

1           AN ACT relating to the destruction of confiscated firearms.

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

3           ➔Section 1. 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 destroyed~~[sold at~~  
7       public auction to:

8       (a) ~~Federally licensed firearms dealers holding a license appropriate for the type~~  
9           ~~of firearm sold; or~~

10      (b) ~~For a firearm which was used in a homicide, any person who certifies on a~~  
11           ~~form provided by the Department of Kentucky State Police prior to placing a~~  
12           ~~bid that he or she will, upon completion of the auction, leave the firearm with~~  
13           ~~the Department of Kentucky State Police for destruction. A state or local~~  
14           ~~government or agency thereof shall not purchase a firearm under this~~  
15           ~~paragraph.~~

16      (2) ~~Any provision of KRS Chapter 45 or 45A relating to disposition of property to the~~  
17           ~~contrary notwithstanding, the Department of Kentucky State Police shall:~~

18       (a) ~~Conduct any auction specified by this section;~~

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

21       (c) ~~Transfer remaining proceeds of the sale to the account of the Kentucky Office~~  
22           ~~of Homeland Security for use as provided in subsection (5) of this section;~~  
23           ~~and~~

24       (d) ~~For any sale pursuant to subsection (1)(b) of this section, destroy the firearm].~~

25      (2)~~(3)~~ Prior to the destruction~~[sale]~~ of any firearm, the Department of Kentucky  
26       State Police shall make an attempt to determine if the firearm to be destroyed~~[sold]~~  
27       has been stolen or otherwise unlawfully obtained from an innocent owner and

1       return the firearm to its lawful innocent owner, unless that person is ineligible to  
2       purchase a firearm under federal law.

3       ~~(3)(4)~~ The Department of Kentucky State Police shall receive firearms and  
4       ammunition confiscated by or abandoned to every law enforcement agency in  
5       Kentucky. The department shall dispose of the firearms received in the manner  
6       specified in subsection (1)~~subsections (1) and (2)~~ of this section. ~~However,~~  
7       ~~firearms which are not retained for official use, returned to an innocent lawful~~  
8       ~~owner, or transferred to another government agency or public museum shall be sold~~  
9       ~~as provided in subsection (1) of this section.~~

10     ~~(5) The proceeds of firearms sales shall be utilized by the Kentucky Office of~~  
11       ~~Homeland Security to provide grants to city, county, charter county, unified local~~  
12       ~~government, urban county government, and consolidated local government police~~  
13       ~~departments; university safety and security departments organized pursuant to KRS~~  
14       ~~164.950; school districts that employ special law enforcement officers as defined in~~  
15       ~~KRS 61.900; airport safety and security departments established under KRS~~  
16       ~~183.880; and sheriff's departments for the purchase of:~~

17       (a) ~~Body armor for sworn peace officers of those departments and service~~  
18       ~~animals, as defined in KRS 525.010, of those departments;~~  
19       (b) ~~Firearms or ammunition;~~  
20       (c) ~~Electronic control devices, electronic control weapons, or electro muscular~~  
21       ~~disruption technology; and~~  
22       (d) ~~Body worn cameras.~~

23     ~~In awarding grants under this section, the Kentucky Office of Homeland Security~~  
24       ~~shall give first priority to providing and replacing body armor and second priority to~~  
25       ~~providing firearms and ammunition, with residual funds available for the purchase~~  
26       ~~of body worn cameras, electronic control devices, electronic control weapons, or~~  
27       ~~electro muscular disruption technology. Body armor purchased by the department~~

1 receiving grant funds shall meet or exceed the standards issued by the National  
2 Institute of Justice for body armor. No police or sheriff's department shall apply for  
3 a grant to replace existing body armor unless that body armor has been in actual use  
4 for a period of five (5) years or longer. Any department applying for grant funds for  
5 body-worn cameras shall develop a policy for their use and shall submit that policy  
6 with its application for the grant funds to the Office of Homeland Security as part of  
7 the application process.

8 (6) The Department of Kentucky State Police may transfer a machine gun, short-  
9 barreled shotgun, short barreled rifle, silencer, pistol with a shoulder stock, any  
10 other weapon, or destructive device as defined by the National Firearms Act which  
11 is subject to registration under the National Firearms Act and is not properly  
12 registered in the national firearms transfer records for those types of weapons, to the  
13 Bureau of Alcohol, Tobacco, and Firearms of the United States Department of  
14 Justice, after a reasonable attempt has been made to transfer the firearm to an  
15 eligible state or local law enforcement agency or to an eligible museum and no  
16 eligible recipient will take the firearm or weapon. National Firearms Act firearms  
17 and weapons which are properly registered and not returned to an innocent lawful  
18 owner or retained for official use as provided in this section shall be sold in  
19 accordance with subsection (1) of this section.]

