

CORRECTIONS IMPACT STATEMENT

SESSION: 18RS

BILL #: HB 502 Introduced

BR #: 1854

DOC ID#: BR185400.100 - 1854 - XXXX

BILL SPONSOR(S): Rep. G. Brown Jr, M. Marzian, J. Donohue, K. Flood, J. Jenkins, R. Meeks, A. Scott, J. Wayne

AMENDMENT SPONSOR(S):

SUBJECT: AN ACT relating to firearms and declaring an emergency.

SUMMARY OF LEGISLATION: Create new sections of KRS Chapter 237 to specify definitions for "assault weapons," "large-capacity ammunition-feeding devices," "bump stocks," and "ammunition sellers"; require background checks for private firearms sales; require reporting to law enforcement of firearm and ammunition thefts and losses; require the safe storage of firearms; and to prohibit the manufacture, sale, or transfer of a bump stock; amend KRS 395.250 to require an estate's inventory to list each firearm; amend KRS 403.735 to require judges, when issuing an order of protection, to consider whether a person against whom the order is entered should be prohibited from possessing a firearm; amend KRS 504.030 to require judges in criminal cases where a person is found guilty by reason of insanity to demand the surrender of the defendant's firearms; amend KRS 506.080 to specify that the offense of facilitation includes assistance in providing firearms; amend KRS 508.020 to include physical injury to a minor by virtue of the intentional discharge of a firearm within the offense of assault in the second degree; create new sections of KRS Chapter 527 to create the offense of criminal purchase or disposal of a weapon and to prohibit the unlawful storage of a firearm; amend KRS 527.040 to require that the sentence for a felon in possession of a firearm run consecutively with any other felony sentence; amend KRS 527.070 to include colleges and universities within the existing ban on firearms in schools; amend KRS 532.030 to require the judge pronouncing a defendant guilty but mentally ill to demand the surrender of the person's firearms; create a new section of KRS Chapter 237 to require the State Police to promulgate administrative regulations relating to the licensing of persons to possess firearms and assault weapons, the registration of firearms and assault weapons, and the logging of firearms and ammunition sales effective January 1, 2019; repeal KRS 65.870; amend KRS 237.115 to conform; EMERGENCY.

This bill amendment committee substitute is expected to:

Have the following Corrections impact Have no Corrections impact

- | | |
|---|--|
| <input checked="" type="checkbox"/> Creates new crime(s) | <input type="checkbox"/> Repeals existing crime(s) |
| <input type="checkbox"/> Increases penalty for existing crime(s) | <input type="checkbox"/> Decreases penalty for existing crime(s) |
| <input checked="" type="checkbox"/> Increases incarceration | <input type="checkbox"/> Decreases incarceration |
| <input type="checkbox"/> Reduces inmate/offender services | <input type="checkbox"/> Increases inmate/offender services |
| <input type="checkbox"/> Increases staff time or positions | <input type="checkbox"/> Reduces staff time or positions |
| <input checked="" type="checkbox"/> Changes elements of offense for existing crime(s) | |
| <input type="checkbox"/> Otherwise impacts incarceration (Explain) _____ | |

STATE IMPACT: Class A, B & C felonies are based on an average daily prison rate of \$70.12. Most Class D felons are housed in one of 76 full service jails for up to 5 years. DOC's cost to incarcerate a felony inmate in a jail is \$31.45 per day (includes jail per diem, medical & central office costs), not including substance abuse treatment. Projections are based on the daily rate x 365 x number of years.

Projected Impact: NONE MODERATE (< \$1 million) SIGNIFICANT (> \$1 million)

Section 1 of the legislation specifies a definition of an assault weapon.

Section 2 establishes a National Instant Criminal Background Check (NICS) before a sale. The dealer may charge a \$10 fee per transaction. This record shall not be subject to open records. A violation of the background requirements shall be a Class A misdemeanor.

Section 3 requires individuals to report the loss or theft of a firearm or ammunition within twenty-four (24) hours of discovering the loss or theft. The report shall include detailed information about the firearm. Failure to report a lost or stolen firearm or ammunition shall be a Class A misdemeanor.

