

# CRIMINAL JUSTICE REFORM

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REVIEW OF KENTUCKY'S CRIMINAL  
JUSTICE SYSTEM

REPORT TO THE GOVERNOR

PRESENTED BY:  
SECRETARY J. MICHAEL BROWN  
JUSTICE & PUBLIC SAFETY CABINET

DECEMBER 1, 2008



## JUSTICE AND PUBLIC SAFETY CABINET

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December 1, 2008

Governor Beshear:

In March of this year you charged me with conducting a comprehensive review of Kentucky's criminal justice system, particularly as it relates to the prison population. Working through the auspices of the Kentucky Criminal Justice Council, I established committees to look at various issues facing our system, including sentencing guidelines; substance abuse policies and laws; and penal code reform. This report provides an overview of those recommendations from the Criminal Justice Council and its various subcommittees.

I want to point out that two underlying principles were shared by all committees, and shaped these recommendations. Foremost, the committees were diligent in keeping in mind the safety and security of the community. Secondly, the committees were cognizant of and concerned for the fair and proper administration of justice. Balancing the rights of the accused to fair and equitable treatment with the rights of victims seeking justice through appropriate sanctions, while ensuring the safety needs of the Commonwealth, were important guidelines.

I am proud of the substantive work that has been accomplished in a relatively short timeframe, but I am mindful that this is a first step in what will undoubtedly be a continued journey toward the goals of modernizing Kentucky's penal code and reigning in Kentucky's escalating prison population without compromising public safety.

The various subcommittees reviewed volumes of materials. After submitting over fifty recommendations for consideration, the Criminal Justice Council acted favorably on over forty of those proposals, with a number of recommendations being ripe for consideration by both you and the General Assembly.

Among those recommendations:

- **Reevaluating the current classification and penalty structure of felony offenses.** The Council saw no need to modify or amend the current definition or structure of the most serious offenses, now categorized as "violent" offenses within KRS 439.3401. However, the Council believes that there should be clearer delineation between the degrees of the other felony classifications. For example, the sanctions for some Class D felonies are at times severe, and offer no mechanism to employ alternative sentencing. We strongly recommend that another felony category be established carrying a sentencing range of perhaps 1-2 years, for the least serious level of felony crime. Those felonies which now fall between the most violent and serious crimes and the proposed new low level

felonies, should be delineated according to their seriousness and whether or not they were perpetrated against persons or property.

- **Eliminating duplicitous enhancements for a single crime.** Under current statute a person can be prosecuted as a persistent felony offender while at the same time receive an enhancement for the same crime under a separate statute, e.g. KRS 218A. One proposal submitted by the Commonwealth's Attorneys Association passed unanimously by both the subcommittee and the full Council. That recommendation is to eliminate the ability to enhance a felony offense through one statutory provision and also prosecute the offender as a Persistent Felony Offender. An election would have to be made at indictment to either proceed with the enhancement or to indict as a Persistent Felony Offender. This recommendation presents the prosecutor with an "either, or" decision.
- **Amending KRS 500.050(1), Statute of Limitations, on Class C and D felonies, with specific exceptions yet to be decided.**
- **Increasing the felony threshold for theft and fraudulent use of credit cards from \$300 to \$500.** This would adjust for inflation and the current price of consumer goods.
- **Creating a series of escalating penalties for theft and property offenses as the value of the property increases.** These gradations could be set at \$500 - \$10,000 to constitute a Class D felony; \$10,000 - \$60,000 a Class C felony and over \$60,000 a Class B felony.
- **Reviewing the current process for granting parole.** This review would include the entire process, including function and structure of the parole board itself, and would be substantive in nature and require further review by the Council.
- **Allowing for the waiver of presentence investigation if all parties agree.** There are a number of cases where all parties agree to waive the investigation largely due to a plea agreement or acceptance of the penalty.
- **Adopting drug treatment and pretrial diversion legislation, similar to SB 72 of the 2008 legislative session, introduced by Senator Kelly.** Funding for treatment and intervention is critical for dealing with the substance abuse epidemic.
- **Amending provisions for granting of medical or geriatric parole.**
- **Expanding the availability of substance abuse programs in county jails.**
- **Recommending collecting a scientific, evidenced based study of our representative current prison population, including but not limited to the largest circuit.**

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In addition to these highlights, this report contains all recommendations considered by the Council, including those reported favorably, along with those rejected and those of which no consensus could be reached by the Criminal Justice Council.

Respectfully,

Secretary J. Michael Brown  
Justice and Public Safety Cabinet

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## INTRODUCTION

In his January 29, 2008, budget address, Governor Steve Beshear, announced plans to appoint a criminal justice task force, comprised of representatives from all parts of the criminal justice system, to undertake a comprehensive review of Kentucky's penal code, sentencing guidelines, and related issues. Over the last thirty years, Kentucky's crime rate has remained virtually flat, increasing by approximately three percent; however its incarceration rate has increased by 600 percent in the same timeframe. Kentucky's growing prison population of over 21,000 inmates was estimated to cost over \$400 million at the end of the biennium. Governor Beshear explained the goal of the task force would be to ensure protection of the public and appropriate punishment of offenders, while developing ways to better control the cost of the system.

Further detailing Kentucky's rate of incarceration, the Pew Center on the States released a study in February of this year, showing the growth of Kentucky's prison population leading the nation. According to the Pew Center, Kentucky's prison population increased 12 percent in 2007, compared to a national increase of only 1.6 percent

Following direction from the Governor, Justice and Public Safety Cabinet Secretary J. Michael Brown moved forward with reviewing Kentucky's criminal justice system. On March 17, Secretary Brown convened the Criminal Justice Council and charged it with reviewing all available information on Kentucky's penal code, sentencing guidelines and other issues relating to the escalating costs of the state's criminal justice system. The Council was instructed to reach out to interested parties and develop practical recommendations to address these critical problems. The deadline for recommendations for statutory changes due to Governor Beshear was set for December 1, 2008, in preparation for consideration by the 2009 General Assembly.

Over the course of the year, the Council spearheaded the efforts in reviewing Kentucky's current practices and providing recommendations to the Governor, outlining areas of possible reform within the criminal justice system.

To begin this process, the Council established five subcommittees including Chapter 218A; Penal Code; Sentencing; Corrections, Probation and Parole; and the Pretrial Release Subcommittee. Each of the subcommittees were appointed a Chairperson and instructed to choose membership from a pool of volunteers including representatives from state, county and city government, judges, prosecutors, defense attorneys, and community activists. Once membership was established, work began immediately to ensure recommendations could be reviewed by committees and sent to the full Council for consideration by the end of the year.

There were two underlying principles that shaped these recommendations and were shared by all committees. Foremost, the committees were diligent in keeping in mind the safety and security of the community. Secondly, the committees were cognizant of and concerned for the fair and proper administration of justice. Balancing the rights of the accused to fair and equitable treatment, seeking justice for the victim through appropriate

offender sanctions and ensuring the safety needs of the Commonwealth were important guidelines. An important element of these considerations is the reevaluation of the sentencing structure to reflect contemporary sentencing practices in benchmark states.

With these principles in mind the committees addressed the issue of basic philosophy regarding the incarceration of prisoners. The choices considered were simple punishment or the rehabilitation of the inmate. While all agreed there are offenders for whom rehabilitation was unlikely, the majority of those imprisoned may well respond to programs targeted at improving their education, job skills and treating their substance abuse problems. A great number of offenders (by some estimations, 70 percent) were in various ways involved in drug related activity. This either directly or indirectly contributed to their offending and subsequent incarceration. As a result of this finding, many of the recommendations contained herein address the impact of drugs on our prison population.

