

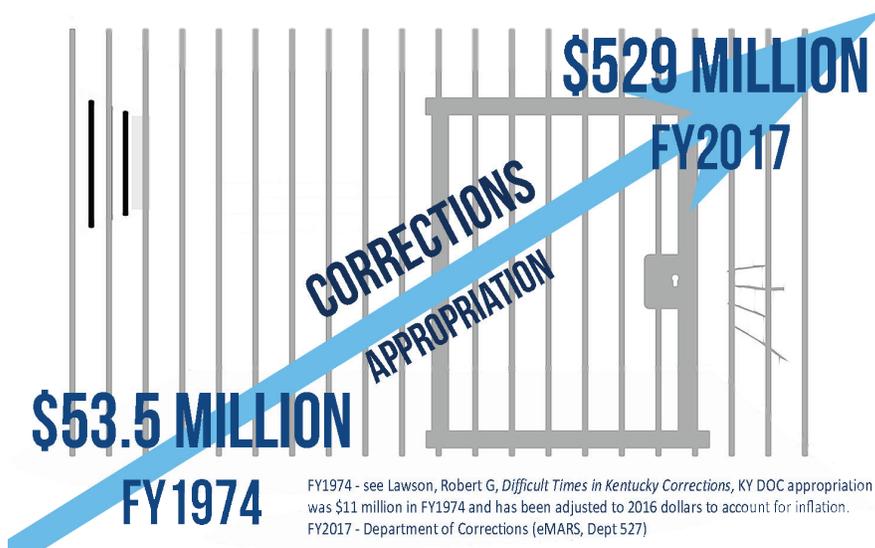
The Advocate



dpa.ky.gov

February 2017 (revised)

CRIMINAL JUSTICE FACTS



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

AN OVERVIEW OF CRIME AND INCARCERATION

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

From 1985- 2015

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

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

From 1985- 2015

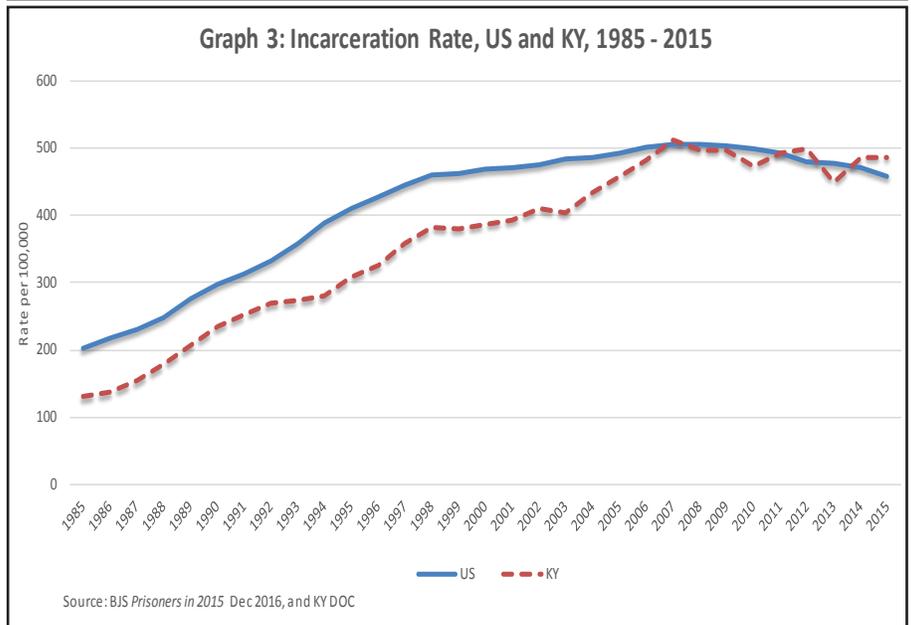
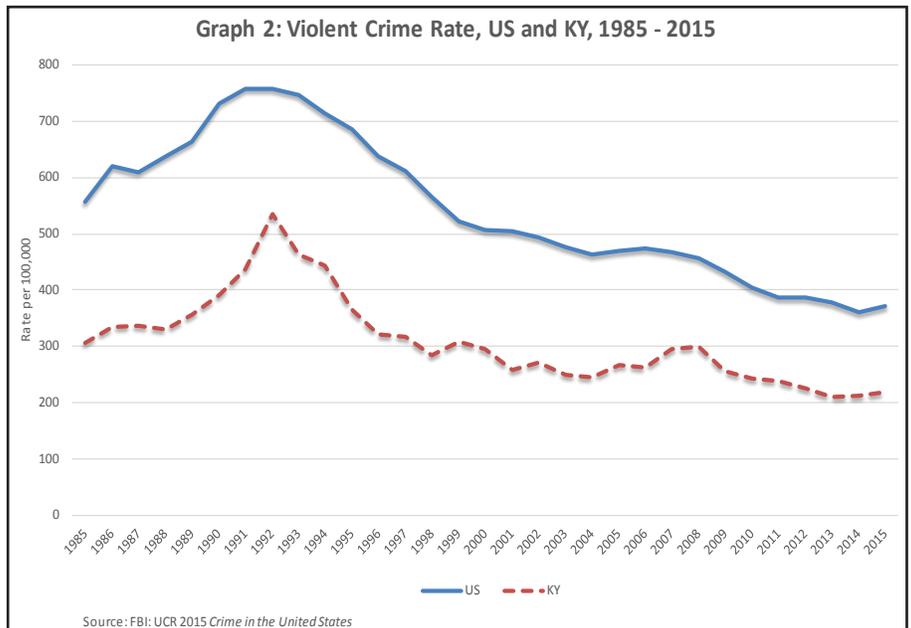
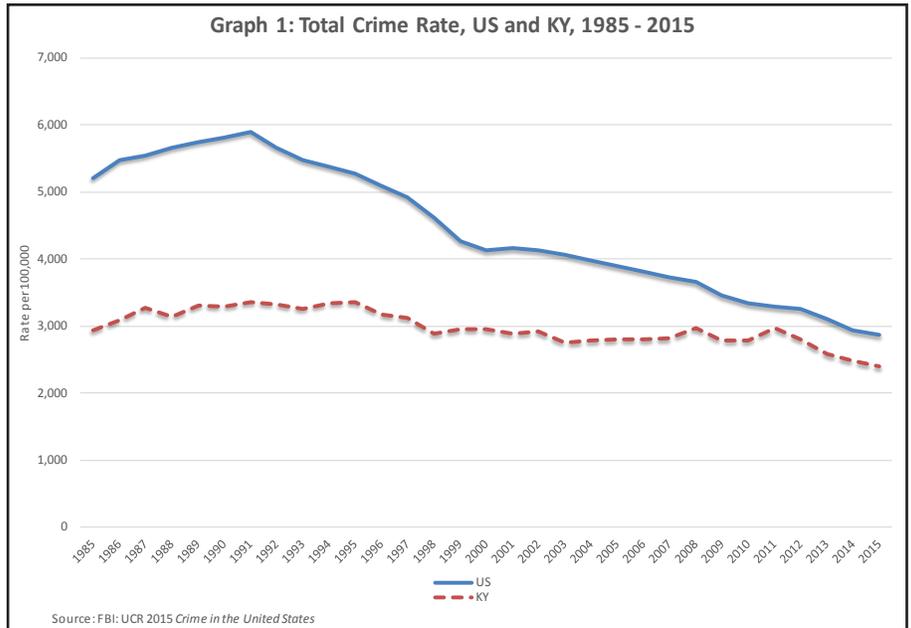
- The United States imprisonment rate increased 127%, more than doubling
- The Kentucky imprisonment rate increased 271%, nearly quadrupling

