the time the check or order was
20 issued; or
- 21 (b) Payment was refused by the drawee for lack of funds, upon presentation
22 within thirty (30) days after issue, and the maker failed to make good within
23 ten (10) days after receiving notice of that refusal. Notice of the refusal may
24 include a citation to this section and a description of this section's criminal
25 penalties and shall be deemed properly addressed when mailed to the address
26 printed or written on the check or sight order or provided by the drawer or
27 maker upon issuance of the check or sight order. The notice, if mailed, shall

1 be deemed received by the addressee seven (7) days after it is placed in the
2 United States mail. The notice may be sent by first-class mail if supported by
3 an affidavit of service setting out the contents of the notice, the address to
4 which the notice was mailed, that correct postage was applied, and the date
5 the notice was placed in the United States mail. A maker makes good on a
6 check or similar sight order for the payment of money by paying to the holder
7 the face amount of the instrument, together with any merchant's posted bad
8 check handling fee not to exceed fifty dollars (\$50) and any fee imposed
9 pursuant to subsection (5) of this section.

10 (5) If a county attorney issues notice to a maker that a drawee has refused to honor an
11 instrument due to a lack of funds as described in subsection (4)(b) of this section,
12 the county attorney may charge a fee to the maker of fifty dollars (\$50), if the
13 instrument is paid. Money paid to the county attorney pursuant to this section shall
14 be used only for payment of county attorney office operating expenses. Excess fees
15 held by the county attorney on June 30 of each year shall be turned over to the
16 county treasurer before the end of the next fiscal year for use by the fiscal court of
17 the county.

18 (6) A person is guilty of theft by deception when the person issues a check or similar
19 sight order in payment of all or any part of any tax payable to the Commonwealth
20 knowing that it will not be honored by the drawee.

21 (7) A person is guilty of theft by deception when the person issues a check or similar
22 sight order in payment of all or any part of a child support obligation knowing that it
23 will not be honored by the drawee.

24 (8) Theft by deception is a Class B misdemeanor unless:

25 (a) The value of the property, service, or the amount of the check or sight order
26 referred to in subsection (6) or (7) of this section is five hundred dollars
27 (\$500) or more but less than one thousand dollars (\$1,000), in which case it is

1 a Class A misdemeanor;

2 (b) The value of the property, service, or the amount of the check or sight order
3 referred to in subsection (6) or (7) of this section is one thousand dollars
4 (\$1,000) or more but less than ten thousand dollars (\$10,000), in which case it
5 is a Class D felony;

6 (c) A person has three (3) or more convictions under paragraph (a) of this
7 subsection within the last five (5) years, in which case it is a Class D felony.
8 The five (5) year period shall be measured from the dates on which the
9 offenses occurred for which the judgments of convictions were entered;~~[-or]~~

10 (d) The value of the property, service, or the amount of the check or sight order
11 referred to in subsection (6) or (7) of this section is ten thousand dollars
12 (\$10,000) or more, in which case it is a Class C felony: or

13 (e) The offense occurs during a declared emergency as defined by KRS
14 39A.020 arising from a natural or man-made disaster and within the area
15 covered by the emergency declaration, in which case the person shall be
16 charged one (1) level higher than the level otherwise specified in this
17 subsection.

18 (9) If any person commits two (2) or more separate offenses of theft by deception
19 within ninety (90) days, the offenses may be combined and treated as a single
20 offense, and the value of the property in each offense may be aggregated for the
21 purpose of determining the appropriate charge.

22 ➔Section 14. KRS 514.110 is amended to read as follows:

23 (1) A person is guilty of receiving stolen property when he or she receives, retains, or
24 disposes of movable property of another knowing that it has been stolen, or having
25 reason to believe that it has been stolen, unless the property is received, retained, or
26 disposed of with intent to restore it to the owner.

27 (2) The possession by any person of any recently stolen movable property shall be

1 prima facie evidence that such person knew such property was stolen.