When we examine the following issues it may be helpful to consider where in the incarceration process each recommendation will have the greatest effect. Those that will affect the prison exit point are most likely to provide the greatest immediate reductions in prison population. However, these same recommendations may not produce a continuing reduction once inmate parole and release limits are reached.

Those recommendations that affect the prison population at the entry point will serve to limit the number of inmates coming into the prisons. These recommendations will be effective in the long term but will have virtually no immediate effect on population reduction. Similarly, changes in the criminal laws, particularly sentencing, will have a long term effect without immediate population reduction results. As with the proposed changes in statutes, the widespread provision of substance abuse treatment programs will have an effect of reducing recidivism. However, substance abuse treatment programs are long term investments and will not affect changes that will immediately reduce prison population. This, however, is a critical issue and must be strongly considered.

## CHAPTER 218A SUBCOMMITTEE

Chaired by Judge Gregory Bartlett, Vice Chief Regional Circuit Judge, the Chapter 218A subcommittee had representation from the Attorney General's Office, Commonwealth Attorneys, Defense Attorneys, Department of Public Advocacy, Kentucky State Police, Department of Criminal Justice Training, and the Administrative Office of the Courts. This committee had the strenuous task of reviewing Kentucky's controlled substance statutes contained in KRS 218A for uniformity and proposed changes.

Beginning over the summer, the committee held five meetings to discuss drug related offenses, ranging from topics that included the decriminalization of marijuana to double enhanced penalties, judicial discretion and judicial disparity across the state, and the hard to define line between drug "user" and drug "trafficker". The committee reviewed statistical information of Kentucky's current inmate population provided by Commissioner LaDonna Thompson, Department of Corrections. Presentations were made by the County Attorney's Association, the Executive Director of the Office of Drug Control Policy, substance abuse treatment providers and a recovered addict.

After testimony, discussion and much debate, committee members were asked to submit individual recommendations to be voted on by the committee and sent to the Criminal Justice Council for further consideration.

The following recommendations were reported favorably out of the committee:

- **Reclassify possession of small amounts of controlled substances as misdemeanor.**  
*Commentary:* Make possession of small amounts of controlled substances for personal use a misdemeanor for first and second offenses within five years. Drug treatment would be required upon conviction of first and second offense possessions. Third offense possession for personal use would be a felony, but would require mandatory in-patient treatment as a condition of probation if granted. An infrastructure of legitimate treatment options must be in place. Unless otherwise implemented, this Misdemeanor possession of small amounts of controlled substances for personal use proposal places the financial burden on the Counties. Offender compliance and supervision would also be problematic.
- **Eliminate enhancement for second or subsequent possession of drug paraphernalia.**  
*Commentary:* Possession of paraphernalia as currently codified allows the state to charge offenders harshly for instruments that are merely presumed to be used for drugs.
- **Redraft statute regarding trafficking within 1000 yards of a school.**  
*Commentary:* This statute could be over charged in situations where a person has been charged with possession with intent to traffic when drugs are found in their home or in their car, which happens to be within 1000 yards of a school, and there is no evidence of intent to sell to students.

- **Drugged driver bill and presumptive BAC for drunk drivers.**  
*Commentary:* This bill reduces the DUI BAC aggravator from .18 to .15. In addition, there is no reasonable excuse for an individual to be allowed to operate a motor vehicle with illegal controlled substances in their blood stream, but if it was in their pocket they could be charged. However, concern was voiced that driving under the influence of drugs is already prohibited by statute. This bill places the burden on the defendant to establish that the usage was consistent with a legal prescription. A legal prescription properly used, should be an absolute pretrial grounds for dismissal. Citizens who continuously have controlled substances in their blood are at constant risk of being accused of drugged driving. This may also affect civil liability because of their violation of the law.
- **Implementation of a statute regarding pretrial diversion.**  
*Commentary:* Drug usage is a medical and or psychological matter regarding the level of addictive behavior. Pretrial officers would provide the judge with information concerning defendant's drug addiction; judge could order a further assessment to determine level of care needed; as a condition of pretrial release judge could also order treatment, out-patient or in-patient. Diversion could be applicable after defendant has completed treatment.
- **Permit expungement of records for simple possession of controlled substances, paraphernalia, etc., with set thresholds, (e.g. treatment, time post-conviction).**  
*Commentary:* Expungement is allowed in other offenses, i.e. drunk driving. While still a codified offense, possession of small amounts of drugs would indicate personal usage and is in effect a status crime worthy of expungement.
- **Create levels of trafficking based on quantity sold, reducing penalty for low-level sales.**  
*Commentary:* Current law does not distinguish between low level users selling to support their own habit and large scale dealers. Applicable penalties for user-dealers are the same as those for trafficking profiteers who sell not to support their own habit but to garner income from sales. One, among many determining factors, could be a matter of quantity possessed/sold and volume of sales.
- **Modify the current possession of cocaine felony offense to a reclassification of a misdemeanor offense for all quantities under one gram.**  
*Commentary:* The possession of small amounts of cocaine, specifically under one gram, presents a difficulty for all parties to independently test the substance prior to the adjudication of the case. Moreover, as immediately above, small amounts would presumably indicate an end user rather than an individual intent on trafficking with that amount of cocaine. Another instance where treatment is preferred to more severe penalties.
- **Direct money seized during arrest for a drug offense to be, in part or in whole, allocated at sentencing to subsidize the Court ordered drug programs.**

*Commentary:* Present funding resources are severely limited. Utilization of monies seized from offenders could be used to subsidize drug assessment and treatment programs for offenders.

- **Draft a new aspirational statute in the introduction to Chapter 218A.**  
*Commentary:* This new statute advises the Court to treat possession/use/abuse of drugs as a medical/mental health condition. In so doing the overarching philosophy is to address those concerns prior to the secondary consideration of handling the case as only a criminal offense.
- **Implement re-entry courts for parolees.**  
*Commentary:* Re-entry courts, very similar to drug courts, require treatment, frequent and random drug testing, case management, employment or education, and frequent and regular oversight. Enhanced supervision and treatment can reduce the revocation rate of parolees. This program would, however, require additional funding.
- **Reevaluate the current felony classifications.**  
*Commentary:* A concern was voiced that there is and should be some overlap of penalties between offenses. There are some Class D felonies that are more egregious than some Class C felonies. Appropriate changes should allow for the sentences to fit the crime and discourage overcharging.
- **Expand the responsibility and resources of Community Corrections.**  
*Commentary:* Expand the use of home incarceration, electronic monitoring, day treatment and intensive supervision.
- **Engage services of licensed professional.**  
*Commentary:* Provide resources to pay for a licensed professional to perform an assessment to be included in the pre-sentence investigative report including recommendations regarding treatment.
- **The substance abuse programs available in county jails housing state inmates.**  
*Commentary:* The SAP program should be available to all (approximately 8000) state inmates, who have no say in where they are housed. The majority of these county jail facilities do not have a substance abuse program funded nor available for drug offenders. These programs need to be funded and implemented if we are going to continue housing Class D and C felons in a county jail facility.