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

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

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

In the FBI compilation of this data, property crimes have been given more weight as most crime is property related. Violent crime includes murder and non-negligent manslaughter, rape, robbery, and aggravated assault. Property crime includes burglary, larceny-theft, motor vehicle theft, and arson. The method of data collection is based on the Hierarchy Rule, where in the case of a multiple-offense criminal incident, only the most serious offense is counted.



Despite Kentucky’s climbing incarceration rate, there has been a decline in the crime rate. This decline is reflected by the Administrative Office of the Courts caseload data from calendar year 2005 to 2015, as shown in Table 1 (page 3) and Graph 5 (page 3). From calendar year 2005 to 2015, the total of circuit criminal cases, district misdemeanor cases and district felony cases decreased by 43,194, or 17%. Over the same period however, there has been a 3% increase in circuit criminal case filings as reported by the Administrative Office of the Courts. Circuit criminal cases peaked in calendar year 2012 and have decreased annually since that time. District misdemeanor and felony cases have decreased by 44,265, or 20% since 2005.

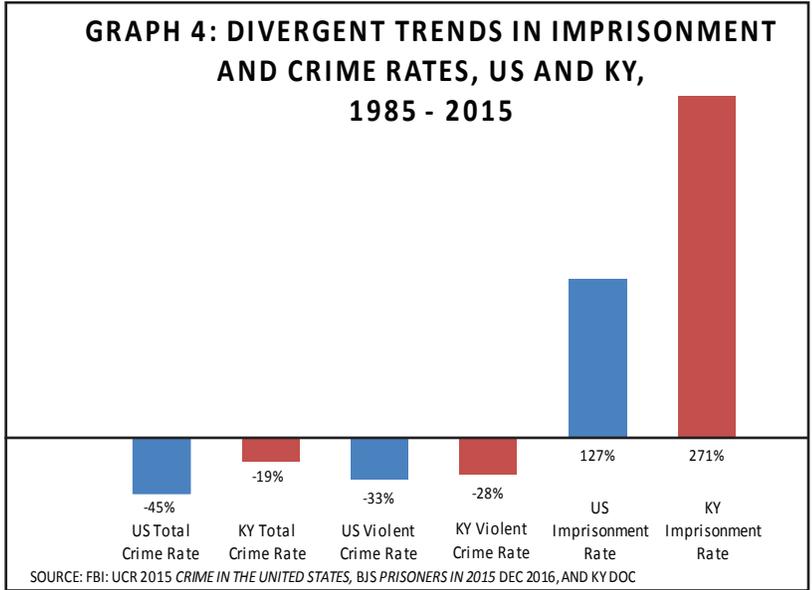


Table 1 (page 3) shows the number of Circuit Court criminal case filings and District Court Felony and Misdemeanor case filings recorded by Administrative Office of the Courts from calendar year 2005 through 2015. The numbers presented in Table 1 (page 3) do not include the District Court Prepayable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

Graph 5 (page 3) shows the overall decrease in cases since 2005, with the 10-year high in 2007 at over 250,000 cases to the low of less than 207,000 cases in 2015.

