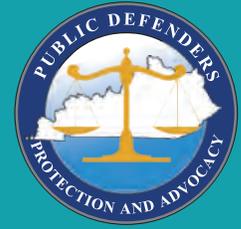


The Advocate



www.dpa.ky.gov

June 2014

2014 Criminal Law Legislative Update

The 2014 General Assembly resulted in a relatively small number of changes to criminal law, as compared with other recent sessions. Still, some of the seemingly minor bills of 2014 could signal a willingness to go in new directions and, as a first step, could have long-term impact on future legislation and reforms. Below are brief summaries of this year's bills relating to criminal law.



Damon Preston
Deputy Public Advocate

Limits on Fish and Wildlife officers – Senate Bill 66 was introduced as a response to frequent complaints about overzealous Fish and Wildlife Officers harassing boaters on Lake Cumberland. The bill amends KRS 235.310 to require Fish and Wildlife officers to have “reasonable and articulable suspicion [of a violation of a Kentucky law or regulation] based upon specific and articulable facts” prior to stopping or boarding a boat. Even upon boarding a boat based on suspicion, no search is authorized unless it is supported by probable cause. The Department of Fish and Wildlife Resources must report to the Legislative Research Commission each year on the training provided to officers and any changes in law enforcement policies.

Legalization of Cannabidiol – After convincing testimony of the benefits of Cannabidiol by parents of children with a severe form of epilepsy, Senate Bill 124 excluded physician-ordered Cannabidiol from the definition of marijuana, despite its origin in the Cannabis plant. Also excluded from the definition is any drug or substance approved for use in a clinical trial by the US Food and Drug Administration. These changes do not directly open the door to legalization of marijuana, but clearly go in the direction of recognizing that medicinal purposes of the components of marijuana are being recognized and the use of those components should not be equated with possession of marijuana for recreational purposes.

Felony Expungement and A New Affirmative Defense Made Available to Human Trafficking Victims – In 2013, the General Assembly passed House Bill 3, which provided expanded protections for victims of human trafficking. In 2014, this protection was expanded by Senate Bill 184 to allow a victim of human trafficking to have criminal convictions expunged and to raise an affirmative defense in pending cases, if it can be shown that the offenses were direct results of the human trafficking. Both the expungement and the available defense apply broadly to all offenses which are not violent offenses as defined in KRS 17.165. This means, for the first time in Kentucky, felony convictions, some as serious as Class B felonies, will be able to be expunged, even by a prisoner who is still serving his or her sentence at the time of the application. Other efforts at felony expungement were unsuccessful this session, but passage of SB 184 may provide support for expansion of expungement in 2015.

Authorization of “Alcohol Monitoring Devices” – House Bill 359 authorized courts to order the use of an “alcohol monitoring device” as a condition of pretrial release, probation, conditional discharge or diversion or as a sanction for a violation of a DVO. The defendant must bear all costs relating to the device. If a court determines that a defendant is indigent and no other funding source is available to cover the costs for indigent

defendants, the court must consider other conditions of release. Criminal defense attorneys, especially public defenders, should be aware that the language requires only consideration of other terms of release for indigent defendants. While the legislative history would make clear that the intention was that indigent defendants not remain in custody solely because they cannot afford the devices, practitioners should be prepared to challenge courts that make the use of such devices mandatory for all defendants. In the area of pretrial release, the devices are authorized only in cases of moderate-risk or high-risk defendants.

Expansion of Voyeurism to “Upskirt” Photos – After the Massachusetts Supreme Judicial Court ruled in a highly publicized opinion that it was not a violation of Massachusetts law for a person to take photographs of a woman's underwear by using a cell phone positioned to point under the woman's skirt, the Kentucky General Assembly quickly passed Senate Bill 225, which would make the practice of “upskirt” photography illegal under the Voyeurism statute (KRS 531.090).

Tax Zappers Zapped – House Bill 69 created a new Class D felony offense for the Possession of an Automated Business Record Falsification Device. These devices, which include both physical devices and software programs and are often collectively referred to as “tax zappers”, are used to falsify commercial sales information for the purpose of avoiding sales tax collection and reducing visible revenue. In addition to criminal penalties and forfeiture, a person convicted of this offense will lose all business permits for 10 years.