The following recommendations were given strong consideration but did not pass favorably out of committee:

- **Requirement that there be a minimum, measurable amount of any controlled substance for drug possession offenses.**
- **Exempt drug possession offenses from being basis for persistent felony offender indictment.**

- **Amend trafficking to require some consideration of amount, not just transfer of drugs.**
- **Eliminate enhancements for other drug offenses, except felony drug trafficking.**
- **Amend manufacturing meth statute to require actual manufacture; collection of chemicals could be attempt.**
- **Marijuana possession should be reduced to violation and not enhanceable.**
- **Create a new classification of felonies to include a new Class E felony carrying a penalty of not less than 1 nor more than 2 /2.5 years in the penitentiary.**
- **Create 2 new classes of misdemeanors: Class C misdemeanor carrying up to 60 days in the county jail and/or a maximum fine of \$175.00; a new Class D misdemeanor carrying a penalty of up to 30 days in the county jail and/or a maximum of a \$100.00 fine.**
- **Insert language in the probation statutes exempting mere possession of a controlled substance or a positive drug test as being a grounds for making a motion to revoke a conditionally discharged, prior misdemeanor, or felony probated sentence.**
- **Expand KRS 218A.275 and 218A.276 to allow the Court to set aside and void all drug convictions upon completion of treatment and/or payment of fines and costs and/or termination of the period of conditional discharge or probation.**
- **Lower the parole eligibility for all felony drug offenders (excluding crimes of violence and/or possession/use of a firearm).**
- **Make parole mandatory for nonviolent drug offenders who have completed the necessary treatment and have a clean institutional record. Recommend nonviolent felons should be eligible for parole after service of 10% of their sentence and parole should be mandatory for all Class E and D felons incarcerated.**
- **Repeal the current persistent felony offender in the 2<sup>nd</sup> degree leaving only the PFO law as originally drafted on January 1, 1975.**
- **Eliminate the mandatory minimum of 10 years to serve in the penitentiary prior to a first appearance of the parole board on all Defendants convicted of the status offense of PFO 1.**

## PENAL CODE SUBCOMMITTEE

The Penal Code subcommittee was chaired by the Honorable Chris Cohron, President, Commonwealth Attorneys Association. The subcommittee had representation from the Kentucky State Senate and the House of Representatives, the Attorney General's Office, Judge Executives, Public Defenders, and the County Attorneys Association.

The committee held three meetings to discuss statutory changes to the penal code. The committee members were asked to submit individual recommendations to be voted on by the committee and sent to the Criminal Justice Council for further consideration.

The following recommendations were reported favorably out of the committee:

- **Amend KRS 500.050(1) as follows:**

KRS 500.050

(1) The prosecution of felony offenses denounced by this Code or other statutes is limited as follows:

- (a) Prosecution of a capital offense may be commenced at any time.
- (b) Prosecution of a Class A or Class B felony may be commenced at any time.
- (c) Unless otherwise expressly provided in the statute denouncing the offense, the prosecution of a Class C felony must be commenced within 10 years of the date on which it was committed.
- (d) Unless otherwise expressly provided in the statute denouncing the offense, the prosecution of a Class D felony must be commenced within 5 years of the date on which it is committed.

- **Amend the language of KRS 520.095(1)(b)(2) by eliminating the reference to property damage.**

*Commentary:* This corrects problem noted by the Court of Appeals in *Crain v. Commonwealth*, 257 S. W. 3d 924, 928-930 (Ky. App., 2008).

KRS 520.100

(2)

- (b)
  - (2) By fleeing or eluding, the person causes, or creates a substantial risk of, serious physical injury or death to any person.

- **Raising felony theft level to \$500.**

*Commentary:* The present felony theft threshold is out of date and has not kept pace with inflation. Raising the requirement to \$500 will align the value with current prices of property.

- **Gradation of felony theft by value of item(s) taken.**

*Commentary:* Make gradation of theft of \$500-\$10,000 a class D, \$10,000-\$60,000, a C, and over \$60,000 a B. Current statutes do not sufficiently differentiate between

thefts at the lower felony threshold and thefts of much greater cost. This proposal sets “gradations” based on specific monetary value of items or cash taken.

- **Raise the fraudulent use of a credit card from \$100 to \$500 within a six month period.**

*Commentary:* As with the preceding proposal, inflation has rendered the present threshold too low.

- **Require funding to implement a “rocket docket” program for all Commonwealth Attorney and Department of Public Advocacy offices.**

*Commentary:* The actors in the adjudication of cases have an interest in expediting cases through the courts. The “rocket docket” addresses attendant issues.

- **Make DUI 3<sup>rd</sup> a felony.**

*Commentary:* DUI is recognized as a serious threat to the community. While treatment is necessary in combating the disease of addiction, offenses must be viewed as a threat to public safety and attach sanctions commensurate with the imposed danger.

- **Conduct a study of the prison population.**

*Commentary:* Implement a study of the largest judicial circuit in each of the seven Supreme Court Districts and examine the prison population to see how and why each inmate got there. The Administrative Office of the Courts and the Department of Corrections have much of this data but additional research methods will need to be employed to garner all relevant information. Funding and staffing may be problematic.

- **Credit payment for time served back to the county jails.**

- County jails would be reimbursed by the State upon final sentencing of a Defendant on a felony sentence for all time spent in a County jail pre-adjudication. *Passed, 2 yes with 4 abstain*
- The State would become responsible for the cost of housing a Defendant on a felony offense upon the entry of a guilty plea on a felony offense. *Passed, 3 yes, 3 abstain.*

*Commentary:* Cost to counties is growing and presenting a fiscal problem. These proposals would shift the financial burden from the counties to the state under the circumstances stated.

- **Waiver of presentence investigation.**

*Commentary:* Ability upon agreement of all parties with approval of the Court to waive presentence investigations before sentencing on all cases. This will expedite cases through the courts where all actors agree that sentencing may proceed without the AOC conducting a presentence investigation.

- **Establish an additional category other than violent and nonviolent offenses.**

*Commentary:* This proposal is to establish a felony category other than violent and

non-violent offenses. A third category is needed to alleviate classification issues on serious offenses. Other states have addressed this issue by establishing several felony categories, (e.g. violent, non-violent and serious felonies). These classifications serve to further segregate offenses by their danger and impact on the community and the citizenry.

The following recommendations were given strong consideration but did not pass favorably out of committee:

- **Repeal current KRS 532.025 entirely and replace it with the following language:  
KRS 532.025**

(1) Upon the entry of a guilty plea, or the return of a jury verdict of guilty, to the charge of intentional murder, the question of punishment shall be determined at a hearing before a jury for the purpose of determining the punishment to be imposed.

(2) If the government does not seek the penalty of death, proceedings will be conducted according to KRS 532.055 and the jury will impose one of the penalties authorized by KRS 532.026(2).

(3) If the government seeks the penalty of death, at the conclusion of the hearing the jury will be instructed to answer the following question: “Are you convinced, beyond a reasonable doubt, that society can be protected from the defendant only by terminating his life?” The government and the defendant may introduce evidence relevant to this question. If the jury answers affirmatively, the judge will impose a sentence of death as authorized by KRS 532.026(1). If the jury answers negatively, the jury will impose one of the sentences authorized by KRS 532.026(2).

- **Repeal KRS 532.030(1) and (4) and enact the following language:  
KRS 532.026**

(1) If a person is convicted of intentional murder and a jury returns a verdict that his life must be terminated, the penalty is death and shall be imposed by the judge.

