



JUSTICE AND PUBLIC SAFETY CABINET

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Dear Law Enforcement Personnel:

House Bill 463 was introduced and billed as a means to reduce the costs associated with incarcerating criminals within the Commonwealth. HB 463 addressed several concerns aimed at reducing prison populations, such as revising parole/probation protocols, restructuring the amount of time to be served for certain Class D felonies, eliminating enhancement penalties for subsequent offenses, etc. These revisions had little impact on how peace officers in the Commonwealth performed their duties to preserve the peace.

However, HB 463 did not stop at restructuring penalty guidelines and easing parole/probation protocols; Section 46 of the Bill directly changed law enforcement officers' discretionary arrest powers that had been in place since 1962. HB 463, Sect. 46 is included on the following pages in its entirety, the major changes being high-lighted.

Sincerely,

A handwritten signature in cursive script that reads "Gerald Ross".

Gerald Ross, J.D.
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Effective June 8, 2011:

Section 1. KRS 431.015 is amended to read as follows:

- (1) (a) KRS 431.005 to the contrary notwithstanding, and except as provided in paragraphs (b) and (c) of this subsection, a peace officer ***shall issue a citation*** instead of making an arrest for a misdemeanor committed in his *or her* presence, if there are reasonable grounds to believe that the person being cited will appear to answer the charge. The citation shall provide that the defendant shall appear within a designated time.
 - (b) A peace officer *may* make an arrest instead of issuing a citation for a misdemeanor committed in his or her presence if the misdemeanor is:
 1. A violation of KRS Chapter 508, 510, or 527, or KRS 189A.010;
 2. An offense in which the defendant poses a risk of danger to himself, herself, or another person; or
 3. An offense in which the defendant refuses to follow the peace officer's reasonable instructions.
 - (c) A peace officer *shall* make an arrest for violations of protective orders issued pursuant to KRS 403.715 to 403.785.
- (2) A peace officer ***may*** issue a citation instead of making an arrest for a violation committed in his presence but may ***not make*** a physical arrest ***unless*** there are reasonable grounds to believe that the defendant, if a citation is issued, will not appear at the designated time or ***unless*** the offense charged is a violation of KRS 189.223, 189.290, 189.393, 189.520, 189.580, 235.240, 281.600, 511.080, or 525.070 committed in his presence or a violation of KRS 189A.010, not committed in his presence, for which an arrest without a warrant is permitted under KRS 431.005(1)(e).
 - (3) If the defendant fails to appear in response to the citation, or if there are reasonable grounds to believe that he will not appear, a complaint may be made before a judge and a warrant shall issue.

- (4) When a physical arrest is made and a citation is issued in relation to the same offense the officer shall mark on the citation, in the place specified for court appearance date, the word "ARRESTED" in lieu of the date of court appearance.

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After conferring with the Attorney General's office regarding the proper interpretation of the revised statutory provisions, the Department of Criminal Justice's Legal Training Section has developed these training criteria so officers will be prepared to work within the guidelines that become effective June 8, 2011.

**CONFER WITH YOUR LOCAL PROSECUTOR ABOUT THE
IMPLEMENTATION OF THIS STATUTE/TRAINING**

2011 REVISIONS TO KRS CHAPTER 431 PEACE OFFICERS' AUTHORITY TO ARREST

Effective June 8, 2011, HB 463 requires that officers **CITE** instead of making physical arrests for **misdemeanors** that are committed in his/her presence, unless the officer reasonably believes the person would not appear at the stated time and date for the court appearance.

(NOTE: Officers' authority to arrest for FELONY offenses, as well as making arrests for Assault 4th Degree in Domestic Violence situations, are NOT affected by the 2011 changes).

KRS 431.015 will permit officers to make a physical arrest in lieu of issuing a citation in the following situations:

Permitted pursuant to KRS 431.015(1)(b)(2):

"An offense in which the defendant poses a risk of danger to himself, herself, or another person..."

Under this language, officers may continue to arrest for those "breach of peace" offenses – but **ONLY** if their post-arrest complaint **contains specific language indicating how the arrestee posed the "risk of danger"**.

For example, if an offender is engaged in a Chapter 525 offense (Riot, Disorderly Conduct, and Related Offenses), an officer may arrest if the actor's conduct creates a risk of injury to the actor or to an innocent bystander. **This risk should be specified in the post-arrest complaint.**

Permitted pursuant KRS 431.015(1)(b)(3):

"An offense in which the defendant refuses to follow the peace officer's reasonable instructions."

