

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. Before any sale, exchange or transfer of a firearm, a NICS must be completed by a firearms dealer. 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 a transaction fee not to exceed \$10. Violations of this section shall be a Class A misdemeanor.

Section 3 requires any person who lawfully possesses a firearm or sells ammunition, who suffers a loss or theft of a firearm or ammunition, to report that loss or theft to the police or sheriff's 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.

Sections 6 and 7 amends KRS 403.735 and KRS 456.050 by requiring judges to consider whether a person against whom an order of protection or an interpersonal protective order is entered should be prohibited from possessing a firearm. They add 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.

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. 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 defendant directs the transfer of the weapon(s) to a person lawfully allowed to possess the firearm(s).

Section 10 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. It will be 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. 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.

There is no estimate available on how many non-weapons offenses involving a firearm that could have Criminal Facilitation added, under this legislation.

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. For FY 2020 data from AOC indicated that there were a total of nine cases of assault in second degree with six convictions. Of these, two cases/convictions were assault second degree-non family-gun. There were five cases/charges with three convictions for assault second degree domestic violence/child abuse. It is not known how many offenders would be generated under this Section, but is likely to be low.

Section 12 creates the new Class D felony of criminal purchase or disposal of a firearm in a new section of KRS Chapter 527. 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 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. In FY 2020, there were 5,337 charges resulting in 1,206 convictions statewide for convicted felon in possession of a firearm and convicted felon in possession of a handgun. Consecutive sentences will likely add significant incarceration time.

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. In FY 2020, AOC reported 18 cases with 19 charges for unlawful possession of weapons on school property. These reported cases apply public or private primary and secondary school property.

Section 15 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. The estimated number of firearms the local sheriff may have to store under this provision is unknown.

Section 16 creates a new section of KRS Chapter 237 and 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. Possession of a handgun without a license or exemption would be prohibited and would be a Class A misdemeanor, as would possession of an unregistered handgun. Similarly, a person who possess an assault weapon or large capacity ammunition feeding

device without a license or exemption and/or possess an unregistered assault weapon or large capacity ammunition feeding device shall be guilty of Class D felonies.

Further, Section 15 requires firearm dealers and ammunition sellers to keep logs of sales. By July 1, 2022, such logs are to be kept in real-time and shall be used to access KSP 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 19 repeals KRS 65.870 which, among other things, prohibits local governments from enacting local gun control laws.

Section 20 makes the effective date for Section 16, January 1, 2022.

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 upon sheriffs' departments, local law enforcement agencies, and local 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 KSP all reports of lost or stolen firearms and ammunition.

Additionally, Sections 6, 7, 8, and 15 the bill require 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) and the Kentucky Fraternal Order of Police (FOP) 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. FOP states that with most small sheriff offices and police departments, space is always an issue, especially for evidence rooms. 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 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 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.

Lastly, since the bill repeals KRS 65.870, local governments would then be allowed to enact their own gun control measures. Local governments that choose 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 2020, the average hourly rate was \$107. 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 overall impact on local jails is indeterminable. Overall, the fiscal impact at the local level is expected to be moderate to significant.

2021 Jail Costs Language

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 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 an average cost to incarcerate of \$37.35 per day. While the majority of misdemeanor defendants are granted bail, those who do not will also cost local jails an average cost to incarcerate of \$37.35 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 average cost to incarcerate of \$37.35, which includes the \$31.34 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 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 average cost to incarcerate of \$37.35, which includes the \$31.34 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. The per diem may be less than, equal to, or greater than the actual housing cost.

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 Sheriffs' Association, Fraternal Order of Police

Preparer: Mark Offerman **Reviewer:** KHC **Date:** 2/17/21