

2011 Kentucky Reforms Cut Recidivism, Costs

Broad Bill Enacts Evidence-Based Strategies

Problem: Kentucky had one of the fastest growing prison populations in the nation over the decade ending in 2009, rising by 45 percent, compared to 13 percent growth for all states.

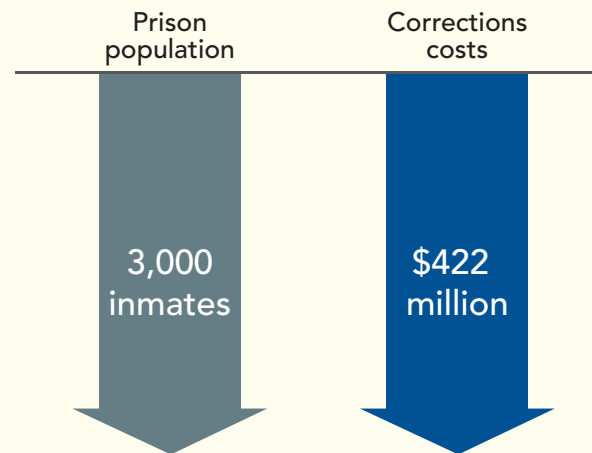
Consequences: Corrections spending jumped 214 percent over the two decades ending in FY 2010, to \$440 million. Meanwhile, recidivism rates remained above levels seen in the 1990s, despite slight improvement in recent years.

Drivers: Data showed an increase in overall arrests and court cases, as well as rising incarceration rates for technical parole violators. Analysis also showed offenders in Kentucky were far more likely to be sentenced to prison than the national average and an increase in the percentage of all admissions who were drug offenders.

Reforms: With technical assistance from the Pew Center on the States, the Task Force on the Penal Code and Controlled Substances Act produced a set of reforms leading to the Public Safety and Offender Accountability Act of 2011. Passed unanimously in the Senate and with just one dissenting vote in the House, the law concentrates expensive prison beds on serious offenders, reduces recidivism by

The Impact of Public Safety Reform

The Public Safety and Offender Accountability Act will reduce Kentucky's prison population by more than 3,000 inmates over the next 10 years and save taxpayers an estimated \$422 million.



SOURCE: Kentucky Office of State Budget Director

strengthening probation and parole, and establishes mechanisms for measuring government progress over time.

Impact: The legislation is expected to enhance public safety and improve the performance of Kentucky's correctional system on multiple levels. The state estimates the reforms will save \$422 million over 10 years, allowing increased investment in programs to reduce recidivism with residual funds available for state budget relief.

Background

Between 1999 and 2009, Kentucky had one of the fastest growing prison populations in the nation. Although it has declined modestly during the past three years, the Commonwealth's inmate population was 45 percent larger in 2009 than it was a decade earlier.¹

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This is one of the best days in the 26 years I've been up here.”

Senate President David Williams (R),
upon passage of the bill, February 28, 2011

Looking back over a longer period, the prison population had jumped more than 260 percent since 1985, from about 5,700 inmates to more than 20,700 in 2010, according to the Kentucky Department of Corrections.² At year-end 2007, 1 of every 92 adults in Kentucky was incarcerated, compared with 1 of every 100 adults nationally.³

This high rate of prison expansion was not the result of an increase in crime. Kentucky's serious crime rate has been well below that of the nation and other southern states since the 1960s, and the crime rate in 2009 was about what it was in 1974.⁴ Nevertheless, the Commonwealth's imprisonment rate has increased. It jumped from well below the national average in 1985 to slightly above the national average in 2009.⁵ That high imprisonment rate applies to both men and women. In 2008, Kentucky had the sixth highest incarceration rate for females.⁶

Kentucky taxpayers paid handsomely for the Commonwealth's heavy reliance on prison. In FY 1990, general fund corrections spending in Kentucky totaled \$140 million. By FY 2010, that amount was \$440 million, an increase of 214 percent.⁷ Focusing the lens tighter, average state spending per prisoner rose about 10 percent between FY 2005 and FY 2009, jumping to approximately \$19,000 per year to house each inmate.⁸ Meanwhile, funds to reduce recidivism and hold offenders accountable in the community became more scarce. Spending on probation and parole between FY 2005 and FY 2009 dropped from \$1,191 per offender per year to \$961 per offender per year.⁹