Requirement of Proof of Insurance Reduced – House Bill 218 amended KRS 304.39-117 to require a vehicle owner to have proof of insurance only for the first 45 days after coverage begins. For anyone who has owned a vehicle for longer than 45 days and has not switched insurance carriers in the past 45 days, there is no longer a requirement that the owner keep in his possession proof of insurance coverage. Instead, the AVIS database created by KRS 304.39-087, which requires all companies providing car insurance in Kentucky to submit a monthly list of vehicles covered, shall provide the ongoing proof that a motor vehicle is insured.

Possession of Cell Phone in a Jail or Prison is Now a Felony – House Bill 343 amended the definition of “dangerous contraband” in KRS 520.010 to include “cell phones”. This means that anyone charged with possessing a cell phone in a detention facility can now be charged with felony Promoting Contraband, not just the misdemeanor level. For criminal defense lawyers, this change raises questions about whether attorneys or investigators can retain their cell phones as they meet with clients. For public defenders who may be at the jail for hours to meet with many clients in a row, denial of the ability to keep a cell phone would be a substantial hardship. Hopefully, we will be able to work out with local jails and correctional facilities a reasonable agreement that protects facilities while still enabling attorneys to do the work they need to do.

Expansion of Carrying Concealed Deadly Weapons Permits – House Bill 128 expanded the permissible carrying of concealed deadly weapons in two ways. First, it added “retired peace officers” to the list of persons who may carry a concealed weapon at any time or location in Kentucky without limitation, provided they have a valid CCDW license. Second, it created a temporary non-renewable 45-day CCDW permit that is available to a petitioner for a protective order that has been granted. Weapons

training is not required for this permit. The bill also made numerous changes to KRS 237.110 relating to the process for applying for or renewing CCDW permits.

Prohibition of Parental Rights for Offenders Convicted of Felony Sex Offenses Relating to Conception – Senate Bill 108 eliminates custody, visitation, and inheritance rights for any person that has been convicted of a felony sex offense that resulted in the birth of a child. Upon a request from the mother, the person could be granted reasonable visitation rights to the child.

Defendants Under 18 Cannot Resolve Traffic Cases By Themselves – Traffic cases involving juveniles who are 16 or 17 years old are handled in adult court, not juvenile court. House Bill 90 makes changes that recognize that parents or guardians should be aware of and involved in the resolution of these cases. To accomplish this, juveniles below the age of 18 are ineligible to prepay penalties for traffic violations. A court appearance is now required and, while not required to be present at every court appearance, a parent or guardian must be present at the time the case is resolved.

Electronic Search Warrants Authorized but Not Yet Created – Senate Bill 45 authorizes the Kentucky Supreme Court to create by rule a process for electronic search warrants, as long as the process complies with the Kentucky Constitution and other requirements for search warrants, including the production of a paper copy at the time it is served. The Kentucky Supreme Court will now consider whether to adopt such a rule and, if so, what the timetable would be for comments and adoption.

Electronic Transmission of Civil Complaints – Senate Bill 138 amends KRS 454.210 to allow the clerk of a court where a civil complaint is filed to satisfy the requirement to send copies of the complaint and summons to the Secretary of State through electronic means, rather than only by traditional certified mail. While this does not impact criminal practice directly, this is another step in the direction of electronic filing and transmission of court information, which is very likely to expand into the criminal arena in the near future.

Conduct 5.3 (Responsibilities regarding non-lawyer assistants). Additional language was added to provide protection for social workers or other professionals who may be independently licensed or certified and have responsibilities under those licenses or certifications that may conflict with DPA’s attorney-client responsibility to clients.

Authorization for Counsel in Parole or Post-Incarceration Supervision Revocation Hearings – KRS 31.110(2)(a) grants a statutory right to counsel to defendants facing revocation of parole, but nowhere in the chapter was DPA specifically authorized to provide counsel in these situations. Language was added to make clear that DPA has a responsibility to provide attorneys in parole or other revocation hearings.

Annual Reports – DPA is required to file with the LRC an annual report by September 30 of each year.

Access to Juvenile Files for DPA Attorneys – Pursuant to a federal court consent decree entered into in 1995, DPA has a duty to provide representation and assistance to juveniles who are incarcerated or committed to the Department of Juvenile Justice. DPA’s Juvenile Post-Disposition Branch exists to meet the requirements of this consent decree, but its Frankfort-based attorneys are sometimes denied access to juvenile files because they are not the attorney of record. KRS 31.110(2)(c) and (4) have been amended to permit access to juvenile files to DPA attorneys handling post-disposition challenges.

