CRIMINAL JUSTICE REFORM IN KENTUCKY

Sponsor: Criminal Law Section
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Owensboro, Kentucky
A NOTE CONCERNING THE PROGRAM MATERIALS

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THE PRESENTERS

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REPRESENTATIVE JOSEPH M. FISCHER represents House District 68, which includes part of Campbell County. He is Chair of House Judiciary Committee and Co-Chair of the Juvenile Justice Oversight Council. He serves on the Banking & Insurance, Elections, Constitutional Amendments & Intergovernmental Affairs, and Judiciary Committees. He received his B.A. from Holy Cross College and his J.D. from the University of Cincinnati. Representative Fischer received the Northern Kentucky Right to Life John J. Bauer Service Award in 1998 and serves on the Board of Greater Cincinnati Lawyers for Life. He is a member of the Defense Research Institute, Federalist Society for Law & Public Policy, and the Kentucky, Ohio, and Cincinnati Bar Associations.

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EDWARD C. MONAHAN began as a public defender in 1976. He has been Kentucky Public Advocate since September 1, 2008. Monahan is co-editor of Tell the Client's Story: Mitigation in Criminal and Death Penalty Cases (2017). He served as Deputy Public Advocate from 1996-2004 and was a public defender with the Kentucky Department of Public Advocacy from 1976-2004, representing capital clients at trial, on appeal, and in post-conviction in state and federal courts. He was co-counsel in Gall v. Parker and Kordenbrock v. Scroggy, both granting federal habeas relief to clients sentenced to death. Mr. Monahan was counsel in Binion v. Commonwealth where the Kentucky Supreme Court recognized the need for defense experts. He is a founding member of the National Association for Public Defense, serves on its Steering Committee and chairs its Education Committee. He is a charter board member of the Kentucky Association of Criminal Defense Lawyers, was its president (2011), and chaired its Education Committee (2011-2016), is past chair of the Kentucky Bar Association’s (KBA) Criminal Law Section, and was a member of the KBA Ethics Committee (2000-2011). Mr. Monahan is a member of the National Association of Criminal Defense Lawyers and co-chairs its Committee on Pretrial Release Advocacy.
SECRETARY JOHN C. TILLEY was appointed Secretary of the Kentucky Justice and Public Safety Cabinet on December 10, 2015. He is a former prosecutor and state representative nationally recognized for his work in the areas of criminal justice reform and drug policy. Secretary Tilley served nine years in the Kentucky House of Representatives and was chair of the Judiciary Committee (2009-2015). He co-chaired several joint bi-partisan House/Senate task forces on criminal justice and drug policy, and sponsored key pieces of legislation including a landmark criminal justice reform bill triggering a national model for change. A graduate of the University of Kentucky and Salmon P. Chase College of Law, Secretary Tilley is a member of the Council of State Government's Justice Center, the National Criminal Justice Association, the National Governor's Association Pew Advisory Council and co-chaired the National Conference of State Legislatures Law and Criminal Justice Committee.

JUDGE TOMMY TURNER was elected to the office of County Judge Executive in 1985, thus becoming the youngest person in the history of Kentucky to be elected to the office. He is a graduate of Western Kentucky University. Judge Turner was chair of the local and district health departments and of the Lincoln Trail Area Development District. He served on the board of the National Association of Development Organizations, has twice served as president of the Kentucky County Judge Association and the Kentucky Association of Counties, and on the Governor's Task Forces concerning such matters as local taxation, juvenile justice, public defender services, pension systems, the Kentucky Jail Standards Commission, the local Correctional Facilities Funding Authority, the HB 463 Penal Revision work group and the Criminal Justice Policy Assessment Council. He was a founding member of the board which created the Lincoln Museum as well as the Friends of Lincoln organization which purchased and donated the Lincoln Knob Creek Farm to the U.S. government, adding it to the National Park System in 2001. Judge Turner, along with Senator Jim Bunning, served on the U.S. Abraham Lincoln Bicentennial Commission. The log cabin design found on the back of the bicentennial penny issued in 2009 was created by him. Judge Turner currently serves as vice president of the Kentucky Historical Society.
SENATOR WHITNEY WESTERFIELD was first elected to the Kentucky State Senate in 2012, representing Christian, Todd, and Logan counties in Western Kentucky. He currently serves as the Chair of the Senate Judiciary Committee, and as a member of the Capital Planning Advisory Board, Tobacco Fund Settlement Oversight, Agriculture, Natural Resources & Energy, Veterans/Military Affairs/Public Protection, and the Program Review & Investigations Committees in the State Senate. In 2013, Senator Westerfield served as Co-Chair of the Juvenile Code Reform Task Force and during the 2014 Regular Session sponsored Senate Bill 200, reflecting the work of the Task Force and bringing about the largest reform to Kentucky’s juvenile justice system in thirty years. He continues juvenile justice policy work as Co-Chair of the SB200 Oversight Council, overseeing the implementation of the bill as well as exploring numerous other juvenile justice policies. In 2016, Senator Westerfield was appointed to the Governor's Criminal Justice Policy Assessment Council to review possible reforms to Kentucky's criminal code. He is presently an attorney with the Fletcher Law Firm in Hopkinsville after serving over five years as an Assistant Commonwealth’s Attorney. Senator Westerfield has long been an active member of his community, having served on the Boys and Girls Club Board of Directors, as a member of the Kiwanis Club and former member of the Kiwanis Board of Directors. He also served as chair of the Kiwanis Club Soap Box Derby Committee in 2008 and 2009. He has served on the Hopkinsville American Red Cross Advisory Committee, the Board for the United Way of the Pennyrile, and as United Way Board Chair in 2012. Currently, Senator Westerfield serves on the Board for Alpha Alternative, a crisis pregnancy care center in Hopkinsville and the Kentucky Association of Child Advocacy Centers. He received his B.S., with university and departmental honors, at the University of Kentucky and his J.D. from Southern Illinois University School of Law. Senator Westerfield is a member of the Kentucky and Tennessee Bar Associations.
I. MISSION STATEMENT

The Council's purpose was to assess Kentucky's criminal justice system seeking changes to improve public safety and enhance the administration of criminal justice. The Council was tasked to review existing research, best practices, and data-driven evidence to formulate a path forward for Kentucky that builds a smarter, stronger, and fairer criminal justice system that reduces incarcerations and continues to keep communities safe. The Council made recommendations to the Governor, which resulted in a plan for legislative and policy changes to propose to the 2017 General Assembly.

The scope of the council's assessment included:

A. Addressing the Unsustainable, Growing Adult Corrections Population;
B. Options for Revising and Updating the Penal Code, with a View toward Simplification and Clarification;
C. Addressing Issues of Workforce Development to Remove Barriers to Successful Re-Entry;
D. Propose Strategies for Reducing Recidivism;
E. Reforms in Probation and Parole;
F. Drug Policy; and
G. Strategies to Keep People from Entering the Criminal Justice System.

