

CHAPTER 151**(SB 179)**

AN ACT relating to criminal offenses committed during a declared emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 500.080 is amended to read as follows:

As used in the Kentucky Penal Code, unless the context otherwise requires:

- (1) "Actor" means any natural person and, where relevant, a corporation or an unincorporated association;
- (2) "Crime" means a misdemeanor or a felony;
- (3) "Dangerous instrument" means any instrument, including parts of the human body when a serious physical injury is a direct result of the use of that part of the human body, article, or substance which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or serious physical injury;
- (4) "Deadly weapon" means any of the following:
 - (a) A weapon of mass destruction;
 - (b) Any weapon from which a shot, readily capable of producing death or other serious physical injury, may be discharged;
 - (c) Any knife other than an ordinary pocket knife or hunting knife;
 - (d) Billy, nightstick, or club;
 - (e) Blackjack or slapjack;
 - (f) Nunchaku karate sticks;
 - (g) Shuriken or death star; or
 - (h) Artificial knuckles made from metal, plastic, or other similar hard material;
- (5) "Felony" means an offense for which a sentence to a term of imprisonment of at least one (1) year in the custody of the Department of Corrections may be imposed;
- (6) "Government" means the United States, any state, county, municipality, or other political unit, or any department, agency, or subdivision of any of the foregoing, or any corporation or other association carrying out the functions of government;
- (7) "He" means any natural person and, where relevant, a corporation or an unincorporated association;
- (8) ***"Impacted by the disaster" means the location or in reasonable proximity to the location where a natural or man-made disaster has caused physical injury, serious physical injury, death, or substantial damage to property or infrastructure;***
- (9) "Law" includes statutes, ordinances, and properly adopted regulatory provisions. Unless the context otherwise clearly requires, "law" also includes the common law;
- ~~(10)(9)~~ "Minor" means any person who has not reached the age of majority as defined in KRS 2.015;
- ~~(11)(10)~~ "Misdemeanor" means an offense, other than a traffic infraction, for which a sentence to a term of imprisonment of not more than twelve (12) months can be imposed;
- (12) ***"Natural or man-made disaster" means a tornado, storm, or other severe weather, earthquake, flood, or fire that poses a significant threat to human health and safety, property, or critical infrastructure;***
- ~~(13)(11)~~ "Offense" means conduct for which a sentence to a term of imprisonment or to a fine is provided by any law of this state or by any law, local law, or ordinance of a political subdivision of this state or by any law, order, rule, or regulation of any governmental instrumentality authorized by law to adopt the same;