Presumption of Indigency for Appeal – KRS 31.120 is amended to create a presumption that a person represented by a public defender at sentencing is indigent for purposes of appeal. This presumption may be overcome after a hearing at which the court finds cause for the person not to be considered an indigent person.

Limitation on Federal Practice – KRS Chapter 31 creates DPA as the state public defender agency, but KRS 31.220 outlines exceptions when DPA may act in federal court. Prior language allowed representation in any matter “related to an action pending” in state court. In recognition of the breadth and ambiguity of the term “related to”, HB 264 amended the language to limit representation to matters involving a challenge to the validity, timing, or method of a state court criminal case judgment or to the fact, duration, or confinement of a juvenile offender.

DPA Housekeeping Bill Adopted

With a unanimous vote in both chambers, DPA’s “Housekeeping Bill” (House Bill 264) passed the General Assembly. The bill amends various sections of KRS Chapter 31 to bring the DPA authorizing statutes in line with current practices and to create efficiencies in DPA’s operations and services. Thanks to Representative Brent Yonts (D – Greenville), the bill’s sponsor, for his great support and advocacy for this bill and for our agency.



B. Scott West
General Counsel

Here is a brief summary of the significant changes to KRS Chapter 31:

Definitions – Previously undefined terms “Department”, “Defending Attorney”, and “Plan” are defined. “Department” refers to DPA. “Defending attorney” as used in Chapter 31 refers to attorneys representing needy or indigent persons under the chapter. “Plan” refers to agreements between DPA and private attorneys for representation under the chapter.



Damon Preston
Deputy Public Advocate

“Non-Lawyer Assistants” – Prior language referring to non-attorneys in DPA as “secretarial, clerical, and other personnel” has been replaced by the term “non-lawyer assistants” to clarify that non-attorneys in DPA are acting in the capacity covered by Rule of Professional



Governor Steve Beshear signs HB 264, a public defense measure. From left to right, Ed Monahan, Damon Preston, Scott West, Tim Arnold, Glenda Edwards, Brad Holajter, and HB 264 sponsor Representative Brent Yonts, Chair of House State Government Committee. This 2014 “housekeeping” bill conforms the requirements of the Department of Public Advocacy’s authorizing statutes, KRS Chapter 31, with the current realities of the practice of public defense.

What Did Not Pass

Heroin legislation – Designated a high priority by legislators in both chambers, this bill was stalled by constitutional concerns and the House’s authorization of needle exchange programs in the bill. Important parts of the bill dealing with expanded treatment and protections for those trying to help overdose victims had wide support in both chambers. Two



Damon Preston
Deputy Public Advocate

provisions that would have made the prosecution of traffickers for homicide easier in cases of overdose deaths raised constitutional concerns. One provision would have essentially made traffickers strictly liable for the overdose death of someone who received drugs from them regardless of circumstances. The second provision would have prohibited the introduction of evidence about the overdose victim's actions, even when those actions (such as ingesting other illegal drugs prior to meeting with the defendant) contributed directly to the overdose.

Dating Violence – This bill would have expanded DVO and EPO protection to dating couples. It passed the House Judiciary committee, but was blocked by the addition of abortion-related amendments on the House floor and never reemerged.

Open Juvenile Proceedings – SB 157 would have authorized the creation of a pilot project involving a small number of counties where juvenile court proceedings would be presumptively open in cases involving dependency, neglect, or abuse, termination of parental rights, or felony-level delinquency charges. The bill passed the Senate Judiciary, Senate Chamber, and House Judiciary quickly, but stalled on the House floor.

Voting Rights for Convicted Felons – HB 70 would have resulted in a vote on a constitutional amendment to allow for the restoration of voting rights for persons with felony convictions. It passed the House and passed the Senate in a significantly amended form after receiving a much-publicized hearing with U.S. Senator Rand Paul testifying in favor of a path to restoration of voting rights. The House refused to agree to the Senate's changes and the bill died.

Expanded Expungement (except for human trafficking victims) – Five different bills were introduced to expand expungement of criminal convictions. House Bill 64, sponsored by Rep. Owens (D – Louisville) was the most comprehensive and would have allowed expungement for some Class D felonies, multiple misdemeanors occurring not as a single course of conduct, and district court felonies that were held to the grand jury but that did not result in an indictment. That bill passed the House, but was not considered by the Senate. House Bill 355, sponsored by Rep. Stone (D – Scottsville) was the most modest, allow discretionary expungement of multiple misdemeanors occurring not as a single course of conduct. HB 355 passed the House, but was amended in the Senate to include a controversial clause eliminating court costs in cases referred to county attorney traffic diversion programs. It was passed by the Senate, but not considered for concurrence in the House.