II. MEMBERS

A. John Tilley, Chair, Secretary of Justice and Public Safety
B. Senator Whitney Westerfield, Kentucky General Assembly
C. Representative Joseph M. Fischer, Kentucky General Assembly
D. Representative Darryl Owens, Kentucky General Assembly
E. Secretary Derrick Ramsey, Labor Cabinet
F. Senator John Schickel, Kentucky General Assembly
G. Senator Morgan McGarvey, Kentucky General Assembly
H. Representative Denny Butler, Kentucky General Assembly
I. Representative Chris Harris, Kentucky General Assembly
J. Dr. Allen Brenzel, Department for Behavioral Health, CHFS
K. Judge David Tapp, Pulaski Circuit Court
L. Justice Daniel Venters, Supreme Court of Kentucky
M. Judge Tommy Turner, County Judge/Executive, LaRue County
N. Ms. Amy Milliken, Warren County Attorney
O. Ms. Courtney Baxter, Commonwealth Attorney for Oldham, Henry, and Trimble Counties
P. Commissioner Rick Sanders, Kentucky State Police
Q. Mr. Damon Preston, Department of Public Advocacy
R. Mr. Russell Coleman, Spokesperson, Kentucky Smart on Crime
S. Ms. Bryanna Carroll, Kentucky League of Cities
T. Mr. Anthony Smith, Executive Director, Cities United
U. Mr. Jason Woosley, Jailer, Grayson County
V. Ms. Brenda Tiffany, Victim Advocate
W. Bishop William Medley, Diocese of Owensboro
X. Mr. Dave Adkisson, President and CEO, Kentucky Chamber of Commerce

III. WORK GROUP RECOMMENDATIONS


The group has recommended:

1. Raise theft threshold levels to $2,000. This would apply to all thefts, which currently are set at $500 to be considered a felony. Flagrant non-support, currently set at $1,000 for a felony, would also rise to $2,000;

2. Amending the assault and robbery statutes;

3. Amend the term "violent offender" to "offender" in KRS 439.3401 (which is the parole eligibility statute);
4. Setting parole revocation caps for technical violations at three days for the first revocation, five days for the second revocation, ten days for the third revocation, and up to the remainder of the sentence for the fourth and subsequent revocation;

5. Allowing the parole rate to be permissible in the sentencing phase of trial.

B. Jail Reform: Jason Woosley, Sen. John Schickel, Judge Executive Tommy Turner

This group submitted a list of ten areas they recommend for consideration.

1. Incentives for jails to do MRT or other programs that earn inmates "good time" credit.

2. Definition of "indigent" that would apply to court costs and fees so that people are not spending time in jails and prisons for failure to pay fees they couldn't afford. Schickel opposes.

3. Bail/bond credits. HB 463 allowed for these credits but they have not been utilized consistently. If some "teeth" were added, that might help in proper implementation and perhaps ease crowding in jails. Schickel opposes.

4. Jail construction funds and whether we can stop the sweeping/allocate for programs if money is left.

5. Operation of Halfway Houses by county jails. Jailers association would like to be able to have jails operate halfway houses, providing additional bed space for people leaving prison or to discharge inmates as part of a program designed to get them working real jobs.

6. Increase in per diem for jails housing state inmates to at least what it costs to house an inmate in a county jail.

7. Create a gross misdemeanor category, with possibility of funding by the state for those inmates in county jails.

8. Continue to use graduated sanctions on paroled inmates, but lower the sanctions, such as not recalling them for every technical violation. Schickel opposes this suggestion.

9. Lower restrictions on county jails, making it easier for them to construct new bed space when feasible.

10. Decrease the square footage requirements per inmate for jails.
C. Prevention: Amy Milliken, Anthony Smith, Bishop William Medley

Charged with finding ways to keep people out of the system to begin with, this group met with several stakeholder groups and people interested in juvenile interventions and other programs aimed at keeping people safely in the community. They support:

- Day reporting, which allows for certain level offenders to remain working and involved with their families while receiving services that are designed to keep them from returning to the system. A bill (HB 332) to allow this type of program was presented in the 2015 session, but did not progress.

D. Reentry/Recidivism Reduction: Russell Coleman, Rep. Darryl Owens, Secretary Derrick Ramsey, Judge David Tapp, Brenda Tiffany, Dave Adkisson

Two groups merged to form this working group as a result of having very similar paths. They have focused on trying to eliminate barriers that inhibit ex-offenders from being successful upon reentry into the community. In addition to legislative efforts, this group has also played a role in identifying some policy areas for improvement that the Justice Cabinet is working on as well.

1. Driver's licenses/IDs: Currently, inmates cannot get identification while incarcerated, which presents a barrier for their smooth transition. Transportation and Corrections have long collaborated on possible solutions. Transportation has a bill proposal to create a mobile unit for driver's licensing that would also be able to service correctional institutions and jails.

2. Require that licensing authorities not disqualify someone from obtaining an occupational license solely because they have been convicted of a crime and create a process for review and appeal.

3. Continue the authority of the courts to operate programs that use swift and certain sanctions, following Hawaii's SMART Court model. There are currently seven pilot projects, and this would encourage expansion, as well as set up some data collection standards so that we can track effectiveness.

E. Drug Policy: Sen. Morgan McGarvey, Commissioner Rick Sanders, Dr. Allen Brenzel

The group considered and is working on some recommendations on how to make Casey's Law, which allows for civil commitments due to addiction, work as intended. This group has also had some discussion about some policy areas, such as expansion of the Angel Initiative and possibly some improvements to the use of drug courts.

Parole is an area that greatly impacts the prison population. The work group has met with our Parole Board chair to brainstorm ideas and supports two initiatives.

1. Presumptive parole for certain Class D felonies. This would allow for certain lower level cases to receive an automatic administrative parole. Currently, these cases undergo a file review by Parole Board members, but in the majority of cases are granted parole. There would be provisions for victims to petition for a review of a case.

2. Performance-based funding for Halfway Houses. We are considering models used in other states that tie how successful a halfway house program is at reducing recidivism with the funding they get from the state.

IV. OTHER SUGGESTIONS

Throughout the process, some other considerations that were not taken up by individual work groups have arisen, including suggestions from Secretary Tilley, who did not sit on a particular group. They include:

A. Elimination of Money Bail: This would create a bail system not dependent on one's resources, but rather focused on the accused person's risk to the community and likelihood of appearing in court. It would eliminate some disparities that occur simply because some people do not have outside resources to help them with bail.

B. Justice Reinvestment.

C. What data sharing language needs to be established via this bill to make sure reforms are being implemented with fidelity?

D. HB 463 established reports to the Criminal Justice Commission – should we strike that language and reconstitute a board that will be more engaged in monitoring the progress of reforms, accept reports, etc.

E. Based on the visit to Kansas, there was some discussion of previous legislation that Sen. Stivers sponsored several years ago (2007: SB 42) that would have allowed private industry inside prisons. Inmates work for a fair wage, much higher than they get now, and are able to save and pay back their debts.

V. HIGHLIGHTS OF SENATE BILL 120

The above recommendations, which were crafted through discussion of a smaller drafting committee, resulted in the filing of Senate Bill 120. Not all the recommendations were able to be included in this version, which is considered a
major step forward in the work of criminal justice reform, but nowhere near complete. The following are the highlights of the Senate Bill 120, as filed.

A. Modifies discretionary detention so it gives Probation and Parole more flexibility to use sanctions for supervision violations.

B. Adjusts parole and probation credits for those who are compliant and need less supervision, which should ease a growing caseload with no negative impact on public safety. These compliance credits mirror a successful model from Missouri.

C. Removes automatic bans for felons seeking professional/occupational licenses, giving discretion and providing a process for boards to determine whether a crime should prohibit licensure.

D. Creates a way for the Department of Corrections to implement a reentry drug supervision pilot program (similar to drug court) for certain inmates and parolees with substance abuse disorders.

E. Establishes a way for law enforcement agencies to offer "Angel Initiative" programs. These programs allow addicts to come to police departments and seek help finding treatment without fear of drug possession charges.

F. Establish a mechanism for private industry, which doesn't compete with other Kentucky businesses, to operate inside prisons, giving inmates an opportunity to learn real-life job skills while also paying restitution, child support and for their own incarceration costs.

G. Establish authority to allow certain lower-level inmates serving felony sentences in county jails the chance at work release, thereby helping them become employable post-sentence and able to pay restitution.