(2) If a person is convicted of intentional murder and a jury does not determine that the defendant’s death is necessary, the jury shall fix a punishment of

- (a) life imprisonment without the possibility of parole, or
- (b) life imprisonment with the possibility of parole after service of 25 years, or
- (c) life imprisonment subject to ordinary parole eligibility guidelines, or
- (d) a term of years not less than 20 nor more than 50.

- **Remedy the construction of KRS 515.020(1)(b), by requiring proof that a deadly weapon was actually possessed by the person charged with the offense.**
- **Amend KRS 508.025 to remove ambiguity about the level of culpability required by deleting the phrase “attempts to cause” in Subsection (1)(a) of the statute and substituting new language.**

## CORRECTIONS, PROBATION AND PAROLE SUBCOMMITTEE

The Corrections, Probation and Parole subcommittee was chaired by Commissioner LaDonna Thompson, Department of Corrections. This subcommittee had representation from the Attorney General's Office, Commonwealth Attorney's Association, County Attorney's Association, Department of Public Advocacy, Kentucky County Judge Executive's Association, the Parole Board and the Department of Juvenile Justice. This committee had the critical task of reviewing the methods and processes employed to meet Kentucky's obligation to provide and apply offender sanctions handed down by the courts. This committee reviewed statistics on the inmate population, inmate aging, incarceration alternatives, factors guiding, controlling and impacting parole services and factors affecting parole violations and recidivism.

The committee held six meetings to discuss the above stated topics. Numerous guests were brought in to make presentations and inform the committee on important programs and opportunities to improve the services of the department. Among these presentations were, aging of the inmate population, substance abuse programs, the Recidivism Reduction Act, Kentucky Correctional Industries, inmate education and home incarceration programs. The committee reviewed statistical information regarding Kentucky's current inmate population and the parole caseload and procedures.

After testimony and discussion, the committee members submitted individual recommendations to be voted on by the committee and sent to the Criminal Justice Council for further consideration.

The following recommendations were reported favorably out of the committee:

- **Consider statutory revisions to expand medical and geriatric parole opportunities due to low risk of inmate as a result of medical condition or age.**  
*Commentary:* Current policy dictates that medical parole can only be granted when, due to catastrophic or terminal illness, the inmate's life expectancy is one year or less. This excludes inmates who are severely disabled and no longer pose a threat to the community. In example, currently there is an inmate who is blind and others who are paraplegic or quadriplegic. Expanding the statutory criteria to include such cases would address an ongoing financial and personnel burden in the DOC.
- **Maintain financial support and sustainability by continued legislative funding of substance abuse program expansion.**  
*Commentary:* The consensus of committee members is that treatment of drug and substance abusers is paramount in serving the community. Drug treatment programs hold the best hope of moving offenders beyond the behaviors that lead to their reoffending and reentering the system. Without legislative leadership these beneficial provisions will not be available to all who need such services. The leadership is strongly urged to dedicate a continuing budget of additional funding that would sustain and expand these programs.

- **Review sex offender registrant residency restrictions.**  
*Commentary:* Current residency restrictions often create difficulties in housing and treating sex offenders. In many communities there may be no acceptable residences and treatment facilities. The committee recommends exemptions to residency restriction laws for sex offenders. These exemptions will allow registrants to undergo treatment for mental health issues, substance/alcohol abuse, long term geriatric care and hospital treatment in the Commonwealth's facilities designed for such treatment.
- **Determine whether facilities such as community centers/contract facilities would be considered exempt from the residency restrictions for sex offenders.**  
*Commentary:* Presently as the law is now codified, there may be no contract facilities whose address is "legal" for sex offenders to reside due to imposed exclusionary zones and distances. If contracted halfway beds could be available for use by sex offenders, especially the sex offender conditional discharges, it would further re-entry initiatives. Hard to place offenders would be released first to a community center, which allows for oversight, prior to discharging them to the community.
- **Provide local incentives to increase the use of alternatives to incarceration.**  
*Commentary:* Expand the responsibility and resources of Community Corrections. Require more offenders to restore the victim by agreeing to conditions of community service rather than incarceration. Expand the use of home incarceration, electronic monitoring, and day treatment. However, expansion of Community Correction Programs, home incarceration and day treatment will have a severe financial impact on counties. Removing state inmates, Class D and C felons from county jails means less income for counties and will deepen the current jail financial crisis counties face. This proposal only benefits the state correctional budget issue, while the counties are negatively impacted.
- **Return the Correctional Education Legislated Appropriation to the DOC.**  
*Commentary:* With this change, DOC can seek the most accountable and efficient provider to meet the educational demands of Kentucky's inmate population. Specific concentration areas, required by the American Correctional Association, include Special Education; Adult Education, including GED preparation and testing; and Vocational/Technical Education, not necessarily Postsecondary Education driven. The return of Correctional Education's Legislated Appropriation to the Department of Corrections is essential to fulfill the Department's goals and objectives, which includes providing re-entry programs and assistance for offenders, prior to release, all aimed toward reducing Kentucky's recidivism rate. The committee understands this proposal will require additional dollars that could make implementation very difficult.
- **Provide incentives for nursing homes, personal care homes, and mental health centers to accept our inmate population.**

*Commentary:* To facilitate the transfer of appropriate medical inmates to private facilities, there must be incentives for service providers. Such providers may find the inclusion of inmates, however defined, negatively affect their ability to attract other patients to fill empty beds. This disincentive must be offset by more favorable rewards.

- **Allow for DOC to contract with nursing care facilities for offenders who are still serving their sentence.**

*Commentary:* At present the DOC medical facilities are filling with a greater number of aging and infirm inmates. This results in a significant and increasing financial burden. This specific proposal targets inmates who are infirm from age, catastrophically or terminally ill and those disabled so as to render them incapable of reoffending and/or posing a threat to the community. Allowing the DOC to contract with nursing care facilities for offenders who are still serving their sentence will allow a share of cost to incarcerate with Medicaid and Medicare.

- **Allow the Recidivism Reduction Act (Prison Industries Enhancement) for inmates other than those required to be in county jails by statute.**

*Commentary:* Vocational rehabilitation is a positive influence on inmates. These programs provide skills that are otherwise beyond the grasp of inmates exiting the system. PIE provides both skills and a nominal source of income for the inmate. These funds can be used for court ordered restitution, payment of fines and to defray in part the cost of the inmate's incarceration. This program also provides real world job skills and can impart a responsible work ethic. Codifying this program will allow increased and more consistent admission to the program and consequent increased benefits to both the inmate and the Commonwealth.

- **Increase funding for treatment and vocational programs.**

*Commentary:* All inmates should have access to the rehabilitative care they need to address the problems that contributed to their incarceration. The need is universally acknowledged by the committee; however, they also recognize such programs will have a large fiscal impact for the Commonwealth.

- **Increase institutional staff to prepare inmates for their release into the community. Also, increase staff subsequent to inmate release per parolee ratio.**

*Commentary:* In order for Re-Entry benefits to be financially and programmatically robust more staff is needed at state institutions and for community corrections programs and supervision. Again, attaining more dollars will be extremely difficult.

- **Review the current structure for granting parole.**

*Commentary:* Review best practices in other states to determine if the Parole Board could have a more standardized system of determining inmate suitability for discharge, keeping in mind public safety.

- **Preserve current Parole Board staffing at 9 full time members.**

*Commentary:* Maintaining the staffing of the parole board will presently allow for appropriate scrutiny of cases before the parole board. This proposal may be reconsidered if there is a major change in the number of cases before the board.