Increase of the Felony Theft Floor – House Bill 54, sponsored by Rep. Watkins (D – Paducah), would have raised the threshold for felony theft to \$1,000. Kentucky is among only 15 states that allow a felony theft prosecution for property valued at \$500 or lower. 30 states have thresholds of \$1,000 or higher.

Death Penalty Reform – It has now been almost three years since the issuance of the ABA Assessment Team's landmark report outlining deficiencies in Kentucky's death penalty system. Despite the introduction of a number of bills aimed at addressing the problems, no legislation was called for a hearing by either chamber to deal with the issues.

Summary of Senate Bill 200- 14 Reg. Sess. 200

Overview: This bill was sponsored by Senator Whitney Westerfield and is based on the recommendations of the Juvenile Justice Task Force, which can be found here: <http://www.lrc.ky.gov/lrcpubs/rm514.pdf>



Tim Arnold
Post-Trial Director

The full text of the bill can be found at the LRC website here: <http://www.lrc.ky.gov/lrcpubs/rm524.pdf>.

The bill originally eliminated status offenders and folded them under the DNA section of the Juvenile Code. That provision was eliminated based on opposition but the bill retained a provision that essentially created a diversion program for status offense cases: the Family Accountability Intervention Response (FAIR) program.

Some of the major recommendations of the Task Force were retained, such as:

- requiring evidence-based risk assessments
- requiring graduated sanctions
- placing limits on the lengths of commitment for low-level offenses
- requiring collection of data to assess the success rate of programs
- steering savings towards community-based services for youth



Renee VandenWallBake
Juvenile Post-Disposition Branch

Below is a summary of the changes contained in SB 200. The sections of the bill where the change can be found are in parenthesis. Most of the bill is effective July 1, 2015. However, provisions relating to the FAIR team, and the requirement for DJJ to promulgate a regulation which includes graduated sanctions, limitations on treatment times, etc., become effective July 15, 2014.

Changes for Status Offenders:

- I. **FAIR PROGRAM** (section 26- will be new section of KRS 605) - Effective 7/15/2014
 - Creates a team comprised of Court Designated Worker (CDW), County Attorney, DPA, interagency council member, and Cabinet member, school personnel, and law enforcement to accept referrals for services. The team is led by the CDW
 - The team will take referrals in status offense cases where the child failed diversion, failed to appear, or declined to participate in diversion. The CDW must refer a status offender who has failed diversion or declined diversion to FAIR (section 36). The team reviews the actions of the CDW and can either:
 1. Refer back to CDW for more services as recommended by the team, or
 2. Inform CDW to refer the case to the County attorney.
 - AOC is to create a graduated sanctions program for violations of diversion (Section 27).
- II. **COMPLAINTS**
 - Complaints filed by schools have to include a statement from the DPP that they have "documented the home conditions of the student and the intervention strategies attempted, as required by [KRS 158.140], and that he or she attempted to conduct a conference with the child and a parent" (Section 27).
 - The CDW must conduct a Preliminary Inquiry using a risk assessment and give child opportunity to participate. After the Inquiry, the CDW may (Section 36) determine no action may be taken, though that decision is reviewed by the FAIR team.
- III. **RUNAWAYS**

- Clarifies that if a child is a runaway, that child is "taken into custody" not arrested. (Section 40). After being taken into custody, the officer must notify the child's parents, Cabinet or DJJ, and CDW when they are picked up (Section 41).
- If ordered by the court, the child may be held in nonsecure detention for 72 hours, or secure detention for no more than 24 hours (Section 34). The court may conduct an emergency ex parte hearing to determine whether to release the child. After 72 hours if not released home, emergency custody shall be given to the Cabinet and a DNA petition shall be filed. If prior to the expiration of 72 hours the child is released from secure or nonsecure detention back home, the CDW shall initiate a status offense case.

IV. CONTEMPT

- Detention time for contempt is limited to 30 days- KRS 600.060 (section 25).