H. Establish opportunities for jails to operate reentry centers or day reporting centers to ease inmate transition back into society.
Overview

- Prison Admissions
  - Overall, by admission type, by offense type
- Prison Length of Stay
  - Overall, sentence length, parole data
- Prison Stock Population
  - Overall, by admission type, by offense type, by sex
- Probation and Parole

Data Source

- Kentucky Department of Corrections, CY 2007-July 2016
PRISON ADMISSIONS

Prison admissions are up 26% since 2009

Source: Kentucky Department of Corrections
Two-thirds of admissions are supervision violators

Admissions of parole violators up 86% since 2009
90% of admissions had underlying non-violent offense

Prison Admissions by Offense Type, 2015

- Person: 7%
- Property: 60%
- Drug: 30%
- Sex: 3%

Source: Kentucky Department of Corrections

Property crime admissions up 48% since 2009

Prison Admissions by Most Serious Offense Type

- Person
- Property
- Drug
- Sex

Source: Kentucky Department of Corrections
Admissions: Key Takeaways

• Prison admissions rose 26% since 2009
• Two-thirds of admissions are supervision violators
  – Parole revocations up 86% since 2009
  – Parole revocations are #1 source of admissions
• 90% of admissions have underlying nonviolent offense
  – Admissions with underlying property crime up 48% since 2009
Time served fell 29% since 2009

Average Time Served

Time served declined for all admission types

Average Time Served by Admission Type

Source: Kentucky Department of Corrections
Sentence length for new crimes down 12% since 2007

Average Sentence Length for New Crime

Source: Kentucky Department of Corrections

Only property offenses have declining sentence length

Average Sentence Length for New Crime, by Most Serious Offense Type

Source: Kentucky Department of Corrections
Recall: property crime admissions up 48% since 2009

![Graph showing Prison Admissions by Most Serious Offense Type]

Source: Kentucky Department of Corrections

Parole grant rates increased after 2007, peaked in 2010, and plateaued by 2012

![Graph showing Parole Grant Rate by Year]

Source: Kentucky Department of Corrections
By 2015, over 60% of parole releases occurred at the earliest approved date

**Parole Releases, Percent by Type**

<table>
<thead>
<tr>
<th>Year</th>
<th>% Released at earliest date</th>
<th>% Released after eligible</th>
</tr>
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<tbody>
<tr>
<td>2007</td>
<td>100%</td>
<td>0%</td>
</tr>
<tr>
<td>2008</td>
<td>95%</td>
<td>5%</td>
</tr>
<tr>
<td>2009</td>
<td>90%</td>
<td>10%</td>
</tr>
<tr>
<td>2010</td>
<td>85%</td>
<td>15%</td>
</tr>
<tr>
<td>2011</td>
<td>80%</td>
<td>20%</td>
</tr>
<tr>
<td>2012</td>
<td>75%</td>
<td>25%</td>
</tr>
<tr>
<td>2013</td>
<td>70%</td>
<td>30%</td>
</tr>
<tr>
<td>2014</td>
<td>65%</td>
<td>35%</td>
</tr>
<tr>
<td>2015</td>
<td>60%</td>
<td>40%</td>
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</tbody>
</table>

Source: Kentucky Department of Corrections

**Time Served: Key Takeaways**

- Time served down 29% since 2009, likely for two reasons:
  - 12% decline in average sentence length
  - Note: sentences *up* for person, sex, drug crimes
  - But, more admissions for property offenses, which have relatively short *and* falling sentence lengths
  - Are falling sentence lengths due to “net widening?”
  - Parole rate flat, but more “on-time” releases
- Grant rate rose after 2007, but flat from 2012 onward
  - Recently: 40% hearings don’t result in grant
- Higher percent of releases via parole at eligibility date
  - Recently: 38% coming after eligibility date
PRISON POPULATION

Prison population flat 2007-2012, fell 9% in 2013, rose 18% since

Source: Kentucky Department of Corrections
Supervision violations account for half of the prison population

Since 2013, probation and parole violations driving growth (up 34% and 38%, respectively)
Two-thirds of prison inmates have underlying non-violent offense

Prison Population by Most Serious Offense at Admission, 2016

- Person: 15%
- Property: 44%
- Drug: 22%
- Sex: 19%

Source: Kentucky Department of Corrections

Inmates with underlying property offense are largest share (44%) and fastest growing population, up 41% since 2013

Prison Population by Most Serious Offense at Admission

Source: Kentucky Department of Corrections
Since 2007 the female prison population grew 25% compared to 5% for males (women are now 13% of the prison population)

### Key Takeaways: Prison Population

- The prison population grew 7% since 2007
  - Flat until 2013, fell 9% in 2013, grew 18% since
- Half of inmate population admitted for supervision violation
  - Probation and parole violations up by one-third since 2013
- Two-thirds of inmate population has underlying non-violent crime
  - Property offenders are the largest share of the prison population, and increased 41% since 2013
- Number of women in prison grew 5 times as fast as men since 2007 (25% vs 5%)
PROBATION AND PAROLE

Probation population up 42% since 2007, flat since 2011

Source: Kentucky Department of Corrections
Property and drug crimes make up the vast majority of probation admissions.

Successful discharge rates are higher now than they were in 2007.
**Probation**

Percent unsuccessful down, but number is up

**Number of Unsuccessful Probation Discharges**

[Graph showing the number of unsuccessful probation discharges from 2007 to 2015.]

Source: Kentucky Department of Corrections

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**Parole**

Parole population up 24% since 2007, but down 8% since 2013

**Total Parole Population by Year**

[Graph showing the total parole population from 2007 to 2016.]

Source: Kentucky Department of Corrections
Successful discharge rates are higher now than they were in 2007

Parole Releases, Percent by Discharge Type, 2007 and 2015

Source: Kentucky Department of Corrections

Percent unsuccessful down, but number is up

Number of Unsuccessful Parole Discharges

Source: Kentucky Department of Corrections
Key Takeaways: Supervision

- Number of probationers up 42% since 2007
  - Almost exclusively sentenced for non-violent crime
  - Percent with unsuccessful discharge falling, but number growing
- Number of parolees up 24% since 2007
  - But has fallen 8% since 2013
  - Percent with unsuccessful discharge falling, but number growing
- Gains in successful discharge likely being “washed out” by the growing number of people under supervision

Overall Key Takeaways

- Admissions up 26% since 2009, largely driven by parole violators and property offenders
- Time served down 29% since 2009, largely driven by declining sentence length and prompt parole
  - But, sentence length decline may reflect higher proportion of property offenders. Net widening?
  - 40% paroles not granted, 38% occur after eligibility
- Stock population up 18% since 2013, largely driven by supervision violators and property offenders
  - Number of female inmates grew 5X faster than males
- Probation up 42% and parole up 24% since 2007
  - Reductions in unsuccessful discharge washed out by growing supervision rolls?
Linking Data to Policy: Supervision Violations

Data
- Probation and parole populations up 42% and 24% since 2007
- Two-thirds of admissions and half of prison population are supervision violations
- Account for majority of prison population growth since 2013

Goal
- Get deterrence right
- Focus prison beds on most chronic and violent offenders

Policy
- Swift, certain, fair (from pilot to norm)
  - Graduated sanctions
  - Revocation caps
  - Institute/expand earned discharge

Linking Data to Policy: Non-violent Offenses

Data
- 90% of admissions and 66% of inmates have underlying nonviolent crime
- Inmates with underlying property offense are largest share and fastest growing

Goal
- Focus prison beds on most chronic and violent offenders
- Free-up resources for higher public safety ROI strategies

Policy
- Shift some crimes to misdemeanors
- Presumptive probation
- Downgrade felony penalty ranges
- Expand eligibility and amount of earned/good time
Linking Data to Policy: Parole

**Data**
- Grant rate flat, but increasingly prompt
- But number of hearings and grants falling

**Goal**
- Streamline parole process
- Increase certainty
- Focus parole decision makers on tougher cases

**Policy**
- Administrative/presumptive parole
- “Staging” of programs

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**Summary**

**Contact Information**

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This issue of The Advocate presents criminal justice data from across Kentucky and our nation. The purpose of this edition is to provide data for citizens, policy-makers and anyone interested in criminal justice in Kentucky. The data are from a variety of sources including the Kentucky Department of Corrections, the Kentucky Department of Public Advocacy, the Kentucky Administrative Office of the Courts, and the FBI. The data provides a picture of the criminal justice system in Kentucky. Included is data on incarceration, crime rates, parole rates, nonviolent persistent felony offenders, and public defender caseloads.