- ~~(14)~~~~(12)~~ "Person" means a human being, and where appropriate, a public or private corporation, an unincorporated association, a partnership, a government, or a governmental authority;
- ~~(15)~~~~(13)~~ "Physical injury" means substantial physical pain or any impairment of physical condition;
- ~~(16)~~~~(14)~~ "Possession" means to have actual physical possession or otherwise to exercise actual dominion or control over a tangible object;
- ~~(17)~~~~(15)~~ "Serious physical injury" means physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ. For a child twelve (12) years of age or less at the time of the injury, a serious physical injury includes but is not limited to the following:
- (a) Bruising near the eyes, or on the head, neck, or lower back overlying the kidneys;
 - (b) Any bruising severe enough to cause underlying muscle damage as determined by elevated creatine kinase levels in the blood;
 - (c) Any bruising or soft tissue injury to the genitals that affects the ability to urinate or defecate;
 - (d) Any testicular injury sufficient to put fertility at risk;
 - (e) Any burn near the eyes or involving the mouth, airway, or esophagus;
 - (f) Any burn deep enough to leave scarring or dysfunction of the body;
 - (g) Any burn requiring hospitalization, debridement in the operating room, IV fluids, intubation, or admission to a hospital's intensive care unit;
 - (h) Rib fracture;
 - (i) Scapula or sternum fractures;
 - (j) Any broken bone that requires surgery;
 - (k) Head injuries that result in intracranial bleeding, skull fracture, or brain injury;
 - (l) A concussion that results in the child becoming limp, unresponsive, or results in seizure activity;
 - (m) Abdominal injuries that indicate internal organ damage regardless of whether surgery is required;
 - (n) Any injury requiring surgery;
 - (o) Any injury that requires a blood transfusion; and
 - (p) Any injury requiring admission to a hospital's critical care unit;
- ~~(18)~~~~(16)~~ "Unlawful" means contrary to law or, where the context so requires, not permitted by law. It does not mean wrongful or immoral;
- ~~(19)~~~~(17)~~ "Violation" means an offense, other than a traffic infraction, for which a sentence to a fine only can be imposed; and
- ~~(20)~~~~(18)~~ "Weapon of mass destruction" means:
- (a) Any destructive device as defined in KRS 237.030, but not fireworks as defined in KRS 227.700;
 - (b) Any weapon that is designed or intended to cause death or serious physical injury through the release, dissemination, or impact of toxic or poisonous chemicals or their precursors;
 - (c) Any weapon involving a disease organism; or
 - (d) Any weapon that is designed to release radiation or radioactivity at a level dangerous to human life.
- ➔Section 2. KRS 508.025 is amended to read as follows:
- (1) A person is guilty of assault in the third degree when the actor:
 - (a) Recklessly, with a deadly weapon or dangerous instrument, or intentionally causes or attempts to cause physical injury to:
 1. A state, county, city, or federal peace officer;

2. An employee of a detention facility, or state residential treatment facility or state staff secure facility for residential treatment which provides for the care, treatment, or detention of a juvenile charged with or adjudicated delinquent because of a public offense or as a youthful offender;
 3. An employee of the Department for Community Based Services employed as a social worker to provide direct client services, if the event occurs while the worker is performing job-related duties;
 4. Paid or volunteer emergency medical services personnel certified or licensed pursuant to KRS Chapter 311A, if the event occurs while personnel are performing job-related duties;
 5. A paid or volunteer member of an organized fire department, if the event occurs while the member is performing job-related duties;
 6. Paid or volunteer rescue squad personnel affiliated with the Division of Emergency Management of the Department of Military Affairs or a local disaster and emergency services organization pursuant to KRS Chapter 39F, if the event occurs while personnel are performing job-related duties;
 7. A probation and parole officer;
 8. A transportation officer appointed by a county fiscal court or legislative body of a consolidated local government, urban-county government, or charter government to transport inmates when the county jail or county correctional facility is closed while the transportation officer is performing job-related duties;
 9. A public or private elementary or secondary school or school district classified or certified employee, school bus driver, or other school employee acting in the course and scope of the employee's employment; or
 10. A public or private elementary or secondary school or school district volunteer acting in the course and scope of that person's volunteer service for the school or school district;
- (b) Being a person confined in a detention facility, or a juvenile in a state residential treatment facility or state staff secure facility for residential treatment which provides for the care, treatment, or detention of a juvenile charged with or adjudicated delinquent because of a public offense or as a youthful offender, inflicts physical injury upon or throws or causes feces, or urine, or other bodily fluid to be thrown upon an employee of the facility; or
- (c) Intentionally causes a person, whom the actor knows or reasonably should know to be a peace officer discharging official duties, to come into contact with saliva, vomit, mucus, blood, seminal fluid, urine, or feces without the consent of the peace officer.
- (2) (a) For **a violation**~~[violations]~~ of subsection (1)(a) ~~[and (b)]~~ of this section, assault in the third degree is a Class D felony, **unless the offense occurs during a declared emergency as defined by KRS 39A.020 arising from a natural or man-made disaster, within the area covered by the emergency declaration, and within the area impacted by the disaster, in which case it is a Class C felony.**
- (b) **For a violation of subsection (1)(b) of this section, assault in the third degree is a Class D felony.**
- (c) For violations of subsection (1)(c) of this section, assault in the third degree is a Class B misdemeanor, unless the assault is with saliva, vomit, mucus, blood, seminal fluid, urine, or feces from an adult who knows that he or she has a serious communicable disease and competent medical or epidemiological evidence demonstrates that the specific type of contact caused by the actor is likely to cause transmission of the disease or condition, in which case it is a Class A misdemeanor.
- ~~(d)~~~~(e)~~ As used in paragraph ~~(c)~~~~(b)~~ of this subsection, "serious communicable disease" means a non-airborne disease that is transmitted from person to person and determined to have significant, long-term consequences on the physical health or life activities of the person infected.

