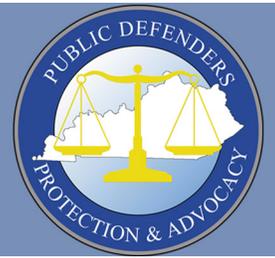


The Advocate



dpa.ky.gov

September 2017

PUBLIC VALUE OF PUBLIC DEFENSE

IT HAS BEEN A GREAT 37 YEARS

by Edward C. Monahan



Edward C. Monahan

Public Advocate

Department of Public Advocacy

After 37 years as a Kentucky public defender and 9 years as the state's chief defender, the Governor has decided not to reappoint me as the chief defender. As I leave Kentucky's statewide public defender program, I offer reflections on the value of public defense, our challenges, and how defenders can provide more value.

Defenders are integral to justice

We were born a nation in search of protecting individual

liberties against the government. The Constitution requires our work because a citizen's liberty is at risk of being taken by the government. Our work on behalf of a client in our adversarial system assures the fair process that provides outcomes the public can have confidence in. Anyone familiar with the actual workings of our criminal justice system knows well that without a strong public defense system the ability to prosecute persons fairly would not be possible.

Efficient organization

DPA is a well-run agency as a result of the continuation of the values advanced during Ernie Lewis' administration that include accountability, transparency, client-centered and cost-effective representation. Prime indicators of our efficiency is what we are accomplishing with the provided funds. The average funding per trial case is \$276. The average funding for a conflict case is \$323.

Statewide system is structurally sturdy

Every person wants a lawyer who provides high quality advice and representation that is independent of professional and political interference. That does not happen on its own. Independence is what we need in our court system and it is essential for a public defense system that has integrity. Independence is the American Bar Association's first principle of a public defender program, "The public defense function, including the selection, funding, and payment of defense counsel, is independent." A board of directors, which has multiple sources of appointments, is a primary method of assuring an independent system. We

have that independent governing board in the Public Advocacy Commission.

The Commission ensures the professional independence of the work of the attorneys and staff representing individual clients. That independence is the national standard and is essential to the credibility of the criminal justice system and the proper ethical functioning of the statewide indigent defense system. The two Commission Chairs who I have served under and each Commission Member have been exceptionally supportive of our public defense system. Their support has been essential for the effective operation of the department.

Workloads are unethically high

How many clients can a talented, experienced attorney provide competent representation for? In FY 17, the average number of newly assigned trial cases was 459. That's too many for any lawyer to provide the competent representation required under the Kentucky Supreme Court's Rules of Professional Conduct.

Everyone knows we have too much work. The Governor recognized that DPA needs more attorneys to accomplish our work when he asked the 2016 General Assembly to provide funding for 44 defenders in his budget request. Unfortunately, we did not get the funding. The Governor's support for our needs is critical.

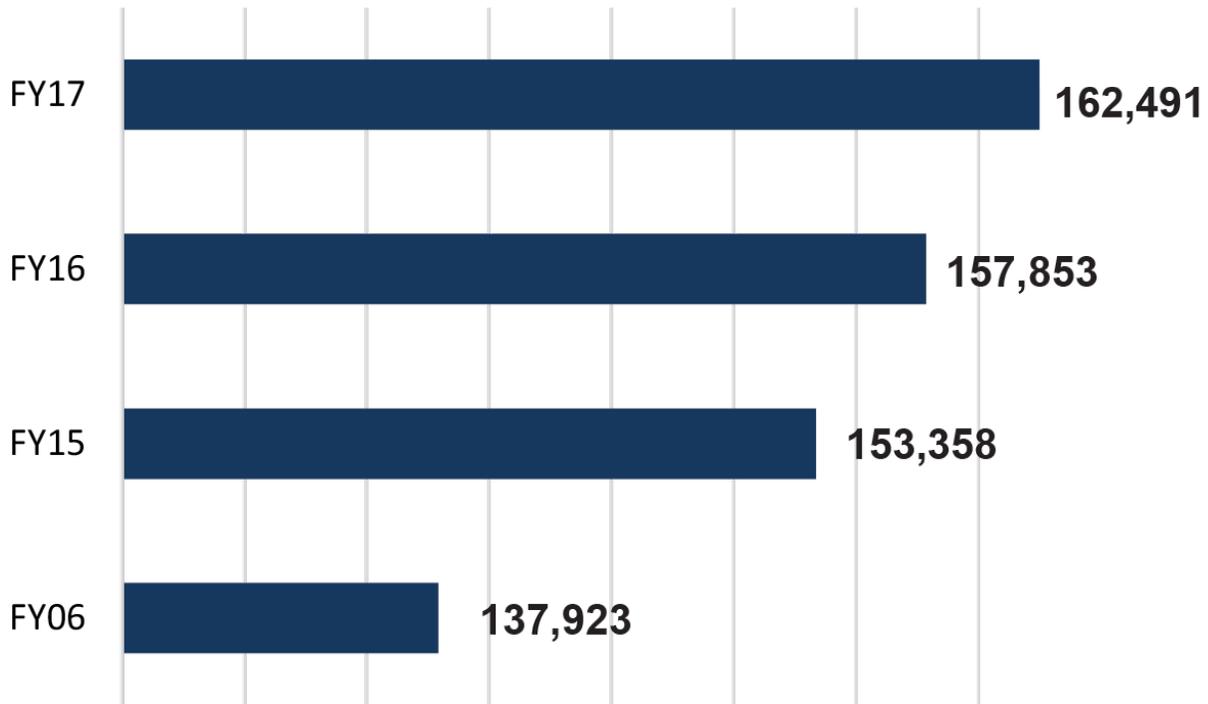
More capacity will reduce costs and increase satisfaction

Had DPA received additional attorneys, cases would have been resolved sooner, which is what clients, victims, judges and prosecutors would prefer, and county jails' costs would be less.

Our foremost challenge is: how do we meet our responsibilities without adequate resources? DPA is required to accept all appointments and provide representation in each case.

DPA was appointed to 2.9% more cases in FY 16, some 4,495 cases, and 2.9% more in FY 17, some 9,127 cases. This is an increase of 5.6% over two years. While the Governor recognized that we needed additional staff, we did not receive any additional funding, yet we had to provide representation to these additional clients. Think about having responsibility for 13,622 more cases over a two-year period without any additional resources. DPA has been appointed 24,562 more cases in FY17 as compared to FY 06.

FROM FY15-17, AN ADDITIONAL 13,628 CASES APPOINTED TO DPA



Public defense client initiatives

I am very proud of the statewide progress made in our service to the criminal justice system and clients. In particular:

1. DPA is at first appearances, seeking the decision on appointment before the release ruling and then immediately advocating for the pretrial release of our clients. Because of this and changes in the law and a number of other advances, the pretrial release rate has increased by 10% statewide since 2011 while the public safety rate and failure to appear rate have stayed the same or improved, saving counties scores of millions of dollars in jail costs. On September 16, 2013 the National Association of Pretrial Service Agencies’ John C. Hendricks Pioneer Award was presented to DPA for the statewide public defender program’s strategic commitment to advance public defender pretrial release advocacy across Kentucky.
2. Our alternative sentencing worker program expanded to provide 45 ASWs presenting over 2,389 plans a year with a stunning return of \$4.21-5.66 for every \$1 invested. This program is offsetting over \$10 million in incarceration costs. It has proven public value. This nationally recognized initiative has received three awards, the National Criminal Justice Association 2011 Outstanding Criminal Justice Program Award; Harvard University’s John F. Kennedy School of Government Ash Center for Democratic Governance and

Innovation Top 25 Innovation in Government Award in 2013, and the American Bar Association’s Section of State and Local Government Law 2017 Jefferson Fordham Society Accomplishment Award.

3. Creation of six new defender offices (Newport, Nicholasville, Harlan, Shelbyville, Princeton, Georgetown) without any additional resources. This provides better service to clients and more timely resolution of cases.
4. Vigorous communication of criminal justice facts, including the facts that our crime rate and number of cases in the criminal justice system continue to decrease as incarceration increases.
5. Development and presentation of common sense criminal justice policy recommendations that would safely save the state and counties substantial funds.

Clients are our focus

We would not exist but for clients. Clients are our special responsibility. We represented clients in 162,491 cases in FY17. Many adults and juveniles received substantial relief from their charges, reduced sentences, diversions, dismissals. Sixty clients received relief as a result of an appeal, 49 had reduced sentences as a result of a post-conviction action, 32 juveniles obtained a favorable modification through a post disposition action.

Leadership and learning is our discipline

Leadership has been a hallmark of DPA. We work with creativity, commitment, passion. We have high expectations and we hold each other accountable to representing clients well. We seize

opportunities to access perspectives, go to the balcony, adapt, and identify options. As we lead, we reach beyond the probable to the possible. Case reviews have flourished with a spirit of helping others see what clients need. We have the best defense education in the nation. With our turnover, we have to excel at this. We know that changing our behavior can change the outcome. Our cumulative criminal defense intellectual capital is second to none.