The overall crime rate nationally and in Kentucky continues to decline as shown in Graph 1 (page 2). In 2015, the US violent crime rate, a subset of the crime rate, and the Kentucky violent crime rate each increased by 3% over the prior year but remained at historic lows. Graph 2 (page 2) shows the 3% increase in violent crime in the United States and Kentucky over the prior year, but also shows an overall decrease in the crime rate from 387.1 to 376.6 for the United States total, and from 239.6 to 218.7 in Kentucky over the five-year period from 2011 to 2015. The decrease is even greater from 1985 to 2015. The Kentucky violent crime rate remains the third lowest yearly rate since 1985.

From 1985-2015
- The overall crime rate in Kentucky declined by 19%
- The violent crime rate in Kentucky declined by 28%
- The overall crime rate in the United States declined by 45%
- The violent crime rate in United States declined by 33%

While the overall crime rate nationally and in Kentucky continues to decline, the Kentucky prison rate climbs.

From 1985-2015
- The United States imprisonment rate increased 127%, more than doubling
- The Kentucky imprisonment rate increased 271%, nearly quadrupling
Graph 3 (page 2) shows the overall upward trend of incarceration rates in the United States and in Kentucky. In 2007 the incarceration rate in Kentucky surpassed the United States rate for the first time over the 30-year period from 1985 – 2015. While Kentucky’s incarceration rate has not consistently remained above the United States rate, the 2015 incarceration rate in Kentucky was 6% greater than that of the United States.

Over the 30-year period from 1985-2015, Kentucky and the United States saw a divergent trend in crime and incarceration rates. Graph 4 (page 3) shows that since 1985, the violent crime rate has decreased by 28%, while the imprisonment rate has increased by 271%. The Kentucky violent crime rate was less than that of the United States, while the imprisonment rate over this time grew more than that of the United States, which increased by 127%.

Table 2 (page 4) includes data collected by the Uniform Crime Reporting (UCR) Program. According to the FBI UCR website, the UCR Program collects voluntarily, self-reported data from more than 18,000 sources including university, city, county, state, tribal, and federal law enforcement agencies. The FBI then compiles the information for use in their publications. The Total Crime numbers include the total number of violent and property crimes.

In the FBI compilation of this data, property crimes have been given more weight as most crime is property related. Violent crime includes murder and non-negligent manslaughter, rape, robbery, and aggravated assault. Property crime includes burglary, larceny-theft, motor vehicle theft, and arson. The method of data collection is based on the Hierarchy Rule, where in the case of a multiple-offense criminal incident, only the most serious offense is counted.
Despite Kentucky’s climbing incarceration rate, there has been a decline in the crime rate. This decline is reflected by the Administrative Office of the Courts caseload data from calendar year 2005 to 2015, as shown in Table 1 (page 3) and Graph 5 (page 3). From calendar year 2005 to 2015, the total of circuit criminal cases, district misdemeanor cases and district felony cases decreased by 43,194, or 17%. Over the same period however, there has been a 3% increase in circuit criminal case filings as reported by the Administrative Office of the Courts. Circuit criminal cases peaked in calendar year 2012 and have decreased annually since that time. District misdemeanor and felony cases have decreased by 44,265, or 20% since 2005.

Table 1 (page 3) shows the number of Circuit Court criminal case filings and District Court Felony and Misdemeanor case filings recorded by Administrative Office of the Courts from calendar year 2005 through 2015. The numbers presented in Table 1 (page 3) do not include the District Court Prepayable caseload, which AOC provides in a separate report.

Graph 5 (page 3) shows the overall decrease in cases since 2005, with the 10-year high in 2007 at over 250,000 cases to the low of less than 207,000 cases in 2015.
Table 2: US and Kentucky Crime Rate Trends Including Kentucky and US Incarceration Rates per 100,000 People

<table>
<thead>
<tr>
<th>Year</th>
<th>US Total</th>
<th>KY Total</th>
<th>US Violent</th>
<th>KY Violent</th>
<th>KY Prison</th>
<th>US Prison</th>
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<tbody>
<tr>
<td>1985</td>
<td>5,207.1</td>
<td>2,947.2</td>
<td>556.6</td>
<td>305.5</td>
<td>131.1</td>
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<td>1986</td>
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<td>1988</td>
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<td>3,134.8</td>
<td>637.2</td>
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<td>473.4</td>
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<td>239.6</td>
<td>492.9</td>
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<tr>
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<tr>
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<td>211.6</td>
<td>486.2</td>
<td>471</td>
</tr>
<tr>
<td>2015</td>
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<td>2,396.3</td>
<td>372.6</td>
<td>218.7</td>
<td>486.4</td>
<td>458</td>
</tr>
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</table>

DUI CASES ARE DECLINING

Table 3 (page 5) shows the decrease to the total number of DUI cases statewide. The decrease over the 10-year period from 2005-2015 is 30%, with a decrease each year since 2006. Graph 6 (page 5) depicts this decrease of almost 11,000 cases.

In Kentucky, the incarcerated population is growing annually, despite the falling crime rate. The increasing inmate population in Kentucky leads to additional government expenses. Figure 1 (page 5) shows the additional amounts for FY2012-2016 required by the Kentucky Department of Corrections as a result of the prison population being higher than the projections. Graph 7 (page 6), showing the Inmate Population between December 2015 and December 15, 2016, is based on a monthly report provided directly by the Department of Corrections. Over the one-year period, there was an 11% increase to the inmate population with a high of 23,989 inmates in September 2016 and the lowest level of 22,187 in December 2015. At the lowest point in December 2015, there were 296 more inmates versus the FYs 16-18 Consensus Forecast. The greatest difference in forecast versus actual inmates was in July 2016 when there were 2,217 more inmates than the consensus forecast.

INCREASE IN IMPRISONMENT IS COSTLY

Figure 1: Necessary Government Expenses due to State Inmates above Projections

$89.6 million over the last 5 years

Source: Office of State Budget Director, Budget Documents (http://osbd.ky.gov/Pages/default.aspx)
NONVIOLENT PERSISTENT FELONY OFFENDER COSTS ARE HIGH

We know that the climb in Kentucky’s imprisonment rate is costly, but what is the cost to incarcerate the nonviolent persistent felony offender population?

Using information on persistent felony offenders provided by the Kentucky Department of Corrections in Table 4 (page 7), the cost to incarcerate the 3,054 nonviolent PFO (total PFO currently incarcerated minus violent PFO currently incarcerated), serving the full length of the average sentence of 20.3 years, at a cost of $61.09 per day based on KY DOC’s Cost to Incarcerate Report for FY15 is more than $1.3 billion. This is an estimated increase in cost from the prior year of more than $101 million dollars, when 2,877 individuals were serving an average of 20.2 years at a cost of $60.38.