Greater spending on prisons did not translate into more positive public safety outcomes. While the state's recidivism rate—the number of offenders who return to prison within three years of release—fluctuated over the previous decade and improved slightly in recent years, it remained above the levels from the late 1990s. The recidivism rate for those leaving prison in 1997 was 37 percent. The Kentucky Department of Corrections reported that the rate peaked at 44 percent for those leaving prison in 2003, and stood at 40 percent for those who left prison in 2007.¹⁰

Charting a New Path

With the prisons filled to capacity and the state economy in significant distress, Kentucky in 2010 was at a critical crossroads. Although the inmate population had dipped somewhat, the significant growth of prison spending over the previous decade and disappointing public safety return concerned many Kentucky policy makers, and they began looking for new solutions to contain prison growth and corrections spending while protecting public safety.

To help chart a course forward, the General Assembly in 2010 established the bipartisan, inter-branch Task Force on the Penal Code and Controlled Substances Act.¹¹ The task force members included the chairs of the Senate and House Judiciary Committees, the Chief Justice, the governor's Justice and Public Safety Cabinet secretary, a former prosecutor, a former public defender, and a county judge/executive. The task force was given authority to request technical assistance from outside organizations, and it made this request of the Pew Center on the States.

Beginning in the summer of 2010, the task force began a detailed analysis of Kentucky's sentencing and corrections data, combing through prison admissions data and auditing state policies. Pew and its partners, the Crime and Justice Institute and the JFA Institute, assisted the task force with this work.

The analysis revealed that correctional policies and practices were principally responsible for Kentucky's prison growth, rather than an increase in crime or any demographic shifts. Among the findings:

■ **Increase in Arrests and Court**

Cases. While reported crime remained basically flat between 2001 and 2009, adult arrests increased 32 percent during that time.¹² The increase was driven by a 70 percent jump in arrests for drug offenses, a 22 percent increase in arrests for Part 1 offenses and an increase of 33 percent for Part 2 offenses.¹³ Meanwhile, the Administrative

Members of the Task Force on the Penal Code and Controlled Substances Act:

- Senator Tom Jensen, task force co-chair and chair of the Senate Judiciary Committee
- Representative John Tilley, task force co-chair and chair of the House Judiciary Committee
- Secretary J. Michael Brown, Justice and Public Safety Cabinet
- Chief Justice John D. Minton, Jr., Kentucky Supreme Court
- Tom Handy, former Commonwealth's Attorney
- J. Guthrie True, former public advocate
- Judge/Executive Tommy Turner, Larue County

Office of the Courts reported that the number of criminal cases filed in Kentucky's circuit courts rose from 25,591 in 2002 to 32,026 in 2009.¹⁴

■ **High Percentage of Offenders Being Sentenced to Prison.**

Kentucky sentenced offenders to prison as opposed to probation or other alternative sanctions at a much higher rate than most other states. In 2009, Kentucky circuit and district courts sentenced 57 percent of all convicted felony offenders to prison, a considerably higher proportion than other jurisdictions.¹⁵ The federal Bureau of Justice Statistics reports that in 2006, 41 percent of all felony convictions nationwide resulted in a sentence to state prison.¹⁶

■ **Technical Parole Violators.**

Parolees sent back to prison for a violation of the terms of their release who did not have a new felony conviction nearly doubled as a percentage of prison admissions over the past 12 years. The Kentucky Department of Corrections reported that such parole violators accounted for 10.2 percent of total prison admissions in FY 1998, but made up 19.5 percent of all admissions in FY 2010. Admissions by parole violators who had a new felony conviction accounted for just 2.2 percent of total admissions in FY 2010, up from 1.8 percent of total admissions in FY 1998.¹⁷

■ **Drug Offenders.** The Kentucky Department of Corrections reported that between 2000 and 2009, the proportion of incoming inmates who were drug offenders rose from 30 percent to 38 percent. More broadly, 25 percent of the total inmate population was serving time for drug offenses. In addition, about 75 percent of these incarcerated drug offenders are in prison for possession offenses or first-time drug trafficking offenses that are often met with alternative sanctions in other states.¹⁸

Building Consensus

The extensive analysis of factors fueling growth in the prison system was the first step in a year-long effort to develop common-sense policy changes to contain corrections costs and reinvest a portion of the savings in evidence-based practices and programs that have been shown in other states to reduce recidivism and improve public safety.