20 ➤Section 2. KRS 45.777 is amended to read as follows:

21 (1) The proceeds from the sale of major items of equipment or real property, purchased  
22 in whole or in part with capital construction funds, shall be deposited into the  
23 general fund unless federal funding restraints require otherwise.

24 (2) The provisions of this section shall not apply to:  
25 (a) The sale of real property held as right-of-way; or  
26 (b) The sale of equipment by the Transportation Cabinet[; or  
27 (c) The sale of confiscated firearms].

1            ➔Section 3. KRS 147A.002 is amended to read as follows:

2        (1) The Department for Local Government shall be headed by a commissioner and  
3            shall consist of the:

4            (a) Office of Financial Management and Administration, which shall be headed  
5            by an executive director appointed by the commissioner and shall be  
6            responsible for duties including but not limited to:

7                1. Local government financial assistance;

8                2. County budget approval;

9                3. Performance of various recordkeeping requirements for the  
10              Commonwealth's cities, counties, and special districts;

11              4. Provision of administrative support for the state local debt officer and  
12              the state local finance officer;

13              5. Administration of the county officials training incentive program set  
14              forth in KRS 64.5275; and

15              6. Provision of financial analysis and guidance related to the internal  
16              budgetary processes of the Department for Local Government;

17        (b) Office of Federal Grants, which shall be headed by an executive director  
18              appointed by the commissioner and shall be responsible for the administration  
19              of all federal grant programs;

20        (c) Office of State Grants, which shall be headed by an executive director  
21              appointed by the commissioner and shall be responsible for the administration  
22              of all state grant programs, including the Renaissance on Main Program, the  
23              area development fund, ~~the body armor program set forth in KRS 16.220,~~  
24              the cemetery fund program, single county coal severance grants, and any state  
25              grant programs or individually funded projects awarded by statute or budget;

26        (d) Office of Legal Services, which shall be headed by an executive director  
27              appointed by the commissioner and shall be responsible for legal services

1                   within the Department for Local Government and for its constituencies around  
2                   the Commonwealth; and

3                   (e) Office of Field Services, which shall be headed by an executive director  
4                   appointed by the commissioner and shall be responsible for duties including  
5                   but not limited to staffing regional offices to assist local governments.

6                   (2) The commissioner, with the approval of the Governor, shall appoint necessary  
7                   deputies, assistants, attorneys, and other employees and shall fix their compensation and  
8                   authorize payment of their expenses according to law.

9                   ➔Section 4. KRS 500.090 is amended to read as follows:

10                  (1) Except as provided in KRS 500.092, all property which is subject to forfeiture  
11                  under any section of the Kentucky Penal Code shall be disposed of in accordance  
12                  with this section.

13                  (2) (a) Property other than firearms which is forfeited under any section of this code  
14                  may, upon order of the trial court, be destroyed by the sheriff of the county in  
15                  which the conviction was obtained.

16                  (b) Property other than firearms which is forfeited under any section of this code  
17                  may, upon order of the trial court, be sold at public auction. The expenses of  
18                  keeping and selling such property and the amount of all valid recorded liens  
19                  that are established by intervention as being bona fide shall be paid out of the  
20                  proceeds of the sale. The balance shall be paid to:

- 21                  1. The state, if the property was seized by an agency of the state or peace  
22                  officer thereof;
- 23                  2. The county, if the property was seized by the sheriff or an agency or  
24                  peace officer of the county;
- 25                  3. The Department of Fish and Wildlife Resources, if the property was  
26                  seized by a peace officer of the Department of Fish and Wildlife or was  
27                  seized by any other officer for violation of KRS Chapter 150;

1                   4. The city, if the property was seized by the city or by an agency or peace  
2                   officer thereof and the property was delivered to the city property clerk;  
3                   5. The city (ninety percent (90%) of the proceeds) and the sheriff (ten  
4                   percent (10%) of the proceeds), if the property was seized by the city or  
5                   by an agency or peace officer thereof and the property was delivered to  
6                   the sheriff or the county police; or  
7                   6. The state, if the property was seized by any combination of agencies  
8                   listed above.