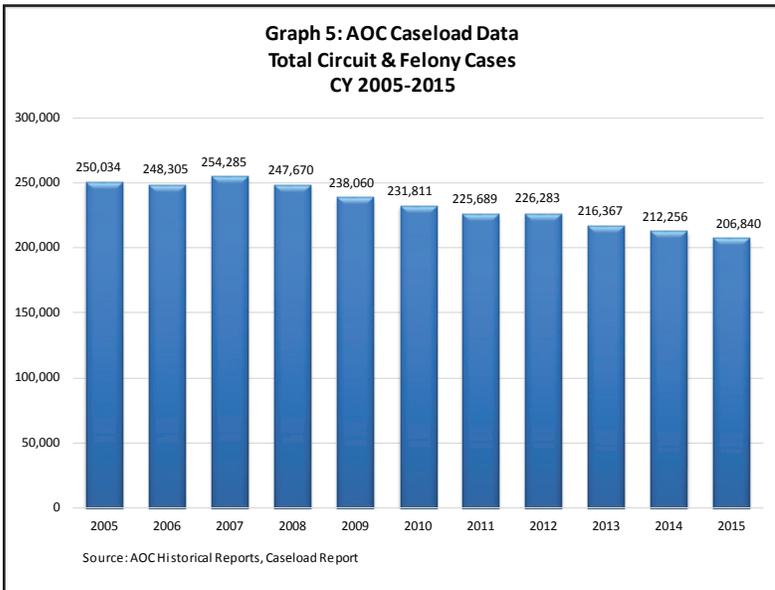


Table 1: AOC Caseload Data, Circuit Criminal and District Misdemeanor & Felony Cases, CY 2005- 2015

	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	32,072	180,184	212,256
2015	32,031	174,809	206,840

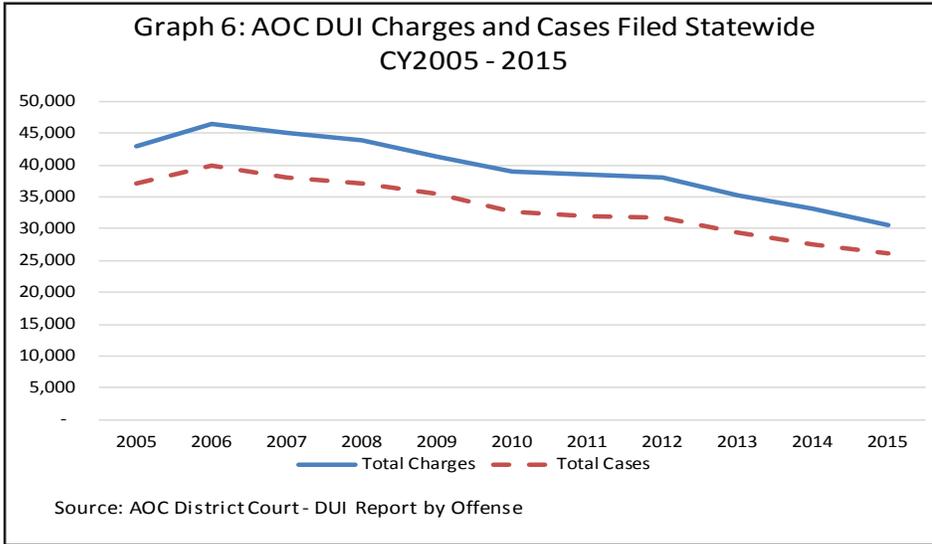
Source: AOC Historical Reports, Caseload Report

Table 2: US and Kentucky Crime Rate Trends Including Kentucky and US Incarceration Rates per 100,000 People						
	Crime				Incarceration	
Year	US Total	KY Total	US Violent	KY Violent	KY Prison	US Prison
1985	5,207.1	2,947.2	556.6	305.5	131.1	202
1986	5,480.4	3,092.2	620.1	334.4	137.7	217
1987	5,550.0	3,270.0	609.7	337.8	155.8	231
1988	5,664.2	3,134.8	637.2	330.1	178.5	247
1989	5,741.0	3,317.1	663.1	356.9	206.9	276
1990	5,820.3	3,299.4	731.8	390.4	235.8	297
1991	5,897.8	3,358.3	758.1	438.0	252.1	313
1992	5,660.2	3,323.5	757.5	535.5	269.7	332
1993	5,484.4	3,259.7	746.8	462.7	274.1	359
1994	5,373.5	3,337.2	713.6	444.0	280.6	389
1995	5,274.9	3,351.7	684.5	364.7	307.6	411
1996	5,087.6	3,166.3	636.6	320.5	326.5	427
1997	4,927.3	3,127.0	611.0	316.9	358.8	444
1998	4,615.5	2,889.4	566.4	284.0	382.7	461
1999	4,266.5	2,953.4	523.0	308.3	379.2	463
2000	4,124.8	2,959.7	506.5	294.5	387.2	469
2001	4,162.6	2,896.8	504.5	258.3	393.1	470
2002	4,125.0	2,926.5	494.4	271.4	409.3	476
2003	4,067.0	2,758.6	475.8	248.5	402.8	483
2004	3,977.3	2,782.6	463.2	245.1	434.6	487
2005	3,900.5	2,797.8	469.0	266.8	457.2	492
2006	3,808.1	2,807.5	473.6	263.0	482.0	501
2007	3,730.4	2,813.3	466.9	295.0	513.0	506
2008	3,669.0	2,964.3	457.5	298.9	497.9	506
2009	3,465.5	2,779.6	431.9	255.0	497.9	504
2010	3,350.4	2,795.2	404.5	243.9	473.4	500
2011	3,292.5	2,965.5	387.1	239.6	492.9	492
2012	3,255.8	2,800.4	387.8	224.9	499.1	480
2013	3,112.4	2,584.9	379.1	210.9	450.0	477
2014	2,946.1	2,479.3	361.6	211.6	486.2	471
2015	2,870.0	2,396.3	372.6	218.7	486.4	458

Source: FBI: UCR 2015 Crime in the United States, BJS Prisoners in 2015 Dec 2016, and KY DOC