In addition, the task force reviewed existing community supervision policies and practices; considered best practices from other states; and solicited input from a wide range of stakeholders within the criminal justice system and beyond. These included law enforcement officials, county representatives, prosecutors, the defense bar, crime victims, judges, probation and parole officers, business leaders, and treatment providers.

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[Sen. Jensen and Rep. Tilley] were from two different parties, from two separate parts of the state, but their perseverance caused all of us to lay down our differences for the greater good.”

Chief Justice John D. Minton, Jr.
April 20, 2011

Through a series of public hearings and meetings, the task force members used this research and input to build consensus for a package of tailored legislative and administrative reforms. The package of reforms, released as part of a final task force report in January 2011, will hold offenders accountable while reducing recidivism, leading to stable costs and improved public safety.

To enact these recommendations, the task force co-chairs, Sen. Tom Jensen, a Republican from London, and Rep. John Tilley, a Democrat from Hopkinsville, drafted the Public Safety and Offender Accountability Act with input from key stakeholders.¹⁹

The 150-page bill was introduced in February 2011 and sailed through both chambers—unanimously in the Senate and 96-1 in the House—and was signed into law by Governor Steve Beshear on March 3, 2011. Despite a short legislative session and a gubernatorial campaign pitting the Senate President against the sitting governor, both Republicans and Democrats were able to coalesce around this important issue.

Projections are that the changes will reduce the prison population by more than 3,000 inmates over the next 10 years, saving the state an estimated \$422 million.²⁰ The legislation directs that a significant portion of those savings be reinvested in evidence-based correctional programs.

The Public Safety and Offender Accountability Act

The Public Safety and Offender Accountability Act combines data-driven reforms to help Kentucky use its expensive prison space for the most serious offenders, strengthen parole and probation to reduce recidivism, and track progress under the law so the legislature can effectively evaluate results. The Office of State Budget Director estimates the reforms will produce savings of \$422 million over 10 years.²¹ A portion of these savings will be reinvested in substance abuse programs, mental health treatment, and other efforts designed to reduce reoffending.

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It is critical to find sensible ways to be smart on crime while remaining tough on criminals, and Kentucky will surely be held as an example for other states to follow.”

Governor Steve Beshear (D)
February 28, 2011

Focus Expensive Prison Beds on Serious Offenders

The Kentucky Department of Corrections reported that between 2000 and 2009, the proportion of incoming inmates who were drug offenders rose from 30 percent to 38 percent. In addition, 25 percent of the total inmate population was serving time for drug offenses, and about 75 percent of them were incarcerated for possession offenses or a first-time drug trafficking offense.²²

The law reflects a consensus that many of these low-risk, nonviolent offenders can be effectively supervised in the community at a lower cost, ensuring prison beds are available for more dangerous offenders. Savings from that tiered approach can then be invested to create a stronger system of community punishments that will reduce recidivism. Specifically, the Act:

- Distinguishes between serious drug trafficking and peddling by maintaining severe penalties for serious drug traffickers, while establishing a proportionate scale of penalties that ensures those who traffic in larger quantities of drugs are punished more harshly than those who sell small amounts for personal use.
- Revises penalties for simple possession of drugs by making the penalty for possession of controlled substances in the first degree a Class D felony with a three-year maximum sentence rather than five years. In addition, it also allows courts to divert minor offenders by permitting deferred prosecution or a presumptive probation sentence for first and second time possession offenders.
- Eliminates sentence enhancements for second and subsequent drug possession offenses.
- Requires prosecutors to choose to enhance a person's sentence using either the Persistent Felony Offender (PFO) statute or the enhancement in the applicable criminal offense statute, but not both, and restricts possession in the first degree from triggering the application of the PFO statute, but allows it to count as a prior offense if another subsequent felony offense triggers the PFO statute.
- Revises the "drug-free school zone" by changing the required distance between a trafficking offense and a school building from 1,000 yards to 1,000 feet in accordance with the Uniform Controlled Substances Act.²³
- Expands community-based transitional housing options and GPS monitoring for those leaving prison.