Advocacy is our responsibility

Our responsibility is to protect people’s liberty vigorously. When I visit our offices statewide and talk to judges and other criminal justice leaders, my question has always been, Are our folks fighting hard for their clients. That is what we are here to do. People’s liberty is at stake. Too many of our clients are overcharged. Some are innocent. Many will not benefit from the length of sentences sought by prosecutors and imposed by judges.

Nobody likes a professional who is a potted plant or one who is mediocre. Every client wants a lawyer who will fight for fair process and just outcomes. That is our hallmark.

Regrets

I have regrets that are significant. Our workloads remain excessive. During my time, I tried to make progress with the assistance of the Kentucky Bar Association on increasing the compensation of private attorneys doing conflict representation and increasing salaries for our staff in conjunction with prosecutors. State attorney salaries have not been increased in 16 years. Because of excessive workload and inadequate salaries, our turnover is enormous. Since I began as public advocate in 2008, over 300 attorneys have left DPA. It does cost more to pay less because of this turnover. The system pays the price as resolution of cases are delayed. The flat fee rates being paid to private counsel doing conflict representation are clearly unconstitutionally low. I regret that there has been no progress on loan assistance, and we have only been able to move from 30 to 36 trial offices when there are 120 county attorney offices and 57 Commonwealth’s Attorney offices. We need at least 57. In conjunction with the KBA, we are working harder to become more diverse but we have yet to make the needed progress. We have opportunities not fully realized, obtaining the release pretrial for every low and moderate risk clients, obtaining full and timely discovery for every client, advocating for a sentence for each nonviolent client with an alternative to incarceration, increasing our motion practice to challenge all inappropriate evidence.

With gratitude

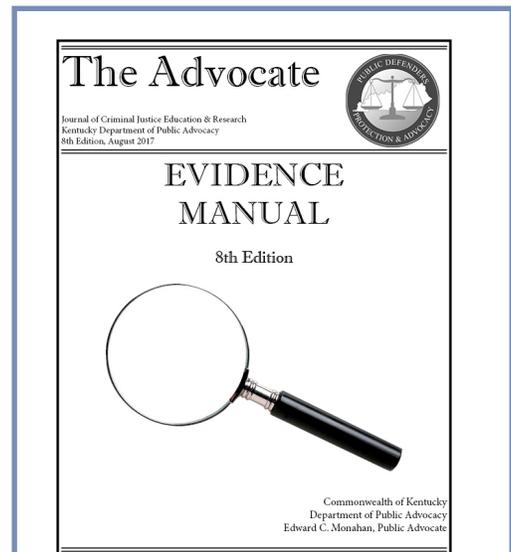
Thomas Merton identified our challenge, “The biggest human temptation is to settle for too little.” I took over from Ernie Lewis who led DPA for 12 years and who always set his sights high, always working to shape a better future. I worked with him for 28 years and for him for 8 years as deputy. He taught me that leadership was working with others to envision and shape a

better future for our clients. There is no better defender leader to have followed. I have worked hard to provide passionate leadership focused on clients. Perhaps most importantly, I have been a partner with the Public Advocacy Commission and the department’s leadership team and supervisors in making sure that the representation provided by our staff is vigorous, professional and done independent of professional or political influence. This agency’s mission is and remains client-centered.

I am not done. I remain passionate about public defense. I will be doing criminal defense and public defense consulting and teaching nationally.

It has been a privilege for me to be a Kentucky public defender starting in 1976 and to be Kentucky’s Public Advocate since 2008. Thanks to all who provide support to Kentucky’s public defense. Felix Frankfurter said it well, “Gratitude is one of the least articulate of the emotions, especially when it is deep.” I never imagined that I would have such an opportunity to be a part of leading this statewide public defense system.

Edward C. Monahan
Public Advocate
Department of Public Advocacy



Available at www.dpa.ky.gov

Go to “Public Defender Resources” and then “DPA Courtroom Manual Series” to view all of the DPA manuals.

ABANDON ALL DISCRETION YE WHO ENTER HERE: THE JUDICIAL *INFERNO* OF BRIGHT-LINE RULES

by Glenn McClister



Glenn McClister

Staff Attorney
Education and Strategic Planning

Anytime a court exercises its discretion, the appropriate standard of review is abuse of discretion. According to a July, 2017 search in Westlaw, *Commonwealth v. English*, 993 S.W.2d 941 (Ky. 1999), has been cited by courts 1,111 times for the following definition of abuse of discretion: “The test for abuse of discretion is whether the trial judge’s decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles.” At 945. So, for

example, it was an abuse of discretion to refuse the defendant a continuance after the court had allowed the Commonwealth to amend the indictment on the day of trial to include an additional year of sex abuse allegations. The defense has an obligation to investigate and the refusal to grant even a two-day continuance unfairly deprived the defendant of effective representation. *Herp v. Commonwealth*, 491 S.W.3d 507 (Ky. 2016).

There is, however, another sub-specie of abuse of discretion that involves the failure to exercise any discretion at all, in circumstances in which discretion is required. This often happens when a court substitutes the individualized use of discretion for a bright-line rule the court uses to cover all circumstances of a similar nature; making decisions that should be deliberate, become automatic. Bright-line rules can appear in all stages of a criminal case, and the appellate courts have found the use of them as a substitute for judicial discretion to constitute abuse of discretion. What follows are some examples.

It’s the bond we always set. In *Abraham v. Commonwealth*, 565 S.W.2d 152 (Ky.App. 1977), the trial court set an automatic \$25,000 bond on each of the defendant’s three theft charges. It said in its order denying a motion to reduce the bond, “[t]hat the bond set herein of Twenty-Five Thousand (\$25,000.00) dollars on each count is the bond always set by this Court in theft and related cases...” At 157. The trial court did not consider the defendant’s prior criminal record if any, the defendant’s reasonably anticipated conduct if released, and his financial ability to give bail. The Court of Appeals, in reversing, ruled, “This does not constitute the exercise of judicial discretion,” and stressed that “the record should demonstrate that the circuit judge did in fact exercise the discretion vested in him under the statutes and rules.” At 158.

I don’t probate these types of cases. In *Wyatt v. Ropke*, 407 S.W.2d 410 (Ky.App. 1966), the trial judge told counsel for the defendant, “There is no point in discussing this matter. I am not going to suspend any armed robbery sentence.’ The judge repeated several times, in open court, that under no circumstances would he suspend or probate the sentence of anyone convicted of armed robbery, regardless of the facts.” At 411. What was then the Kentucky Supreme Court responded by taking the extraordinary step of granting a writ of prohibition preventing the judge from presiding in the case. The appellate court admitted that, ordinarily, “it is difficult to conceive of any circumstances under which this court would be justified in substituting its judgment for that of the trial court upon the ground that such discretion [to probate a sentence] had been arbitrarily exercised.” Yet the court found the trial judge’s declaration that “he will not exercise his discretion but will make a purely arbitrary decision,” such an abuse of discretion that it amounted to having “denied the very fundamentals of his office.” *Ibid.* It concluded, “The exercise of discretion is a mandatory judicial function, not a matter of choice of the judge.” *Ibid.*

I don’t take pleas in these types of cases. In *Chapman v. Commonwealth*, 265 S.W.3d 156 (Ky. 2007), the Kentucky Supreme Court found that “[A]n acceptance or rejection of a guilty plea is a decision that must be made on a case-by-case basis. ... [A] trial court abuses its discretion by automatically accepting or rejecting a guilty plea without first making the particularized and case-specific determinations that the plea is legally permissible and, considering all the underlying facts and circumstances, appropriate for the offense(s) in question.” At 177.

Its jail policy. While RCr 8.28(5) requires that a judge shall not permit a jury to see a defendant in shackles “[e]xcept for good cause shown,” “the trial court unquestionably abused its discretion” when it allowed the defendant to be shackled in front of the jury and gave only “the mere explanation that shackling was ‘jail policy.’” *Ordway v. Commonwealth*, -- S.W.3d --, 2016 WL 5245099, unpublished, at 17.

We decided this at the plea. Sentencing requires a great deal of judicial discretion. KRS 532.050(1) 533.010(1)&(2), and RCr 11.02 require that, before imposing sentence, a judge must consider the contents of a presentence investigation report, including the nature of the crime and the history of the defendant, and anything in mitigation of punishment. The record must reflect that the court ordered a presentence investigation report, reviewed its contents, allowed the defendant to

controvert the findings, and that the court considered the possibility of probation. *Brewer v. Commonwealth*, 550 S.W.2d 474 (Ky. 1977); *Patterson v. Commonwealth*, 555 S.W.2d 607 (Ky. App. 1977). A trial court is supposed to make its sentencing decision only after it has completed all these inquiries. It can be, therefore, an abuse of discretion to use the plea agreement as a bright-line rule for the final decision at sentencing. Here are a few examples:

It's already in writing. In *Edmonson v. Commonwealth*, 725 S.W.2d 595 (Ky. 1987), the Kentucky Supreme Court noted that, “[i]mmediately after the sentencing hearing, the trial judge handed copies of the final judgment to counsel for the parties. The judgment was on a pre-printed form and the blanks had been filled in with a typewriter.” At 596. The court wrote, “we must conclude that the trial judge had either made up her mind as to the sentence which should be imposed, or she had tentatively decided what sentence to impose unless the defendant came forward with some compelling reason for leniency.” *Ibid.* This was abuse of discretion.