DUI CASES ARE DECLINING

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



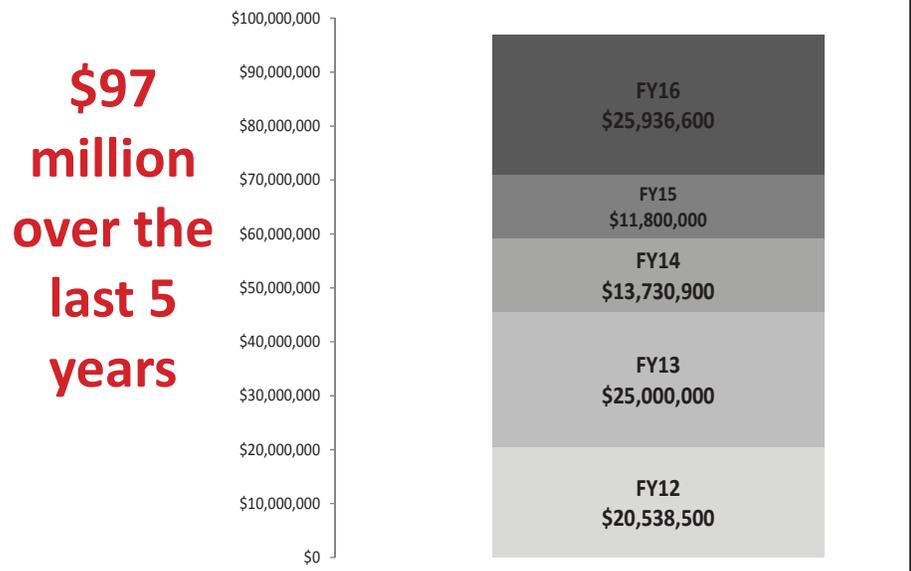
	Total Charges	Total Cases
2005	42,994	37,008
2006	46,456	39,826
2007	45,088	38,130
2008	43,917	37,143
2009	41,254	35,394
2010	38,923	32,649
2011	38,577	32,034
2012	38,025	31,818
2013	35,292	29,315
2014	33,020	27,507
2015	30,518	26,059

Source: AOC District Court - DUI Report by Offense

INCREASE IN IMPRISONMENT IS COSTLY

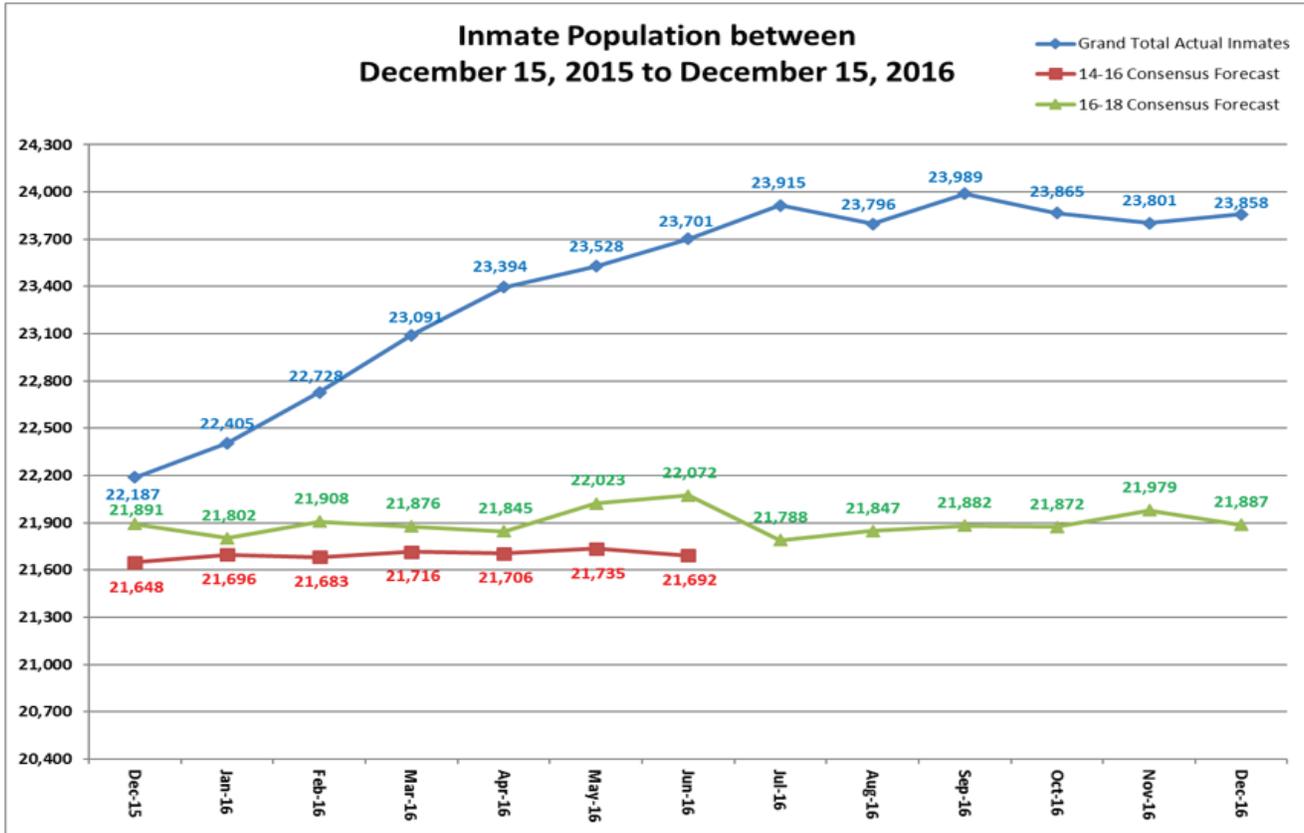
In Kentucky, the incarcerated population is growing annually, despite the falling crime rate. The increasing inmate population in Kentucky leads to additional government expenses. Figure 1 (page 5) shows the additional amounts for FY2012-2016 required by the Kentucky Department of Corrections as a result of the prison population being higher than the projections. Graph 7 (page 6), showing the Inmate Population between December 2015 and December 15, 2016, is based on a monthly report provided directly by the Department of Corrections. Over the one-year period, there was an 8% increase to the inmate population with a high of 23,989 inmates in September 2016 and the lowest level of 22,187 in December 2015. At the lowest point in December 2015, there were 296 more inmates versus the FYs 16-18 Consensus Forecast. The greatest difference in forecast versus actual inmates was in July 2016 when there were 2,127 more inmates than the consensus forecast.