- **Codify the time credits that are awarded due to educational and program completion and meritorious good time.**

*Commentary:* Positive behavior while incarcerated should be rewarded and done so on a consistent basis. Such programs benefit both the Commonwealth and the inmate by release with a more educated and or skilled individual. From a county perspective there are issues involved with the additional time credits given inmates. This provision could result in detrimental financial impacts.

- **Codify the parole supervision credit and minimum expiration of sentence.**

*Commentary:* At present parole credits and expiration of sentence is not specifically codified.

- **Give parole officers latitude in sanctions to include periods of placement in county jail for technical violators.**

*Commentary:* Presently technical parole violations result in either offender specific sanctions or revocation of parole and return to DOC. This proposal allows for a relatively severe intermediate sanction that ultimately allows the offender to remain on parole. While so incarcerated these offenders would be state inmates housed in county jails at the cost to the Commonwealth. Along with this provision, a process would need to be created with a local avenue of appeal through the parole process. Noted during vote on this issue, there is not a consensus of the Parole Board.

## PRETRIAL RELEASE SUBCOMMITTEE

The Pretrial Services subcommittee was chaired by Judge Kelly Easton, Hardin Circuit Court. This subcommittee had representation from the Commonwealth Attorneys Association, Public Defender Office, Judge Executive, and Pretrial Services within the Administrative Office of the Courts. This committee had the task of reviewing Kentucky's rules regarding bail, actions of pre-trial officers and Judges, as well as the examination of policy to ensure the timely release of offenders post-arrest.

The subcommittee held four meetings to discuss the myriad of matters relating to bond procedures and the policy for release of offenders. While the bulk of the committee's efforts revolved around specific statutes, there was continuing discussion of data sources and findings that might better inform future decision makers. Chief among these are improved risk assessment guidelines and evidenced-based release criteria. The uniform application of these "rules" was foremost as it was perceived, anecdotally, that there were regional differences in the application of current rules and procedures.

The committee members throughout the course of the meetings assembled a series of recommendations that were seen as central to improving the pre-trial process. These were reviewed and then voted on as a block in the last committee meeting. As such there are no "failed" proposals included in this section. The set of recommendations passed were then forwarded to the Criminal Justice Council for further consideration.

The following recommendations were reported favorably out of the committee:

### **Recommend adoption of the changes to RCr 4.00 through RCr 4.54 with Appendix A-Uniform Schedule of Bail.**

- **RCr 4.06 – Make statutory change to authorize Pretrial Services Officers to assist with completing the Affidavit of Indigence.**  
*Commentary:* Pretrial Services Officers have not consistently "assisted" with the Affidavit of Indigence. An administrative procedure may specifically authorize Pretrial Services officers to administer the necessary oath. It is, however, believed that a rule change or statutory change would be best to make sure that such officers are authorized to complete the forms.
- **RCr 4.16 – Judicial accountability for deviation from the Uniform Schedule of Bail.**  
*Commentary:* This change will require a judge to record reasons in writing when that judge decides not to apply the Uniform Schedule of Bail. The existing procedure for creating a court record of such reasons is unclear. To avoid inconsistent practices around the Commonwealth, a standard practice should be imposed. For the requirement of written reasons to be effective, there must be some meaningful method for immediate review. Without an available record, a reviewing court will not be able to conduct such a meaningful review.
- **RCr 4.20 - With respect to the Uniform Schedule of Bail, it would appear that "stacking" of bonds has been approved implicitly.**

*Commentary:* If “stacking” is allowed, this should be expressly stated in the schedule itself or in RCr 4.20 to avoid inconsistent application. By stacking, the Committee recognizes that a defendant charged with three offenses, all subject to the Uniform Schedule, would be required to post the combined amounts. A concern has been voiced about Section 6 of the Uniform Schedule on DUI cases in that it may not be consistent with applicable statutes and provides a preference for non-residents.

- **RCr 4.58 – Incarceration of individuals for non-payment of fines.**

*Commentary:* Current policy incarcerates individuals for non-payment of fines. However, the cost of the incarceration exceeds the usual amount allowed as credit on the fines. This doubles the loss to the Commonwealth. This proposed rule change addresses only pre-conviction incarceration. The issue should be further addressed from a statutory standpoint with reference to KRS 534.060. The Committee recognizes the financial impact of such policy changes. Any changes with respect to this rule or to any corresponding statutes should be done only after a financial study of the economic effects of the non-collection of fines.

- **Collection and analysis of existing data sources.**

*Commentary:* A full year of data has been collected on the new Risk Assessment Guidelines used by Pretrial Services. A proper analysis of this information is essential for evidence based practices for bond decisions.

- **Use of independent analysis source.**

*Commentary:* To maximize confidence in the validity of the analysis the Committee recommends that the analysis be performed by outside, independent services, not by the staff of the AOC.

- **Appointment of a successor committee.**

*Commentary:* This successor committee would have oversight of the analysis to obtain as much information as possible from the existing data. Any subsequent changes to the Risk Assessment Guidelines will be empirically based and result in greater confidence and reliability.

- **Final report and training deadline.**

*Commentary:* The successor committee will ensure the analysis is completed in a timely manner. The successor committee will be responsible to schedule presentations for training conferences in the Fall of 2009 for judges, prosecutors and defense attorneys.

- **Evidence-based release criteria.**

*Commentary:* Because of the expense, including the limited time of Pretrial Services officers, in service training and education must include efficient use of Monitored Conditional Release, with conditions based on the needs presented in each case rather than categorization based solely on the nature of the pending charges.

- **Recommended statutory changes.**

*Commentary:* The Pretrial Committee recommends the following statutory changes. The brackets indicate language to be added to the quoted statutes:

**KRS 431.515(2)**-The Supreme Court may by appropriate rule or order establish and provide for such pretrial investigation and release services including, where practical, the taking of financial statements, and the court's determination of whether a person is a needy person as provided in KRS 31.120. [For this purpose, pretrial release officers shall be authorized to act as an attesting officer on the affidavit of indigency required by KRS 31.120.]

**KRS 532.120(3)**-Time spent in custody prior to the commencement of a sentence as a result of the charge that culminated in the sentence[, including time spent in custody for pretrial drug treatment provided by the Department of Corrections,] shall be credited by the court imposing sentence toward service of the maximum term of imprisonment. [Time spent in custody as sanctions during participation in a Drug Court program shall not be credited.] If the sentence is to an indeterminate term of imprisonment, the time spent in custody prior to the commencement of the sentence shall be considered for all purposes as time served in prison.

## SENTENCING SUBCOMMITTEE

Chaired by Deputy Secretary Charles Geveden, the Sentencing subcommittee had representation from the Legislature, the Attorney General's Office, Circuit Judges, Judge Executives, Commonwealth Attorneys, Department of Juvenile Justice, Department of Public Advocacy, Department of Corrections, and a citizen at large.

This subcommittee had been tasked with reviewing the sentencing practices and structure. The committee's purview was to include KRS 439 as well as all other relevant chapters such as those addressing sentencing enhancements, persistent felony offenders and sentencing disparities. Comparison with benchmark states was suggested and used. Overall the committee was asked to review the current sentencing practices for fairness, proportionality and uniformity between similarly serious crimes.

