

## CORRECTIONS IMPACT STATEMENT

SESSION: 19RS BILL # HB 76 Prefiled BR # 349 DOC ID #: BR034900.100 - 349 - XXX

BILL SPONSOR(S): Rep. G. Brown Jr 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 an 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 237.104 to conform; 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 a new section of KRS Chapter 527 to create the offense of criminal purchase or disposal of a weapon; amend KRS 527.040 to require that the sentence for a felon in possession of a firearm be served subsequent to any other felony sentence; amend KRS 527.070 to include post secondary education facilities 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, 2020; amend KRS 532.025 to conform; amend KRS 237.115 to conform; repeal KRS 65.870; EMERGENCY

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This  bill  amendment  committee substitute is expected to:

Have the following Corrections impact  Have no Corrections impact

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|---|--|
| <input checked="" type="checkbox"/> Creates new crime(s)                              | <input checked="" 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) .                  |  |

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**STATE IMPACT:** Class A, B & C felonies are based on an average daily prison rate of \$71.10. 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 \$32.78 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  MINIMAL to MODERATE (< \$1 million)  SIGNIFICANT (> \$1 million)

Section 1 of this legislation creates a definition of assault weapons (semiautomatic rifle, semiautomatic shotgun, semiautomatic pistol, and revolving cylinder shotgun). The legislation clarifies what is not an assault weapon and adds definitions for bump stock, large capacity ammunition feeding device, and seller of ammunition.

Section 2 requires that all sales, exchanges, or disposals of firearms be conducted in accordance with the legislation (as well as other applicable state or federal law) unless the transaction is conducted under federal firearms license (18 U.S.C. 922) or is between immediate family members. Before any sale, a National Instant Criminal Background Check (NICS) is required. Dealers shall be required to maintain records of transactions, which shall be available to law enforcement but not subject to open records. Dealers may assess a \$10 transaction fee. Violation of this section shall be a Class A misdemeanor.

Section 3 requires individuals to report the loss or theft of a firearm and a seller of ammunition to report the loss or theft of ammunition to local law enforcement within twenty-four (24) hours. Kentucky State Police shall coordinate information and efforts to locate the firearm or ammunition. 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 an appropriate safe storage location or rendered incapable of being fired by a gun-locking device. A safe location includes the use of a safe or other secure container which, when locked, is incapable of being opened without a key, combination, or other unlocking mechanism, preventing an authorized person from access. Failure to safely store a firearms shall be a Class A misdemeanor.

Data from AOC indicates twenty-seven (27) convictions in FY2016-2018 for the similar felony offense of KRS 527.110 Unlawfully Provide or Permit Minor to Possess Handgun (including inchoate offenses). Kentucky Department of Corrections records show nine (9) offenders with this offense, five (5) of whom are incarcerated. Note: offender may be incarcerated on other charges.

Section 5 prohibits the manufacture, sale, delivery, transfer, or import of a bump stock. Violation shall be a Class A misdemeanor. Seizure and forfeiture is included.

Section 6 requires estates to inventory firearms with submission to the Kentucky State Police (KRS 395.250).

Section 7 prohibits individuals subject to a protection order from possessing a firearm if the court determines there is substantial risk the respondent may use or threaten to use a firearm unlawfully against the protected person. The respondent shall surrender any firearms owned or possessed to the local sheriff, where the firearm will be impounded until expiration of the order or legal transfer of the weapons (KRS 403.735).

Section 8 orders prohibition against possession and surrendering/impounding of firearms for individuals found not guilty by reason of insanity (KRS 504.030).

Section 9 reinforces that the right to own or possess firearms does not apply to individuals prohibited by statute from possessing a firearm, adding reference to sections 7, 8, and 15 of this legislation (KRS 237.104).

Section 10 adds making available, selling, exchanging, giving, or disposing of a firearm an element for the offense of criminal facilitation (KRS 506.080). Criminal Facilitation is acting with the knowledge that another individual is committing or intends to commit a crime and engaging in conduct which provides means or aid in the commission of the crime. Criminal Facilitation is a Class D felony when the crime facilitated is a Class A, Class B, or Capital offense, 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. This included language may cause additional offenders to be found guilty of the offense of criminal facilitation; however, the impact is not expected to be substantial as this action may currently be subject to criminal charges.

In FY18, AOC records indicate there were six (6) convictions for Criminal Facilitation to Convicted Felon in Possession of a Firearm and five (5) convictions for Criminal Facilitation to Convicted Felon in Possession of a Handgun. However, there is no way to estimate how many non-weapons offenses involving a firearm that could, under this legislation, have Criminal Facilitation added.

Section 11 amends the offense of Assault 2<sup>nd</sup> Degree (KRS 508.020) by adding wantonly causing physical injury to a minor by intentionally discharging a firearm. Assault 2<sup>nd</sup> Degree is a Class C felony. It is not known how many additional offenders would be generated under this provision, but it is likely to be few. AOC records indicate zero (0) convictions for Assault 2<sup>nd</sup> Degree - Family or Non-Family (Weapon) in FY2016-2018. Department of Corrections records reflect

seven (7) current inmates for the offense of Assault 2<sup>nd</sup> Degree - Family or Non-Family (Weapon). It is not known how many of these offenses involved a minor as a victim.