The cost per year to incarcerate these 3,054 nonviolent offenders is over $68 million at the FY15 cost to incarcerate rate of $61.09 per day. Due to an increase in the number of nonviolent offenders and an increase in state facility daily costs, the annual cost to incarcerate increased by 7.4% - more than $4.5 million, over the one-year period.

<table>
<thead>
<tr>
<th>Cost to Incarcerate Nonviolent PFO</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nonviolent PFO Incarcerated</td>
</tr>
<tr>
<td>Daily Cost to Incarcerate</td>
</tr>
<tr>
<td>Average sentence (years)</td>
</tr>
<tr>
<td>Cost per day</td>
</tr>
<tr>
<td>Cost per year</td>
</tr>
<tr>
<td>Cost for all Nonviolent PFO, serving full length of average sentence</td>
</tr>
</tbody>
</table>
### Table 4: Facts Regarding Persistent Felony and Violent Offenders (as of July 10, 2016)

<table>
<thead>
<tr>
<th>Category</th>
<th>TOTAL</th>
<th>PFO 1st Only</th>
<th>PFO 2nd only</th>
<th>PFO 1st AND 2nd</th>
<th>Total PFO</th>
<th>Violent Offender</th>
<th>Violent PFO</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capital Offense</td>
<td>627 (40 years)</td>
<td>20 (48 years)</td>
<td>32 (68 years)</td>
<td>4 (47 years)</td>
<td>56 (59 years)</td>
<td>620 (40 years)</td>
<td>66 (Life)</td>
</tr>
<tr>
<td>Class A Felony</td>
<td>400 (42 years)</td>
<td>23 (46 years)</td>
<td>23 (54 years)</td>
<td>2 (34 years)</td>
<td>48 (49 years)</td>
<td>362 (37 years)</td>
<td>41 (46 years)</td>
</tr>
<tr>
<td>Class B Felony</td>
<td>5176 (22 years)</td>
<td>332 (43 years)</td>
<td>542 (34 years)</td>
<td>112 (54 years)</td>
<td>986 (40 years)</td>
<td>2574 (22 years)</td>
<td>386 (38 years)</td>
</tr>
<tr>
<td>Class C Felony</td>
<td>6727 (12 years)</td>
<td>302 (17 years)</td>
<td>902 (17 years)</td>
<td>108 (30 years)</td>
<td>1312 (19 years)</td>
<td>689 (10 years)</td>
<td>55 (17 years)</td>
</tr>
<tr>
<td>Class D Felony</td>
<td>8848 (6 years)</td>
<td>306 (14 years)</td>
<td>799 (10 years)</td>
<td>66 (24 years)</td>
<td>1171 (12 years)</td>
<td>625 (6 years)</td>
<td>32 (11 years)</td>
</tr>
<tr>
<td>Class B Involving Death or Serious Injury</td>
<td>2735 (23 years)</td>
<td>171 (38 years)</td>
<td>196 (36 years)</td>
<td>41 (57 years)</td>
<td>408 (39 years)</td>
<td>2735 (23 years)</td>
<td>408 (39 years)</td>
</tr>
<tr>
<td>Commission or Attempt Commission KRS 510</td>
<td>2622 (20 years)</td>
<td>1193 (38 years)</td>
<td>2319 (18 years)</td>
<td>431 (38 years)</td>
<td>268 (38 years)</td>
<td>268 (38 years)</td>
<td>268 (38 years)</td>
</tr>
<tr>
<td>Use of Minor in Sexual Performance (KRS 531.310)</td>
<td>111 (31 years)</td>
<td>4 (141 years)</td>
<td>34 (40 years)</td>
<td>0 (79 years)</td>
<td>81 (22 years)</td>
<td>3 (45 years)</td>
<td>0 (0 years)</td>
</tr>
<tr>
<td>Promoting Minor in Sexual Performance (KRS 531.320)</td>
<td>34 (24 years)</td>
<td>1 (34 years)</td>
<td>1 (10 years)</td>
<td>1 (34 years)</td>
<td>24 (20 years)</td>
<td>1 (34 years)</td>
<td>0 (0 years)</td>
</tr>
<tr>
<td>Unlawful Transaction w/ Minor 1st Degree (KRS 530.064(1)(a))</td>
<td>100 (16 years)</td>
<td>2 (14 years)</td>
<td>1 (16 years)</td>
<td>3 (14 years)</td>
<td>80 (16 years)</td>
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<td>Human Trafficking (KRS 529.100)</td>
<td>3 (16 years)</td>
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<td>0 (0 years)</td>
<td>3 (16 years)</td>
<td>0 (0 years)</td>
<td>0 (0 years)</td>
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<td>Criminal Abuse (KRS 508.100)</td>
<td>154 (19 years)</td>
<td>7 (30 years)</td>
<td>7 (16 years)</td>
<td>1 (32 years)</td>
<td>10 (20 years)</td>
<td>149 (19 years)</td>
<td>8 (22 years)</td>
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<td>Burglary I accompanied by Assault or Attempted Assault</td>
<td>112 (34 years)</td>
<td>12 (59 years)</td>
<td>15 (44 years)</td>
<td>4 (126 years)</td>
<td>31 (60 years)</td>
<td>94 (31 years)</td>
<td>24 (54 years)</td>
</tr>
<tr>
<td>Burglary I accompanied by Kidnapping or Attempted Kidnapping</td>
<td>60 (52 years)</td>
<td>9 (109 years)</td>
<td>4 (35 years)</td>
<td>3 (133 years)</td>
<td>16 (95 years)</td>
<td>52 (49 years)</td>
<td>12 (92 years)</td>
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<tr>
<td>Robbery in the First Degree</td>
<td>1620 (28 years)</td>
<td>143 (56 years)</td>
<td>176 (51 years)</td>
<td>54 (61 years)</td>
<td>373 (54 years)</td>
<td>1311 (25 years)</td>
<td>258 (45 years)</td>
</tr>
</tbody>
</table>

*2016 Data from 1/1/2016 to 7/10/2016*
The Parole Board evaluates candidates for parole on two factors: the Offense Severity Index and the Risk Level Score. The charts below analyze parole rates in Kentucky based on those two factors for the six-month period from March through August 2016 (data from Parole Board Monthly Reports). During that time, 7,102 inmates were considered for parole.

Figure 2 (page 8), below, contains the raw parole rates, broken down by the inmate’s risk level and severity index score at the time of the parole decision. Those with the lowest level of risk and lowest level of offense severity were paroled at a rate of 82%. Those with the highest risk and highest severity were paroled at a rate of 6%. The overall parole rate for this time-period was 48%. The numbers in Figure 2 are the Parole Rates, the percentage of eligible inmates in each category that were granted parole.

Based on the Parole Rates in Figure 2, one might conclude that “most” inmates who are not paroled are high risk and have a high offense severity level. After all, the Parole Rate of inmates found to have the Highest Risk level was only 15% and the rate of inmates with the highest Offense Severity level was only 25%.

What this conclusion misses is the information from Figure 3 (page 8), which shows that only 7% of the inmates considered for parole fall into the Highest risk category and only 5% have the Highest Severity level.
Figure 4 (page 9) shows the risk and severity levels of the 3,695 inmates who were denied parole. Over 50% of the inmates denied parole are Lowest Risk (11%) or Low-Moderate Risk (41%). Similarly, about 54% are Low Severity (27%) or Moderate Severity (27%) Offense Level. Over 25% of those denied parole are either Low or Low-Moderate in both categories.

The numbers in Figure 4 are the raw number of unparoled inmates and the percentage of the 3,695 unparoled inmates that fell into each category.