Over the course of five months, the committee held five meetings to examine the sentencing of offenses to recommend a more coherent and just slate of authorized penalties. The committee reviewed these statutes and sanctions balancing the safety needs of the community, the restoration of the victim and a just and proportional sanction for the offender. A concern of the committee was the current application of judicial discretion and judicial disparity across the state. During the course of their deliberations the committee reviewed current Kentucky sentencing provisions and gathered information from benchmark states to inform their decisions. Presentations were made by Commissioner LaDonna Thompson, Department of Corrections; Charles Wilkerson, Parole Board; Professor Robert Lawson, University of Kentucky School of Law, Dr. Thomas Whetstone, Consultant; Mr. Ray Larson, Commonwealth's Attorney, Fayette County.

The members were asked to submit individual recommendations to the committee. These recommendations would then be voted on by the committee. Those that passed by simple majority were then sent to the Criminal Justice Council for further consideration.

The Sentencing Subcommittee forwarded the following recommendations.

- **Amend PFO Statute-KRS 532.080:** Eliminate PFO 2<sup>nd</sup> Degree; remove the 10 year restriction on parole eligibility for PFO 1<sup>st</sup> Degree; a conviction enhanced by another statute shall not be used to obtain a PFO conviction and require that the person have been subject to incarceration before PFO 1 is utilized.
- **Amend PFO Statute-KRS 532.080:** Amend PFO statute so that a conviction enhanced by another statute shall not be used for enhancement under the PFO statute; remove the 10 year restriction on parole eligibility for PFO 1<sup>st</sup> and require that person have been subject to incarceration before either PFO 1<sup>st</sup> or PFO 2d is utilized.

*Commentary:* There is a wide degree of difference between offenders sentenced under the PFO statute. Presently those who committed non-violent, non-serious

offenses may be penalized the same as violent and serious crime offenders. Eliminating enhancements from the PFO eligibility criteria removes a potential source of sentencing disparity and overly severe PFO jeopardy and penalties. The requirement that the offender have served a period of incarceration brings the PFO application criteria back to the historic intent regarding the application of the PFO penalty. While both of these recommendations passed favorably out of committee the major difference is either the removal of PFO 2<sup>nd</sup> or retaining PFO 2<sup>nd</sup> and revising the sentence structure.

- **Amend 218A so that the classification or penalty for a subsequent drug offense is not elevated one level.**

*Commentary:* This brings to question whether or not increasing the penalty for second offenses has any positive effect on reoffending.

- **Research the disparity in use of PFO and enhanced sentences throughout Kentucky.**

*Commentary:* Data is needed to support future decisions. The Sentencing Committee recommends that a state-wide database be created as an information resource to review on-going sentencing practices within the state. Data such as the length of sentences from guilty pleas, jury verdicts, PFO sentences and other information as determined by the Penal Code Committee will be collected from various judicial circuits across the state. As part of the database design phase, the Penal Code Committee will obtain input from representative judicial groups and agencies and establish guidelines on how the database should be used.

- **Eliminate enhancement of Possession of Drug Paraphernalia, Second Offense, to a Class D Felony.**

*Commentary:* Eliminate enhancement.

- **Eliminate the ability to enhance a felony offense through one statutory provision and also charge the offender as a Persistent Felony Offender. An election would have to be made at indictment to either proceed with the enhancement or to indict as a Persistent Felony Offender.**

*Commentary:* This recommendation presents the prosecutor with an “either, or” decision.

- **Review the punishment for classifications and create a Class E felony.**

*Commentary:* Not all Class D felonies are created equally. There is wide diversity in offense severity within the classification. The establishment of a fifth felony classification would allow the state to move current class D felonies of a lesser severity to a lower classification. The creation of a class E felony will allow those such classified offenses to be eligible for lower terms of incarceration, community corrections and shock probation alternatives.

The following recommendations were given strong consideration but were not passed favorably out of committee:

- **For many non-violent crimes, including possession of and trafficking in low quantities of illegal substances, provide a penalty range that is less than a Class D offense and require treatment in place of, or as a condition of, sentencing with credit given for any treatment day against the imprisonment day.**

*Commentary:* This recommendation failed in part because a similar recommendation had already passed. Additionally, there was dissent regarding the one for one treatment/sentence credit.

- **Change PFO laws to focus on violent repeat offenders.**

*Commentary:* The committee was persuaded that there were compelling reasons to include non-violent felonies in the PFO count.

## CRIMINAL JUSTICE COUNCIL RECOMMENDATIONS

Following direction from the Governor, Justice and Public Safety Secretary J. Michael Brown moved forward with reviewing Kentucky's criminal justice system. On March 17, Secretary Brown convened the Criminal Justice Council and charged it with reviewing all available information on Kentucky's penal code, sentencing guidelines and other issues relating to the escalating costs of the state's criminal justice system.

Over the course of the year, the Council met seven times to review Kentucky's current policies and practices within the criminal justice system. The Council reviewed previous studies from similar commissions such as the 2006 Blue Ribbon Commission on Sentencing, the final report of the Penal Code Revision Project of 2003, and the report of the Pew Center highlighting Kentucky's growth in prison population leading the nation. Members were presented information on Kentucky's 1974 Penal Code enactment and the intent of its original drafters. Statistical data profiling current prison population was provided by the Department of Corrections. Advocates for drug court expansion and others for alternatives to incarceration, such as the nationally recognized Recovery Kentucky program, gave testimony.

In addition to these efforts, the Council established five subcommittees including Chapter 218A; Penal Code; Sentencing; Corrections, Probation and Parole; and the Pretrial Release Subcommittee. The subcommittees were instructed to submit recommendations to the full council.

On November 24, the Council met and undertook the process of reviewing fifty four recommendations that had been vetted and submitted by the subcommittees. Of those, excluding duplicate proposals from multiple committees, forty-one recommendations passed favorably out of the Council, five were voted unfavorably, and no decision was able to be reached on three proposals.

This report begins by highlighting some of the most potentially effective measures, voted favorably out of the Council. A complete list of recommendations is included at the end of this report.

***Recommendation: Reevaluate the Current Classification of Felony Offenses.***

Passed unanimously by the Criminal Justice Council and reported favorably, without objection, by both the Penal Code and 218A subcommittees, there is a call to reevaluate the current penalty structure for felonies. One proposal strongly suggested creating a third felony type, other than violent and non-violent. Another proposal suggested the addition of a "Class E" felony that would essentially exclude violent and serious non-violent offenses. Whichever proposal is considered, the Council's intent was to ensure that parole eligibility was not increased by the felony reclassification.

***Recommendation: Reexamine the Persistent Felony Offender Statute (PFO) and the Penalties.*** Two proposals addressing the PFO statute were passed favorably. One proposal submitted by the Commonwealth's Attorneys Association, passed unanimously

by both the Sentencing subcommittee and the Council. The recommendation is to eliminate the ability to enhance a felony offense through one statutory provision and also charge the offender as a Persistent Felony Offender. An election would have to be made at indictment to either proceed with the enhancement or to indict as a Persistent Felony Offender. This recommendation presents the prosecutor with an “either, or” decision.

The other proposal regarding Kentucky’s PFO statute is to eliminate PFO 2<sup>nd</sup> Degree; remove the 10 year restriction on parole eligibility for PFO 1<sup>st</sup> Degree; a conviction enhanced by another statute shall not be used to obtain a PFO conviction; and require that the person have been subject to incarceration before PFO 1 is utilized.

***Recommendation: Eliminate Enhancement for Second and Subsequent Possession of Drug Paraphernalia.***

Submitted with unanimous support by the 218A subcommittee, the Sentencing subcommittee and voted favorably by the Council, the recommendation strongly suggests amending Chapter 218A to eliminate the requirement for elevating to the next classification for second and subsequent possession of drug paraphernalia. The base sentence length is sufficient sanction for subsequent offenses.