9                   (c) 1. Subject to the duty to return confiscated firearms and ammunition to  
10                   innocent owners pursuant to this section, all firearms and ammunition  
11                   confiscated by a state or local law enforcement agency, all firearms  
12                   ordered forfeited by a court, and all abandoned firearms and ammunition  
13                   coming into the custody of a state or local law enforcement agency and  
14                   not retained for official use shall be transferred to the Department of  
15                   Kentucky State Police for disposition as provided by KRS 16.220.

16                   2. The transfer shall occur not more than ninety (90) days after the  
17                   abandonment of the firearm or ammunition to the law enforcement  
18                   agency or not more than ninety (90) days after its confiscation, unless a  
19                   court requires the firearm or ammunition for use as evidence, in which  
20                   case it shall be transferred to the Department of Kentucky State Police  
21                   not more than ninety (90) days following the order of forfeiture by the  
22                   court or after the court returns the firearm or ammunition from use as  
23                   evidence. ~~Prior to the sale of any firearm or ammunition, the law  
24                   enforcement agency shall make a bona fide attempt to determine if the  
25                   firearm or ammunition to be sold has been stolen or otherwise  
26                   unlawfully obtained from an innocent owner and return the firearm and  
27                   ammunition to its lawful innocent owner, unless that person is ineligible~~

1                   to purchase a firearm under federal law. This subsection relating to  
2                   auction of firearms and ammunition shall not apply to firearms and  
3                   ammunition auctioned by the Department of Fish and Wildlife that may  
4                   be sold to individual purchasers residing in Kentucky who are eligible  
5                   under federal law to purchase firearms and ammunition of the type  
6                   auctioned.]

7                   (d) If property which is forfeited under any section of this code is determined by  
8                   the trial court to be worthless, encumbered with liens in excess of its value, or  
9                   otherwise a burdensome asset, the court may abandon any interest in such  
10                  property. Property which is abandoned pursuant to this section shall be  
11                  returned to the lawful claimant upon payment of expenses for keeping the  
12                  property.

13                  (e) Property which is forfeited under any section of this code may, upon order of  
14                  the trial court, be retained for official use in the following manner: [.]

15                  1. Property which has been seized by an agency of the state may be  
16                  retained for official state use; [.]

17                  2. Property which has been seized by an agency of a county, city, charter  
18                  county government, ~~or~~ urban-county government, consolidated local  
19                  government, or unified local government may be retained for official  
20                  use by the government whose agency seized the property or for official  
21                  state use; and [.]

22                  3. Property seized by any other unit of government may be retained only  
23                  for official state use.

24                  The expenses for keeping and transferring such property shall be paid by the  
25                  unit of government by which the property is retained.

26                  (3)[(2)] Money which has been obtained or conferred in violation of any section of  
27                  this code shall, upon conviction, be forfeited for the use of the state. This subsection

1 shall not apply when, during the course of the proceeding in which the conviction is  
2 obtained, the person from whom said money was unlawfully acquired is identified.

3 ~~(4)(3)~~ Property forfeited under any section of this code shall be disposed of in  
4 accordance with this section only after being advertised pursuant to KRS Chapter  
5 424. This subsection shall not apply to property which is designed and suitable only  
6 for criminal use or to money forfeited under subsection ~~(3)(2)~~ of this section.

7 ~~(5)(4)~~ The trial court shall remit the forfeiture of property when the lawful claimant:  
8 (a) Asserts his or her claim before disposition of the property pursuant to this  
9 section;

10 (b) Establishes his or her legal interest in the property; and  
11 (c) Establishes that the unlawful use of the property was without his or her  
12 knowledge and consent. This subsection shall not apply to a lienholder of  
13 record when the trial court elects to dispose of the property pursuant to  
14 subsection ~~(2)(1)~~(b) of this section.

15 ~~(6)~~ For purposes of this section, "lawful claimant" means owner or lienholder of  
16 record.

17 ~~(7)(6)~~ **(a)** Before property which has had its identity obscured in violation of KRS  
18 514.120 may be sold or retained for official use as provided in this section, the  
19 court shall cause a serial or other identifying number to be placed thereon, and  
20 a record of the number assigned shall be placed in the court order authorizing  
21 the sale or retention of the property. This number shall be assigned, whenever  
22 applicable, in consultation with the Department of Kentucky State Police and  
23 any other state or federal regulatory agency.

24 **(b)** The purchaser of the property shall be given a document stating that the  
25 property had been forfeited pursuant to law and that a number, shown on the  
26 document, has been assigned which shall be deemed as compliance of the  
27 owner with KRS 514.120. When property is returned to an owner pursuant to

1                   this section and its identity has been obscured by another person in violation  
2                   of KRS 514.120, the court shall provide a document to the owner relieving  
3                   him or her of liability for its continued possession. This document shall serve  
4                   as evidence of compliance with KRS 514.120 by the owner or any person to  
5                   whom he or she lawfully disposes of the property.

