

# CORRECTIONS IMPACT STATEMENT

SESSION: 20RS BILL # HB 45 Prefiled BR # 342 DOC ID #: xxxx

BILL SPONSOR(S): Rep. G. Brown Jr AMENDMENT SPONSOR(S): . .

TITLE: 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," 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; 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 not 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 postsecondary 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 handguns and assault weapons, the registration of handguns and assault weapons, and the logging of firearms and ammunition sales effective January 1, 2021; amend KRS 532.025 to conform; amend KRS 237.115 to conform; repeal KRS 65.870; EMERGENCY; some provisions EFFECTIVE January 1, 2021.

**AMENDMENT:** .

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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) .                  |                                                                  |

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**STATE IMPACT:** Class A, B, & C felonies are based on an average daily prison rate of \$75.91. Community Custody Class C and most Class D felons are housed in one of 76 full service jails for up to 5 years. Department of Corrections' cost to incarcerate a felony inmate in a jail is \$36.70 per day, which includes \$31.34 per diem, medical costs, & central office administrative costs (substance abuse treatment not included). *Projections are based on the daily rate x 365 days x number of years. Offenders may have multiple offenses or incarcerated on other charges unless otherwise noted. Unless otherwise noted, numbers will include inchoate offenses at the underlying offense level.*

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

This legislation focuses on several weapon offenses.

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 of large capacity ammunition feeding device and seller of ammunition.

Section 2 requires that all sales, exchanges, or transfers of firearms be conducted in accordance with the legislation unless the transaction is conducted by a licensed dealer (in accordance with 18 U.S.C. 921 and 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. 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 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 a safe storage 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 firearm shall be a Class A misdemeanor.

While not a direct comparison as it is specific to minors, for the similar felony offense of KRS 527.110 Unlawfully Provide or Permit Minor to Possess Handgun, AOC reports zero (0) convictions in FY2019. Kentucky Department of Corrections records show seven (7) offenders with this offense, three (3) of whom are incarcerated.

Section 5 requires estates to inventory firearms with submission to the Kentucky State Police (KRS 395.250).

Section 6 requires judges to consider prohibition of firearms for individuals subject to protection orders 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 7 orders prohibition against possession and the surrendering/impounding of firearms for individuals found not guilty by reason of insanity (KRS 504.030).

Section 8 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 6, 7, and 14 of this legislation (KRS 237.104).

Section 9 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 FY2019, AOC records indicate there were four (4) convictions for Criminal Facilitation to Convicted Felon in Possession of a Firearm and three (3) 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 10 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 one (1) conviction for Assault 2<sup>nd</sup> Degree - Family or Non-Family (Weapon) in FY2019. Department of Corrections records reflect two (2) inmates and seven (7) supervised offenders for the offense of Assault 2<sup>nd</sup> Degree - Family or Non-Family (Gun). 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 five (5) to ten (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 \$75.91 per day.

Section 11 creates a new Class D felony of criminal purchase or transfer of a weapon. The offense occurs when an individual knowingly purchases for or transfers a firearm to a prohibited individual, knowing that individual is prohibited from possessing a firearm.

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 12 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 2019, AOC records indicate 918 convictions statewide for Class D Convicted Felon in Possession of a Firearm and 942 convictions for Class C Convicted Felon in Possession of a Handgun.

Currently the Department has 1,260 inmates for the Class D offense of Possession Of Firearm By Convicted Felon and 1,726 inmates for the Class C offense of Possession Of Handgun By Convicted Felon.

For these two crimes only, the average sentence length is 6.03 years. However, the average sentence length for all offenses these offenders are incarcerated on is 16.54 years.

Consecutive sentences will add significant additional incarceration time. Under KRS 532.100 Class Ds with a sentence of more than five (5) years can only be housed in a county jail when there is less than five (5) years remaining. Class C felons are eligible for placement in a county jail if meeting the requirements for community custody. Those eligible for incarceration in a county jail serve at a cost to the state of \$36.70 per day while those incarcerated at a state prison facility are a cost of \$75.91 per day.

Section 13 adds colleges or universities to the prohibition of unlawful possession of a weapon at school. Unlawful Possession of Weapon on School Property (KRS 527.070) is a Class D felony.

In FY2019, AOC reports five (5) convictions for this offense, while the Department currently has five (5) offenders incarcerated and twenty-one (21) offenders on supervision for this offense.

Section 14 prohibits possession and orders the surrendering of firearms for offenders convicted of a capital offense, felony offense, or any offense where the individual is found guilty but mentally ill (KRS 532.030).

Section 15 tasks the Kentucky State Police to regulate the licensing of persons to possess a handgun in the Commonwealth. It would prohibit possession of a handgun unless legally licensed or exempted. 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). The licensure period will 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 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 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.

An electronic sales log keeping requirement shall be established for firearms dealers and ammunition sellers in Kentucky, with real time operation by July 2021. A firearms dealer who violates this regulation would be subject to a Class B misdemeanor.

Sections 16-17 (KRS 532.025 & KRS 237.115 are conforming amendments. Section 18 repeals KRS 65.870. Sections 19-20 call for emergency enactment with the exception of Section 15.

This legislation encompasses several criminal offenses, both misdemeanor and felony, that would have a significant impact for the Department. 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 \$1,385,413.59 to \$2,770,827.17
1 Class C Felon costs KY \$138,541.366 to \$277,082.72	100 Class C Felons cost KY \$13,854,135.86 to \$27,708,271.72
A Class D Felony sentence is 1 to 5 years.	10 Class D Felons cost KY \$133,969.74 to \$669,848.70
1 Class D Felon costs KY \$13,396.97 to \$66,984.87	100 Class D Felons cost KY \$1,339,697.40 to \$6,698,487.00

**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. Since the per diem is an estimated average cost of housing an inmate, the per diem may not be the actual housing cost for the jail. *Projections are based on the daily rate x 365 days x number of years. Offenders may have multiple offenses or incarcerated on other charges unless otherwise noted. Unless otherwise noted, numbers will include inchoate offenses at the underlying offense level.*

**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 add to the county justice involved population, which could have a financial impact on the county. There is also an impact to State Police and local law enforcement for the enforcement of this legislation.

The legislation also establishes new felony offenses. 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.

Class D offenders are subject to serving their sentence at a county jail at a reimbursement rate to the jail of \$31.34 per day. Class C offenders may or may not be eligible for service of their sentence at a jail, depending on eligibility for community custody.

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 through additional convictions or length of incarceration periods.

A Class A misdemeanor is 90 days to 1 year in jail.	10 Class A misdemeanants: \$28,206.00 to \$114,391.00
1 Class A misdemeanant: \$2,820.60 to \$11,439.10	100 Class A misdemeanants: \$282,060.00 to \$1,143,910.00
A Class B misdemeanor is up to 90 days in jail.	10 Class B misdemeanants: up to \$28,206.00
1 Class B misdemeanant: up to \$2,820.60	100 Class B misdemeanants: up to \$282,060.00

**Projected Corrections Impact from Amendments:**

**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: Kathleen M. Keagy 1/14/2020  
Commissioner, Kentucky Department of Corrections Date