2 (3) Receiving stolen property is a Class B misdemeanor unless:

3 (a) The value of the property is five hundred dollars (\$500) or more but less than
4 one thousand dollars (\$1,000), in which case it is a Class A misdemeanor;

5 (b) The value of the property is one thousand dollars (\$1,000) or more but less
6 than ten thousand dollars (\$10,000), in which case it is a Class D felony;

7 (c) A person has three (3) or more convictions under paragraph (a) of this
8 subsection within the last five (5) years, in which case it is a Class D felony.
9 The five (5) year period shall be measured from the dates on which the
10 offenses occurred for which the judgments of conviction were entered;

11 (d) The value of the property is ten thousand dollars (\$10,000) or more, in which
12 case it is a Class C felony;

13 (e) The property is a firearm, regardless of the value of the firearm, in which case
14 it is a Class D felony;~~[-or]~~

15 (f) The property is anhydrous ammonia, regardless of the value of the ammonia,
16 in which case it is a Class D felony unless it is proven that the person violated
17 this section with the intent to manufacture methamphetamine in violation of
18 KRS 218A.1432, in which case it is a Class B felony for the first offense and a
19 Class A felony for each subsequent offense; or

20 (g) The offense occurs during a declared emergency as defined by KRS
21 39A.020 arising from a natural or man-made disaster and within the area
22 covered by the emergency declaration, in which case the person shall be
23 charged one (1) level higher than the level otherwise specified in this
24 subsection.

25 (4) If any person commits two (2) or more separate offenses of receiving stolen
26 property within ninety (90) days, the offenses may be combined and treated as a
27 single offense, and the value of the property in each offense may be aggregated for

1 the purpose of determining the appropriate charge.

2 ➔Section 15. KRS 515.020 is amended to read as follows:

- 3 (1) A person is guilty of robbery in the first degree when, in the course of committing
4 theft, he or she uses or threatens the immediate use of physical force upon another
5 person with intent to accomplish the theft and when he or she:
- 6 (a) Causes physical injury to any person who is not a participant in the crime; or
 - 7 (b) Is armed with a deadly weapon; or
 - 8 (c) Uses or threatens the immediate use of a dangerous instrument upon any
9 person who is not a participant in the crime.
- 10 (2) Robbery in the first degree is a Class B felony, unless the offense occurs during a
11 declared emergency as defined by KRS 39A.020 arising from a natural or man-
12 made disaster and within the area covered by the emergency declaration, in
13 which case it is a Class A felony.

14 ➔Section 16. KRS 61.168 is amended to read as follows:

- 15 (1) As used in this section:
- 16 (a) "Body-worn camera" means a video or audio electronic recording device that
17 is carried by or worn on the body of a public safety officer. This definition
18 does not include a dashboard mounted camera or recording device used in the
19 course of clandestine investigations;
 - 20 (b) "Body-worn camera recording" or "recording" means a video or audio
21 recording, or both, that is made by a body-worn camera during the course of a
22 public safety officer's official duties;
 - 23 (c) "Personal representative" means a court-appointed guardian, attorney, or agent
24 possessing written authorization to act on behalf of a person that is involved in
25 an incident contained in a body-worn camera recording, a person holding a
26 power of attorney for a person that is involved in an incident contained in a
27 body-worn camera recording, or the parent or guardian of a minor child

1 depicted in a body-worn camera recording. If a person depicted in the
2 recording is deceased, the term also means the personal representative of the
3 estate of the deceased person, the deceased person's surviving spouse, parent,
4 or adult child, the deceased person's attorney, or the parent or guardian of a
5 surviving minor child of the deceased;

6 (d) "Public agency" has the same meaning as in KRS 61.870(1);

7 (e) "Public safety officer" means any individual that is an employee of a public
8 agency who is certified as a first responder under KRS Chapter 311A or
9 whose employment duties include law enforcement or firefighting activities;
10 and

11 (f) "Use of force" means any action by a public safety officer that results in death,
12 physical injury as defined in KRS 500.080~~[(13)]~~, discharge of a personal body
13 weapon, chemical agent, impact weapon, extended range impact weapon,
14 sonic weapon, sensory weapon, conducted energy weapon, or a firearm, or
15 involves the intentional pointing of a public safety officer's firearm at a
16 member of the public.

17 (2) Except as provided in this section, the disclosure of body-worn camera recordings
18 shall be governed by the Kentucky Open Records Act, as set forth in KRS 61.870 to
19 61.884.

20 (3) The retention of body-worn camera video recordings shall be governed by KRS
21 171.410 to 171.740, and the administrative regulations promulgated by the
22 Kentucky Department of Libraries and Archives.