➔Section 3. KRS 511.020 is amended to read as follows:

- (1) A person is guilty of burglary in the first degree when, with the intent to commit a crime, he **or she** knowingly enters or remains unlawfully in a building, and when in effecting entry or while in the building or in the immediate flight therefrom, he **or she** or another participant in the crime:

- (a) Is armed with explosives or a deadly weapon;~~{or}~~
 - (b) Causes physical injury to any person who is not a participant in the crime; or
 - (c) Uses or threatens the use of a dangerous instrument against any person who is not a participant in the crime.
- (2) Burglary in the first degree is a Class B felony, *unless the offense occurs during a declared emergency as defined by KRS 39A.020 arising from a natural or man-made disaster, within the area covered by the emergency declaration, and within the area impacted by the disaster, in which case it is a Class A felony.*

➔Section 4. KRS 511.030 is amended to read as follows:

- (1) A person is guilty of burglary in the second degree when, with the intent to commit a crime, he *or she* knowingly enters or remains unlawfully in a dwelling.
- (2) Burglary in the second degree is a Class C felony, *unless the offense occurs during a declared emergency as defined by KRS 39A.020 arising from a natural or man-made disaster, within the area covered by the emergency declaration, and within the area impacted by the disaster, in which case it is a Class B felony.*

➔Section 5. KRS 511.040 is amended to read as follows:

- (1) A person is guilty of burglary in the third degree when, with the intent to commit a crime, he *or she* knowingly enters or remains unlawfully in a building.
- (2) Burglary in the third degree is a Class D felony, *unless the offense occurs during a declared emergency as defined by KRS 39A.020 arising from a natural or man-made disaster, within the area covered by the emergency declaration, and within the area impacted by the disaster, in which case it is a Class C felony.*

➔Section 6. KRS 511.060 is amended to read as follows:

- (1) A person is guilty of criminal trespass in the first degree when he *or she* knowingly enters or remains unlawfully in a dwelling.
- (2) Criminal trespass in the first degree is a Class A misdemeanor, *unless the offense occurs during a declared emergency as defined by KRS 39A.020 arising from a natural or man-made disaster, within the area covered by the emergency declaration, and within the area impacted by the disaster, in which case it is a Class D felony.*

➔Section 7. KRS 511.070 is amended to read as follows:

- (1) A person is guilty of criminal trespass in the second degree when he *or she* knowingly enters or remains unlawfully in a building or upon premises as to which notice against trespass is given by fencing or other enclosure.
- (2) Criminal trespass in the second degree is a Class B misdemeanor, *unless the offense occurs during a declared emergency as defined by KRS 39A.020 arising from a natural or man-made disaster, within the area covered by the emergency declaration, and within the area impacted by the disaster, in which case it is a Class A misdemeanor.*

➔Section 8. KRS 511.080 is amended to read as follows:

- (1) A person is guilty of criminal trespass in the third degree when he knowingly enters or remains unlawfully in or upon premises.
- (2) Criminal trespass in the third degree is a violation, *unless the offense occurs during a declared emergency as defined by KRS 39A.020 arising from a natural or man-made disaster, within the area covered by the emergency declaration, and within the area impacted by the disaster, in which case it is a Class B misdemeanor.*

➔Section 9. KRS 512.020 is amended to read as follows:

- (1) A person is guilty of criminal mischief in the first degree when, having no right to do so or any reasonable ground to believe that he or she has such right, he or she intentionally or wantonly:
 - (a) Defaces, destroys, or damages any property causing pecuniary loss of one thousand dollars (\$1,000) or more;
 - (b) Tamper with the operations of a key infrastructure asset, as defined in KRS 511.100, in a manner that renders the operations harmful or dangerous; or

- (c) As a tenant, intentionally or wantonly defaces, destroys, or damages residential rental property causing pecuniary loss of one thousand dollars (\$1,000) or more.
- (2) Criminal mischief in the first degree is a Class D felony, ***unless the offense occurs during a declared emergency as defined by KRS 39A.020 arising from a natural or man-made disaster, within the area covered by the emergency declaration, and within the area impacted by the disaster, in which case it is a Class C felony.***

➔Section 10. KRS 512.030 is amended to read as follows:

- (1) A person is guilty of criminal mischief in the second degree when, having no right to do so or any reasonable ground to believe that he or she has such right, he or she:
 - (a) Intentionally or wantonly defaces, destroys, or damages any property causing pecuniary loss of five hundred dollars (\$500) or more but less than one thousand dollars (\$1,000); or
 - (b) As a tenant, intentionally or wantonly defaces, destroys, or damages residential rental property causing pecuniary loss of five hundred dollars (\$500) or more but less than one thousand dollars (\$1,000).
- (2) Criminal mischief in the second degree is a Class A misdemeanor, ***unless the offense occurs during a declared emergency as defined by KRS 39A.020 arising from a natural or man-made disaster, within the area covered by the emergency declaration, and within the area impacted by the disaster, in which case it is a Class D felony.***

➔Section 11. KRS 512.040 is amended to read as follows:

- (1) A person is guilty of criminal mischief in the third degree when:
 - (a) Having no right to do so or any reasonable ground to believe that he or she has such right, he or she intentionally or wantonly defaces, destroys, or damages any property causing pecuniary loss of less than five hundred dollars (\$500);
 - (b) He or she tampers with property so as knowingly to endanger the person or property of another; or
 - (c) He or she as a tenant, and having no right to do so or any reasonable grounds to believe that he or she has such right, intentionally or wantonly defaces, destroys, or damages residential rental property causing pecuniary loss of less than five hundred dollars (\$500).
- (2) Criminal mischief in the third degree is a Class B misdemeanor, ***unless the offense occurs during a declared emergency as defined by KRS 39A.020 arising from a natural or man-made disaster, within the area covered by the emergency declaration, and within the area impacted by the disaster, in which case it is a Class A misdemeanor.***

➔Section 12. KRS 514.030 is amended to read as follows:

- (1) Except as otherwise provided in KRS 217.181, a person is guilty of theft by unlawful taking or disposition when he ***or she*** unlawfully:
 - (a) Takes or exercises control over movable property of another with intent to deprive him ***or her*** thereof; or
 - (b) Obtains immovable property of another or any interest therein with intent to benefit himself ***or herself*** or another not entitled thereto.
- (2) Theft by unlawful taking or disposition is a Class B misdemeanor unless:
 - (a) The property is a firearm (regardless of the value of the firearm), in which case it is a Class D felony;
 - (b) The property is anhydrous ammonia (regardless of the value of the ammonia), in which case it is a Class D felony unless it is proven that the person violated this section with the intent to manufacture methamphetamine in violation of KRS 218A.1432, in which case it is a Class B felony for the first offense and a Class A felony for each subsequent offense;
 - (c) The property is one (1) or more controlled substances valued collectively at less than ten thousand dollars (\$10,000), in which case it is a Class D felony;
 - (d) The value of the property is five hundred dollars (\$500) or more but less than one thousand dollars (\$1,000), in which case it is a Class A misdemeanor;