Figure 5 (page 9) shows the frequency of certain parole rate ranges for inmates with the lowest evidence-based, validated risk assessment level scores from January 2013 to October 2016 in ascending order. The most frequent parole rate is 63 – 69%, which occurred in 21 months out of the 46 available in the data set. In only three months were the parole rates above 76%, and in five months the parole rates were less than 56%. The parole rates by month are shown in Table 5 and Graph 8 (both on page 10).
Table 5: Parole Rate of Inmates with the Lowest Evidence-Based, Validated Risk Assessment Level Score
January 2013 - October 2016

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<th></th>
<th>2015</th>
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<td>54.0%</td>
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Graph 8: Parole Rate of Inmates with the Lowest Evidence-Based, Validated Risk Assessment Level Score
January 2013 - October 2016
Courts appointed DPA to 2.9% more cases in Fiscal Year 2016 as compared to the prior year. As shown in Figure 6 (page 11), from FY 2006 to FY 2016, there was a 14.5% increase in court appointed cases – there were more than 19,000 new trial cases appointed to DPA in FY2016 compared to FY2006.

DPA trial attorneys opened an average of 460 new cases in FY 2016. To insure that competent representation is provided timely and efficiently, caseloads must be reduced.

The minimum national standards require representation be continuously provided by the same lawyer from initial court appearance through trial, sentencing or dismissal. Further, an attorney representing a criminal defendant must spend sufficient time to accomplish the following:

- Interview and counsel clients;
- Seek pretrial release of incarcerated clients;
- Conduct necessary investigations;
- Pursue formal and informal discovery from the prosecution and file appropriate motions;
- Undertake sufficient legal research;
- Prepare and conduct for pretrial hearings and trials; and
- Prepare for and conduct hearings at which clients are sentenced.

For information on defender obligations and the impact of excessive caseloads on ethical duties of defenders, see ABA Formal Opinion 06-441 Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere With Competent and Diligent Representation (May 13, 2006); ABA Eight Guidelines of Public Defense Related to Excessive Workloads (2009).
The Advocate

IN THIS EDITION OF THE ADVOCATE:
CRIMINAL JUSTICE FACTS OVERVIEW

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AOC REPORTED CASES DECREASE .......................................... 3
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In 2016, Governor Matt Bevin formed the Criminal Justice Policy Assessment Council (CJPAC) to recommend reforms in criminal justice laws and policies to improve the efficiency and effectiveness of the penal system, reduce state correctional expenses, and reduce recidivism. In December, subcommittees of the CJPAC made several recommendations to accomplish the Governor's objectives and, in January 2017, most of those recommendations were drafted into a proposed bill for the 2017 General Assembly. That proposal evolved into Senate Bill 120, sponsored by Sen. Whitney Westerfield, which Governor Bevin signed into law on April 10, 2017.

During the three months between the proposal and the final bill, the evolution of SB 120 unfortunately involved the removal of many of the CJPAC recommendations, including all proposed changes to Kentucky's penal code. Surviving in SB 120 were a number of positive changes to the justice and correctional systems, but major reforms were left for future consideration. Included in this article are the provisions in SB 120 that are now law followed by a description of the proposals included in earlier versions that were scrapped during the 2017 session.

I. COURT COSTS REFORM

Intention #1* – A person should not be jailed because he or she cannot afford to pay court costs.

Intention #2 – A nonpayment case should lead to definitive resolution, not a perpetual cycle of court appearances and contempt that requires ongoing county, court, prosecutor, and defender resources.

A. Definition of "Poor Person" (KRS 453.190): The prior definition of a "poor person" required a subjective finding by a court that a person is unable to pay the costs without depriving himself or herself or his or her family of the "necessities of life." The new definition includes an objective determination that the person has an income at or below an indigency level established by the Kentucky Supreme Court.

B. Payment Schedule for Court Costs, Fines and Fees (KRS 534.020): SB 120 creates a structure for installment payments of court costs, fees, or fines. A defendant who is subject to an installment plan must be given the plan in writing and must be informed that he or she shall appear in court if a payment cannot be made. All costs, fees, and fines shall be paid within one year of sentencing, but restitution is not subject to this limitation.

* "Intentions" are included here as the author's interpretation of the General Assembly's intention in making the changes in SB 120 and are not a representation of actual legislative history.
C. Contempt for Nonpayment (KRS 534.020): A person may be held in contempt for nonpayment of costs, fees, or fines, but only upon a finding that the nonpayment was "willful and not due to an inability to pay." A defendant may also be jailed for failure to appear at a show cause hearing for nonpayment, but a warrant issued for this person must include notice to the jailer that a defendant jailed pursuant to the warrant must be released upon payment of the costs, fees, or fine or upon accrual of sufficient daily service credit (see below).

D. Daily Service Credit (KRS 534.070): SB 120 clarified that all jail sentences imposed for nonpayment of court costs, fines, or fees or for a failure to appear in court at a show cause hearing for nonpayment of costs, fines or fees are subject to the $50 (or $100 if working in a community service program) daily service credit in KRS 534.070. The change also made release from jail mandatory upon service of sufficient credit, as calculated by the jailer. A court does not have to order release and does not have authority to order continued detention for nonpayment if the defendant is not held under any other orders. Once an inmate has accrued sufficient credit for release, the costs, fees, or fines are considered paid.

E. Repeal of Specific Incarceration Limits (KRS 534.060): Under prior law, separate (and inconsistent) statutes existed to inform courts of how to respond to nonpayment of fines. While KRS 534.070 provided a $50 daily credit to allow a defendant to satisfy a fine through service of sufficient jail time, KRS 534.060 authorized a sentence of up to four months for nonpayment of a fine in a Class A misdemeanor case or up to ten days for nonpayment of a fine in a violation case. This inconsistency resulted in some courts ignoring the daily credit altogether and imposing sentences under the authority of KRS 534.060. Many of these courts also held that this statute did not excuse the original fines and still required payment after release from the jail sentence (often starting a new cycle of nonpayment and jail). SB 120 repealed all of the language in KRS 534.060 that would authorize a sentence for nonpayment that would not be subject to the daily service credit.

F. Defense Tips

1. When representing a defendant charged with contempt for nonpayment of a fine, court costs, or fees, the court must make a finding that the nonpayment was willful and not due to an inability to pay. If the defendant does not have an ability to pay, he is not in contempt.

2. Daily service credit is mandatory and does not require approval (or even action) by a court. A defendant arrested on a Friday and arraigned on Monday for nonpayment already has a $200 credit (four days at $50 per day). If he or she owes less than $200, he or she is entitled to release. (NOTE: The new law does not refer to a guilt finding or imposition of a sentence. Release is required
even if the defendant has not yet admitted to contempt of court (see KRS 534.020(3)).

3. Appellate litigation in this area is strongly encouraged. Some trial courts may routinely jail indigent defendants for nonpayment of costs or fees. Such decisions should be challenged with appeals to Circuit Court and beyond. Because of the application of mandatory service credits, defendants have nothing to risk by appealing a finding of contempt once they have served sufficient days to cover the unpaid amount.

G. The Law on Fines and Fees

For further discussion of the law on fines and fees, see Glenn McClister, "Costs, Fees, Fines And Restitution: A Practitioners Guide," The Advocate (December 2015).


II. PROBATION AND PAROLE CHANGES

Intention #1 – A person under supervision after a conviction should be given incentives to comply with the conditions of supervision.

Intention #2 – The limited resources of the Department of Corrections (both in prisons and Probation and Parole) should be focused on high risk and non-compliant inmates, not low-risk compliant ones.