Changes for Public Offenders:

I. DIVERSION

- The CDW can now divert one felony charge with the permission of the CA that is not a sex offense or involve the use of a weapon (previously, felony offenses were wholly exempted from diversion)- KRS 605.030 (Section 28).
- The CDW is supposed to use a risk and needs assessment for diversion determinations and agreements (Section 28).
- Informal adjustments are clarified to expressly include diversion or supervision for a period not to exceed 6 months. It also clarifies that no adjudication is necessary for an informal adjustment. (Section 33).
- CDW must conduct a Preliminary Inquiry using a risk assessment and give the child opportunity to participate (Section 36). After the Inquiry, CDW may:
 - ✓ Refer to county attorney.
 - ✓ With approval of county attorney, hold a "formal conference" and enter into diversion agreement.
- A diversion agreement under this section may include restitution (Section 36).
- Use of graduated sanctions is required if not doing well with diversion. If a petition is filed, the child can ask for dismissal of the petition based on substantial compliance with diversion agreement (Section 36).
- KRS 635.010(1)(b) has been eliminated, so all provisions apply to both status and public offenses. (Section 45)

II. COMPLAINT

- Clarifies that the County Attorney has authority to dismiss a public offender petition even if there are reasonable grounds to believe the offense occurred (Section 45).
- County attorney "may not" file a petition on a misdemeanor offense where there are no prior offenses, and there is a diversion agreement in place (Section 45).

III. CONTEMPT

- Detention time for contempt is limited to 30 days- KRS 600.060 (section 25, 46).

IV. DISPOSITION

- The court must consider the risk and needs assessment when determining disposition (Section 47).

V. PROBATION

- Graduated Sanctions (Sections 5, 31): DJJ must create a protocol of "swift, certain, proportionate and graduated" sanctions for violation of the terms and conditions of probation. The protocol must define both positive and negative responses to behavior. No hearing is needed to impose a graduated sanction except if the sanction is an out-of-home placement. DJJ can only request a judicial hearing for an "out of home placement" if there is clear and convincing evidence that there are no lesser sanctions OR the child is an immediate threat to himself or others.
- Length of Probation (Section 47):
 - ✓ if a violation, no more than 30 days EXCEPT if the child is in a program that requires a longer amount of time, then up to 3 months;
 - ✓ if a misdemeanor, no more than 6 months EXCEPT if sex offense or with deadly weapon. Also if the child is in a program and needs more time in, then no more than 12 months;
 - ✓ if a D felony, no more than 12 months EXCEPT if sex offense or with deadly weapon;
 - ✓ for all other offenses, can be probated until 18.
- Violation of Probation (Section 47):
 - ✓ Graduated sanctions must be imposed.
 - ✓ No commitment to DJJ for violations of probation, UNLESS commitment was suspended at disposition.
 - ✓ Child can be sent to an "out-of-home placement" for up to 30 days for violating probation but only when there is clear and convincing evidence that there are no lesser sanctions OR the child is an immediate threat to himself or others.

VI. COMMITMENT

- Risk and Needs Assessment: DJJ must create a validated risk & needs assessment that is used "prior to disposition and at regular intervals thereafter to determine risk levels and to identify intervention needs and is [used] to objectively guide placement and the length and type of treatment for each child committed to the department or probated to the department." (Section 5). That risk assessment should be used to determine placement upon commitment (Section 31). The court must consider the risk assessment at disposition (Section 38)
- Limitation on Commitment: A child adjudicated of a misdemeanor or D felony CANNOT be committed UNLESS they have 3 prior public offense adjudications or 4 other adjudications on violations OR the offense involved a deadly weapon or was a sex offense (Section 47).
- Court can probate/suspend commitment but the length of time cannot exceed those for probation (section 47). Once commitment is probated, the court can revoke the probated/suspended commitment and commit the child. The length of commitment is the length discussed below and the child does get credit for the amount of time in any out-of-home placement that was part of the probated/suspended commitment. If the child is over 17.5, probated/suspended commitment cannot exceed 1 year or past 19th birthday
- Length of Commitment: (section 5, 47):
 - ✓ Misdemeanor: IF had 3 prior public offense adjudications/4 prior adj for violations, THEN 4-12 months (section 5, 47).