Section 4 requires the safe storage of firearms. A firearm shall not be stored or left out of immediate possession/control without the firearm being securely locked in a secure container or rendered incapable of being fired by a gun locking device. A safe storage container is one that when locked, is incapable of being opened without a key, combination or other unlocking mechanism and is capable of preventing an unauthorized person from obtaining the firearm. Failure to safely store a firearms shall be a Class A misdemeanor.

Under Section 5, it is unlawful to manufacture, sell, transfer, or import a bump stock. Violation shall be a Class A misdemeanor. Unlawful commerce/transfer of the device shall be subject to forfeiture.

Under Section 6, estates are required to inventory every firearm with submission to the Kentucky State Police.

Section 7 requires judges to consider prohibition of firearms for individuals subject to protection orders. If so imposed, the weapons shall be impounded until expiration of the order or legal transfer of weapons.

Section 8 orders the prohibition against and the surrendering of firearms for individuals found not guilty by reason of insanity.

Section 9 adds making, supplying, or disposing of a firearm an element for criminal facilitation. Criminal Facilitation is a Class D felony with the crime facilitated is a Class A, Class B, or Capital offense, and a Class A misdemeanor when the crime is a Class C or Class D felony, and a Class B misdemeanor when the crime facilitated is a misdemeanor.

Section 10 adds wantonly causes physical injury to a minor by intentionally discharging a firearm to Assault 2nd Degree. Assault 2nd Degree is a Class C felony.

Currently the Department has 1,060 inmates in custody and an additional 860 offenders on community supervision with a conviction for Assault 2nd Degree. Note: offenders may also be serving on other charges.

Section 11 creates a Class D offense of criminal purchase or disposal of a weapon for individuals prohibited from possession of a firearm and knowingly purchases or disposes of a firearm.

Section 12 creates a new crime of unlawful storage of a firearm, in which a firearm is recklessly stored allowing a minor to have unsupervised access, to which the minor accesses the unsecured firearm without permission. A firearm is considered secured by a secured lock box or container, a device or mechanism (other than the safety) which renders the firearm temporarily inoperable, or by carrying the firearm on the body. Unlawful storage of a firearm shall be a Class B misdemeanor. A Class A misdemeanor results when the firearm is used by the minor without legal justification, resulting in physical injury, serious physical injury, or death. This penalty does not apply if the minor obtains the firearm as a result of unlawful means.

Data from AOC indicates eight (8) convictions in FY2015-2017 for Unlawfully Provide or Permit Minor to Possess Handgun (including inchoate offenses). The Department currently has four (4) offenders incarcerated and five (5) offenders on supervision for this offense.

Section 13 amends the statute for possession of firearm or handgun by a convicted felon, mandating this offense to be consecutive to any other felony sentence. In FY 2017 there were 703 convictions statewide for Class D Convicted Felon in Possession of a Firearm and 595 convictions for Class C Convicted Felon in Possession of a Handgun, including inchoate offenses.

Currently the Department has 2,277 offenders incarcerated and 2,286 offenders on community supervision for Convicted Felon in Possession of a Firearm or Convicted Felon in Possession of a Handgun. For incarcerated offenders only, there are 1,109 offenses of Class D Possession Of Firearm By Convicted Felon and 1,334 offenses of Class C Possession Of Handgun By Convicted Felon. Note: offenders may be convicted of multiple offenses.

For these two crimes, the average sentence length for inmates convicted under 527.040 is 5.94 years. However, the average sentence length for all offenses these offenders are incarcerated on is 16.82 years.

Consecutive sentences will add significant additional incarceration time. Of those currently incarcerated for these offenses, it is not known how many are serving consecutive vs concurrent sentences. Under KRS 532.100 Class C & D felons with a sentence of more than five (5) years can only serve the time in a county jail if meeting the requirements for community custody.

Section 14 is amended to include colleges or universities to the prohibition of unlawful possession of a weapon at school. In FY2017 AOC reports five (5) convictions for the Class D felony of Unlawful Possession of Weapon on School Property. The Department currently has five (5) offenders incarcerated and thirteen (13) offenders on supervision for this offense.

Section 15 orders the prohibition against and the surrendering of firearms for individuals found guilty but mentally ill. This section would be effective on January 2019.