Reduce Recidivism by Strengthening Probation and Parole

Kentucky's corrections system has faced several persistent challenges, such as stubbornly high recidivism rates, a high rate of imprisonment and a lack of sufficient community intervention resources. The new law codifies and expands upon efforts that will allow the system to address these challenges. Specifically, the Act:

- Requires that the courts and corrections authorities incorporate risk and needs assessment information into the decision-making process, including for pre-trial supervision, at sentencing, in evaluating parole suitability and setting terms of parole, and throughout the period of probation and parole supervision.
- Requires that by 2016, 75 percent of state expenditures on supervision and intervention programs for pre-trial defendants, inmates and those on parole and probation are spent on programs that are evidence-based.
- Requires that offenders are supervised using practices proven to reduce recidivism.
- Allows parole and probation officers to focus on those most likely to reoffend by requiring the use of administrative caseloads for low-risk offenders.
- Authorizes compliance credits for parolees and early termination for probationers who successfully comply with supervision conditions.
- Requires six months of supervision for offenders who would otherwise be discharged without supervision at the end of their sentences, except for serious offenders such as Class A felons or those convicted of a capital offense; prospectively those offenders will now be supervised for one year after the end of their sentence.
- Authorizes the Department of Corrections to allow offenders to complete required programming in the community and be monitored by GPS.
- Permits placement of offenders closer to their community in local jails for the last part of their sentences and allows eligibility for work release.
- Increases accountability for probation and parole violations by authorizing imposition of administrative, graduated sanctions for parole and probation violators.
- Creates two pilot projects based on the successful HOPE probation (Hawaii's Opportunity Probation with Enforcement) model, which requires frequent drug testing with immediate sanctions for positive drug tests or other violations and referral to treatment if necessary.

Improve Government Performance

Kentucky faces a tough economic situation, and the state continues to weather significant budget shortfalls. In fiscal years 2009 and 2010, general fund receipts declined for two consecutive years for the first time since World War II. Revenue levels experienced by the state in FY 2008 are not expected to return until FY 2012.²⁴ Such economic woes make efficiency in government all the more important. The new law will improve the performance of Kentucky's correctional system to ensure taxpayers receive a better return on their public safety investment. Specifically, the Act:

- Identifies the primary objective for both the Department of Corrections and sentencing policy as maintaining public safety, holding offenders accountable and reducing recidivism.
- Establishes mechanisms to measure and report the results achieved under the law.
- Improves the efficiency of the parole process by limiting the deferment period and requiring the parole board to hear cases at least 60 days prior to the offender's parole eligibility date. This change eliminates administrative delays that result in offenders staying in prison beyond the date they are granted parole.
- Requires a Corrections Impact Statement to determine the fiscal impact for any bill that proposes to increase, decrease or otherwise impact incarceration, and requires the sponsor of such a bill to identify the funds to pay for any additional costs.
- Establishes performance incentive funding pilot projects to reduce the number of offenders sent to prison at sentencing or based on a revocation.
- Requires that the Department of Corrections develop an online system that provides courts, attorneys, probation and parole officers, and victims with information about sentencing.
- Improves bail and pretrial release systems by using risk assessment and GPS monitoring, ensuring that bail amounts for misdemeanors do not exceed the fines and fees of the offenses charged, setting a \$100 per day credit toward bail and release for offenders in jail, and requiring the Supreme Court to set guidelines for judges to use when ordering pretrial release for moderate or high risk offenders.
- Allows a peace officer to issue a citation instead of making an arrest for many misdemeanor offenses with certain exceptions, such as when the offender poses a risk of danger to himself or others.

- Requires a certificate of need before the construction of new jails.
- Reauthorizes the Task Force on the Penal Code and Controlled Substances Act to monitor the implementation of the provisions of this Act and recommend further changes to Kentucky's criminal justice system.

Reinvest Savings to Strengthen Probation and Parole

The Office of State Budget Director estimates that the Act's reforms will bring gross savings of \$422 million over 10 years.²⁵ A portion of these savings will be reinvested in efforts to reduce recidivism, including strengthening probation and parole and programs for substance abusing offenders. Specifically, the Act:

- Requires that the savings achieved by the changes to the drug provisions in the Commonwealth's Controlled Substances Act be measured and reinvested to expand interventions in the community and in prison that reduce the likelihood of criminal behavior. Such measures include evidence-based substance abuse and mental health programs.
- Requires the General Assembly to appropriate funds necessary to expand treatment programs, expand probation and parole services, and provide for additional pretrial services and drug court case specialists necessary as a result of the provisions in the new law.
- Of the remaining savings from the Act, after accounting for needed parole and probation services, 25 percent will be distributed to a new local corrections assistance fund to aid local corrections facilities and programs.
- Designates \$1.2 million of the savings to expand the functionality and data in the Kentucky Offender Management System to ensure the Department of Corrections can effectively track the data necessary to carry out the new law.