- (e) The value of the property is one thousand dollars (\$1,000) or more but less than ten thousand dollars (\$10,000), in which case it is a Class D felony;
 - (f) The person has three (3) or more convictions under paragraph (d) of this subsection within the last five (5) years, in which case it is a Class D felony. The five (5) year period shall be measured from the dates on which the offenses occurred for which the judgments of conviction were entered;
 - (g) The value of the property is ten thousand dollars (\$10,000) or more but less than one million dollars (\$1,000,000), in which case it is a Class C felony;
 - (h) The value of the property is one million dollars (\$1,000,000) or more but less than ten million dollars (\$10,000,000), in which case it is a Class B felony; ~~or~~
 - (i) The value of the property is ten million dollars (\$10,000,000) or more, in which case it is a Class B felony; **or**
 - (j) ***The offense occurs during a declared emergency as defined by KRS 39A.020 arising from a natural or man-made disaster, within the area covered by the emergency declaration, and within the area impacted by the disaster, in which case the person shall be charged one (1) level higher than the level otherwise specified in this subsection.***
- (3) Any person convicted under subsection (2)(i) of this section shall not be released on probation or parole until he or she has served at least fifty percent (50%) of the sentence imposed, any statute to the contrary notwithstanding.
- (4) If any person commits two (2) or more separate offenses of theft by unlawful taking or disposition within ninety (90) days, the offenses may be combined and treated as a single offense, and the value of the property in each offense may be aggregated for the purpose of determining the appropriate charge.

➔Section 13. KRS 514.040 is amended to read as follows:

- (1) A person is guilty of theft by deception when the person obtains property or services of another by deception with intent to deprive the person thereof. A person deceives when the person intentionally:
- (a) Creates or reinforces a false impression, including false impressions as to law, value, intention, or other state of mind;
 - (b) Prevents another from acquiring information which would affect judgment of a transaction;
 - (c) Fails to correct a false impression which the deceiver previously created or reinforced or which the deceiver knows to be influencing another to whom the person stands in a fiduciary or confidential relationship;
 - (d) Fails to disclose a known lien, adverse claim, or other legal impediment to the enjoyment of property which the person transfers or encumbers in consideration for the property obtained, whether the impediment is or is not valid or is or is not a matter of official record; or
 - (e) Issues or passes a check or similar sight order for the payment of money, knowing that it will not be honored by the drawee.
- (2) The term "deceive" does not, however, include falsity as to matters having no pecuniary significance or puffing by statements unlikely to deceive ordinary persons in the group addressed.
- (3) Deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he or she did not subsequently perform the promise.
- (4) For purposes of subsection (1) of this section, a maker of a check or similar sight order for the payment of money is presumed to know that the check or order, other than a postdated check or order, would not be paid, if:
- (a) The maker had no account with the drawee at the time the check or order was issued; or
 - (b) Payment was refused by the drawee for lack of funds, upon presentation within thirty (30) days after issue, and the maker failed to make good within ten (10) days after receiving notice of that refusal. Notice of the refusal may include a citation to this section and a description of this section's criminal penalties and shall be deemed properly addressed when mailed to the address printed or written on the check or sight order or provided by the drawer or maker upon issuance of the check or sight order. The notice, if mailed, shall be deemed received by the addressee seven (7) days after it is placed in the

United States mail. The notice may be sent by first-class mail if supported by an affidavit of service setting out the contents of the notice, the address to which the notice was mailed, that correct postage was applied, and the date the notice was placed in the United States mail. A maker makes good on a check or similar sight order for the payment of money by paying to the holder the face amount of the instrument, together with any merchant's posted bad check handling fee not to exceed fifty dollars (\$50) and any fee imposed pursuant to subsection (5) of this section.