- ✓ D felony: IF had 3 prior public offense adjudications/4 prior adj for violations, THEN 8-18 months (section 5, 47).
 - ◆ EXCEPTIONS for the above:
 - if a sex offense under Chapter 510.
 - if involved a "deadly weapon."
 - ✓ All other offenses: up to 18 years of age:
 - ◆ except if declared juvenile sex offender, then commitment is determined under that section of the code (which was not changed by SB 200).
 - ✓ The minimums provided above can be extended up to the maximum only if DJJ goes through an ATR process and DJJ determines longer commitment is "necessary for completion of treatment."
 - ✓ Note that the provision allowing commitment up to age 21 for independent living purposes is still present in the revised code as well as the section for commitment for 1 year if the child is over 17.5.
- As of July 15, 2016, 50% of DJJ money must be spent on evidence-based practices, increased to 75% by 2018 (Section 4).
 - DJJ has to come up with a way to measure outcomes of their treatment programs, do audits, and correct those programs that are not evidence-based (Section 5).
 - DJJ has to track juvenile recidivism (Section 5).
 - The bill moves and expands the requirements for the Division of Placement Services within DJJ which is in charge of classification, evaluation, placement, and transportation of juveniles (section 6).
 - The Kentucky Department of Education has to collect data from local schools on incidences resulting in charges or police complaint (section 11).
 - Tuition waivers are now available to youth who were committed for only 12 months instead of 2 years (KRS 164.2847(2)(b)).
 - KRS 600.010 intent section was amended to include (Section 23):
 - ✓ Recognition of the child's right to treatment in evidence-based programs, and
 - ✓ Acknowledgment that "out-of-home placement should only be utilized for youth who are high-risk or high-level offenders, and that low-risk, low-level offenders should be served through evidence-based programming in their community." This expands upon pre-existing language requiring placement in the least restrictive alternative.
 - AOC is required to track data from complaints, what happened to them, what happened with diversion, and how many cases are being amended to DNA cases (section 27).

VII. POST-DISPOSITION

- DJJ has to create a graduated sanctions program for kids on supervised placement conditions (sections 5, 50).

Other Miscellaneous Changes:

- The law creates a Juvenile Justice Oversight Council to make additional recommendations for changes and oversee the implementation of the bill (Section 3).
- The Justice Cabinet is to create fiscal incentives to create alternatives to out-of-home placements with the goal of reducing detention and PO commitments (Section 2) .

Length of Probation or Commitment based on type of offense under SB 200

| | VIOLATION (offense only punishable by a fine) | MISDEMEANOR EXCEPT IF SEX OFFENSE OR OFFENSE WITH DEADLY WEAPON | D FELONY, EXCEPT IF SEX OFFENSE OR OFFENSE WITH DEADLY WEAPON | ALL OTHER OFFENSES EXCEPT CHILDREN DESIGNATED JUVENILE SEX OFFENDERS |
|--------------------------------------|--|--|--|---|
| Probation | 30 days- 3 months | 6-12 months | 12 months | Up to age 18 |
| Violation of probation | 30 days in "out of home" placement- NOT COMMITMENT | 30 days in "out of home" placement- NOT COMMITMENT | 30 days in "out of home" placement- NOT COMMITMENT | 30 days in "out of home" placement- NOT COMMITMENT |
| Suspended/probated commitment | 30 days- 3 months | 6-12 months | 12 months | Up to age 18 |
| Length of Commitment | NONE AUTHORIZED | Not authorized unless 3 prior offenses | Not authorized unless 3 prior offenses | Up to age 18 |

**Kentucky is Increasing Pretrial Release Safely
Millions Saved by Counties**

Kentucky's national pretrial release reputation that includes a model pretrial release agency using evidence based, validated risk assessments is providing high value for Kentucky taxpayers.

As a result of the model work of the Kentucky Court of Justice's Division of Pretrial Services combined with the legislative changes in 2011's HB 463 on pretrial release, and defenders working to be at first appearances providing pretrial release advocacy, county jails are saving millions in the daily costs of feeding, clothing and sheltering inmates - money which can be diverted to other jail or county uses - as the release rate has increased by 3% statewide with constant appearance and improved safety rates.



Ed Monahan
Public Advocate

\$12 - \$15 million per year savings or a \$36-\$45 million savings over 3 years. This money can be used for other jail or county priorities.

