

**Local Government Mandate Statement
Kentucky Legislative Research Commission
2020 Regular Session**

Part I: Measure Information

Bill Request #: 342

Bill #: HB 45

Document ID #: 671

Bill Subject/Title: An ACT related to firearms and declaring an emergency.

Sponsor: Representative George A. Brown Jr.

Unit of Government: City County Urban-County
 Unified Local
 Charter County Consolidated Local Government

Office(s) Impacted: Local Law Enforcement; Sherriffs Offices, Jails

Requirement: Mandatory Optional

Effect on

Powers & Duties: Modifies Existing Adds New Eliminates Existing

**Part II: Bill Provisions and the Estimated Fiscal Impact Relating to Local
Government**

This legislation is a gun control measure that creates several new crimes, amends existing offenses, and creates new responsibilities for county sheriffs and local law enforcement agencies.

Sections 1, 2, 3, 4, and 15 create new sections to KRS Chapter 237 (Firearms and Destructive Devices). Section 11 creates a new section to KRS Chapter 527 (Offenses Relating to Firearms and Weapons).

Section 1 defines several new terms used in this measure: assault weapons, large-capacity ammunition-feeding device, and seller of ammunition. It also clarifies what is not considered to be an assault weapon.

Section 2 establishes a requirement for a National Instant Criminal Background Check (NICS) before any sale, exchange, or disposal of firearms be conducted unless the transaction is between immediate family members. Dealers shall be required to maintain

records of transactions, and shall make these records available to law enforcement. These records are not subject to open records. Dealers may assess up to a \$10 transaction fee. Violations of this section shall be a Class A misdemeanor.

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. The report shall include detailed information about the firearm(s). 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 6 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 7 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. The local sheriff shall impound the firearms until the order expires or is lifted, the conviction is altered, amended, or vacated, the defendant is granted a pardon, or the respondent directs the transfer of the weapon(s) to a person lawfully allowed to possess the firearm(s).

Section 8 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 6, 7, and 14 of this Act.

Section 9 adds “. . . making available, selling, exchanging, giving, or disposing of a firearm” an element for the offense of Criminal Facilitation to KRS 506.080. Criminal Facilitation is a Class D felony when the crime is a Class A/B felony or Capital Offense, a Class A misdemeanor when the crime is a Class C/D felony, and a Class B misdemeanor when the crime facilitated is a misdemeanor.

Section 10 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 11 creates the new Class D felony of criminal purchase or disposal of a weapon. The elements of this crime occurs when a prohibited individual knowingly purchases 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. Any act in violation of this section is a Class D felony. It is not known how many additional offenders would be convicted of this offense, but it is not expected to be substantial.

Section 12 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. In FY 2019, there were 1,840 convictions statewide for Class D Convicted Felon in Possession of a Firearm or Convicted Felon in Possession of a Handgun. Consecutive sentences will likely add significant additional incarceration time.

Section 13 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 14 adds language to KRS 532.030 that prohibits any person convicted of any offense but found mentally ill, 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 15 establishes licensing and registration requirements for handguns, assault weapons, and large capacity ammunition feeding devices. The Kentucky State Police may create exemptions to licensing and registration requirements. Possession of a handgun without a license or exemption would be prohibited and would be a Class A misdemeanor. A person who possess an unlicensed assault weapon or large capacity ammunition feeding device shall be guilty of a Class D felony.

The Kentucky State Police shall similarly establish a regulation for the registration of handguns, assault weapons and large capacity ammunition feeding devices. This includes a requirement for registration upon transfer of the weapon or device. A person possessing an unregistered handgun shall be guilty of a Class A misdemeanor. A person who possess an unregistered assault weapon or large capacity ammunition feeding device shall be guilty of a Class D felony.

Furthermore, Section 15 requires firearm dealers and ammunition sellers to keep logs of sales. By July 1, 2021, such logs are to be kept in real-time and shall be used to access Kentucky State Police records to determine if a particular purchase can be completed. Dealers who fail to comply with these requirements would be subject to a Class B misdemeanor.

Section 18 repeals KRS 65.870 which, among other things, prevents local governments from enacting local gun control laws.

Section 19 makes the effective date for Section 15, January 1, 2021.

Section 20 declares an emergency and with the exception of Section 15, 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 upon sheriffs' departments, local law enforcement agencies, and county jails.

This bill 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 Kentucky State Police 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 not 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) believes 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, increased training for personnel, and supplies or equipment necessary 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.

The proposed measure creates a series of new crimes, makes changes to current ones, and adds an enhanced jail sentence requirement (consecutive sentences) for possession of a firearm by convicted felon. Consecutive sentences will likely add significant additional incarceration time.

Local governments will be responsible for incarcerating individuals charged with violating the provisions of this bill. 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.

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 77 full service jails or three 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 77 full service jails or three 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 77 full service jails or three 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.

While it is not known how many additional convictions this legislation would bring, the number of offenses would increase as well as an increase in incarceration under this legislation, especially with enhancing the penalty for possession of a firearm by a convicted felon by requiring consecutive sentences. The impact on local jails is indeterminable. Overall, the fiscal impact at the local level is expected to be moderate to significant.

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

Part II, above, pertains to the bill as introduced.

Data Source(s): LRC Staff, Administrative Office of the Courts, Department of Corrections; Kentucky Sheriff's Association

Preparer: Mark Offerman **Reviewer:** KHC **Date:** 1/9/20