6                   **(c)** This section shall not apply to any person after property has been sold or  
7                   returned in compliance with this section who violates the provisions of KRS  
8                   514.120 with respect to that property.

9                   **(8)[(7)]** **(a)** Before forfeiture of any property under this section, it shall be the duty  
10                  of the trial court to determine if a lawful owner or claimant to the property has  
11                  been identified or is identifiable. If a lawful owner or claimant has been  
12                  identified or is identifiable, the court shall notify the owner or claimant that  
13                  the property is being held and specify a reasonable period of time during  
14                  which the claim may be made or may, in lieu thereof, order the return of the  
15                  property to the lawful owner or claimant.

16                  **(b)** If the lawful owner or claimant does not assert his or her claim to the property  
17                  after notification or if he or she renounces his or her claim to the property, the  
18                  property shall be disposed of as provided in this section.

19                  **(c)** It shall be the duty of all peace officers and other public officers or officials  
20                  having knowledge of the lawful owner or claimant of property subject to  
21                  forfeiture to report the same to the trial court before the act of forfeiture  
22                  occurs.

23                  ➔Section 5. KRS 500.093 is amended to read as follows:

24                  No court or law enforcement agency shall retain a firearm or ammunition for official use  
25                  for the purpose of avoiding transfer of the firearm or ammunition to the Department of  
26                  Kentucky State Police under KRS 237.090 or 500.090, or other statute to avoid its being  
27                  **destroyed****[sold]** pursuant to KRS 16.220.

1            ➔Section 6. KRS 514.065 is amended to read as follows:

2        (1) As used in this section, "telecommunications service" means any communication  
3            service ordinarily provided for a charge or compensation to facilitate the  
4            origination, transmission, emission, or reception of signs, signals, writings, images,  
5            sounds, or intelligence of any nature by telephone, including but not limited to  
6            cellular and personal communications service, as terms may be defined in 47 C.F.R.  
7            parts 22 and 24, respectively, telephones, wire, radio, electromagnetic,  
8            photoelectronic, or photooptical systems, but excluding cable television services,  
9            even if provided by a telephone utility.

10      (2) A person is guilty of possession, use, or transfer for use of a device for theft of  
11            telecommunications services when the person:

12            (a) Makes, assembles, or possesses any instrument, apparatus, equipment, or  
13            device designed, modified, altered, programmed, reprogrammed, or otherwise  
14            adapted for or used for commission of a theft of telecommunications services  
15            in violation of KRS 514.060; or

16            (b) Sells, gives, transports, or otherwise transfers to another, or offers or  
17            advertises to sell, give, or otherwise transfer any instrument, apparatus,  
18            equipment, or device described in paragraph (a) of this subsection, or plans or  
19            instructions for making or assembling the same under circumstances evincing  
20            an intent to use or employ the instrument, apparatus, equipment, or device, or  
21            to allow the same to be used or employed, for a purpose described in  
22            paragraph (a) of this subsection, or knowing or having reason to believe that  
23            the same is intended to be so used, or that the aforesaid plans or instructions  
24            are intended to be used for making or assembling the instrument, apparatus,  
25            equipment, or device.

26      (3) An instrument, apparatus, equipment or device described in paragraph (a) of  
27            subsection (2) of this section shall not include any instrument, apparatus,

1       equipment, or device authorized or approved or otherwise permitted by an agency  
2       of the federal government or the Commonwealth of Kentucky.

3       (4) Possession, use, or transfer for use of a device for theft of telecommunications  
4       services is a Class A misdemeanor unless the defendant has previously been  
5       convicted of violating this section, in which case it is a Class D felony.

6       (5) Notwithstanding any other provision of this chapter, any instrument, apparatus,  
7       equipment, or device designed, modified, altered, programmed, reprogrammed, or  
8       otherwise adapted for or used for commission of a theft of telecommunications  
9       service in violation of KRS 514.060, may be seized under warrant or incident to a  
10      lawful arrest for the violation of KRS 514.060, and, upon the conviction of any  
11      person for a violation, the court shall order any instrument, apparatus, equipment,  
12      device, or plans or instructions for making or assembling them forfeited to the state  
13      or destroyed in accordance with KRS 500.090(2)~~(1)~~(a), or if requested by the  
14      person providing the telecommunications service in the territory in which they were  
15      seized, turned over to the telecommunications service provider.