I told you I'd do it when you entered your plea. In *McClanahan v. Commonwealth*, 308 S.W.3d 694 (Ky. 2010), the trial court accepted a plea agreement from the defendant which contained numerous “hammer clauses.” The defendant agreed to serve ten years but also agreed he would serve forty years if he violated the conditions of his release between entering the plea and sentencing. The Kentucky Supreme Court found that “the trial judge did not exercise the independent discretion required for compliance” with the relevant rules and statutes when the defendant violated the terms of release and the judge automatically imposed a sentence of thirty-five years on the defendant, saying, “Now you're asking the court not to follow the agreement when I told you I would.” At 703. The Supreme Court concluded: “By assuring Appellant on acceptance of his guilty plea that should he violate the terms of his release, the full force of the ‘hammer clause’ would be dropped upon him, the judge committed to the imposition of a specific sentence in a way that precluded true compliance” with the sentencing statutes. At 704.

I told you I'd do it: part 2. In *Knox v. Commonwealth*, 361 S.W.3d 891 (Ky. 2012), another case involving a hammer clause, the Kentucky Supreme Court noted that the trial judge “made precisely the same mistake” as the trial judge in *McClanahan*. At 895. Upon taking the defendant's plea, the trial judge told the defendant that if he violated the conditions of release prior to sentencing, “your sentence is going to be twenty years to serve,” and “The court is going to enforce the agreement if you violate.” *Ibid.* The Supreme Court wrote that it could find no indication that the trial judge relied on anything other than the plea agreement's hammer clause when it imposed sentence. It said, “[w]e cannot avoid the conclusion that the judge in this matter abused his discretion.” At 898.

Knox provided the Kentucky Supreme Court with the opportunity

to reiterate, amplify and clarify its holding in *McClanahan*. While the court repeated that it was not in a position, “to tell prosecutors and defense counsel that a hammer clause may not be part of a plea agreement,” the court nevertheless expressed strong misgivings concerning many aspects of the practice. The practice, it said, tends to provoke a judge into investing “his or her credibility in the outcome at final sentencing”; tends to function as a “poor man's bail”; and may be hard to reconcile with the principle that “the punishment should fit the crime and the criminal.” At 899-900.

The Supreme Court returned to address the way in which hammer clauses tend to turn what should be a deliberate process into one that is automatic. It noted, “[A] plea agreement containing a hammer clause poses inherent difficulties for the judiciary,” and repeated that, “a judge's commitment to impose a sentence based upon a defendant's breach of a hammer clause condition, coupled with the imposition of that sentence without proper consideration of the other relevant factors, is an abuse of judicial discretion.” At 899. It said that in light of this, “[U]pon entry of a guilty plea, the trial court shall not threaten to impose a specific sentence, or announce an intention to impose a specific sentence, or otherwise commit to a specific sentence.” At 898. And it concluded: “When presented with a plea agreement with a hammer clause, the trial judge should accord it no special deference, and shall make no commitment that compromises the court's independence or impairs the proper exercise of judicial discretion.” At 900. *See also, Prater v. Commonwealth*, 421 S.W.3d 380 (Ky. 2014).

When the Commonwealth argued, on appeal, that the whole purpose of a hammer clause is the threat of stricter punishment, the Supreme Court responded: “The Commonwealth concedes in this case that a hammer clause cannot be effective to promote compliance with conditions of release without the judge's threat to impose the stiffer sentence of the hammer clause. If that is true, it is just an inherent flaw in the concept of the hammer clause for which we offer no remedy.” At 899.

Zero-tolerance provisions. In *Andrews v. Commonwealth*, 448 S.W.3d 773 (Ky. 2014), the court noted that, “If the trial court had based its decision solely on Andrew's violation of the condition that he remain drug-free, we would have had to deem that decision an abuse of power.” At 780. The court in *Andrews* found that such was not the case; the trial judge had weighed many factors prior to revocation.

In *Helms v. Commonwealth*, 475 S.W.3d 637 (Ky.App. 2015), discretionary review denied by the Supreme Court Dec. 10, 2015, the defendant's diversion agreement had a very explicit “zero-tolerance” clause. After being adequately managed in the community for eighteen months, the defendant committed a single violation of the condition to remain drug-free. The trial court specifically referred to the zero-tolerance provisions in its order voiding the diversion agreement.

The Court of Appeals noted that “[d]espite the trial court's

repeated reference to the zero-tolerance provision,” the trial court also found that the defendant was a risk to the public who could not be properly managed in the community, and that there were no workable alternatives to incarceration. At 640.

As with the hammer clause provisions at issue in *Knox*, the Kentucky Court of Appeals observed that the zero-tolerance provisions were at odds with the statutes that require trial judges to exercise discretion when revoking probation. It said, “[A] zero-tolerance provision cannot shed a trial court of its statutory duty to consider the criteria of KRS 439.3106.” At 644. It also said, “[A] judge’s commitment to a predetermined outcome upon a violation of a condition of diversion without consideration of KRS 439.3106 is an abuse of discretion.” *Ibid*. Like the Supreme Court’s treatment of hammer clauses in *Knox*, the Court of Appeals stopped short of prohibiting the use of zero-tolerance provisions because “such a holding would admittedly render our opinion subject to attack under the separation of powers doctrine.” *Ibid*.

As to the trial court’s decision to revoke the diversion agreement based on a single violation of conditions, the Kentucky Court of Appeals held: “Because there is a complete lack of evidence in the record that Helms is a danger to a prior victim or to the community and he cannot be appropriately managed in the community, the decision to void the diversion agreement and impose a two-year sentence of imprisonment was an abuse of discretion.” At 645.

It’s what the victim wants. Another type of bright-line rule at sentencing involved excessive deference to the victim. In *Griffith v. Commonwealth*, 454 S.W.3d 315 (Ky.App. 2015), the defendant was charged with Robbery First Degree, a violent

offense. She negotiated a plea to Robbery Second Degree, a nonviolent offense with twenty percent parole eligibility. At sentencing, the trial court rejected the agreement without giving the defendant an opportunity to withdraw her plea. The trial court then spent a twenty-minute recess with the victim. After resuming the proceedings, the court told the defendant that the victim wanted her to be sentenced to ten years as a violent offender. After telling the victim, “I’m not satisfied unless you’re satisfied,” the court imposed a ten-year sentence on the original violent offense. At 317. The Court of Appeals held that, “While a trial court must be duly sensitive to a victim’s concerns, it cannot abdicate its responsibility to sentence in deference to a victim’s wishes. No legal authority exists for a victim to decide the sentence.” At 318.

It’s just the way we do things around here. The Kentucky Supreme Court said that it was “obvious that this judge failed to exercise any degree of discretion about the matter,” when “the trial judge went to some length to assure Appellant that being placed in leg irons was his ‘customary practice,’ and that he would be shackled like ‘everybody else in the course of a jury trial.’” The Supreme Court said that this amounted to shackling the defendant, “for the arbitrary and capricious reason that doing so is just how things are done there.” *Bruner v. Commonwealth*, -- S.W.3d --, 2014 WL 4160141, unpublished, at 8.

After reading these examples, how does the phrase “bring your toothbrush with you” sound to you? Or “pay or stay”? Or “people with drug charges are always a danger to the community”? What other examples come to mind?

Beware the bright-line rules!

COSTS, FEES, FINES AND RESTITUTION: A PRACTITIONERS GUIDE by Glenn McClister

Effective June 29, 2017, KRS Chapter 534 was re-written. The legislature inserted language to clarify that the statutes covered not only fines, but costs and fees as well. The provisions for imposing and collecting costs, fees and fines, as well as for dealing with nonpayment, were codified into one central location: KRS 534.020. Broadly speaking, the purpose of the legislation is to help ensure that people are not held for nonpayment of costs, fees and fines which they are unable to pay, and to provide finality in nonpayment cases, so that the first calling of a show cause docket will lead to an eventual resolution of all outstanding debts. Jail credit toward costs, fees and fines is now mandatory and automatic.

COSTS, GENERALLY

Court costs (District & Circuit): \$140.00

KRS 23A.205; KRS 24A.175: \$100.00

KRS 23A.206; KRS 24A.176: \$20.00

KRS 23A.2065; KRS 24A.1765: \$10.00

KRS 23A.209; KRS 24A.179 \$10.00 (NEW)

An additional \$30.00 will be assessed in cases involving sex crimes (KRS chap. 510; 530.020; 530.064(1)(a); 531.310; 531.320) and stalking (KRS 508.140; 508.150). KRS 23A.208 & KRS 24A.178. A \$30.00 fee also applies to all cases diverted to a Traffic Safety Program. KRS 186.574. Persons convicted of DUI Under 21 do not pay the DUI Service Fee. KRS 189A.050(1).