Endnotes

- 1 U.S. Dept. of Justice, Bureau of Justice Statistics, “Prisoners in Year End 2009.”
- 2 Kentucky Department of Corrections.
- 3 *One in 100: Behind Bars in America 2008*, Public Safety Performance Project, The Pew Charitable Trusts (Washington, D.C.: Feb. 2008). These figures include adult offenders in jail as well as those in prison.
- 4 The Disaster Center. United States: Uniform Crime Report—State Statistics from 1960-2009. United States Crime Rates 1960-2009. < <http://disastercenter.com/crime/>> (accessed Feb. 10, 2011).
- 5 According to the *Sourcebook of Criminal Justice Statistics Online*, the Kentucky state imprisonment rate in 1985 was 133 per 100,000 residents, compared with a U.S. rate of 187 per 100,000 residents. The state imprisonment rate in 2009 was 478 per 100,000 residents, compared with a U.S. rate of 442 per 100,000 residents. The 2009 number is found in Appendix Table 9 of the BJS report “Prisoners in 2009.”
- 6 U.S. Dept. of Justice, Bureau of Justice Statistics, “Prisoners in 2008.”
- 7 Data from Kentucky Legislative Research Commission. In 2010, general fund spending for corrections was reduced by \$75 million and replaced with \$75 million in federal stimulus funding. The \$440 million figure for FY 2010 includes the \$75 million in federal stimulus funding. For FY 2012, there will be no federal stimulus funding for Kentucky corrections and the \$75 million in state general fund spending was restored.
- 8 Average per-prisoner spending was calculated using the data from the Department of Corrections’ “Cost to Incarcerate by Type of Institution” and includes an average of maximum security, medium security state and private, and minimum security state and private facilities.
- 9 Data from the Department of Corrections’ “Cost to Incarcerate by Type of Institution.”
- 10 Data from the Kentucky Department of Corrections.
- 11 House Concurrent Resolution 250 (2010).
- 12 Data from Kentucky State Police. Per Kentucky State Police accounting practices, these figures refer to charges, not individual arrests.
- 13 Data from Kentucky State Police. Part I offenses include murder and non negligent manslaughter, forcible rape, robbery, aggravated assault, burglary, larceny-theft, motor vehicle theft and arson. Part II offenses include the additional 21 crimes tracked by the FBI’s Uniform Crime Reports, including drug offense violations.
- 14 Data and analysis from the Administrative Office of the Courts, Department of Court Services Research and Statistics.
- 15 Ibid.
- 16 Bureau of Justice Statistics, “Felony Sentences in State Courts, 2006,” December 30, 2009, <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=2152>.
- 17 Data from Kentucky Department of Corrections.
- 18 Ibid.
- 19 House Bill 463 (2011).
- 20 Fiscal Analysis on House Bill 463 conducted by the Kentucky Office of State Budget Director.
- 21 Ibid.
- 22 Data from Kentucky Department of Corrections.
- 23 The Uniform Controlled Substances Act was drafted by the U.S. Department of Justice in 1969 and promulgated by the National Conference of Commissioners on Uniform State Laws while the federal Controlled Substances Act was being drafted.
- 24 FY 2010 Year End Financial Report, Presented to the Interim Joint Committee on Appropriations and Revenue on July 22, 2010, by Mary Lassiter, State Budget Director.
- 25 Fiscal Analysis on House Bill 463 conducted by the Kentucky Office of State Budget Director.

Launched in 2006, the Public Safety Performance Project seeks to help states advance fiscally sound, data-driven policies and practices in sentencing and corrections that protect public safety, hold offenders accountable and control corrections costs.

The Pew Center on the States is a division of The Pew Charitable Trusts that identifies and advances effective solutions to critical issues facing states. Pew is a nonprofit organization that applies a rigorous, analytical approach to improve public policy, inform the public and stimulate civic life.

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