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



Source: Legislative Research Commission, Budget Review

Graph 7: Actual Inmate Population versus Projection



The 2014-16 biennial budget consensus blended population projections are used for July 2014 – forward. FY16-18 consensus blended population (adjusted for HB463 enacted) projections are included for December 2015 forward.

NONVIOLENT PERSISTENT FELONY OFFENDER COSTS ARE HIGH

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

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

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

Cost to Incarcerate Nonviolent PFO	
Nonviolent PFO Incarcerated	3,054
Daily Cost to Incarcerate	\$61.09
Average sentence (years)	20.3
Cost per day	\$186,569
Cost per year	\$68,097,634
Cost for all Nonviolent PFO, serving full length of average sentence	\$1,382,381,968

Table 4: Facts Regarding Persistent Felony and Violent Offenders (as of July 10, 2016)

	TOTAL	PFO 1st Only	PFO 2nd only	PFO 1st AND 2nd	Total PFO	Violent Offender	Violent PFO
Persons Currently Incarcerated	23301	1065	2369	304	3738	5661	684
Avg Sentenced 2004 - 2015	11618	174	612	9	795	500	41
Sentenced in 2015	12076	167	536	8	711	594	47
Sentenced in 2016*	6372	77	269	7	353	300	22
Avg Sentence Length Of all Persons Incarcerated	22350 (13 years) 919 (Life) 32 (Death)	984 (27 years) 78 (Life) 3 (Death)	2302 (20 years) 65 (Life) 2 (Death)	292 (38 years) 12 (Life) 0 (Death)	3578 (23 years) 155 (Life) 5 (Death)	4871 (21 years) 769 (Life) 21 (Death)	570 (37 years) 111 (Life) 3 (Death)
Average Age of All Incarcerated Persons over 65 years of age	36	43	38	44	40	40	43
	423	24	24	8	56	252	23
*2016 Data from 1/1/2016 to 7/10/2016							

	TOTAL	PFO 1st Only	PFO 2nd only	PFO 1st AND 2nd	Total PFO	Violent Offender	Violent PFO
Capital Offense	627 (40 years) 625 (Life) 25 (Death)	20 (48 years) 37 (Life) 3 (Death)	32 (68 years) 32 (Life) 1 (Death)	4 (47 years) 3 (Life) 0 (Death)	56 (59 years) 72 (Life) 4 (Death)	620 (40 years) 582 (Life) 20 (Death)	56 (59 years) 64 (Life) 3 (Death)
Class A Felony	400 (42 years) 240 (Life) 7 (Death)	23 (46 years) 22 (Life) 0 (Death)	23 (54 years) 11 (Life) 1 (Death)	2 (34 years) 2 (Life) 0 (Death)	48 (49 years) 35 (Life) 1 (Death)	362 (37 years) 160 (Life) 1 (Death)	41 (46 years) 21 (Life) 0 (Death)
Class B Felony	5176 (22 years) 50 (Life) 0 (Death)	332 (43 years) 18 (Life) 0 (Death)	542 (34 years) 22 (Life) 0 (Death)	112 (54 years) 7 (Life) 0 (Death)	986 (40 years) 47 (Life) 0 (Death)	2574 (22 years) 26 (Life) 0 (Death)	386 (38 years) 25 (Life) 0 (Death)
Class C Felony	6727 (12 years) 2 (Life) 0 (Death)	302 (19 years) 1 (Life) 0 (Death)	902 (17 years) 0 (Life) 0 (Death)	108 (30 years) 0 (Life) 0 (Death)	1312 (19 years) 1 (Life) 0 (Death)	689 (10 years) 1 (Life) 0 (Death)	55 (17 years) 1 (Life) 0 (Death)
Class D Felony	8848 (6 years) 1 (Life) 0 (Death)	306 (14 years) 0 (Life) 0 (Death)	799 (10 years) 0 (Life) 0 (Death)	66 (24 years) 0 (Life) 0 (Death)	1171 (12 years) 0 (Life) 0 (Death)	625 (6 years) 0 (Life) 0 (Death)	32 (11 years) 0 (Life) 0 (Death)
Class B Involving Death or Serious Injury	2735 (23 years) 228 (Life) 5 (Death)	171 (38 years) 28 (Life) 1 (Death)	196 (36 years) 26 (Life) 0 (Death)	41 (57 years) 4 (Life) 0 (Death)	408 (39 years) 58 (Life) 1 (Death)	2735 (23 years) 228 (Life) 5 (Death)	408 (39 years) 58 (Life) 1 (Death)
Comission or Attempt Comission KRS 510	2622 (20 years) 171 (Life) 5 (Death)	99 (43 years) 29 (Life) 1 (Death)	150 (32 years) 16 (Life) 0 (Death)	19 (67 years) 3 (Life) 0 (Death)	268 (38 years) 48 (Life) 1 (Death)	2319 (18 years) 127 (Life) 2 (Death)	211 (38 years) 36 (Life) 0 (Death)
Use of Minor In Sexual Performance (KRS 531.310)	111 (31 years) 8 (Life) 0 (Death)	4 (141 years) 1 (Life) 0 (Death)	3 (40 years) 0 (Life) 0 (Death)	0	7 (97 years) 1 (Life) 0 (Death)	81 (22 years) 7 (Life) 0 (Death)	3 (45 years) 0 (Life) 0 (Death)
Promoting Minor In Sexual Performance (KRS 531.320)	34 (24 years) 4 (Life) 0 (Death)	1 (34 years) 1 (Life) 0 (Death)	0	0	1 (34 years) 1 (Life) 0 (Death)	24 (20 years) 3 (Life) 0 (Death)	1 (34 years) 0 (Life) 0 (Death)
Unlawful Transaction w/ Minor 1st Degree (KRS 530.064(1)(a))	100 (16 years) 4 (Life) 0 (Death)	2 (14 years) 2 (Life) 0 (Death)	1 (16 years) 0 (Life) 0 (Death)	0	3 (14 years) 2 (Life) 0 (Death)	80 (16 years) 4 (Life) 0 (Death)	2 (13 years) 2 (Life) 0 (Death)
Human Trafficking (KRS 529.100)	3 (16 years) 0 (Life) 0 (Death)	0	0	0	0	3 (16 years) 0 (Life) 0 (Death)	0
Criminal Abuse (KRS 508.100)	154 (19 years) 6 (Life) 0 (Death)	2 (30 years) 0 (Life) 0 (Death)	7 (16 years) 1 (Life) 0 (Death)	1 (32 years) 0 (Life) 0 (Death)	10 (20 years) 1 (Life) 0 (Death)	149 (19 years) 6 (Life) 0 (Death)	8 (22 years) 1 (Life) 0 (Death)
Burglary I accompanied by Assault or Attempted Assault	112 (34 years) 24 (Life) 1 (Death)	12 (59 years) 3 (Life) 0 (Death)	15 (44 years) 1 (Life) 0 (Death)	4 (126 years) 1 (Life) 0 (Death)	31 (60 years) 5 (Life) 0 (Death)	94 (31 years) 24 (Life) 1 (Death)	24 (54 years) 5 (Life) 0 (Death)
Burglary I accompanied by Kidnapping or Attempted Kidnapping	60 (52 years) 8 (Life) 1 (Death)	9 (109 years) 0 (Life) 0 (Death)	4 (35 years) 0 (Life) 0 (Death)	3 (133 years) 0 (Life) 0 (Death)	16 (95 years) 0 (Life) 0 (Death)	52 (49 years) 8 (Life) 1 (Death)	12 (92 years) 0 (Life) 0 (Death)
Robbery in the First Degree	1620 (28 years) 332 (Life) 19 (Death)	143 (56 years) 32 (Life) 2 (Death)	176 (51 years) 35 (Life) 2 (Death)	54 (61 years) 10 (Life) 0 (Death)	373 (54 years) 77 (Life) 4 (Death)	1311 (25 years) 263 (Life) 11 (Death)	258 (45 years) 49 (Life) 3 (Death)