FINES, GENERALLY

Except otherwise provided for offenses outside the penal code, imposition of a fine in addition to any other punishment imposed is mandatory in the case of felonies and should amount to not less than one thousand dollars (\$1,000) and not more than ten thousand dollars (\$10,000) or double the amount of gain the defendant received from commission of the offense, whichever is greater. KRS 534.030(1).

Nevertheless, in imposing the amount of the fine and the method of its payment, the court must consider the defendant's likely ability to pay, the hardship payment might bring upon dependents of the defendant, the impact of paying the fine on also paying restitution, and the defendant's gain from commission of the offense. KRS 534.030(2).

Fines for misdemeanors may be imposed in addition to, as an alternative to, or in lieu of imprisonment. KRS 534.040(1).

Maximum fines for misdemeanors and violations are: Class A Misdemeanor - \$500.00; Class B Misdemeanor - \$250.00; a violation - \$250.00. KRS 534.040(2). Note that crimes which are not included in the penal code may not conform to this statute. For instance, the charge of "No Insurance," KRS 304.99-060, carries a fine of up to \$1,000.00.

Fines are not to be imposed upon individuals found to be indigent pursuant to KRS Chapter 31 for either felonies or misdemeanors. KRS 534.030(4), KRS 534.040(4), *Simpson v. Commonwealth*, 889 S.W.2d 781 (Ky. 1994); *Travis v. Commonwealth*, 327 S.W.3d 456, 459 (Ky.2010); and *Roberts v. Commonwealth*, 410 S.W.3d 606, 610 (Ky.2013).

An indigent person may nevertheless waive an objection to the imposition of fines. In *Carver v. Commonwealth*, 328 S.W.3d 206, 214 (Ky.App.2010), the Court of Appeals ruled that, "Even upon review for palpable error, we would reverse the circuit court's imposition of a fine upon an indigent person. Assessment of a fine would be a ruling in clear contravention of the law." Yet the trial court in that case did not commit palpable error by imposing \$1,000.00 in fines on the indigent defendant because the defense attorney told the trial court it could impose the fines, and that constituted a waiver of the right to object.

A defendant is entitled to \$5/day credit toward fines for every day spent in jail prior to conviction. RCr 4.58.

IMPOSING COSTS, FEES, AND FINES

At Sentencing. Costs should be assessed at or near sentencing. A court cannot grant itself "continuing jurisdiction" over imposition of costs. *Buster v. Commonwealth*, 381 S.W.3d 294 (Ky.2012). A court does not have jurisdiction to reserve to itself the issue of costs for the time when the defendant is released from prison. *Miller v. Commonwealth*, 391 S.W.3d 857 (Ky.

2013). Similarly, the court does not have jurisdiction to reserve the review of the question of costs till the defendant's release on parole. *Goncalves v. Commonwealth*, 404 S.W.3d 180 (Ky. 2013).

Three Part Analysis for the Imposition of Costs. 1) Is the person a "poor person"? 2) Will he or she be able to pay "in the foreseeable future"? 3) Will he or she be able to pay all costs, fines, and fees together within the time limit of one year?

1) Poor Person. Generally, court costs cannot be waived, even as part of a plea bargain. The exception is when the court finds that "the defendant is a poor person as defined by KRS 453.190(2) and that he or she is unable to pay court costs and will be unable to pay the court costs in the foreseeable future." KRS 23A.205(2); KRS 24A.175(2)

A poor person is now defined as "a person who has an income at or below one hundred percent (100%) on the sliding scale of indigency established by the Supreme Court of Kentucky by rule or is unable to pay the costs and fees of the proceeding in which he is involved without depriving himself or his dependents of the necessities of life, including food, shelter, or clothing." KRS 453.190(2), Supreme Court Order 2017-07.

2) Future Ability to Pay. In addition to the question of whether someone qualifies as a "poor person" under KRS 453, KRS 23A.205 also requires a finding on the record regarding the defendant's future ability to pay "in the foreseeable future" before costs are imposed. *Galloway v. Commonwealth*, 424 S.W.3d 921 (Ky.2014); *McElroy v. Commonwealth*, 389 S.W.3d 130 (Ky.App. 2012); *Smith v. Commonwealth*, 370 S.W.3d 871 (Ky. 2012). Yet it is only sentencing error when costs are imposed upon someone already found to be a poor person. *Spicer v. Commonwealth*, 442 S.W.3d 26 (Ky.2014).

The new legislation did not address the distinction which still must be made between a "poor person," upon whom costs may not be imposed, and an indigent person, upon whom fines may not be imposed. So it remains the case that qualifying as indigent for purposes of the appointment of a public defender does not necessarily entail a waiver of court costs, if the person can still pay the costs in the foreseeable future. *Maynes v. Commonwealth*, 361 S.W.3d 922 (Ky.2012). *Maynes* was appointed a public defender but his case was diverted, and the court ruled that imposition of costs was appropriate in that case. On the other hand, the court clarified that "without some reasonable basis for believing that the defendant can or will soon be able to pay, the imposition of court costs is indeed improper." (At 930.) (See also, *Spicer v. Commonwealth*, 442 S.W.3d 26 (Ky.2014), *Galloway v. Commonwealth*, 424 S.W.3d 921 (Ky.2014), *Nunn v. Commonwealth*, 461 S.W.3d 741 (Ky. 2015), and *Howard v. Commonwealth*, 496 S.W.3d 471 (Ky. 2016).

It was improper to impose costs on a defendant who received a sentence of seven and a half years in *Butler v. Commonwealth*, 367 S.W.3d 609 (Ky.App.2012).

Payment Options. If the defendant is not a poor person and yet cannot pay court costs, fees and fines immediately upon sentencing, the court can order that payment be made either by a certain date or by installments. KRS 534.020(1).

Installment Plans. “The defendant shall be given notice of the total amount due, the payment frequency, and the date by which all payments must be made. The notice shall indicate that if the defendant has not complied with the installment plan by the scheduled date, he or she shall appear on that date to show good cause as to why he or she is unable to satisfy the obligations. This notice shall be given to the defendant in writing on a form provided by the Administrative Office of the Courts.” KRS 534.020(2)(a).

3) Time Limit. “All court costs, fees, and fines shall be paid within one (1) year of the date of sentencing notwithstanding any remaining restitution or other monetary penalty owed by the defendant and arising out of the conviction.” KRS 534.020(2)(b).

Thus, the trial court may not assess court costs based on theoretical future earnings, but what can be paid within a year. As Justice Venters observed,

“It is hard to find any economic advantage in the judge’s decision to assess court costs against a defendant who had only \$1.00 to his name and would likely spend a substantial part of the next 22 years in prison, especially when the judge then invited Appellant to appeal the ruling and declared him to be indigent so that he could do so at taxpayer expense that will far exceed the court cost the judge sought to collect.”

Smith v. Commonwealth, 370 S.W.3d 871, 881, fn 13 (Ky. 2012).

Order of Application. “Installment payments will be applied first to court costs, then to restitution, then to fees, and then to fines.” KRS 534.020(2)(c).

STATUTORY PROCEDURE UPON NONPAYMENT OF COSTS, FEES OR FINES

Rather than simply holding someone in contempt, KRS 534.020 outlines the procedure a court must follow upon a finding that costs, fees or fines have not been paid. The statute requires that a **hearing** must be held before a court can imprison someone for willful failure to pay.

When a court is imposing costs, fees or fines, a sentence of automatic imprisonment for failure to pay cannot also be imposed at the same time. KRS 534.020(4). As such, “pay or stay” warrants, without a hearing, are a violation of this rule. (The commentary to KRS 534.010 says specifically that the

procedure outlined in the chapter does away with the practice of “\$30 or 30 days.”)

See also, Powers v. Hamilton County Public Defender Commission, 501 F.3d 592 (6th Cir. Court of Appeals, 2007), in which the Ohio public defenders were sued in a class action for violating the constitutional rights of indigent defendants who were jailed without a hearing for failure to pay fines, when the public defenders did not demand those hearings and were chiefly responsible for the fact the defendants did not receive them.

A person facing incarceration has a **right to counsel**, including the appointment of a public defender if appropriate. KRS 31.110(1)(a).

It is a violation of the **Equal Protection Clause** of the Fourteenth Amendment of the United States Constitution to incarcerate an indigent person for nonpayment of fines. *Tate v. Short*, 401 U.S. 395, 91 S.Ct. 668, 28 L.Ed.2d 130 (1971).

The defendant must show that his failure to pay was not an “intentional refusal to obey” and also was not a “failure on his part to make a good faith effort.” *Tate, supra*. A defendant can only be jailed for failure to pay a fine when he has had the means to pay and has willfully refused to do so. Alternatives to imprisonment must be considered if the defendant is indigent and cannot pay fines or restitution. *Bearden v. Georgia*, 461 U.S. 660, 103 S.Ct. 2064, 76 L.Ed.2d 221 (1983).

The court’s judgment must specifically set out the court’s findings of fact regarding the defendant’s ability to pay and refusal to do so. *Mauk v. Commonwealth*, 700 S.W.2d 803 (Ky. App. 1985), adopting *Bearden, supra*.