A. Compliance Credits (KRS 439.345): A new system of compliance credits is created for eligible parolees who comply with the terms of their release, pay any restitution that is owed, and remain out of trouble. Eligibility is limited to Class D felons who are not convicted of a violent offense, sex offense, or Assault in the Third Degree and Class C felons who are not convicted of a sex offense, violent offense, trafficking offense, or PFO. Thirty (30) days of credit towards the person's sentence are given for every full calendar month that the parolee is in compliance. For Class D felons, the credits are not applied until the parolee has been on parole for at least one year. For Class C felons, the credits are not applied for two years.

B. Increase in Discretionary Detention Limits (KRS 439.3108): Probation or parole officers may now place offenders who violate the terms of their supervision directly in jail for longer periods without going back to court or to the Parole Board. For probationers, the limit for a single occasion remains at ten (10) days, but the annual cap is increased to sixty (60) days (from thirty (30) days). For parolees, the one-time cap goes from ten (10) to thirty (30) days and the annual limit is raised from thirty (30) to sixty (60) days. A new exception allows a probation or parole officer to hold any supervised person in jail for longer than the caps when the person is awaiting admission to a residential drug or alcohol treatment facility.
program. While these limits will result in additional incarceration in some cases, the intent is to provide more flexibility in addressing the needs of offenders on supervision rather than have full revocation of a probated or paroled sentence as the only alternative.

C. Limitations on Mandatory Reentry Supervision (MRS) (KRS 439.3406): At a meeting of the CJPAC, the chair of the Parole Board described a problem they have in supervising parolees nearing the end of their sentence. Because MRS release is mandatory under KRS 439.3406, parolees would become noncompliant knowing that, at worst, revocation of parole would mean a brief return to prison followed very quickly by mandatory release on MRS. To address this disincentive for compliance, SB 120 amended the MRS law to require service of at least six months after a revocation before release on MRS. It also added a limit that no one can be released on MRS more than twice.

III. IMPROVEMENT OF REENTRY SERVICES

Intention – Because parole revocations are a significant driver of the prison population, more services should be provided to parolees to increase the likelihood of success and decrease the likelihood of a return to prison.

- Reentry Drug Supervision Pilot Program (New Sections of Chapter 439): Eight sections of SB 120 create a pilot program for Reentry Drug Supervision. This program will be similar to drug court and will provide support and services for a limited number of inmates and parolees with substance use disorders. Here are some important features of this new program:

1. The program will be implemented by the Department of Corrections by March 2018;

2. A "Reentry Team" will run the program. The team will include a hearing officer (employed by DOC), a parole officer, a reentry liaison (from Probation and Parole), a social worker, a public defender or representative (who could be a DPA alternative sentencing worker), and a representative from a community mental health center providing treatment to the participants;

3. The reentry team will be empowered to provide incentives, including compliance credits or decreased supervision, and to impose sanctions, including detention, community service, or termination from the program;

4. Admission to the program will be decided by the Parole Board from referrals of current inmates from DOC and of parolees from hearing officers after a preliminary revocation hearing;

5. Current inmates are eligible if they a) were not convicted of violent offense, sex offense, or an offense that resulted in death or serious physical injury; b) were either convicted of a Class C or
Class D felony that was a drug offense or an offense arising from a drug addiction or previously probated or paroled and subsequently revoked due to or with a history of drug abuse; and c) have not previously participated in the program;

6. The Parole Board's consideration of a referral must consider a substance abuse assessment, the person's criminal history and other relevant information, and any statements from victims, who are notified once a referral is made to the Board;

7. If the Board determines to place an eligible inmate into the program, the Board can immediately parole the inmate even if he or she is not yet eligible under other laws;

8. Termination from the program will result in revocation of sentence with the Reentry Team deciding whether the participant receives compliance credits for time spent in the program.

IV. REDUCTION OF BARRIERS FOR EX-OFFENDERS

Intention – Those who have served their sentence for criminal activity and reformed their behavior should not have their economic opportunities limited because of a long ago criminal conviction.

- Effect of Criminal Record on Application for Public Employment or Occupational Licenses (KRS 335B.020 and 335B.030 and fifty-one (51) separate specific licensing laws): Applicants for employment with a public agency or for an occupational license may no longer be disqualified based solely on a criminal conviction. Instead, the conviction must be directly related to the position or license being sought to serve as grounds for disqualification. A person denied a position or license because of a conviction has a right to a hearing on the question of whether the conviction is directly related to the position or occupation.

In the legislative process, two specific exceptions were added to the general rules enacted in SB 120. First, a conviction for a Class A felony, Class B felony, or a sex offense creates a rebuttable presumption that it is connected to an occupational license (but not public employment). Second, the protections granted by SB 120 for persons with criminal records do not supersede laws to the contrary in the hiring of law enforcement personnel or when federal law applies.

V. TREATMENT, NOT PROSECUTION, FOR ADDICTS SEEKING HELP

Intention – A person with a drug addiction should be able to turn to a law enforcement agency and ask for help without worrying that they might be arrested for their drug possession and use.

- Angel Initiative Program (New Section of Chapter 15, the "Department of Law" chapter): This new law provides a structure for an Angel Initiative program that already exists in Louisville and in various cities around the
country. If a law enforcement agency creates a program under the law, a person can ask for drug treatment assistance from the law enforcement agency without fear of arrest or prosecution. The agency then provides a volunteer mentor to assist the person and a referral to a local treatment facility. There are exceptions for persons with outstanding arrest warrants and those with three or more prior drug convictions.

VI. PREPARATION AND TRAINING OF INMATES FOR LIFE AFTER PRISON

Intention – More than 95 percent of prison inmates will eventually be released. One of the biggest predictors of whether a released inmate will reoffend and return to prison is whether he or she has steady employment within a few weeks of returning to their community. Investments in job training and providing real-world work experience for inmates improve the chances that an inmate will not reoffend when released, thus making Kentucky safer.

A. Prison Industry Enhancement Certification Program (PIECP) (New Sections of Chapter 197, "Penitentiaries"): This new program will allow private industry to operate manufacturing facilities inside Kentucky prisons using inmate labor. While the companies selected to participate will benefit from income generated by the businesses and Kentucky's budget will benefit from additional tax revenue and payments for incarceration costs (see below), inmates will benefit from work experience, job training, and compensation from their work. Rather than serving out a sentence from a prison cell, inmates will be working to support their families and learn the skills of a successful worker. The hope is that this program will assist in successful reentry after release and decreased recidivism.

There are many conditions on the program to protect the inmates and the state from abuses and to ensure that PIECP operations do not compete with industry outside prisons. These conditions include:

1. Only nonagricultural goods can be produced;

2. An inmate's participation must be voluntary, with written consent;

3. An inmate working in the program must be paid at a comparable rate to what would be paid in a similar job outside the prison and never less than minimum wage;

4. Inmate labor cannot take the place of an employed civilian worker who would be laid off or have his hours cut because of inmate labor;

5. Inmate labor within the PIECP program cannot be used outside the prison or in construction.

6. Inmates who are employed as part of the PIECP program must agree to a number of deductions from their paycheck: a) 25 percent or more for child support, if the inmate is subject to a
support order; b) 20 percent to the crime victim's compensation fund; c) all applicable taxes, including Social Security; and d) reasonable room and board fees established by DOC regulation. The total deductions may not exceed 80 percent of the inmate's gross pay.

B. Expansion of Work Release (KRS 532.100): Eligible Class D felons serving a sentence in a local jail may be permitted by the jailer (with approval from the Department of Corrections) to work in a community work program or in private employment under terms of work release. The jail may charge the inmate a fee not in excess of the lesser of $55.00 or 20 percent of the prisoner's weekly net pay from the employment.