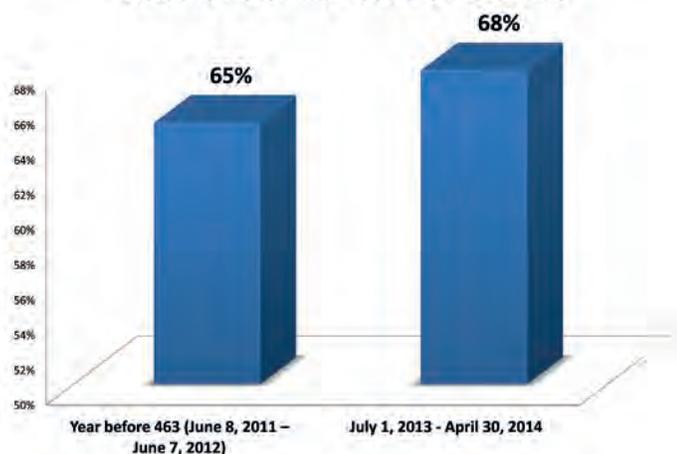
Pretrial release provides safety benefits beyond money saved

And there are significant benefits beyond just financial savings. Safely releasing low and moderate risk arrestees pretrial is strongly correlated to reduced sentence lengths and future criminal activity.

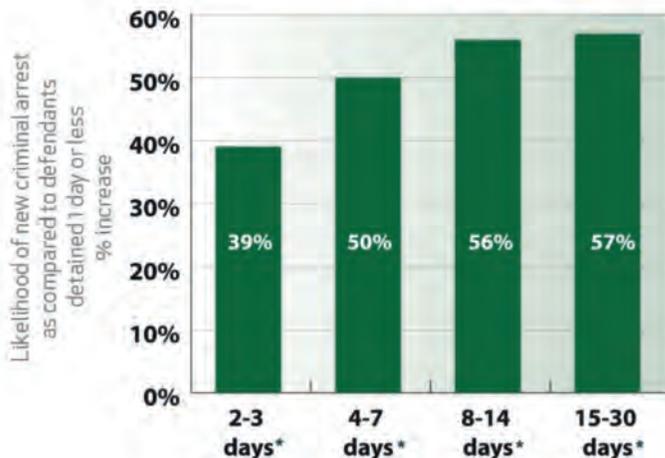
The Laura and John Arnold Foundation (LJAF) study *Pretrial Criminal Justice Research* (November 2013) has "thrown new light on how critical the earliest decisions made in the criminal justice system may be for public safety, fairness, and cost effectiveness."

"Using statewide data from Kentucky, this study uncovered strong correlations between the length of time low and moderate risk defendants were detained before trial, and the likelihood that they would reoffend in both the short and long term. Even for relatively short periods behind bars, low and moderate risk defendants who were detained for more days were more likely to commit additional crimes in the pretrial period - and were also more likely to do so during the two years after their cases ended."

