



Innovation:

HB 463: Changes to Kentucky Penal Code and Controlled Substances Act

Background: Over the last 25 years Kentucky's state prison population has increased 260 percent, growing from 5,700 persons incarcerated to 20,700.¹ In the past three years alone the population grew 45 percent, a staggering number when compared to the national prison system that grew only 13 percent.² Kentucky has also had the distinction of being the fastest growing state prison population for the past 10 years. This large prison system cost the state \$440 million dollars a year in corrections, spending around \$19,000 a year per person in prison.

The reforms are expected to save Kentucky \$422 million over the next 10 years.

The Task Force on the Penal Code and Controlled Substances Act, comprised of members of the executive, legislation and judicial branch and working with consultants from the Pew Center on the States, undertook a data-driven analysis in order to formulate their recommendations. It found a number of reasons for the increasing correctional population.³

- **Increase in arrests and court cases.** While reported crime remained basically flat between 2001 and 2009, adult arrests increased 32 percent during that time.
- **A high percentage of the people convicted were incarcerated.** Kentucky uses prison as opposed to probation or other alternative

sentences at a much higher rate than most other states; in 2009, 57 percent of people convicted of a crime were sentenced to incarceration.

- **Technical parole violators.** People on parole who are sent back to prison and who do not have a new felony conviction have nearly doubled as a percentage of prison admissions. Almost 20 percent of the people sent to prison in fiscal 2010 were incarcerated for technical parole violations; they had not committed a new felony.
- **People incarcerated for drug offenses.** Between 2000 and 2009, the percentage of all admissions to prison that were for drug offenses rose from 30 percent to 38 percent. Currently, 25 percent of the people in Kentucky prisons are there for drug offenses.

These findings spurred nearly unanimous support of the formation of HB 463: Changes to Kentucky Penal Code and Controlled Substances Act, the first major reform of

Kentucky's criminal law since its implementation in 1974. The changes included a modernization of Kentucky's drug laws as well as a restructuring of probation and parole programs.

How it works: HB 643 includes a number of criminal justice reforms.⁴

- **Reforming drug laws:** The reform focuses on a modernization of Kentucky's drug laws, looking to reduce the time spent in prison by people with nonviolent, low-level drug law violations. The sentencing guidelines for possession of a small amount of drugs were reduced and favor

probation over incarceration. It also changed the classification guidelines for repeat drug law violations. Now people convicted of a second or greater drug offense will no longer have an increasing classification, thus preventing an increase in maximum penalties. The use of cite and release for low-level drug law violations was also expanded, limiting the number of arrests occurring from such offense.

- **Pretrial Detention and Bail:** The Supreme Court was mandated to create a set of guidelines to be used by judges when considering pretrial release and monitored conditional release, including a reform of the maximum amount of bail set for persons awaiting trial for specific offenses. The new guideline states that the amount is not to exceed the costs of fine and court expenses.
- **Probation and parole:** The programs are to be amended to increase the number of people placed on probation through community supervision or GPS monitoring, avoiding incarceration. The punishments for parole and probation violations were also changed, creating sanctions for small or technical violations rather than automatic prison time.
- **Drug court:** HB 463 places a requirement on the Supreme Court that they must administer a drug court program.
- **Technology:** The Department of Corrections is now required to create an online database, specifying all their sentencing information.
- **Oversight:** Before any new jail facilities may be built in Kentucky, permission must first be granted through the approval of a certificate of need. In addition, the amendment or addition of any new criminal penalties requires a fiscal impact report before consideration. The bill also authorizes the task force that was formed to create the legislation to continue to meet

for an additional year. Their task for that year will be to ensure proper implementation of the legislation and search for areas where improvements could be made.

Results:

- The reforms are expected to save Kentucky \$422 million over the next 10 years.⁵
- Half of the savings from the reforms is to be reinvested into mental health and drug rehabilitation programs through the criminal justice system as well as an additional \$61 million to fund the increased probation and parole programs.⁶
- The bill will also establish a local corrections assistance fund that will aid counties with the financial burden of jail costs. One fourth of all saving acquired from the reforms would be placed into that fund.⁷
- The Task Force on the Penal Code and Controlled Substances Act was reauthorized for another year to continue its review of Kentucky's criminal law.

Challenges: While reinvestment of correctional savings to services is important, creating lasting reductions in prison and jail populations and criminal justice costs requires better mental health and substance abuse treatment services in the community; these and other “front end” investments can prevent people from ever getting involved in the justice system to begin with.

Policy Implications: These types of large-scale criminal justice reforms have the potential to reduce jail and prison populations, save on local and state costs, and improve public safety. If implemented appropriately, these types of reforms can serve as a model to other states struggling with criminal justice populations.

For more information on reforms in Kentucky, please visit:
www.lrc.ky.gov/lrcpubs/rm506.pdf.

¹ Amanda Van Benschoten, "Beshear signs corrections reform into law," *Kentucky and Cincinnati Enquirer*, March 3, 2011.

² Noelle Hunter, "Addiction costs state millions of dollars," *Morehead News*, February 25, 2011.

³ Report of the Task Force on the Penal Code and Controlled Substances Act (Frankfort, KY: Legislative Research Commission, January 2011)

www.lrc.ky.gov/lrcpubs/rm506.pdf

⁴ Kentucky Legislature, "HB 463," WWW Version 2011.

www.lrc.ky.gov/record/11rs/HB463.htm

⁵ Amanda Van Benschoten, March 3, 2011.

⁶ Amanda Van Benschoten, March 3, 2011.

⁷ Noelle Hunter, February 25, 2011.