If, after the hearing, the court finds that the failure to pay is “**excusable** due to an inability to pay,” the court retains jurisdiction to grant additional time to pay, reduce the amount of installment payments, or of “modifying the manner of payment in any other way.” KRS 534.020(3)(a)(1).

If, after the hearing, the court finds that the failure to pay is “**willful** and not due to an inability to pay,” the court may order the defendant to jail. KRS 534.020(3)(a)(2) & KRS 534.020(4).

If the defendant **fails to appear** at the show cause hearing, the court may issue a warrant for the defendant’s arrest. KRS 534.020(3)(b) & KRS 534.020(4).

If either the defendant is jailed for willful nonpayment or jailed for failure to appear, he must be jailed **on the condition** that he “shall be released upon payment or completion of daily credit pursuant to KRS 534.070.” The jailer keeps track of the credit earned toward costs, fees and fines. The court does not have to order the release of the defendant once the defendant earns sufficient credit. KRS 534.020(3)(a)(2) & (3)(b).

The revisions to KRS 534 did away with the set terms of imprisonment for nonpayment of costs, fees and fines formerly included in KRS 534.060. Now, once the defendant earns

QUICK REFERENCE GUIDE: COSTS AND FINES

IMPOSING COSTS



Circuit and District Court
Total Court Costs = \$140

Additional Potential Costs:

- + \$30 in sex crimes cases
- + \$30 in stalking cases
- + \$30 for the Traffic Safety Program

Exclusions:

No DUI Service Fee for persons convicted of DUI, Under 21.

Requirements for Imposing Court Costs:

- Court costs can be waived if the court finds that “the defendant is a poor person as defined by KRS 453.190(2) and unable to pay court costs in the foreseeable future.”
- A finding of ability to pay in the “foreseeable future” should be put on the record.
- If the person is not a “poor person” as defined by statute, the court can order that payment be made either by a certain date (or the defendant must appear to show cause), or by installments.
- Under an installment plan, all costs and fees must be paid within one year of sentencing. Installment payments are to be applied in a certain order: costs, restitution, fees, and then fines.



Sentencing:

Costs must be assessed at or near sentencing.

PROCEDURE UPON FINDING A FINE IS NOT PAID

Amount:

- Felonies** (the greater of):
- \$1,000-\$10,000; or
 - Double the amount of gain by commission
- Misdemeanors:**
- Class A - \$500.00;
 - Class B - \$250.00;
 - Violation - \$250.00.

Procedure:

- Written notice to defendant at time of imposition of costs, fees, or fines.
- A finding that costs, fees, or fines have not been paid.
- A hearing must be held before a person can be jailed, unless the person fails to appear.
- Right to counsel attaches if defendant is facing possible jail time.
- Court makes a finding of “excusable” or “willful” failure to pay in full.
- If “excusable” the court retains jurisdiction to allow more time to pay, reduce amount of payment, etc.
- If “willful” or if the defendant fails to appear, the person is jailed on condition he or she be released when the debt is paid or the person completes enough daily credit to pay.



Fines for either felonies or misdemeanors are not to be imposed upon individuals found to be indigent pursuant to KRS Chapter 31. An indigent person may waive an objection to the imposition of fines.

REQUIREMENTS IF JAIL TIME IS IMPOSED

Jail Service Credit (KRS 534.070):

- \$50/day credit for jail service
- \$100/day credit for jail service with community service for 8-hours/day
- 1/8 of \$100 for every hour of community service worked.

A defendant who has completely served his jail sentence cannot continue to be held due to failure to pay a fine.

New Limits to Jail Service:

- Limited to amount of time necessary to serve off debt.
- Automatic release, court order unnecessary.



sufficient credit, he or she is to be released by the jailer. The defendant cannot be held for a **fixed term of days** in excess of the days necessary to earn sufficient credit.

KRS 534.020 now controls the collection of fines and fees imposed pursuant to traffic offenses listed in KRS Chapter 189, as well as fines and fees imposed as part of a conviction for DUI under KRS Chapter 189A. KRS 189.990(27), KRS 189A.050(2), KRS 189A.130.

KRS 534.070 requires granting credit earned toward payment of costs, fees and fines when a defendant is jailed as the result of an order to show cause, specifying fifty dollars (\$50) per day credit if the defendant does not do community service, one hundred dollars (\$100) a day if the defendant does community service, one eighth (1/8) of one hundred dollars for each individual hour worked short of a full eight hours, and specifying that the credit shall not be collected but rather that portion of the costs, fees or fines shall be considered paid.

A defendant is entitled to \$5/day credit toward fines for every day spent in jail prior to conviction. RCr 4.58.

A defendant who has completely served his jail sentence cannot continue to be held merely because he has not yet paid his fine, if he has no money to pay. *Spurlock v. Noe*, 467 S.W.2d 320 (Ky. App. 1971).

RESTITUTION

A court may sentence a defendant to probation until restitution is paid, regardless of the normal 2-year limit on misdemeanor probation. KRS 533.020(4). If restitution is owed, the defendant cannot be released from probation until it is paid. KRS 532.033(8).

Although due process protections at sentencing are somewhat less than those before guilt has been found, sentencing must be based on reliable facts. *U.S. v. Silverman*, 976 F.2d 1502, 1504 (6th Cir. 1992). Due process includes notice, the assistance of counsel, a hearing, the opportunity for the defense to present evidence, and proof from the Commonwealth by a preponderance of evidence. *Fields v. Commonwealth*, 123 S.W.3d 914 (Ky.App. 2003). Imposition of restitution based solely on unsworn and uncross-examined statements from a victim's mother was found to have violated due process in *Jones v. Commonwealth*, 382 S.W.3d 22 (Ky. 2011). An order for restitution entered prior to termination of the time given to the defendant to controvert the evidence of the Commonwealth was held to be a violation of due process in *Donovan v. Commonwealth*, 376 S.W.3d 628 (Ky.App. 2012).

If the court did not order that probation be extended until restitution is paid, a defendant can ask for such an extension. A waiver of the 2-year limit (for misdemeanors) must be made knowingly and voluntarily. *Commonwealth v. Griffin*, 942 S.W.2d 289 (Ky. 1997). Extension of probation for the time necessary to

pay restitution takes a court order. KRS 533.020(4), which allows a probationary period to be extended for "the time necessary to complete restitution," does not automatically prolong the court's jurisdiction without a duly entered court order. *Commonwealth v. Wright*, 2012WL1890365, unpublished.

A 5% administrative fee goes to the circuit clerk in addition to the actual amount of restitution. KRS 533.030(3)(b).

Imprisonment for failure to pay a fine or restitution is only appropriate when the defendant has had the means to pay but has willfully refused to do so. Alternatives to imprisonment must be considered if the defendant is indigent and cannot pay fines or restitution. *Bearden v. Georgia*, 461 U.S. 660, 103 S.Ct. 2064, 76 L.Ed.2d 221 (1983); *Clayborn v. Commonwealth*, 701 S.W.2d 413 (Ky.App. 1985).

A defendant is entitled to an itemized statement of damages. *Clayborn, supra*.

Restitution to a victim does not include loss already covered by insurance and cannot go directly to an insurance company. *Clayborn, supra*. See also, *Bentley v. Commonwealth*, 497 S.W.3d 253 (Ky.App. 2015).

Victims have a duty to minimize damages. *Davis v. Fischer Single Family Homes, Ltd.*, 231 S.W.3d 767, 780 (Ky. App. 2007); *Equitable Life Assurance Society of United States v. Merlock*, 69 S.W.2d 12, 15 (1934).

Although in *Hearn v. Commonwealth*, 80 S.W.3d 432 (Ky. 2002), the court held that restitution can include post-judgment interest, effective October 1, 2016, the new RCr 11.06 says that a court cannot order a defendant to pay interest on restitution, but that recovery of such costs can be pursued in a civil suit.

Restitution must be ordered in addition to incarceration, diversion, or probation. KRS 532.032(1). *Commonwealth v. O'Bryan*, 97 S.W.3d 454 (Ky.App. 2003). See also KRS 532.358.

However, a court order ordering a defendant to pay restitution at an amount to be determined in the future is not a valid order for restitution because it does not fix the amount. KRS 532.033 lists the requirements of a valid order of restitution and requires that the court fix the amount at sentencing. KRS 431.200 controls post-sentencing attempts to collect restitution in cases of damaged property, and requires the filing of a verified petition within 90 days of sentencing. Since that petition was never filed, and the court normally loses jurisdiction over a case 10 days after the entry of final judgment, and since the court waited for 7 years for the defendant to serve out his sentence before setting the amount of restitution, the court had lost jurisdiction over the defendant to order restitution. *Rollins v. Commonwealth*, 294 S.W.3d 463 (Ky.App. 2009). On the other hand, the defendant waived the issue of whether the court retained jurisdiction to order an amount of restitution 10 days after entry of the final judgment in the case, when he agreed to a restitution hearing after sentencing. *Commonwealth v.*

Steadman, 411 S.W.3d 717 (Ky. 2013).

