

Section 3 requires any person who lawfully possesses a firearm or sells ammunition, and who suffers a loss or theft of a firearm or ammunition, to report that loss or theft to the police or sheriffs' department. Local law enforcement must forward a copy of the report to Kentucky State Police (KSP). Failure to report such loss or theft within 24 hours of discovering the loss or theft is a Class A misdemeanor.

Section 4 requires gun owners or custodians when not in the immediate possession or control of their guns, to securely lock their firearms in an appropriate safe-storage depository or render them incapable of being fired. Failure to do so is a Class A misdemeanor.

Section 5 makes it a Class A misdemeanor for a person to make, sell, transfer, deliver, or import a bump stock. Bump stocks confiscated in violation of this section shall become contraband, will be seized and forfeited to the state, and disposed of in accordance to KRS 237.090.

Section 6 amends KRS 395.250 to require a particularized description of every firearm that is part of an estate be provide to the KSP.

Section 7 amends KRS 403.735 by adding the requirement for the local sheriff to impound firearms from a respondent where the court determines there is a substantial risk that the respondent may use or threaten to use a firearm against the person requesting an order of protection. The local sheriff shall impound the firearms until the prohibition is lifted, the order expires, or the respondent directs the transfer of the weapon(s) to a person lawfully allowed to possess the firearm(s).

Section 8 adds language to KRS 504.030 that requires a defendant who is found not guilty by reason of insanity to surrender all firearms owned or possessed to the local sheriff who will impound the weapons until the defendant can legally possess or own the firearms or directs the transfer of the weapons to a person lawfully allowed to possess the firearm.

Section 9 amends KRS 237.104 by adding language which allows firearms to be taken or impounded from a person who is forbidden to possess a firearm, as amended by Sections 7, 8 and 15 of this Act.

Section 10 amends KRS 506.080 by adding the language “. . .making available, selling, exchanging, giving, or disposing of a firearm.” to the elements of criminal facilitation. Criminal facilitation is either a Class D felony, Class A misdemeanor, or a Class B misdemeanor depending on the level of facilitation associated with the underlying crime.

Section 11 amends KRS 508.020, assault in the second degree, by including instances for when a person “wantonly causes physical injury to a minor by intentionally discharging a firearm.” Assault in the second degree is a Class C felony.

Section 12 creates the new offense of criminal purchase or disposal of a weapon. The elements of this crime include the purchase of a firearm by a person while knowing that he

or she is prohibited by law from possessing a firearm. This section also prohibits purchasing a firearm for, or on behalf of, or for the use of another person while knowing that the other person may not legally possess one. Lastly, this section also forbids the disposal of a firearm to a person prohibited by law from possessing a gun. Any act in violation of this section is a Class D felony.

Section 13 enhances the penalty for possession of a firearm by a convicted felon in KRS 527.040. It requires that the sentence imposed on the offender be served subsequent to the requirements of any other felony sentence.

Section 14 amends KRS 527.070 to add postsecondary education facilities and any other property owned, used or operated by any institute of postsecondary education to the list of educational institutions where it is illegal to possess a firearm. Violation of this section is a Class D felony.

Section 15 adds language to KRS 532.030 that states when a person is convicted of any capital or felony offense, or any offense where the defendant is found guilty but mentally ill, the judge shall order the defendant to be prohibited from possessing firearms. All possessed or owned firearms must be turned over to the local sheriff to be impounded until the defendant can legally possess or own firearms or directs the transfer of the weapons to someone who can. Section 17 amends KRS 532.025 by updating the citation referenced in KRS 532.030 due to the newly added language of Section 15.

Section 16 establishes licensing and registration requirements for handguns, assault weapons, and large capacity ammunition feeding devices. The KSP may create exemptions to licensing and registration requirements. Unless exempted by KSP regulation, failure to license and register a handgun or in possession is a Class A misdemeanor for each offense. Likewise, lack of proper licensing and possession of unregistered assault weapons or large capacity ammunition feeding devices is a Class D felony for each offense.

Furthermore, Section 16 requires firearm dealers and ammunition sellers to keep logs of sales. By July 1, 2020, such logs are to be kept in real-time and shall be used to access KSP's records to determine if a particular purchase can be completed. A failure to comply with these requirements is a Class B misdemeanor.

Section 17 makes legal citation adjustments resulting from additional language in Section 15.

Section 18 amends KRS 237.115 removing the right of a college, university, or any postsecondary education facility, including technical schools and community colleges, to control the possession of deadly weapons on any property owned or controlled by them.

Sections 19 repeals KRS 65.870 which, among other things, prevents local governments from occupying any part of the field of regulation of firearms. KRS 65.870 also subjects local governments and their agents to civil liability for attempting to enforce any local firearms laws.

Section 20 makes the effective date for Section 16 January 1, 2020.

Section 21 declares an emergency and with the exception of Section 16, makes this Act effective upon passage and approval by the Governor or upon it otherwise becoming law.

The bill's impact on local government will fall mostly upon sheriffs' departments, local law enforcement agencies, and county jails.

HB 76 places new duties on sheriffs' departments and local law enforcement agencies. These new duties are clerical and custodial in nature. Section 3 requires all local law enforcement agencies, including sheriffs, to forward to KSP all reports of lost or stolen firearms and ammunition.