- (5) If a county attorney issues notice to a maker that a drawee has refused to honor an instrument due to a lack of funds as described in subsection (4)(b) of this section, the county attorney may charge a fee to the maker of fifty dollars (\$50), if the instrument is paid. Money paid to the county attorney pursuant to this section shall be used only for payment of county attorney office operating expenses. Excess fees held by the county attorney on June 30 of each year shall be turned over to the county treasurer before the end of the next fiscal year for use by the fiscal court of the county.
- (6) A person is guilty of theft by deception when the person issues a check or similar sight order in payment of all or any part of any tax payable to the Commonwealth knowing that it will not be honored by the drawee.
- (7) A person is guilty of theft by deception when the person issues a check or similar sight order in payment of all or any part of a child support obligation knowing that it will not be honored by the drawee.
- (8) Theft by deception is a Class B misdemeanor unless:
 - (a) The value of the property, service, or the amount of the check or sight order referred to in subsection (6) or (7) of this section is five hundred dollars (\$500) or more but less than one thousand dollars (\$1,000), in which case it is a Class A misdemeanor;
 - (b) The value of the property, service, or the amount of the check or sight order referred to in subsection (6) or (7) of this section is one thousand dollars (\$1,000) or more but less than ten thousand dollars (\$10,000), in which case it is a Class D felony;
 - (c) A person has three (3) or more convictions under paragraph (a) of this subsection within the last five (5) years, in which case it is a Class D felony. The five (5) year period shall be measured from the dates on which the offenses occurred for which the judgments of convictions were entered;~~or~~
 - (d) The value of the property, service, or the amount of the check or sight order referred to in subsection (6) or (7) of this section is ten thousand dollars (\$10,000) or more, in which case it is a Class C felony: **or**
 - (e) ***The offense occurs during a declared emergency as defined by KRS 39A.020 arising from a natural or man-made disaster, within the area covered by the emergency declaration, and within the area impacted by the disaster, in which case the person shall be charged one (1) level higher than the level otherwise specified in this subsection.***
- (9) If any person commits two (2) or more separate offenses of theft by deception within ninety (90) days, the offenses may be combined and treated as a single offense, and the value of the property in each offense may be aggregated for the purpose of determining the appropriate charge.

➔Section 14. KRS 514.110 is amended to read as follows:

- (1) A person is guilty of receiving stolen property when he or she receives, retains, or disposes of movable property of another knowing that it has been stolen, or having reason to believe that it has been stolen, unless the property is received, retained, or disposed of with intent to restore it to the owner.
- (2) The possession by any person of any recently stolen movable property shall be prima facie evidence that such person knew such property was stolen.
- (3) Receiving stolen property is a Class B misdemeanor unless:
 - (a) The value of the property is five hundred dollars (\$500) or more but less than one thousand dollars (\$1,000), in which case it is a Class A misdemeanor;
 - (b) The value of the property is one thousand dollars (\$1,000) or more but less than ten thousand dollars (\$10,000), in which case it is a Class D felony;
 - (c) A person has three (3) or more convictions under paragraph (a) of this subsection within the last five (5) years, in which case it is a Class D felony. The five (5) year period shall be measured from the dates on which the offenses occurred for which the judgments of conviction were entered;

- (d) The value of the property is ten thousand dollars (\$10,000) or more, in which case it is a Class C felony;
- (e) The property is a firearm, regardless of the value of the firearm, in which case it is a Class D felony;{
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- (f) The property is anhydrous ammonia, regardless of the value of the ammonia, in which case it is a Class D felony unless it is proven that the person violated this section with the intent to manufacture methamphetamine in violation of KRS 218A.1432, in which case it is a Class B felony for the first offense and a Class A felony for each subsequent offense; *or*
- (g) ***The offense occurs during a declared emergency as defined by KRS 39A.020 arising from a natural or man-made disaster, within the area covered by the emergency declaration, and within the area impacted by the disaster, in which case the person shall be charged one (1) level higher than the level otherwise specified in this subsection.***

- (4) If any person commits two (2) or more separate offenses of receiving stolen property within ninety (90) days, the offenses may be combined and treated as a single offense, and the value of the property in each offense may be aggregated for the purpose of determining the appropriate charge.