After Implementation of HB 463, Pretrial Release Rates Increase 3% Statewide

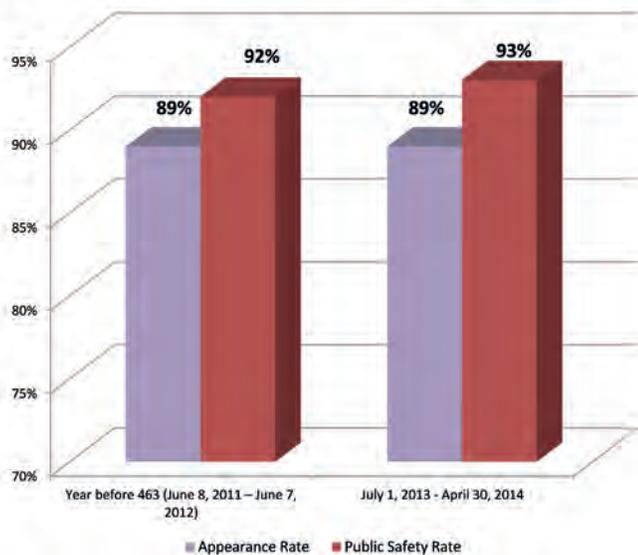


Increase in New Criminal Arrest Low-Risk Defendants

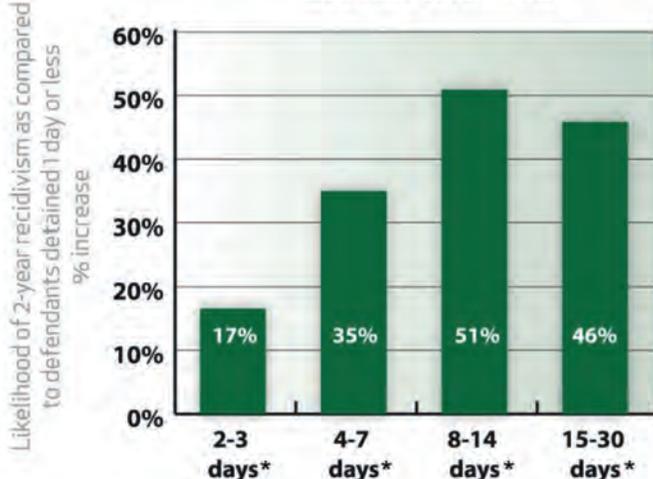


* = statistically significant at the .01 level or lower

After Implementation of HB 463 Appearance Rate Remains Steady and Public Safety Rate Increases 1%



Increase in 2-Year Recidivism Low-Risk Defendants



* = statistically significant at the .01 level or lower

Counties save millions

Because of HB 463's pretrial release changes, counties have saved significant jail costs. Conservatively, at \$4 - \$5 million per percent, there is a

More savings possible

Most Kentucky jails currently house arrestees who are low and moderate risk. If these persons were released, counties would save even more money and future criminal activity would be reduced.

**Kentucky Department of Public Advocacy
Courtroom Manual Series**

We all have our own favorite legal reference works. Most Kentucky lawyers are familiar with Professor Lawson's *Kentucky Evidence Law Handbook* or Cooper's *Kentucky Instructions to Juries*. I began criminal defense practice with an attorney who loved to quote from Milward's *Reversible Error in Kentucky Criminal Cases*. The theory was that being able to tell a judge that a certain decision would likely result in reversal was more likely to get the judge to reconsider.



Glenn McClister
Staff Attorney



What makes one reference work a favorite may depend on a number of different factors: reputation, recommendations from others, what other attorneys use, what the judge prefers, or just what happens to be available in the office library. Still, what if one could choose a reference work the way a golfer chooses a club or

the way a mechanic chooses a tool? What if some reference works were specially designed to be the legal equivalent of "the right tool for the right job" for attorneys working on their feet in the courtroom day after day? The new DPA Courtroom Manual Series is designed to do just that.

The publications in the *DPA Courtroom Manual Series* all have the following features in common:

1. **Specialization:** All of the manuals focus on the rules, procedures, statutes and court opinions relevant to the practice of criminal law. There is no need to wade through all the material on civil law and practice which is included in most other types of reference works.
2. **Focus:** Unlike reference works which may include analysis and explanations of how the rules and procedures work or the theory and history behind the crafting of certain rules, statutes or opinions, the Courtroom Manuals focus on collecting published opinions in each important area of the law.
3. **Ease of Use:** The Courtroom Manuals are designed to be long enough to be useful but short and concise enough to be easy to use. Each manual is designed to be a quick reference either in the tranquility of

the office or the clamor of a trial. Moreover, the content of each manual can be mastered in a day or two and then be ready at the fingertips of an attorney needing to give a case summary and citation on his or her feet.

4. **Responsiveness:** Since the manuals are all revised regularly with input from our attorneys all over the state, they reflect not only the broad lie of the land in established Kentucky caselaw, but also include the latest changes in law as well as the latest legal issues that are appearing in courts across the Commonwealth. The Manuals not only include the settled law of Kentucky but are also a guide to the most recent innovations in best practices as well.
5. **Accuracy:** Although most published cases continue to be good law for years, the Courtroom Manuals are updated and revised often enough to include the most important new cases interpreting new legislation, extending previous rulings, or adopting new and different approaches to matters previously settled.
6. **Impartiality:** The Courtroom Manuals are not partisan guides to defense analysis and argumentation. The Manuals are available to judges, legislators, prosecutors, and defense attorneys throughout the state. They are designed to reflect accurately the current state of the law as it is, not how some group or another may wish it to be.
7. **Accessibility:** We say to our new public defenders, with their huge caseloads, "You do not have the time to be ignorant of the law." Our Courtroom Manuals reflect that concern. Each manual is designed to be a concise introduction to the specific area of the law concerned. Aside from reading the black letter law itself, there is simply no better or more efficient way to become quickly proficient in any area of the criminal law than by reading one of these manuals from cover to cover.
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The University of Louisville Louis D. Brandeis School of Law
11:45 a.m.- 5:00 p.m.



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