23 (4) Notwithstanding KRS 61.878(4), unless the request meets the criteria provided
24 under subsection (5) of this section, a public agency may elect not to disclose body-
25 worn camera recordings containing video or audio footage that:

26 (a) Includes the interior of a place of a private residence where there is a
27 reasonable expectation of privacy, unless the legal owner or lessee with legal

- 1 possession of the residence requests in writing that the release be governed
2 solely under the provisions of KRS 61.870 to 61.884;
- 3 (b) Includes the areas inside of a medical facility, counseling, or therapeutic
4 program office where a patient is registered to receive treatment, receiving
5 treatment, waiting for treatment, or being transported in the course of
6 treatment;
- 7 (c) Would disclose health care information shared with patients, their families, or
8 with a patient's care team or that is considered protected health information
9 under the Health Insurance Portability and Accountability Act of 1996;
- 10 (d) Includes the areas inside of a correctional facility when disclosure would
11 reveal details of the facility that would jeopardize the safety, security, or well-
12 being of those in custody, the staff of the correctional facility, or law
13 enforcement officers;
- 14 (e) Is of a sexual nature or video footage that contains nude images of an
15 individual's genitals, pubic area, anus, or the female nipple;
- 16 (f) Is of a minor child, including but not limited to footage involving juvenile
17 custody matters;
- 18 (g) Includes the body of a deceased individual;
- 19 (h) Would reveal the identity of witnesses, confidential law enforcement
20 informants, or undercover law enforcement officers, or if the release could
21 jeopardize the safety, security, or well-being of a witness or confidential
22 informant;
- 23 (i) Would reveal the location information of a domestic violence program or
24 emergency shelter;
- 25 (j) Would reveal information related to schools, colleges, and universities that is
26 protected by the federal Family Educational Rights and Privacy Act;
- 27 (k) Would result in the disclosure of nonpublic or confidential data classified as

- 1 Criminal Justice Information Services data by the Federal Bureau of
2 Investigation;
- 3 (l) Includes a public safety officer carrying out duties directly related to the
4 hospitalization of persons considered mentally ill;
- 5 (m) Includes the depiction of the serious injury or death of a public safety officer;
6 or
- 7 (n) Includes footage made in conjunction with a law enforcement exercise that
8 includes special response team actions, hostage negotiations, or training
9 events, but only where the public release of tactics, operational protocol, or
10 methodology would disadvantage the capability of public safety officers to
11 successfully respond in emergency or other dangerous situations.
- 12 (5) If the recording contains video or audio footage that:
- 13 (a) Depicts an encounter between a public safety officer where there is a use of
14 force, the disclosure of the record shall be governed solely by the provisions
15 of KRS 61.870 to 61.884, including all of the exceptions contained therein;
- 16 (b) Depicts an incident which leads to the detention or arrest of an individual or
17 individuals, the disclosure of the record shall be governed solely by the
18 provisions of KRS 61.870 to 61.884, including all of the exceptions contained
19 therein;
- 20 (c) Depicts an incident which is the subject of a formal complaint submitted
21 against a public safety officer under KRS 15.520, 67C.326, or 95.450, or
22 depicts an incident which is the subject of a formal legal or administrative
23 complaint against the agency employing the public safety officer, the release
24 of the record shall be governed by the provisions of KRS 61.870 to 61.884,
25 including all of the exceptions contained therein; or
- 26 (d) Is requested by a person or other entity or the personal representative of a
27 person or entity that is directly involved in the incident contained in the body-

1 worn camera recording, it shall be made available by the public agency to the
 2 requesting party for viewing on the premises of the public agency, but the
 3 public agency shall not be required to make a copy of the recording except as
 4 provided in KRS 61.169. The requesting parties shall not be limited in the
 5 number of times they may view the recording under this paragraph.

6 (6) Nothing in this section or KRS 61.169 shall be interpreted to override any provision
 7 related to:

8 (a) Reports by law enforcement officers and criminal justice agencies under KRS
 9 17.150;

10 (b) The law and rules governing discovery or the submission and display of
 11 evidence in any court proceeding, whether criminal or civil, or any
 12 administrative proceeding; or

13 (c) The provisions of KRS 189A.100.

14 ➔Section 17. KRS 61.912 is amended to read as follows:

15 Any duly commissioned special law enforcement officer shall, while performing law
 16 enforcement duties upon the public property he or she is hired to protect, be empowered
 17 to arrest:

18 (1) Persons committing, in his or her presence and upon the public property he or she
 19 is hired to protect, any misdemeanor, any traffic violation, or any other violation as
 20 defined by KRS 500.080~~{(17)}~~;

21 (2) Provided there exists probable cause to believe a felony has been committed upon
 22 the premises he or she is hired to protect, any person whom the officer reasonably
 23 and actually believes to have committed such felony upon the public property.

24 ➔Section 18. KRS 61.914 is amended to read as follows:

25 Duly commissioned special law enforcement officers shall have the power to issue tickets
 26 for parking violations committed upon the public property in their presence and the power
 27 of peace officers under KRS 431.015 to issue citations for misdemeanors, and other

- 1 violations as defined by KRS 500.080~~[(17)]~~, committed in their presence upon the public
- 2 property.