Even though the number of convictions under this offense are not likely to be substantial in number, the impact of additional Class C felons with a sentence of 5-10 years would have a sizeable incarceration cost. It is unlikely that an offender with this conviction would be eligible for community custody and thus would be subject to incarceration at a state prison facility at a cost of \$71.10 per day.

Section 12 creates a new Class D felony of criminal purchase or disposal of a weapon. The offense occurs when a prohibited individual knowingly purchases a firearm or knowing that someone is prohibited from possessing a firearm, purchases a firearm for or on behalf of, or disposes of a firearm to such person. It is not known how many additional offenders would be convicted of this offense, but the numbers would not be expected to be substantial.

Section 13 amends the statute for Possession of a Firearm by a Convicted Felon (KRS 527.040) mandating that sentences for this offense be served consecutive to any other felony sentence imposed on the offender. In FY 2018, AOC records indicate 785 convictions statewide for Class D Convicted Felon in Possession of a Firearm and 786 convictions for Class C Convicted Felon in Possession of a Handgun, including inchoate offenses.

Currently the Department has 1,187 inmates for the Class D offense of Possession Of Firearm By Convicted Felon and 1,529 inmates for the Class C offense of Possession Of Handgun By Convicted Felon. Note: offenders may be convicted of multiple offenses.

For these two crimes only, the average sentence length is 4.97 years. However, the average sentence length for all offenses these offenders are incarcerated on is 15.49 years.

Consecutive sentences will add significant additional incarceration time. 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 adds postsecondary education facilities to the Class D offense of Unlawful Possession of Weapon on School Property (KRS 527.070). In FY2018, AOC reports five (5) convictions for this offense, while the Department currently has eight (8) offenders incarcerated and sixteen (16) offenders on supervision for this offense.

Section 15 prohibits possession and orders the surrendering/impounding of firearms for offenders found guilty but mentally ill (KRS 532.030).

Section 16 tasks the Kentucky State Police to regulate licensure of persons to possess a handgun in the Commonwealth. Possession of handgun without a license or exemption by the Kentucky State Police would be prohibited. Licenses would be available to individuals aged twenty-one (21) and older or honorable discharged from the Armed Forces who meet the eligibility criteria established by regulation (and not otherwise prohibited by state or federal law from possessing a handgun). Licensure shall be for five (5) years, may include a fee, and may constitute a private or public record. Possession of a handgun in violation of the regulations would be a Class A misdemeanor.

The Kentucky 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 Kentucky State Police shall establish licensure for individuals to possess an assault weapon or large capacity ammunition feeding device. 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 be a registry established for assault weapons and large capacity ammunition feeding devices, 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.

Firearms dealers will have a sales log-keeping requirement, with real time operation required by July 2020. A firearms dealer who violates this regulation would be subject to a Class B misdemeanor.

Sections 17-18 are conforming amendments. Section 19 repeals KRS 65.870. Sections 20-21 calls for emergency enactment with the exception of Section 16.

This legislation encompasses several criminal offenses, both misdemeanor and felony, that would have an impact for Corrections. The legislation has a fiscal impact for the Kentucky State Police in the implementation and operation of the firearms registry.

Of considerable impact to incarceration costs is the consecutive sentence requirement for convicted felons in possession of a handgun or firearm, which would increase the average sentence length significantly.

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 \$129,753 to \$259,506	100 Class C Felons cost KY \$13M to \$26M
A Class D Felony sentence is 1 to 5 years.	10 Class D Felons cost KY \$119,649 to \$598,244
1 Class D Felon costs KY \$11,965 to \$59,824	100 Class D Felons cost KY \$1.2M to \$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  MINIMAL to MODERATE (< \$1 million)  SIGNIFICANT (> \$1 million)

This legislation establishes several new Class A misdemeanor offenses related to firearms. Misdemeanor offenses are subject to the cost of county. While it is not known how many additional convictions this legislation would bring, the offenses would ultimately increase the county population, which would have a financial impact on the county and add strain on overcrowded facilities.

Class D offenders are subject to serving their sentence at a county jail at a cost to the state of \$31.34 per day. Class C offenders may or may not be eligible for service of their sentence at a jail, depending on custody level and time left to serve. 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.

It is not possible to estimate the impact on incarceration at the local level. However, given the serious nature of the offenses involved in this legislation, there could be an increase in incarceration under this legislation.

Overall, the fiscal impact to the local level is expected to be moderate to minimal.

A Class A misdemeanor is 90 days to 1 year in jail.	10 Class A misdemeanants: \$28,206 to \$114,391
1 Class A misdemeanor: \$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:**  **1/4/2019**  
Commissioner, Kentucky Department of Corrections Date