PAROLE IN KENTUCKY

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

Figure 2: Parole Rates

		Risk Level Score				
		Level I (Lowest Risk)	Level II	Level III	Level IV (Highest)	
Offense Severity Index	Low	82%	69%	48%	29%	Overall Low 63%
	Moderate	74%	58%	41%	14%	Overall Moderate 49%
	High	49%	36%	23%	9%	Overall High 32%
	Highest	22%	31%	22%	6%	Overall Highest 25%
		Overall Level I 61%	Overall Level II 39%	Overall Level III 37%	Overall Level IV 15%	

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

Figure 3: Total Parole Hearings by Risk Level and Severity Index

		Risk Level Score				
		Level I (Lowest Risk)	Level II	Level III	Level IV (Highest)	
Offense Severity Index	Low	296 4%	1,489 21%	760 11%	103 1%	37% Total Low
	Moderate	216 3%	838 12%	714 10%	200 3%	28% Total Moderate
	High	375 5%	900 13%	664 9%	174 2%	30% Total High
	Highest	129 2%	139 2%	89 1%	16 0%	5% Total Highest
		14% Total Level I	47% Total Level II	31% Total Level III	7% Total Level IV	

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

What this conclusion misses is the information from Figure 3 (page 8), which shows that only 7% of the inmates considered for parole fall into the Highest risk category and only 5% have the Highest Severity level.

Figure 4 (page 9) shows the risk and severity levels of the 3,695 inmates who were denied parole. Over 50% of the inmates denied parole are Lowest Risk (11%) or Low-Moderate Risk (41%). Similarly, about 54% are Low Severity (27%) or Moderate Severity (27%) Offense Level. Over 25% of those denied parole are either Low or Low-Moderate in both categories.

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

Figure 5 (page 9) shows the frequency of certain parole rate ranges for inmates with the lowest evidence-based, validated risk assessment level scores from January 2013 to October 2016 in ascending order. The most frequent parole rate is 63 – 69%, which occurred in 21 months out of the 46 available in the data set. In only three months were the parole rates above 76%, and in five months the parole rates were less than 56%.

Figure 4: Unparoled Inmates

		Risk Level Score				
		Level I (Lowest Risk)	Level II	Level III	Level IV (Highest)	
Offense Severity Index	Low	54 1%	463 13%	392 11%	73 2%	Total Low 27%
	Moderate	56 2%	352 10%	419 11%	172 5%	Total Moderate 27%
	High	190 5%	572 15%	513 14%	158 4%	Total High 39%
	Highest	101 3%	96 3%	69 2%	15 0%	Total Highest 8%
		Total Level I	Total Level II	Total Level III	Total Level IV	
		11%	41%	38%	11%	