***Recommendation: Review the Current Structure for Granting Parole***

Passed unanimously by both the Corrections, Probation and Parole subcommittee and with unanimous support of the Council this recommendation strongly urges reviewing Kentucky’s current parole structure. The Parole Board is, in many respects, a body that controls the length of a sentence of incarceration free of review by any independent authority. Both the granting of parole and the revocation of parole are the exclusive responsibility of the Parole Board.

The caseload of the Parole Board is quite heavy and necessitates numerous decisions be made from document review. This caseload has prompted the appointment of two additional Parole Board members.

***Recommendation: Increase Felony Theft Monetary Threshold to \$500***

Submitted without objection from the Penal Code subcommittee and passed favorably without objection by the Council, there is universal support that suggesting that the felony theft threshold be raised to \$500. The current threshold for graduating from a misdemeanor to felony is set at \$300. This is considered to be unnecessarily low. Given inflation since the limit was codified this threshold is completely out of date. Adjusting for inflation the committee recommended an increase to \$500.

***Recommendation: Raise Fraudulent Use of Credit Card to a \$500 Threshold for Felony***

Passed unanimously by the Council, this recommendation brings into line this statute with the above theft thresholds. This recommendation would place a \$500 threshold of transactions within a period of six months. This need not be a single transaction but rather the accumulated total of all transactions during that six month period.

***Recommendation: Institute a Gradation of Felony Theft Classification Based on Value of Items***

Passed favorably with strong support by both the Penal Code subcommittee and the Council, this recommendation calls for instituting a gradation of felony theft classification. At present once the felony theft threshold is reached there is no sentencing difference for thefts at the minimum threshold and those where the value of items taken can be tens of thousands higher. This is a disparity that needs to be addressed if for no other reason than to create a series of penalties proportional to the offense. This committee recommendation proposes a series of stepwise increases in the felony classification as the value of items increases.

***Recommendation: Implement a Statute Regarding Pretrial Diversion***

Without objection this recommendation was submitted by the 218A committee and passed unanimously by the Council. This recommendation supports drug treatment programming and pretrial diversion, such as Senator Kelly's bill, SB 72/CI (BR 904). This recommendation would channel a great number of offenders to programs where appropriate treatment is provided. These offenders may be incarcerated in a "secure" facility, or upon observed program compliance or as directed by the court, to a residential treatment facility. In either case the treatment of the offender is foremost and most likely to reduce reoffending by treating the problem rather than simply incarcerating the offender.

***Recommendation: Waiver of Presentence Investigations***

With universal support this proposal recommends a change in the statutory requirement for a pre-sentence investigation. Presently all felony convictions require a presentence investigation. There are a number of cases where all parties (defense, prosecution and the bench) agree to waive the presentence investigation largely due to a plea agreement or acceptance of the penalty handed down from the bench or jury.

***Recommendation: Eligibility for Medical and Geriatric Release From Incarceration***

This recommendation was unanimously supported by the Corrections, Probation and Parole subcommittee and reported favorably by the Council. There are at present a large number of inmates who are essentially incapable of reoffending. These inmates pose little or no risk to society yet they represent a considerable financial cost in necessary medical care. Among these inmates are the blind, quadriplegics and paraplegics, amputees, the infirm, aged and those on life support.

Presently there is a provision to release those inmates who are terminally ill, but the release may only take place no more than one year prior to the projected life expectancy. Those who remain incarcerated are not eligible for supplemental payments from Medicare and Medicaid programs. However, upon release these same inmates become eligible for these programs. This will eliminate the pressure on medical facilities by removing labor intensive nursing, costly procedures and attendant costs in drugs and specialized equipment. By transfer to a qualified nursing home or assisted living provider a major savings can be realized by the DOC.

***Recommendation: Move Correctional Education Legislated Appropriation to the DOC***

Education of inmates is presently funded and administered by the Department of Education. It was strongly recommended that these legislated appropriations be returned to the DOC. The committee felt that the DOC understands the needs of the inmate population and has a better analysis of appropriate educational offerings. They also believe they have the necessary personnel to identify and employ or contract for services qualified instructional providers, evaluate program efficacy and maintain appropriate educational facilities and teaching materials. Presently the funding and evaluation of programs is ultimately controlled by the DOE with the DOC having only an ancillary role in controlling and evaluating the educational product. It is anticipated that moving the appropriation to the DOC will realize savings in personnel, facility and administrative costs attendant to communication between the DOC and DOE. With inmate education being a critically important factor in affecting recidivism greater DOC administration is necessary to ensure a relevant and effective educational program

***Recommendation: Permit Expungement of Records for Low Level Drug Offenses***

A reevaluation of applicable statutes is recommended for low level offenses. The recommendation is to permit the expungement of these records and is forwarded with the purpose of providing an incentive for offenders to remove themselves from drug usage. This may also be coupled with the successful completion of an authorized substance abuse treatment program.

***Recommendation: Amend KRS 500.050, Statute of Limitations, and ask Legislature to Adopt Statute of Limitations on C and D Felonies, with a Need of Exceptions Thereto.***

Passed unanimously by the Council, this recommendation addresses what the committees feel is an excessively long period of time in which a case can be brought before the court. The Court of Justice and prosecutors are already struggling under an enormous case load of serious offenses. That job is made harder by the presentation for prosecution of cases that, because of the passage of time, very likely involve stale memories, destruction of evidence, and the death or disappearance of witnesses. Acknowledging the seriousness of any offense classified as a felony, this suggested amendment recognizes that there are degrees of severity and that not every offense brought to the attention of a prosecutor needs to be submitted to the grand jury. See appendices for proposed amendment.

***Recommendation: Expand the Recidivism Reduction Act to Include the Prison Inmates***

This recommendation would allow inmates in state correctional facilities to have access to the Prison Industry Enhancement (PIE) program. This program provides the inmate access to skilled labor training and application of skills in an actual working environment. This program also pays a wage comparable to that paid similar laborers and tradesmen on the outside. This program holds great promise in that it gives skills to the inmate while costing the state virtually nothing. The wages paid these participants can be used to pay restitution, child support and appropriate incarceration and court costs. The program can by force of example and practice provide the inmate with improved work skills and a

work ethic of responsibility and accountability. Upon release from custody these participants have a very good chance of being hired as a skilled trade apprentice. The inclination to reoffend is supplanted by the skill set to obtain employment and to act as a responsible and contributing member of the community.

***Recommendation: Examine Reentry Treatment Programs (Reentry Courts)***

Such programs would assist inmates with their adjustment to society. Without such programming the inmate has little support and supervision while in this adjustment period.

***Recommendation: Access to the Substance Abuse Program (SAP) for State Inmates in County Jails***

Current wisdom indicates that immediate treatment of the offender yields better results. However, treatment at any point during incarceration is better than none. At present there are a great number of state inmates housed in county jails who do not have access to robust and demonstrably successful substance abuse treatment programs. There are several excellent pilot programs now serving a select few jails but these program opportunities must be expanded to a greater number of jails. These programs are not envisioned as simple eight day offerings but rather lengthy programs some as long as six months where behavioral changes can be better assured. Successful graduation from these programs would have a greater effect on reducing reoffending than any period of incarceration without treatment.