An order of restitution that failed to fix the amount was also ruled invalid in *Brown v. Commonwealth*, 326 S.W.3d 469 (Ky. App. 2010).

Trial courts do not have statutory authority to order defendants to repay the State Treasury for the costs of extradition. *Vaughn v. Commonwealth*, 371 S.W.3d 784 (Ky. App. 2012). See also *Southern v. Commonwealth*, 2012 WL 4209260, unpublished. But see also *Sevier v. Commonwealth*, 434 S.W.3d 443 (Ky.2014), in which the defendants had to pay for the cleanup on a methamphetamine lab.

The term “victim” in KRS 532.350(1) means direct victim. It does not include secondary victims. *Blevins v. Commonwealth*, 435 S.W.3d 637 (Ky.App.2014). A drug task force is not a direct victim, and a defendant cannot be made to pay restitution for costs involved in setting up a drug deal using a confidential informant. *Hunt v. Commonwealth*, 2016 WL 1719141, not yet final.

Unlike fines or costs, the payment of restitution cannot be suspended. KRS 532.032(1).

If the defendant has put up a cash bond, the money (minus the 10% bail fee and the 5% administrative fee) must be applied to restitution, cost, fines, and the public defender fee. KRS 431.530(4), RCr 4.46(1). However, if the money is in someone else’s name, he or she must agree to allow the bond to be applied to these expenses. KRS 431.532(3).

PROBATION REVOCATION FOR FAILURE TO PAY FINES, RESTITUTION, OR CHILD SUPPORT

Relying on the United States Supreme Court holding in *Bearden v. Georgia*, 461 U.S. 660 (1983), the Supreme Court of Kentucky noted that, “when considering revocation for failure to pay fines and restitution, the trial court must consider (1) whether the probationer made sufficient bona fide attempts to make payments but [had] been unable to do so through no fault of his own and, if so, (2) whether alternatives to imprisonment might suffice to serve interests in punishment and deterrence.” The trial court must specifically identify the evidence it relies upon in making these determinations on the record, as well as the specific reason(s) for revoking probation on the record. *Commonwealth v. Marshall*, 345 S.W.3d 822, 828 (Ky. 2011). See also *Gamble v. Commonwealth*, 293 S.W.3d 406 (Ky.2009).

It was an abuse of discretion to revoke the defendant when the trial court recognized that the defendant was making a good faith effort to comply with her restitution payment schedule, but revoked the defendant anyway. *Wills v. Commonwealth*, 396 S.W.3d 319 (Ky.App.2013). See also *Hamm v. Commonwealth*, 367 S.W.3d 605 (Ky.App.2012).

The *Bearden* standard was applied to fines in Kentucky in *Mauk v. Commonwealth*, 700 S.W.2d 803 (Ky.App.1985), applied to

restitution in Kentucky in *Clayborn v. Commonwealth*, 701 S.W.2d 413 (Ky.App.1985), and applied to child support (as a type of restitution) in *Marshall*.

The Supreme Court’s holding in *Bearden*, by logical extension, also applies to the failure to find and/or maintain employment. The court must consider whether the defendant made attempts to find employment but could not. *Mbaye v. Commonwealth*, 382 S.W.3d 69 (Ky.App.2012).

Courts have observed that the receipt of Supplemental Security Income (SSI) benefits does not preclude the enforcement of a child support obligation where there is evidence that the obligor retains or has regained the ability to earn income from which child support could be paid. However, the court is not free to completely disregard the Social Security Administration’s determinations that an SSI recipient is disabled and needs the full amount of his or her award for subsistence. If child support is to be demanded from the SSI benefit, there must be evidence clearly establishing the recipient’s ability to afford the support payment. *Commonwealth v. Ivy*, 353 S.W.3d 324 (Ky. 2011). See also *Com. ex rel. Hale v. Stovall*, ___ S.W.3d ___, 2007 WL 1784081, Ky. App., 2007, unpublished, in which the court did not abuse its discretion when it set the defendant’s child support at \$0.00 because the defendant’s only income was bare subsistence level SSI.

In a revocation for failure to pay child support, the trial court is required to set a purge amount upon its original finding of contempt and imposition of conditional discharge. In order to preserve for appeal the issue of whether the trial court erred in not setting a purge amount following a finding of contempt, the defendant must request a purge amount at the time he was found in contempt. In order to find the defendant in contempt, the court must determine whether the ex-husband made bona fide attempts to make ordered support payments but was unable to do so through no fault of his own, and whether alternatives to imprisonment might accomplish the objectives of the Commonwealth prior to revocation. *Shaffeld v. Commonwealth*, 368 S.W.3d 129 (Ky. Ct. of App. 2012).

The child support guidelines are at KRS 403.211 et seq.

PUBLIC DEFENDER PARTIAL FEES

Imposition requires a nonadversarial hearing at arraignment. KRS 31.211(1).

Since finding someone to be a “poor” person entitled to a waiver of court costs is a higher standard than being a “needy” person entitled to the services of a public defender, the court cannot waive costs and then still impose a public defender fee. *Sevier v. Commonwealth*, 434 S.W.3d 443 (Ky. 2014).

Imposition of a \$450.00 public defender fee was improper on a person qualified to be “needy” under KRS Chapter 31. *Spicer v. Commonwealth*, 442 S.W.3d 26 (Ky.2014).

KENTUCKY'S CRIMINAL CASE, CRIME RATE, PRISON, PAROLE, EXPENDITURE DATA: AN UPDATE

Get your checkbook out



The February 2017 Advocate focused on criminal justice facts. This is an update of those facts with additional information now available.

Criminal Cases Decline

Between calendar Year 2007 and calendar Year 2016, the number of criminal cases in the system has decreased by 45,602:

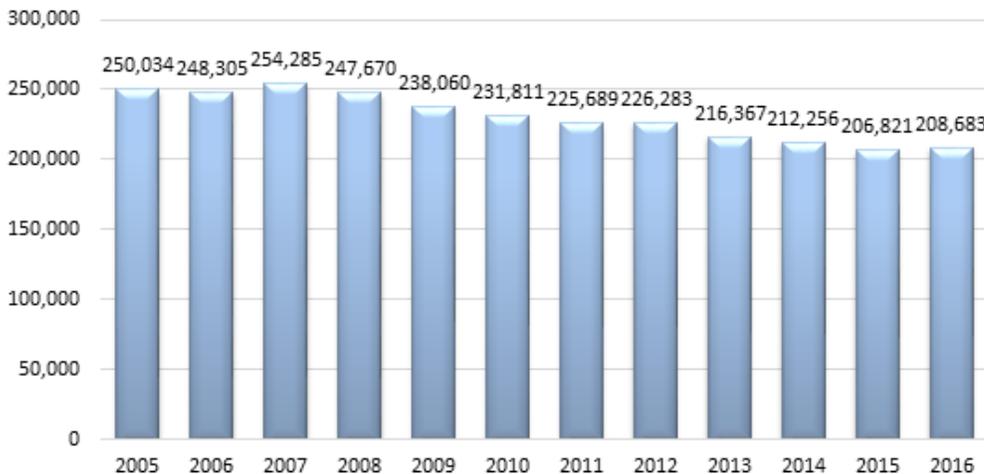
Table 1 shows the number of Circuit Court criminal case filings and District Court Felony and Misdemeanor case filings recorded by Administrative Office of the Courts from calendar year 2005 through 2016. The numbers presented in Table 1 do not include the District Court Prepayable caseload, which AOC provides in a separate report.

Table 1: AOC Caseload Data, Circuit Criminal and District Misdemeanor & Felony Cases, CY 2005- 2016

	Circuit Cases	District Cases	Total
2005	30,960	219,074	250,034
2006	31,182	217,123	248,305
2007	31,699	222,586	254,285
2008	31,643	216,027	247,670
2009	32,025	206,035	238,060
2010	32,152	199,659	231,811
2011	31,361	194,328	225,689
2012	32,516	193,767	226,283
2013	32,088	184,279	216,367
2014	32,083	180,184	212,256
2015	32,036	174,785	206,821
2016	34,670	174,013	208,683

Source: AOC Historical Reports, Caseload Report

**Graph 1: AOC Caseload Data
Total Circuit & Felony Cases
CY 2005-2016**



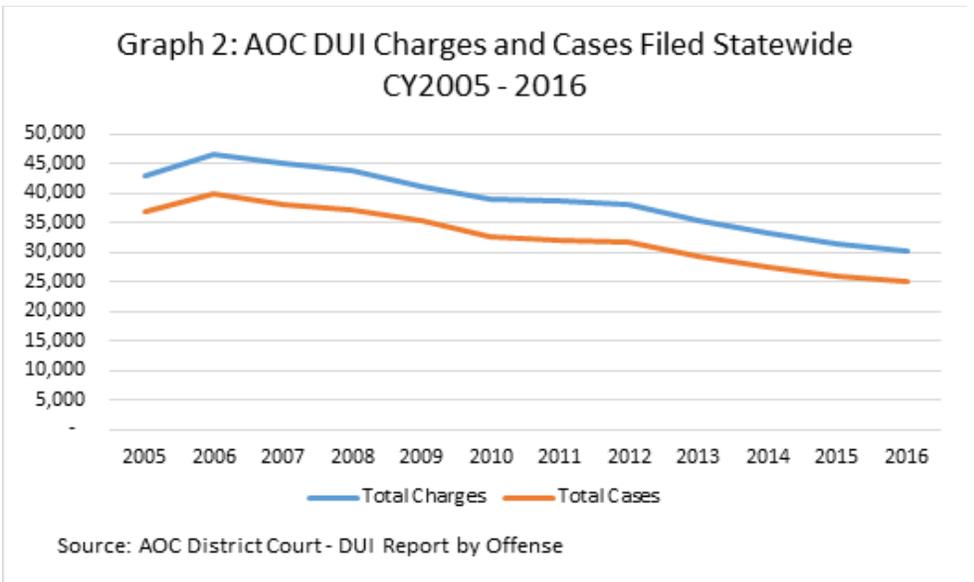
Source: AOC Historical Reports, Caseload Report

Graph 1 shows the overall decrease in cases since 2005, with the 10-year high in 2007 at over 250,000 cases to the low of 208,683 cases in 2016.