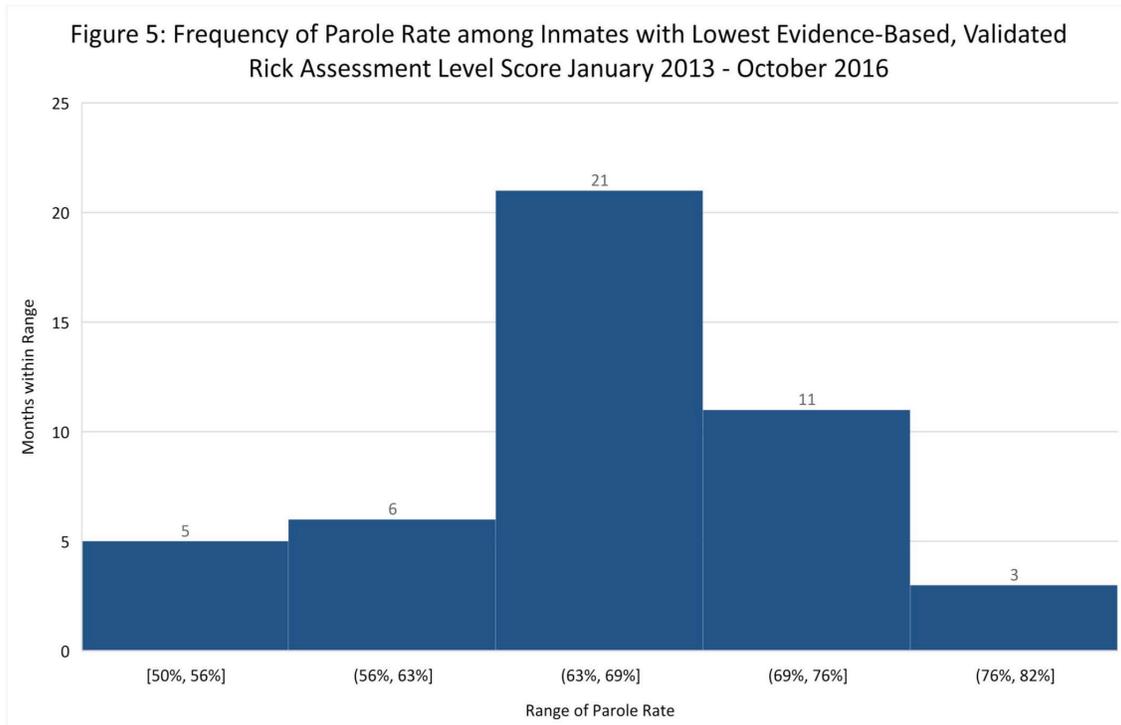
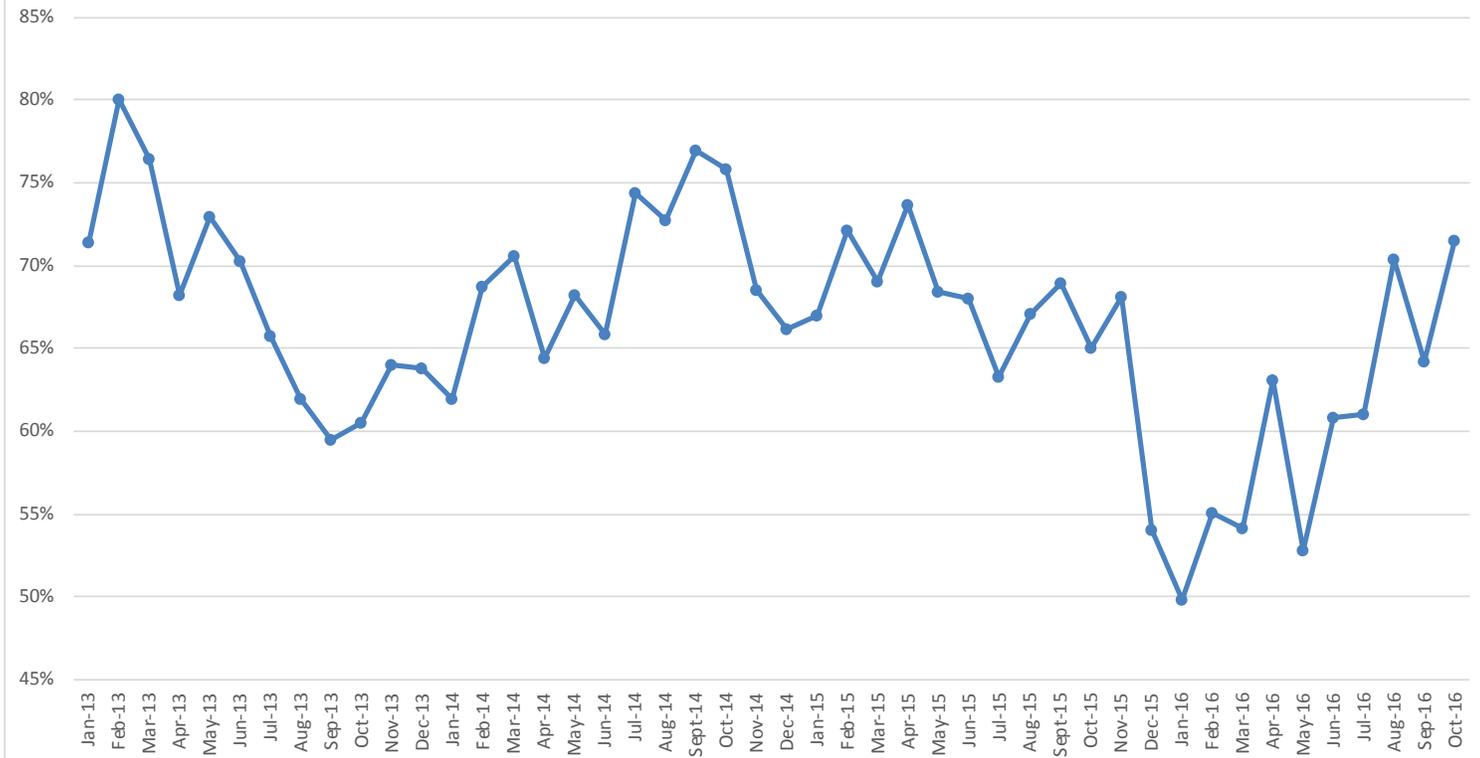