***Recommendation: Obtain Legislative Support for Substance Abuse Programs***

This recommendation is essential for all substance abuse programs to be continued, improved and expanded. Anecdotally approximately 70 percent of offenders brought before the court have some substance abuse or addictive behavior problems. By properly attending to offender medical issues, the state is well served by not only maintaining but increasing funding for substance abuse treatment programs. The current funding and program availability is unable to reach out and treat all who need these medical/psychological interventions. Without robust funding the state will miss the best opportunity to effect substantial positive behavioral changes likely to reduce recidivism in those who had access to treatment programs.

***Recommendation: Conduct a study to obtain a “snapshot” of the current prison population.***

There is a clear consensus by multiple subcommittees and strongly favored by the Council, that there needs to be a greater study of our current prison population. Conduct a study to obtain a “snapshot” of the current prison population. Demographics, jurisdiction of origin, conviction offense, sentence length and other unspecified data points. This would inform actors of statewide practices and regional differences.

Another proposal suggests examining current data collection efforts from all actors in the criminal justice system. Currently there exists a wealth of information collected by and held by the DOC. The AOC has a growing database and the State Police have their own massive information repository. Creating a mechanism where data points can be

extracted from these sources would be of great benefit to the state. Such inclusive data collections would permit detailed analysis of important issues at all levels within the justice system.

Another proposal suggested conducting an ongoing study of PFO dynamics. This study would examine the original charge or indictment, the charge for which sentenced and in appropriate cases the application or threatened application of the PFO statute. This study could be facilitated by existing data now collected by the AOC. Further issues and refinements would be necessary before the implementation of such a study.

### **Complete list of recommendations considered by the Criminal Justice Council**

#### ***Favorable Recommendations:***

1. **Eliminate enhancement for second or subsequent possession of drug paraphernalia.**
2. **Implementation of a statute regarding pretrial diversion.**
3. **Permit expungement of records for simple possession of controlled substances, paraphernalia, etc., with set thresholds, (e.g. treatment, time post-conviction).**
4. **Modify the current possession of cocaine felony offense to a reclassification of a misdemeanor offense for all quantities under one gram.**
5. **Implement re-entry courts for parolees.**
6. **Reevaluate the current felony classifications.**
7. **Expand the responsibility and resources of Community Corrections.**
8. **Make the substance abuse program (SAP) available in county jails housing state inmates.**
9. **Amend KRS 500.050(1) and ask the legislature to adopt a statute of limitations on Class C and D felonies, with a need of exceptions thereto.**
10. **Amend the language of KRS 520.095(1)(b)(2) by eliminating the reference to property damage.**  
**KRS 520.100**  
**(2) By fleeing or eluding, the person causes, or creates a substantial risk of, serious physical injury or death to any person.**
11. **Raising felony theft level to \$500.**

12. **Gradation of felony theft by value of item(s) taken:  
\$500-\$10,000 Class D; \$10,000-\$60,000 Class C; and over \$60,000 Class B.**
13. **Raise the fraudulent use of a credit card from \$100 to \$500 within a six month period.**
14. **Require funding to implement a “rocket docket” program from all Commonwealth Attorney and DPA offices.**
15. **Make DUI 3<sup>rd</sup> a felony.**
16. **Conduct a study of the prison population to ensure the ability to make data-driven decisions.**
17. **Credit payment for time served back to the county jails.  
The State would become responsible for the cost of housing of a defendant on a felony offense upon the entry of a guilty plea on a felony offense.**
18. **Waiver of presentence investigation in agreed cases.**
19. **Establish an additional category other than violent and nonviolent offenses, with no increases in parole eligibility.**
20. **Consider statutory revisions to expand medical and geriatric parole opportunities due to low risk of inmate as a result of medical condition or age.**
21. **Maintain financial support and sustainability by continued legislative funding of substance abuse program expansion.**
22. **Review sex offender registrant residency restrictions.**
23. **Determine whether facilities such as community centers/contract facilities be considered exempt from the residency restrictions for sex offenders.**
24. **Provide local incentives to increase the use of alternatives to incarceration.**
25. **Return the Correctional Education Legislated Appropriation to the DOC.**
26. **Allow for DOC to contract with nursing care facilities for offenders who are still serving their sentence.**
27. **Allow the Recidivism Reduction Act (Prison Industries Enhancement) for inmates other than those required to be in county jails by statute.**
28. **Increase funding for treatment and vocational programs.**

29. **Increase institutional staff to prepare inmates for their release into the community. Also, increase staff subsequent to inmate release per parolee ratio.**
30. **Review the current structure for granting parole.**
31. **Preserve current Parole Board staffing at 9 full time members.**
32. **Codify the time credits that are awarded due to educational and program completion and meritorious good time.**
33. **Codify the parole supervision credit and minimum expiration of sentence.**
34. **Recommend adoption of the changes to RCr 4.00 through RCr 4.54 with Appendix A-Uniform Schedule of Bail.**
35. **Collection and analysis of existing data sources.**
36. **Establish evidence-based release criteria.**
37. **KRS 431.515(2)-The Supreme Court may by appropriate rule or order establish and provide for such pretrial investigation and release services including, where practical, the taking of financial statements, and the court's determination of whether a person is a needy person as provided in KRS 31.120. [For this purpose, pretrial release officers shall be authorized to act as an attesting officer on the affidavit of indigency required by KRS 31.120.]**
38. **KRS 532.120(3)-Time spent in custody prior to the commencement of a sentence as a result of the charge that culminated in the sentence[, including time spent in custody for pretrial drug treatment provided by the Department of Corrections,] shall be credited by the court imposing sentence toward service of the maximum term of imprisonment. [Time spent in custody as sanctions during participation in a Drug Court program shall not be credited.] If the sentence is to an indeterminate term of imprisonment, the time spent in custody prior to the commencement of the sentence shall be considered for all purposes as time served in prison.**
39. **Amend PFO Statute-KRS 532.080: Eliminate PFO 2<sup>nd</sup> Degree; remove the 10 year restriction on parole eligibility for PFO 1<sup>st</sup> Degree; a conviction enhanced by another statute shall not be used to obtain a PFO conviction and require that the person have been subject to incarceration before PFO 1 is utilized.**
40. **Amend KRS 218A so that the classification or penalty for a subsequent drug offense is not elevated one level.**

41. **Eliminate the ability to enhance a felony offense through one statutory provision and also charge the offender as a Persistent Felony offender. An election would have to be made at indictment to either proceed with the enhancement or to indict as a Persistent Felony Offender.**

*Unfavorable Recommendations:*

1. **Make possession of small amounts of controlled substances a misdemeanor. Make possession of small amounts of controlled substances for personal use a misdemeanor for first and second offenses within five years. Drug treatment would be required upon conviction of first and second offense possessions. Third offense possession for personal use would be a felony, but would require mandatory in-patient treatment as a condition of probation if granted. An infrastructure of legitimate treatment options must be in place.**
2. **Drugged driver bill and presumptive BAC for drunk drivers.**
3. **Create levels of trafficking based on quantity sold, reducing penalty for low-level sales.**
4. **Direct money seized during arrest for a drug offense to be, in part or in whole, allocated at sentencing to subsidize the Court ordered drug programs.**
5. **Engage services of licensed professional.**

*Council was unable to reach a decision on the following recommendations:*

1. **Redraft statute regarding trafficking within 1000 yards of a school.**
2. **Provide incentives for nursing homes, personal care homes, and mental health centers to accept members of inmate population.**
3. **Give parole officers latitude in sanctions to include periods of placement in county jail for technical violators.**