Section 16 requires the Kentucky State Police to promulgate regulations for the licensure of persons to possess a handgun in the Commonwealth. It would prohibit possession of a handgun unless legally licensed or exempted. Requirements shall include twenty-one (21) years of age or honorably discharge from the Armed Forces (and not otherwise prohibited). Licensure shall be for five (5) years, may include a fee, and may be public or private (private shall not be a public record). Possession of a handgun in violation of the regulations shall be a Class A misdemeanor.

The State Police shall similarly establish a regulation for the registration of handguns in the Commonwealth, including a requirement for registration upon transfer of a handgun. A person possessing an unregistered handgun shall be guilty of a Class A misdemeanor.

In the same manner, the State Police shall establish licensure for individuals to possess an assault weapon. A person possessing an assault weapon or other large capacity ammunition feeding device in violation of the regulations shall be subject to a Class D felony.

There will also be a registry established for assault weapons, with updated transfer of ownership required. A person possessing an unregistered assault weapon or large capacity ammunition feeding device shall be guilty of a Class D felony.

An electronic sales log keeping requirement shall be established for firearms dealers and ammunition sellers in Kentucky, with real time operation by July 2019. A firearms dealer who violates this regulation would be subject to a Class B misdemeanor.

Sections 17-19 are conforming amendments.

This legislation encompasses several criminal offenses, both misdemeanor and felony, that would have a significant impact for the Department. Of considerable impact is consecutive sentences for convicted felons in possession of a handgun or firearm.

A Class D Felony sentence is 1 to 5 years.	10 Class D Felons cost KY \$114,808 to \$574,040
1 Class D Felon costs KY \$11,481 to \$57,404	100 Class D Felons cost KY \$1.1M to \$5.7M
A Class C Felony sentence is 5 to 10 years.	10 Class C Felons cost KY \$1.3M to \$2.6M
1 Class C Felon costs KY \$127,972 to \$255,944	100 Class C Felons cost KY \$12.8M to \$25.6M

LOCAL IMPACT: Local governments are responsible for the cost of incarcerating individuals charged with Class A or B misdemeanors and felony defendants until disposition of the case. While the expense varies by jail, this estimated impact will be based on \$31.34 per day, which equals the per diem and medical that DOC pays jails to house felony offenders.

Projected Impact: NONE MODERATE (< \$1 million) SIGNIFICANT (> \$1 million)

This legislation establishes several new misdemeanor offenses related to firearms. Misdemeanor offenses are subject to the cost of county. It is not known how many additional convictions this legislation would bring.

Class D offenders are subject to serving their sentence at a county jail at a cost of \$31.34 per day. Class C offenders may or may not be eligible for service of their sentence at a jail. To be eligible for community custody, Class C offenders would have to be classified at the lowest custody level with eighteen (18) months or less to expiration or parole eligibility. Offenders not eligible for community custody would be housed at a state prison at a cost of \$70.12 per day.

Housing state inmates in county jails provides an opportunity for jails in additional revenue through state inmate per diem, however, any additional incarceration impacts local jail capacity.

Overall, the impact on incarceration at the local level is not known, but there could be an increase in offenders generated or length of incarceration periods under this legislation.

A Class B misdemeanor is up to 90 days in jail.	10 Class B misdemeanants: up to \$28,206
1 Class B misdemeanant: up to \$2,821	100 Class B misdemeanants: up to \$282,060
A Class A misdemeanor is 90 days to 1 year in jail	10 Class A misdemeanants: \$28,206 to \$114,391
1 Class A misdemeanant: \$2,821 to \$11,439	100 Class A misdemeanants: \$282,060 to \$1,143,910

The following offices contributed to this Corrections Impact Statement:

Dept. of Corrections Dept. of Kentucky State Police Administrative Office of the Courts Parole Board Other

NOTE: Consideration should be given to the cumulative impact of all bills that increase the felon population or that impose new obligations on state or local governments. The Department of Corrections and local jails continue to operate over capacity. Without steps to reduce the population, any legislation that increases population or lengthens the term of incarceration will have a significant impact on correctional operations.

APPROVED BY: _____
Commissioner, Kentucky Department of Corrections

3/16/2018
Date