Table 5: Parole Rate of Inmates with the Lowest Evidence-Based, Validated Risk Assessment Level Score January 2013 - October 2016							
2013		2014		2015		2016	
Jan	71.4%	Jan	61.9%	Jan	67.0%	Jan	49.8%
Feb	80.0%	Feb	68.8%	Feb	72.1%	Feb	55.1%
Mar	76.4%	Mar	70.6%	Mar	69.1%	Mar	54.1%
Apr	68.2%	Apr	64.4%	Apr	73.7%	Apr	63.1%
May	73.0%	May	68.2%	May	68.4%	May	52.8%
Jun	70.2%	Jun	65.8%	Jun	68.0%	Jun	60.8%
Jul	65.7%	Jul	74.3%	Jul	63.2%	Jul	61.0%
Aug	61.9%	Aug	72.7%	Aug	67.1%	Aug	70.4%
Sep	59.5%	Sep	77.0%	Sep	68.9%	Sep	64.2%
Oct	60.5%	Oct	75.8%	Oct	65.0%	Oct	71.5%
Nov	64.0%	Nov	68.5%	Nov	68.1%		
Dec	63.8%	Dec	66.2%	Dec	54.0%		

Graph 8: Parole Rate of Inmates with the Lowest Evidence-Based, Validated Risk Assessment Level
January 2013 - October 2016



DEFENDER CASE APPOINTMENTS

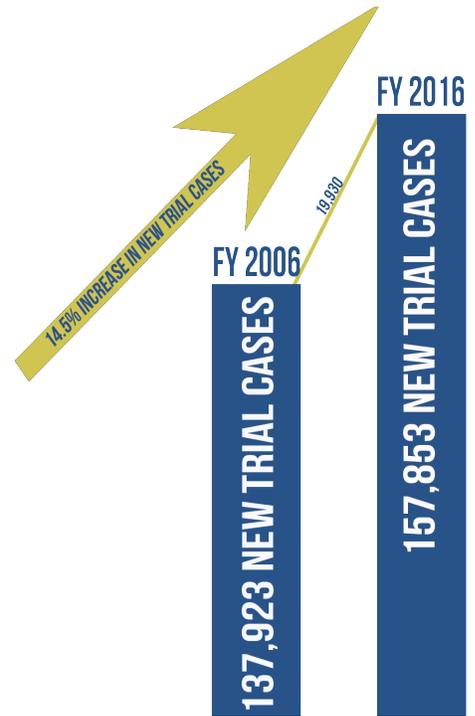
Courts appointed DPA to 2.9% more cases in Fiscal Year 2016 as compared to the prior year. As shown in Figure 6 (page 11), from FY 2006 to FY 2016, there was a 14.5% increase in court appointed cases – there were more than 19,000 new trial cases appointed to DPA in FY2016 compared to FY2006.

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

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

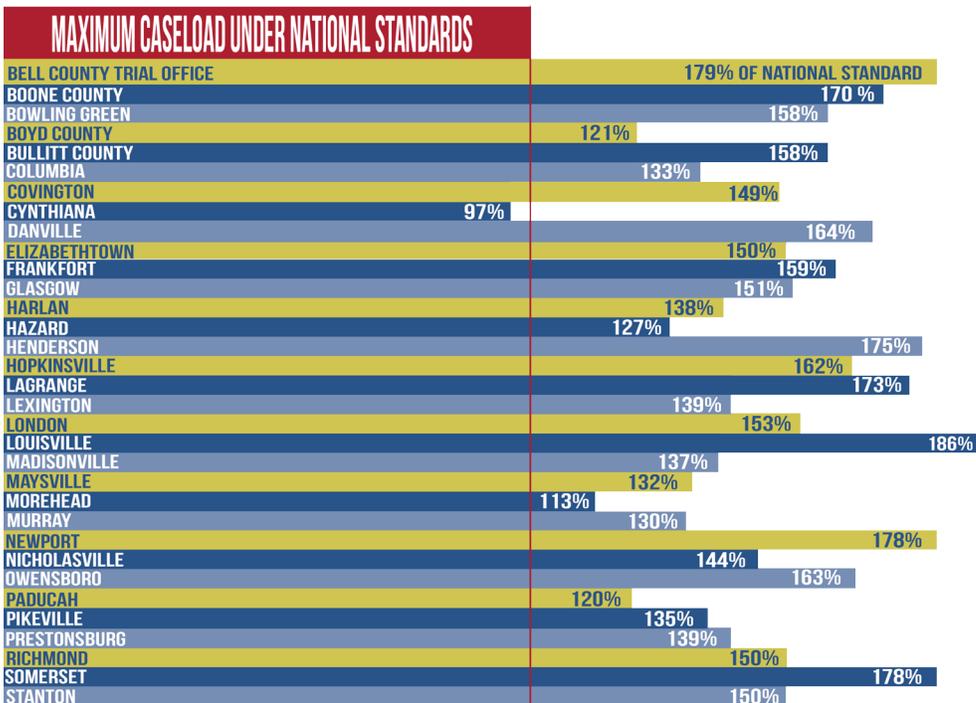
- Interview and counsel clients;
- Seek pretrial release of incarcerated clients;
- Conduct necessary investigations;
- Pursue formal and informal discovery from the prosecution and file appropriate motions;
- Undertake sufficient legal research;
- Prepare and conduct for pretrial hearings and trials;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

Figure 6: DPA New Trial Cases FY2006 & 2016



Source: DPA 2016 Annual Report

Figure 7: DPA Trial Office Caseloads vs. National Standards, FY 2016



Source: DPA 2016 Annual Report

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



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The Advocate



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