Additionally, the bill requires the sheriff to impound the firearms of those barred by the bill from possessing a gun. Those individuals include anyone convicted of a felony, a capital offense, and anybody found to be guilty but mentally ill or guilty by reason of insanity. Further, the bill requires sheriffs to impound guns belonging to respondents of domestic violence emergency protective orders who are judicially deemed to pose a substantial risk to use or threaten to use a firearm against a domestic violence victim.

The Kentucky Sheriffs' Association (KSA) is concerned the requirements of this bill will create a significant fiscal impact to local sheriff offices as well as other local law enforcement. The anticipated impact to the sheriff's office is a result of the lack of space to store firearms, increase training for personnel, and supplies or equipment to maintain the stored firearms. They expect this bill will increase the overall number of firearms that will need to be stored for an undefinable period of time. KSA states that impounded firearms must be treated like evidence. This means that any additional storage space must be secure and have controlled and limited access. The space must be environmentally controlled to prevent damage to firearms from humidity. Due to the unknown period of time firearms may be stored, there may be a need to periodically inspect and maintain firearms to keep them in the same condition as when first impounded.

HB 76 creates a series of new crimes, makes changes to current ones, and adds an enhanced jail sentence requirement or possession of a firearm by convicted felon.

Local governments will be responsible for incarcerating individuals charged with violating the provisions of HB 76. Local governments are responsible for the cost of incarcerating an individual who does not make bail when charged with a Class B or Class A misdemeanor, as well as, an individual convicted of one of these offenses.

Class B and Class A misdemeanors:

A person convicted of a Class B misdemeanor may be incarcerated for up to 90 days. A person convicted of a Class A misdemeanor may be incarcerated for up to twelve months. Misdemeanants are housed in one of Kentucky's 76 full service jails or four life safety jails. While the expense of housing inmates varies by jail, this estimated impact will be

based on \$31.34 per day, which equals the per diem and medical expenses that the Department of Corrections pays jails to house felony offenders. While the majority of misdemeanor defendants are granted bail, those who do not will also cost local jails an average of \$31.34 per day.

Class D and Class C felons:

When a court denies bail to a Class D felony defendant, the local government is responsible for incarcerating the defendant until disposition of the case in one of Kentucky's 76 full service jails or four life safety jails. While the expense of housing inmates varies by jail, each additional inmate increases facility costs by an estimated average of \$31.34 per day, which equals the per diem and medical expenses that the Department of Corrections pays jails to house felony offenders. Upon sentencing, a Class D felon is housed in one of Kentucky's full service jails for the duration of his or her sentence. The Department of Corrections pays a jail \$31.34 per day to house a D felon. Since the per diem pays for the estimated average cost of housing a Class D felon, the per diem may be less than, equal to, or greater than the actual housing cost.

When a court denies bail to a Class C felony defendant, the local government is responsible for incarcerating the defendant until disposition of the case in one of Kentucky's 76 full service jails or four life safety jails. While the expense of housing inmates varies by jail, each additional inmate increases facility costs by an estimated average of \$31.34 per day, which equals the per diem and medical expenses that the Department of Corrections pays jails to house felony offenders. Class C felons are ineligible for placement in local jails until they are classified at the lowest custody level with 24 months or less to their minimum expiration date or parole eligibility date. The Department of Corrections pays local jails \$31.34 per day to house these Class C felons. Since the per diem pays for the estimated average cost of housing a Class C felon, the per diem may be less than, equal to, or greater than the actual housing cost.

Lastly, since the bill repeals KRS 65.870, local governments would then be allowed to enact their own gun control measures. Local government that chose to enact ordinances will incur costs associated with the drafting, publication, indexing and recording of adopted ordinances, and periodically (at least every 5 years) review and eliminate redundant, obsolete, inconsistent and invalid provisions. If localities enact their own ordinances or other laws, the **costs and workload associated with those measures** would be **in addition to other state and federal requirements**. According to Kentucky League of Cities, most cities, especially the smaller ones, retain their city attorney on contract and pay on an hourly basis. Time spent drafting an ordinance is influenced by its complexity and the amount of research that is necessary. In FY 2018, the median hourly rate was approximately \$106. Rates for legal notices vary greatly depending on the length of the publication, the number of times it needs to be published and the newspaper in which the publication is placed. Therefore, these costs are unknown.

The creation of new duties will potentially impact the sheriffs' departments in a moderate to high manner depending on the increase in numbers of firearms to be stored and the availability of additional storage space. The impact of the new duties

on other local law enforcement is expected to be mostly procedural and paper oriented and thus minimal. The impact on local jails is indeterminable.

Part III: Differences to Local Government Mandate Statement from Prior Versions

The Part II section above pertains to the bill as introduced and there are not any prior versions of the bill to complete the Part III section.

Data Source(s): LRC Informational Bulletin No. 145, Kentucky Municipal Statutory Law, Revised September 2018, LRC Staff, Kentucky Sheriffs Association, Kentucky League of Cities, Kentucky Association of Counties; Kentucky Department of Corrections.

Preparer: Mark Offerman **Reviewer:** KHC **Date:** 1/16/19