C. Creation of Day Reporting Centers (new section of KRS Chapter 533) and Reentry Centers (new section of KRS Chapter 441): Two new types of facilities are created as alternative placements for some inmates who are sentenced to jail or prison. A day reporting center would be operated by a local jail and would provide "enhanced community supervision" to eligible defendants convicted of misdemeanors, Class D felonies, or contempt of court. A reentry center would also be run by a local jail, but would be used to house Class D, Class C, or low-risk Class B felons with less than twelve (12) months remaining on their sentence. Every reentry center must provide vocational training and other evidence-based programs and require residents to maintain employment in the community and participate in family outreach and community involvement. The Department of Corrections shall evaluate the effectiveness of each reentry center in reducing recidivism and engaging residents in employment and the community.

VII. OTHER REFORMS

A. Attorney Access to Court Records under Chapter 202A (KRS 202A.121): Involuntary mental health proceedings (sometimes called mental inquest cases) are required to be confidential. This requirement has been so strictly enforced that even an attorney for a person at risk of involuntary hospitalization has not been able to access records relating to his or her client. SB 120 included a specific authorization for a person's attorney, whether appointed or retained, to be given access to the court records in a case.

B. Persons with Out-of-state Juvenile Adjudications for Sex Offenses Have the Same Registration Requirements as In-State Offenders (KRS 17.510) – Under Kentucky law, a juvenile adjudicated of a sex offense does not have a duty to register as a sex offender. In a few states, the law is different and juvenile adjudications do require registration. In Murphy v. Commonwealth, 500 S.W.3d 827 (Ky. 2016), the Kentucky Supreme Court faced the question of whether a person adjudicated as a juvenile sex offender in another state had to register in Kentucky under the requirement that someone's duty to register in another state automatically created a similar duty here. The Supreme Court held that the person did have to register in Kentucky even though his actions would not have
required registration if they occurred here. SB 120 fixed this inconsistency by creating an exception for juvenile adjudications in other jurisdictions that would not have created a duty to register if the adjudication had occurred in the Commonwealth.

C. Reorganization of the Criminal Justice Council: Created many years ago, the Criminal Justice Council was envisioned as a body where criminal justice issues would be openly discussed with all stakeholders at the table. Unfortunately, its only role for the past several years has been to meet annually to discuss 2011 House Bill 463. SB 120 changes the membership and seeks to reboot the work of the Council, which will now be required to meet at least quarterly. Changes to the membership are:

1. The co-chairs of the Council will be the chairs of the House and Senate Judiciary Committees rather than the Justice and Public Safety Secretary;

2. The Commissioner of the Department for Behavioral Health, Developmental and Intellectual Disabilities has been added;

3. The Deputy Secretary of the Justice and Public Safety Cabinet and the Commissioner of the Department of Criminal Justice Training have been removed; and

4. Two judges (one circuit and one district), a law enforcement representative (in addition to the Kentucky State Police Commissioner), and a representative of community-based organizations with experience in substance abuse or mental health treatment have been added.

Remaining on the Council are the Public Advocate, President of the Kentucky Association of Criminal Defense Lawyers, the Attorney General, the Director of the Administrative Office of the Courts, the Commissioners of the Kentucky State Police, the Department of Corrections and the Department of Juvenile Justice, and representatives from the County Attorneys' Association and the Commonwealth Attorneys' Association.

VIII. PROPOSED CRIMINAL JUSTICE REFORMS THAT WERE NOT IN THE FINAL BILL

The CJPAC proposed a number of substantial changes to the criminal justice system that were not in the final version of SB 120. Passage of these proposals would have established Kentucky as the national leader in criminal justice reform, a goal set by Governor Bevin. While each was omitted from SB 120 for various reasons in this short thirty-day legislative session, our hope is that all these ideas will be considered and adopted in the 2018 session of the General Assembly.

A. Higher Thresholds for Theft and Financial Crimes: The amount of monetary damage required to make an offense a felony is lower in Kentucky than almost any other state. This results in prison sentences for thefts as low as $500 (a cell phone, perhaps) or benefits fraud as low
as $100. A drug addict who forges a family member's check to get cash is guilty of a felony even if the check is as low as $10. Someone who falls behind on child support by only $1,000 could be sentenced to five years in prison (at a cost of more than $20,000 per year).

These felony thresholds should be increased to a consistent level that recognizes that felony prosecutions should be reserved for the most serious offenses and that misdemeanor sentences of up to a year in jail are a significant and adequate sanction for lower level financial crimes. An earlier version of the CJPAC bill would have set theft, fraud, and forgery felony levels at $2,000 across the board and nonpayment of child support at $5,000.

B. "No Money" Bail Reform: The concept of bail in a criminal case is centuries old. In the traditional sense, it has referred to the security that is posted to ensure that a charged person returns to court and stays out of trouble. Over time, bail has become in Kentucky a vehicle by which a poor person charged with a crime stays in jail despite being presumed innocent. Ask a member of the general public whether someone's bank account should determine whether they are jailed for a crime and almost no one would agree that this should occur, yet that is the system we have in Kentucky. Poor people who are not a danger stay in jail while wealthier people who are a danger get out of jail.

The proposal considered in 2017 was to eliminate money bail in most cases. Instead, courts would have two choices, detain or release. Most defendants would be released without payment of money on conditions of staying out of trouble and showing up for court. Since 2011, this has been happening in some jurisdictions and studies have shown that the compliance rate has stayed the same or even improved. Courts would have the ability to detain defendants deemed a high risk of committing a crime or failing to return to court, but there would be clear standards for defendants who challenge a court's detention decision.

If a criminal justice system was going to be created from scratch, the current system of money bail would never be the answer for how to treat persons that are charged but presumed innocent of an offense. Unless the person represents a clear danger to the public, he or she should be able to defend his or her case without being jailed in advance of conviction. Once that person is convicted, he or she can be rightfully sentenced to jail as a punishment when appropriate. In any event, the person's access to money should play no role in whether he or she goes to or remains in jail.

C. Penal Code Reform – Class D Versions of Assault and Robbery: One of the stated goals of the CJPAC is to consider major changes to the penal code to make it more consistent and predictable. While a complete rewrite of the penal code is not yet underway, a proposal considered this year was to amend the assault and robbery statutes to create a predictable and sensible "ladder" of escalating seriousness.
Under current law, assault against someone who is not a peace officer (or other specified protected victim) is either a Class A misdemeanor or a Class C or B felony. There is no Class D felony for regular non-law-enforcement assaults. Similarly, robbery (theft using force) is currently only a Class B or Class C felony. This causes charging problems when a person commits misdemeanor non-forceful shoplifting, but then uses minor force when trying to get away. To those involved, this is more serious than the misdemeanor shoplifting alone, but is less serious than a robbery where force was intended from the start. Creation of a Class D version of robbery would fill the gap that exists in current law.

D. Consistency in Age of Consent: An anomaly in current law is that a person could have consensual sex with a person who is sixteen years old and not be guilty of a crime, but if that same person asked that same sixteen-year-old to pose for an indecent picture, he could be guilty of a felony and required to register as a sex offender. An attempt was made in an early version of SB 120 to resolve this inconsistency, but the effort ended in the face of concerns that child pornography laws might be weakened. These concerns could likely be addressed while still eliminating the inconsistency.

E. Sex Offender Registration Reform: While additional offenses and restrictions have been added regularly in recent years, Kentucky’s sexual offender registration system has not been comprehensively reviewed in decades. Kentucky needs a system to protect the public from proven predatory sex offenders, but the current system imposes significant restrictions on an overly broad swath of offenders for decades. The result is many of those who are a danger live in hiding or deception, evading the protective system in place, and many of those who are not a danger are unable to maintain housing and employment because of the rules that limit their choices. The public at large faces a list of thousands of people deemed "sex offenders," but no real way to tell which ones present an evidence-based threat and which ones do not. A comprehensive review of the entire system is necessary.