➔Section 15. KRS 515.020 is amended to read as follows:

- (1) A person is guilty of robbery in the first degree when, in the course of committing theft, he *or she* uses or threatens the immediate use of physical force upon another person with intent to accomplish the theft and when he *or she*:
- (a) Causes physical injury to any person who is not a participant in the crime; or
 - (b) Is armed with a deadly weapon; or
 - (c) Uses or threatens the immediate use of a dangerous instrument upon any person who is not a participant in the crime.
- (2) Robbery in the first degree is a Class B felony, ***unless the offense occurs during a declared emergency as defined by KRS 39A.020 arising from a natural or man-made disaster, within the area covered by the emergency declaration, and within the area impacted by the disaster, in which case it is a Class A felony.***

➔Section 16. KRS 515.030 is amended to read as follows:

- (1) A person is guilty of robbery in the second degree when, in the course of committing theft, he *or she* uses or threatens the immediate use of physical force upon another person with intent to accomplish the theft.
- (2) Robbery in the second degree is a Class C felony, ***unless the offense occurs during a declared emergency as defined by KRS 39A.020 arising from a natural or man-made disaster, within the area covered by the emergency declaration, and within the area impacted by the disaster, in which case it is a Class B felony.***

➔Section 17. KRS 61.168 is amended to read as follows:

- (1) As used in this section:
- (a) "Body-worn camera" means a video or audio electronic recording device that is carried by or worn on the body of a public safety officer. This definition does not include a dashboard mounted camera or recording device used in the course of clandestine investigations;
 - (b) "Body-worn camera recording" or "recording" means a video or audio recording, or both, that is made by a body-worn camera during the course of a public safety officer's official duties;
 - (c) "Personal representative" means a court-appointed guardian, attorney, or agent possessing written authorization to act on behalf of a person that is involved in an incident contained in a body-worn camera recording, a person holding a power of attorney for a person that is involved in an incident contained in a body-worn camera recording, or the parent or guardian of a minor child depicted in a body-worn camera recording. If a person depicted in the recording is deceased, the term also means the personal representative of the estate of the deceased person, the deceased person's surviving spouse, parent, or adult child, the deceased person's attorney, or the parent or guardian of a surviving minor child of the deceased;
 - (d) "Public agency" has the same meaning as in KRS 61.870(1);

- (e) "Public safety officer" means any individual that is an employee of a public agency who is certified as a first responder under KRS Chapter 311A or whose employment duties include law enforcement or firefighting activities; and
 - (f) "Use of force" means any action by a public safety officer that results in death, physical injury as defined in KRS 500.080~~(13)~~, discharge of a personal body weapon, chemical agent, impact weapon, extended range impact weapon, sonic weapon, sensory weapon, conducted energy weapon, or a firearm, or involves the intentional pointing of a public safety officer's firearm at a member of the public.
- (2) Except as provided in this section, the disclosure of body-worn camera recordings shall be governed by the Kentucky Open Records Act, as set forth in KRS 61.870 to 61.884.
- (3) The retention of body-worn camera video recordings shall be governed by KRS 171.410 to 171.740, and the administrative regulations promulgated by the Kentucky Department of Libraries and Archives.
- (4) Notwithstanding KRS 61.878(4), unless the request meets the criteria provided under subsection (5) of this section, a public agency may elect not to disclose body-worn camera recordings containing video or audio footage that:
- (a) Includes the interior of a place of a private residence where there is a reasonable expectation of privacy, unless the legal owner or lessee with legal possession of the residence requests in writing that the release be governed solely under the provisions of KRS 61.870 to 61.884;
 - (b) Includes the areas inside of a medical facility, counseling, or therapeutic program office where a patient is registered to receive treatment, receiving treatment, waiting for treatment, or being transported in the course of treatment;
 - (c) Would disclose health care information shared with patients, their families, or with a patient's care team or that is considered protected health information under the Health Insurance Portability and Accountability Act of 1996;
 - (d) Includes the areas inside of a correctional facility when disclosure would reveal details of the facility that would jeopardize the safety, security, or well-being of those in custody, the staff of the correctional facility, or law enforcement officers;
 - (e) Is of a sexual nature or video footage that contains nude images of an individual's genitals, pubic area, anus, or the female nipple;
 - (f) Is of a minor child, including but not limited to footage involving juvenile custody matters;
 - (g) Includes the body of a deceased individual;
 - (h) Would reveal the identity of witnesses, confidential law enforcement informants, or undercover law enforcement officers, or if the release could jeopardize the safety, security, or well-being of a witness or confidential informant;
 - (i) Would reveal the location information of a domestic violence program or emergency shelter;
 - (j) Would reveal information related to schools, colleges, and universities that is protected by the federal Family Educational Rights and Privacy Act;
 - (k) Would result in the disclosure of nonpublic or confidential data classified as Criminal Justice Information Services data by the Federal Bureau of Investigation;
 - (l) Includes a public safety officer carrying out duties directly related to the hospitalization of persons considered mentally ill;
 - (m) Includes the depiction of the serious injury or death of a public safety officer; or
 - (n) Includes footage made in conjunction with a law enforcement exercise that includes special response team actions, hostage negotiations, or training events, but only where the public release of tactics, operational protocol, or methodology would disadvantage the capability of public safety officers to successfully respond in emergency or other dangerous situations.
- (5) If the recording contains video or audio footage that:

- (a) Depicts an encounter between a public safety officer where there is a use of force, the disclosure of the record shall be governed solely by the provisions of KRS 61.870 to 61.884, including all of the exceptions contained therein;
 - (b) Depicts an incident which leads to the detention or arrest of an individual or individuals, the disclosure of the record shall be governed solely by the provisions of KRS 61.870 to 61.884, including all of the exceptions contained therein;
 - (c) Depicts an incident which is the subject of a formal complaint submitted against a public safety officer under KRS 15.520, 67C.326, or 95.450, or depicts an incident which is the subject of a formal legal or administrative complaint against the agency employing the public safety officer, the release of the record shall be governed by the provisions of KRS 61.870 to 61.884, including all of the exceptions contained therein; or
 - (d) Is requested by a person or other entity or the personal representative of a person or entity that is directly involved in the incident contained in the body-worn camera recording, it shall be made available by the public agency to the requesting party for viewing on the premises of the public agency, but the public agency shall not be required to make a copy of the recording except as provided in KRS 61.169. The requesting parties shall not be limited in the number of times they may view the recording under this paragraph.
- (6) Nothing in this section or KRS 61.169 shall be interpreted to override any provision related to:
- (a) Reports by law enforcement officers and criminal justice agencies under KRS 17.150;
 - (b) The law and rules governing discovery or the submission and display of evidence in any court proceeding, whether criminal or civil, or any administrative proceeding; or
 - (c) The provisions of KRS 189A.100.

➔Section 18. KRS 61.912 is amended to read as follows:

Any duly commissioned special law enforcement officer shall, while performing law enforcement duties upon the public property he *or she* is hired to protect, be empowered to arrest:

- (1) Persons committing, in his *or her* presence and upon the public property he *or she* is hired to protect, any misdemeanor, any traffic violation, or any other violation as defined by KRS 500.080~~{(17)}~~;
- (2) Provided there exists probable cause to believe a felony has been committed upon the premises he *or she* is hired to protect, any person whom the officer reasonably and actually believes to have committed such felony upon the public property.

➔Section 19. KRS 61.914 is amended to read as follows:

Duly commissioned special law enforcement officers shall have the power to issue tickets for parking violations committed upon the public property in their presence and the power of peace officers under KRS 431.015 to issue citations for misdemeanors, and other violations as defined by KRS 500.080~~{(17)}~~, committed in their presence upon the public property.

Signed by Governor April 8, 2022.