

Removal or Impeachment of a Sheriff

Under Section 227 of the Kentucky Constitution, sheriffs are subject to indictment or prosecution for misfeasance, malfeasance in office, or willful neglect in the discharge of official duties. If convicted, he or she can be removed from office. Under this section, the General Assembly may enact legislation that codifies the means of removal from office of any sheriff, jailer, constable or peace officer for these specific types of acts.

In addition, Section 227 provides that the General Assembly may codify into law the process of removing a sheriff, jailer, constable, or peace officer for acts that fall under the broader umbrella of “neglect of duty.”

Process of Removal

There appears to be two ways of removing a sheriff from office. First, a sheriff may be removed through a process called removal by address, which involved petitioning a legislative body for removal and impeachment of the officer. The second option for removal provided in statute allows the Governor to remove a peace officer for neglect of duty.

Impeachment

Under KRS 63.060, a person may petition either the Senate or House of Representatives or both to have an officer removed. The petition for removal will then be referred to a committee. KRS 63.030 provides specific details as to the process of petitioning for removal. Under KRS 63.030 “[a]ny person may, by written petition to the House of Representatives¹, signed by himself, verified by his own affidavit and the affidavits of such others as he deems necessary, and setting forth the facts, pray the impeachment of any officer . . . [t]he House shall refer the petition to a committee, with power to send for persons and papers, to report thereon.”

By the Governor

It appears from more recent case law that removal by the Governor is the preferred method of removal of a sheriff in the state of Kentucky.² Under KRS 63.100, the Governor may vacate the

¹ Under Section 66 of the Kentucky Constitution only the House of Representatives has the power to impeach an officer.

² See *Cornett v. Chandler*, 307 S.W.2d 918 (Ky. 1957)(Proceeding to remove a sheriff from office on the ground of neglect of duty. The Court found that Governor’s order to remove sheriff was proper).

office of the peace officer if he or she is presented with certain evidence indicating neglect of duty by the peace officer. KRS 63.090 provides a non-exhaustive list of acts that would be considered neglect of duty. These include: (1) The commission of a trespass or wrongful act in the performance of official duty; (2) Accepting a bribe to neglect official duty; (3) Gross neglect equivalent to fraud; (4) Willful neglect and such forms of misfeasance or malfeasance as involve a failure in the performance of the duties required by law; (5) Careless or intentional failure to exercise due diligence in the performance of official duty; (6) Habitual drunkenness in office; or, (7) Gross immorality or misconduct in office amounting to neglect of duty.

The process of removal of a peace officer for neglect of duty by order of the Governor is provided in KRS 63.100 to KRS 63.130.³ This process includes the opportunity for the officer to defend his or her actions at a hearing. In addition, KRS 63.140 provides for the removal of a peace officer from office by the Governor for the lynching, killing, maiming, or injury of a prisoner in lawful custody of the peace officer.⁴

³ KRS 63.100:

A peace officer guilty of neglect of duty shall be removed from office in the manner prescribed by KRS 63.100 to 63.130. (2) The Governor shall sign written charges setting forth the grounds for removal of the officer. The charges, when considered collectively, must be supported by the affidavit of at least two (2) witnesses, but it shall not be necessary to support each separate count or individual charge embraced in the charges by two (2) affidavits. The affidavits must be filed by the Governor as a part of the record in the proceedings. The charges need not possess the formalities and exactness of an indictment. The charges shall be recorded in the Executive Journal and an attested copy thereof shall be made by the Secretary of State, and served upon the officer sought to be removed. No response shall be filed to the charges, but they shall stand traversed of record. (3) Notice must be given to the officer sought to be removed, stating the time and place of the hearing, and giving him at least twenty (20) days to prepare his defense.

⁴ Removal under KRS 63.140 for the death or injury of a prisoner still falls under the rubric of “neglect of duty.” However, the statute makes clear that death or injury to a prisoner constitutes prima facie evidence of neglect of duty.