Table 2 shows the decrease to the total number of DUI cases statewide. The decrease over the 12-year period from 2005-2016 is 30%, with a decrease each year since 2006. Graph 2 depicts this decrease of almost 12,000 cases

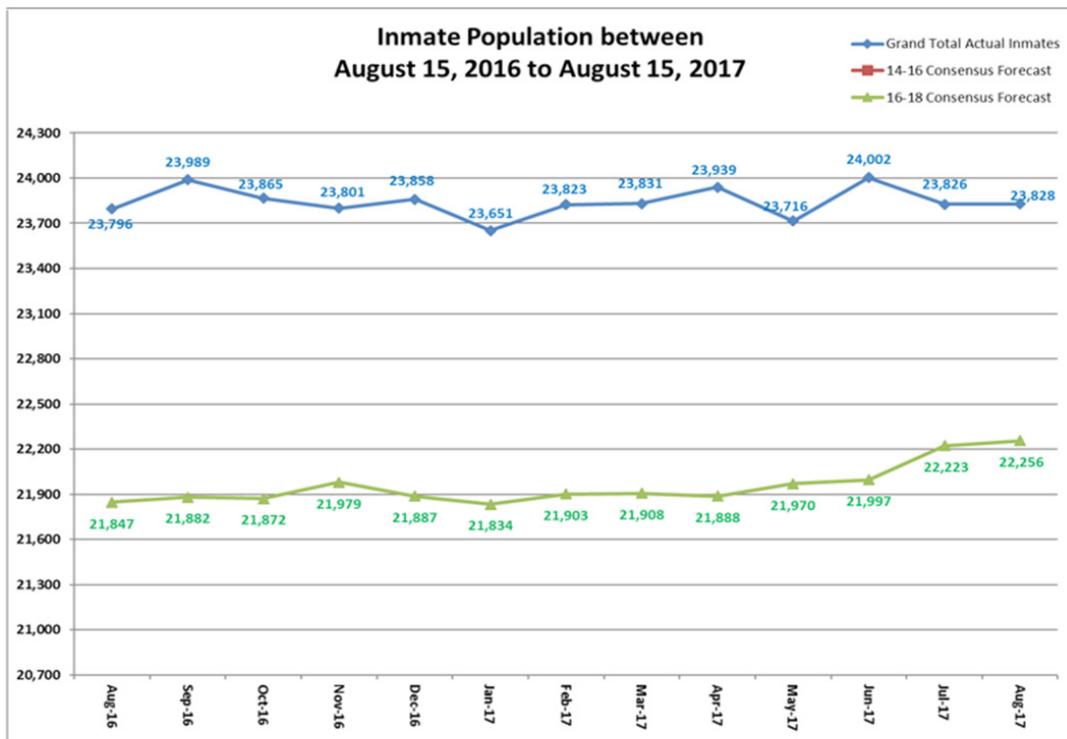
	Total Charges	Total Cases
2005	42,994	37,008
2006	46,456	39,826
2007	45,088	38,130
2008	43,917	37,143
2009	41,254	35,394
2010	38,923	32,649
2011	38,578	32,031
2012	38,036	31,815
2013	35,309	29,313
2014	33,115	27,502
2015	31,291	26,053
2016	30,314	25,093

Source: AOC District Court - DUI Report by Offense



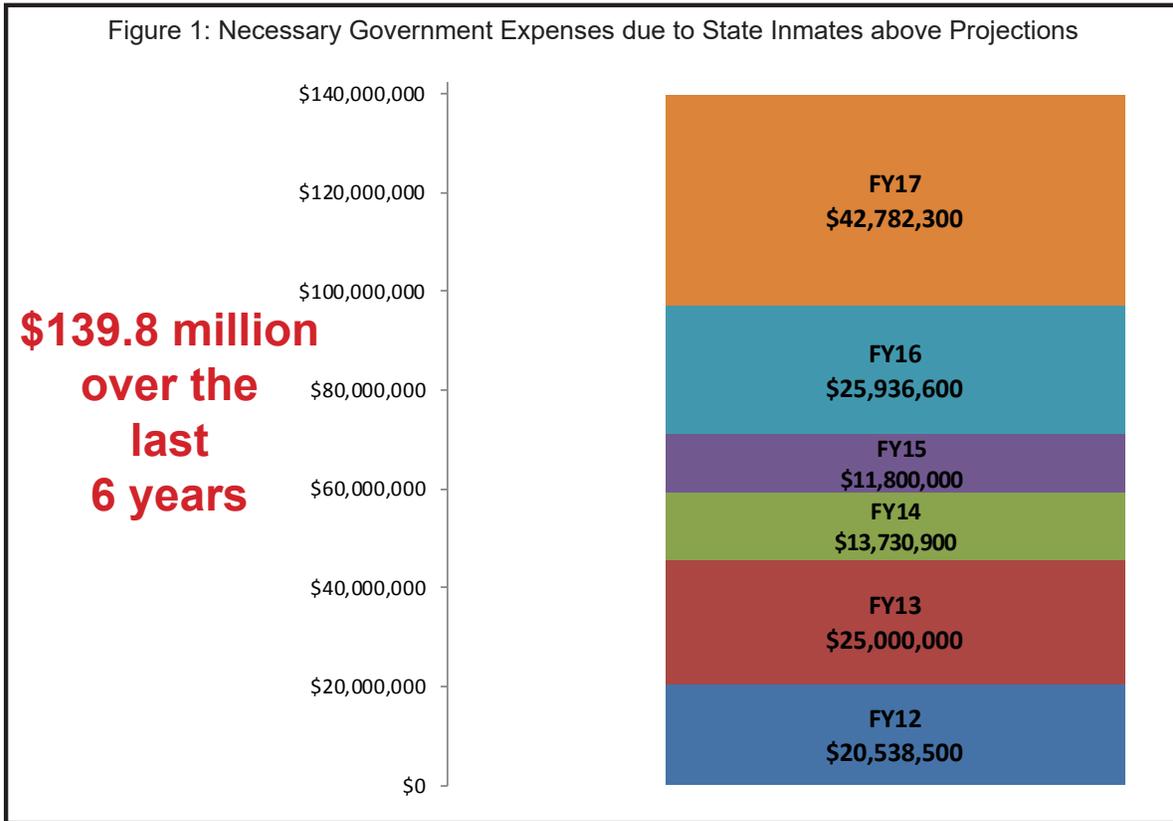
Get out your checkbook

The prison population is 1,572 over its projected level. This level of incarceration comes at great expense. The Corrections budgeted funds for FY 17 were \$572.6 million. Corrections has been requiring funds above those appropriated because of the level of the prison population.



FY16-18 consensus blended population (adjusted for HB303 enacted) projections are included for December 2015 forward.

Corrections incurred costs of nearly \$42.8 million (see Figure 1) more than budgeted in the last fiscal year, and \$139.8 million more than budgeted in the last 6 years.