In this situation, the officer will need to be specific in a post-arrest complaint as to what his/her "reasonable" instruction was, and the defendant's response to the instruction.

For example, the officer responds to a complaint regarding a subject in a store refusing to leave after the manager has ordered him off the premises. The officer advises the subject that he is guilty of trespassing and needs to leave; but the subject refuses. The officer may now arrest, and must be specific as what he/she advised the subject and that the subject refused to comply.

(NOTE: The citation to appear in court would be a “reasonable instruction.” Arguably, a subject’s stated intent to disregard the citation, when properly documented, would justify a physical arrest.)

If the misdemeanor offense is a violation of a protective order issued during the course of a domestic violence situation, the officer SHALL make a physical arrest for the violation of that protective order:

Mandated by KRS 431.015(1)(c):

“A peace officer shall make an arrest for violations of protective orders, issued pursuant to KRS 403.715 to 403.785.”

This has not changed from how we have always instructed – if the law enforcement officer has probable cause to believe a Domestic Violence Order or an Emergency Protective Order has been violated, the officer shall make reasonable efforts to locate the respondent and make an arrest

Arrest authority NOT changed or limited under KRS 431.015(1)(b)(1): The following page contains a list of offenses that the revised statute permits you to make a physical arrest as you were permitted to do prior to these amendments taking effect:

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KRS 431 Arrest Authority NOT changed by HB 463:

1. **Assault 4th Degree** (KRS 508.030);
2. **Menacing** (KRS 508.050);
3. **Wanton Endangerment 2nd Degree** (KRS 508.070);
4. **Terroristic Threatening 3rd Degree** (KRS 508.080);
5. **Criminal Abuse 3rd Degree** (KRS 508.120);
6. **Stalking 2nd Degree** (KRS 508.150);
7. **Violation of a Stalking Restraining Order** (KRS 508.155);
8. **Sexual Abuse 2nd Degree** (KRS 510.120);
9. **Sexual Abuse 3rd Degree** (KRS 510.130);
10. **Sexual Misconduct** (KRS 510.140);
11. **Indecent Exposure 1st Degree** (1st or 2nd offense) (KRS 510.148);
12. **Indecent Exposure 2nd Degree** (KRS 510.150);
13. **Carrying Concealed a Deadly Weapon** (527.020);
14. **Defacing a Firearm** (527.030);
15. **Possession of Defaced Firearm** (527.050);
16. **Possession of Handgun by Minor** (1st offense) (527.100); and
17. **DUI of a Motor Vehicle** (189A.010).
18. **Measurement/Weight violation of motor truck, semitrailer truck, or trailer** (KRS 189.223);
19. **Reckless/careless Driving** (KRS 189.290);
20. **Failure to comply with traffic officer's signal** (KRS 189.393);
21. **DUI of a non-motor vehicle** (KRS 189.520);
22. **Accident-related responsibilities** (Leaving scene; Failure to report; etc; KRS 189.580);
23. **DUI of a Boat** (KRS 235.240);
24. **Violations of Motor Carrier Regulations** (federal and/or state) – KRS 281.600);
25. **Criminal Trespass 3rd** (KRS 511.080);
26. **Harassment** (KRS 525.070); or
27. **Probable Cause DUI of Motor Vehicle not committed in the officer's presence** (KRS 189A.010).

Arrest Authority outside of KRS Chapter 431 – Not changed by HB 463

28. **KRS 39A.190**, authority to arrest for all offenses during a **declared emergency**;
29. **KRS 281.765**, authority to all peace officers to arrest for violations of motor vehicle and boating offenses (but note, should NOT arrest for offenses that **only carry a fine** as punishment if found guilty);
30. **KRS 222.203**, authorizing a peace officer to make an arrest for a violation of KRS 222.202 (**Alcohol Intoxication**);
31. **KRS 433.236(3)**, authorizing a peace officer to make a physical arrest when there is probable cause of a **shoplifting theft**;
32. **KRS 436.605(2)**, mandating a peace officer to arrest for acts of **cruelty, mistreatment, or torture of animals**;
33. **KRS 533.050**, authorizing parole officer and peace officers to arrest persons for violating terms/conditions of probation, parole, or conditional release;
34. **KRS 235.310**, authorizing Fish & Wildlife and all other officers to arrest for any violation of KRS Chapter 235; and
35. **KRS 150.092(3)**, authorizing **Fish & Wildlife** officers the discretion to arrest or cite persons **hunting on private land without permission**.

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