Parole

The parole rate for FY 16-17 is 53% as compared to 61% in FY14-15:

Comparison

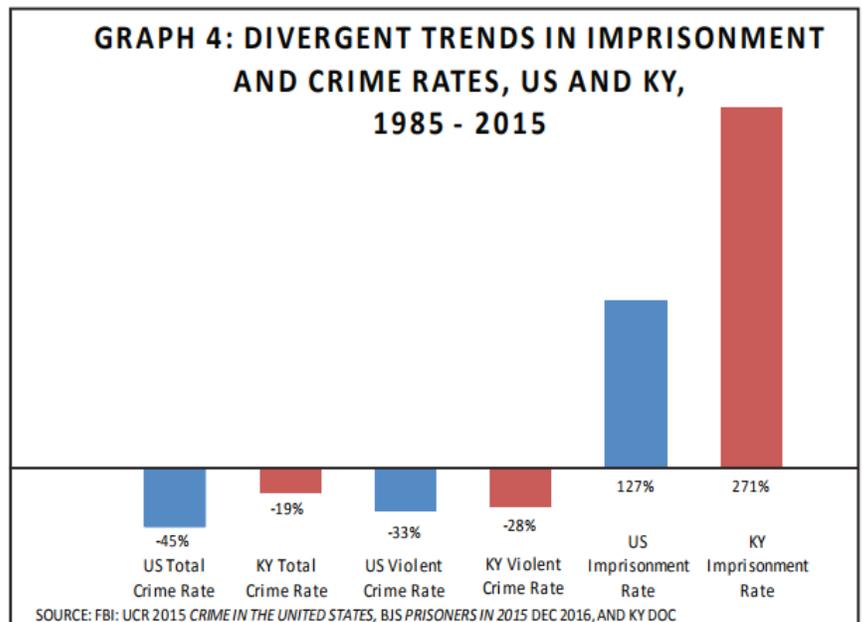
	FY 16-17	FY 15-16	FY 14-15
Parole Recommendation Rate	53%	48%	61%
Initial Parole Rate	51%	48%	62%
Deferred Parole Rate	36%	46%	59%
File Review Parole Rate	52%	48%	62%
Face to Face Parole Rate	52%	44%	58%

Crime Rates Continue to Decline

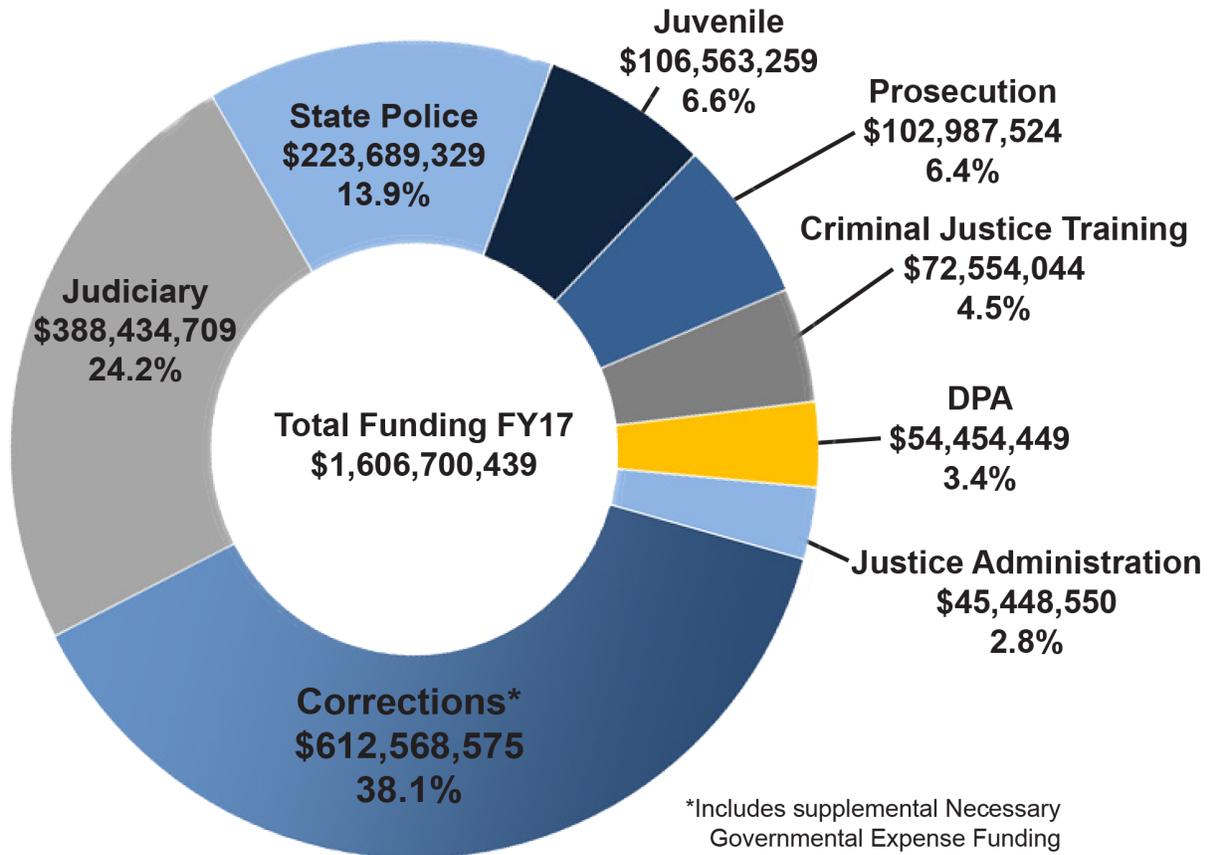
From 1985- 2015, the crime rate in Kentucky declined by 19% and the violent crime rate in Kentucky declined by 28%.

Divergent Trends Nationally and in Kentucky

While the number of cases decline and the crime rates decrease, the prison population continues to increase.



The total Kentucky criminal justice system expenditures in FY 17 were \$1.6 billion. Corrections costs were 38% of the total expenditures at \$613 million.



FY17 Total Expenditures

(expenditures listed for all funds from emars as of 08/18/17)

Department	Name	Function Group	Fund Type						NGE	Total
			GNRL	FDRL	RSTD	ROAD	TBCO			
020/025	Judiciary	020C	\$ 357,468,981	\$ 3,821,252	\$ 27,144,476	\$ -	\$ -	\$ -	\$ 388,434,709	
520	State Police	520D	\$ 95,577,600	\$ 11,453,758	\$ 28,981,271	\$ 87,676,700	\$ -	\$ -	\$ 223,689,329	
523	Juvenile	523J	\$ 85,270,200	\$ 10,258,503	\$ 11,034,556	\$ -	\$ -	\$ -	\$ 106,563,259	
525	Criminal Justice Training	525E	\$ -	\$ 99,196	\$ 72,454,848	\$ -	\$ -	\$ -	\$ 72,554,044	
500	Justice Administration	500A	\$ 30,296,653	\$ 12,427,118	\$ 1,460,324	\$ -	\$ 1,264,455	\$ -	\$ 45,448,550	
515	DPA (excluding P&A Division)	515B	\$ 49,386,800	\$ 168,449	\$ 4,899,200	\$ -	\$ -	\$ -	\$ 54,454,449	
527	Corrections	527A/B/C/D	\$ 541,134,270	\$ 655,330	\$ 28,778,975	\$ -	\$ -	\$ 42,000,000	\$ 612,568,575	
030	Prosecution	see below	\$ 97,650,184	\$ 1,325,000	\$ 4,012,340	\$ -	\$ -	\$ -	\$ 102,987,524	
Total Expenditures (all funds)			\$ 1,256,784,688	\$ 40,208,606	\$ 178,765,990	\$ 87,676,700	\$ 1,264,455	\$ 42,000,000	\$ 1,606,700,439	

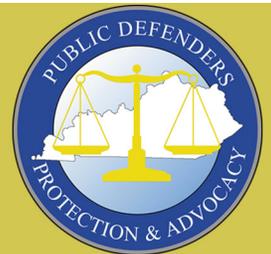
Prosecution Totals									
040	Criminal Services - AG	040M/040B	\$ 7,130,286	\$ 677,109	\$ 109,996	\$ -	\$ -		\$ 7,917,391
030	Commonwealth Attorneys - UPS	030A	\$ 48,439,598	\$ 35,319	\$ 3,155,283	\$ -	\$ -		\$ 51,630,200
030	County Attorneys - UPS	030B	\$ 42,080,300	\$ 612,572	\$ 747,061	\$ -	\$ -		\$ 43,439,933
Total Prosecution			\$ 97,650,184	\$ 1,325,000	\$ 4,012,340	\$ -	\$ -		\$ 102,987,524

This data can be found on the Department of Public Advocacy website at www.dpa.ky.gov

To go directly to this data, visit:

<https://dpa.ky.gov/lp/issuesinpublicdefense/Documents/ExpenditureData2017.pdf>

The Advocate



IN THIS MONTH'S ADVOCATE

Sign up for **The Advocate** online for more useful information including:

- Legislative news and updates
- Summaries of Supreme Court and Court of Appeals criminal opinions
 - And much more!

Please sign up for **email, Twitter or Facebook** updates by going to:

www.dpa.ky.gov

**PUBLIC VALUE OF PUBLIC DEFENSE:
IT HAS BEEN A GREAT 37 YEARS
BY EDWARD C. MONAHAN**

**ABANDON ALL DISCRETION YE WHO ENTER HERE:
THE JUDICIAL INFERNO OF BRIGHT-LINE RULES
BY GLENN MCCLISTER**

**COSTS, FEES, FINES AND RESTITUTION: A PRACTITIONERS GUIDE
BY GLENN MCCLISTER**

**KENTUCKY'S CRIMINAL CASE, CRIME RATE, PRISON, PAROLE,
EXPENDITURE DATA: AN UPDATE
GET YOUR CHECKBOOK OUT**