



JUSTICE & PUBLIC SAFETY CABINET
CRIMINAL JUSTICE COUNCIL

2013
HB463
Implementation Report

October 2013

EXECUTIVE SUMMARY

The Public Safety and Offender Accountability Act (HB463 of the 2011 Regular Session) requires that the Criminal Justice Council present a report on the implementation of the Act's provisions within the various elements of the criminal justice system and make recommendations that will further advance the policies within that Act.

The Criminal Justice Council met on September 5, 2013 to hear reports from various stakeholders who were invited or requested to be part of the ongoing monitoring of the successes of and barriers to implementation of HB463 as well as recommendations for future changes related to the field of justice and public safety.

Presentations for the 2013 report were made by the Kentucky Parole Board, the Kentucky Jailer's Association, the Kentucky Association of Criminal Defense Attorneys, the Department of Public Advocacy, the Commonwealth's Attorneys Association, the Department of Corrections, and the Administrative Office of the Courts.

During the course of FY13, the effects of HB463 were felt in much larger ways than in FY12. From August 2012 to August 2013, the prison population dropped by more than 2,200 inmates. This led to the Justice & Public Safety Cabinet and the Department of Corrections (DOC) not renewing the final private prison contract. All Kentucky inmates are now housed in state facilities, community service centers, or local jails. Also, the Administrative Office of the Courts (AOC) reports that the public safety rate for the Commonwealth continues to rise with the ongoing implementation of HB463.

Local governments, DOC, and AOC all report some level of savings that have been reallocated to create the Local Corrections Assistance Fund, fund the catastrophic medical fund for local jails to use, and allow DOC to augment its capacity for substance abuse treatment slots. Through various means, DOC has been able to increase its substance abuse treatment slots by more than 4,500 in the past 5 years.

There is still work to be done to see the full potential of HB463 and there is a general consensus that more comprehensive penal code reform is needed, as well as addressing issues within the juvenile code. The Criminal Justice Council will continue to follow all these issues in the years to come.

PAROLE BOARD

Shannon Jones, Chairwoman for the Parole Board presented.

Ms. Jones shared the following information:

- In FY13, the Parole Board held the first revocation hearings for offenders subject to the one-year post-incarceration supervision period under KRS 532.400, which applies to inmates convicted of criminal offenses committed about June 8, 2011 who were convicted of a capital offense or a Class A felony, have a maximum or close security classification, or are not eligible for parole by statute.

- In FY13, the Parole Board heard 200 more cases than in FY12 for a total of 15,548 cases. The parole rate in FY13 was 65%, compared to 53% in FY12.
- The Parole Board also had an increase in parole revocation hearings from 3,971 in FY12 to 4,881 in FY13. The majority of the new revocation hearings were mandatory reentry supervision (MRS) hearings due to the fact that the MRS program was only in existence for 6 months of FY12.
- The Parole Board supports and encourages aggressive implementation and use of Graduated Sanctions by DOC.
- The Parole Board has authorized Administrative Law Judges (ALJs) to resolve technical violations by agreement at or before the Preliminary Hearing in appropriate cases.
 - In FY13, over 450 cases have been resolved by agreement at the ALJ level, thereby avoiding further increases in the number of final revocations.
 - Parole officers and offenders must agree to all new terms and conditions to be imposed by Administrative Law Judge.
- When revocation is still necessary, the Parole Board will exercise sound discretion in determining the appropriate length of deferment.

KENTUCKY JAILERS' ASSOCIATION

Mike Simpson, President of the Kentucky Jailers' Association (KJA) and Oldham County Jailer, presented.

Jailer Simpson shared the following information:

- Through the passage of HB463 county jails have seen a reduction in the number of state felons housed in jails. Due to this reduction, the Department of Corrections has realized a savings. While this savings comes as a reduction to county jail budgets, the jailers and local governments understand that one of HB463's main objectives was to curb the fast growing state inmate population in the country.
- HB463 also allows for bail and bond credits to low risk offenders in county jails. Due to these credits we are able to release some non-violent offenders who are simply awaiting trial. This has helped to slow down the rising number of county inmates in county jails and saved local governments money.
- Another success of HB463 from the perspective of local government is the Local Corrections Assistance Fund. Twenty-five percent (25%) of this fund goes to jails to help offset money lost from HB463 reforms and allows jails to offer more programming and address other needs.

Jailer Simpson made the following recommendations:

- The Kentucky Jailers' Association would like to see a portion of the savings go toward evidence-based programming in county jails. More jailers would offer better programs if they were incentivized. This would further help to reduce the recidivism rates.
- There needs to be a continued education effort to ensure that judges across the state continue to utilize the bail and bond credit portion of the statute.

- KJA would like to see the good time credits currently received by state inmates extended to the misdemeanor population as well.
- KJA would also like to see a committee similar to that of the Penal Code and Substance Abuse Taskforce formed to study the misdemeanor population in county jails and how the penal code relates to them.
- KJA hopes that the catastrophic fund for jails will be fully funded for the next biennium.

KACDL AND DPA

Ernie Lewis presented on behalf of the Kentucky Association of Criminal Defense Lawyers (KACDL) and Damon Preston, Deputy Public Advocate, presented on behalf of the Department of Public Advocacy (DPA).

Mr. Lewis shared the following:

- The KACDL surveyed its membership and found members felt that
 - Significant strides have been made in bail reform but the level at which it is utilized varies, sometimes significantly from jurisdiction to jurisdiction.
 - Deferred prosecutions are simply not being used in many jurisdictions.
 - Law enforcement officers use their charging decision to avoid the HB463 marijuana law reforms.
 - Pre-Sentence Investigations (PSI) should be supplied to defense attorneys in advance and not on the day of sentencing. Also, there is a need for additional training of all participants in the system on the risk assessments.
 - Judges continue the practice of imposing the same conditions for probation rather than tailoring those conditions to the specific needs of the defendant.

KACDL recommendations:

- Reconstitute a more robust Criminal Justice Council to begin a conversation about substantial reform.
- KACDL has been proposing reclassifications of criminal offenses for several years including reclassifying many nonviolent felonies to misdemeanors. The KACDL reiterates its support for these reclassifications and the substantial savings that could be achieved.
- The KACDL supports restoring persons with a felony record to our Kentucky communities as a matter of human dignity. Barriers to reentry should be removed including passage of a felony expungement law and voting restoration rights law.
- KACDL continues to recommend elimination of PFO 2nd degree, the restriction of PFO 1st degree only to those cases in which all three prior felonies are violent offenses, and the elimination of the mandatory minimum of 10 years.
- Implement the Kentucky Death Penalty Assessment Team Recommendations.
- KACDL supports the recommendation of a 90-day term for technical violations of parole to be consistent with previous reforms.
- Raise the theft and receiving stolen property limits to at least \$1000.
- Shift felony classifications downward.
 - Class A: 15-50 years as it is presently, with 70 years being the most that anyone can receive under consecutive sentencing.

- Class B: 8-15 years
 - Class C: 4-8 years
 - Class D: 2-4 years
 - Class E: 1-2 years
- KRS 439.3401 should be restricted to truly violent felonies and be restored to its original version as it was when it passed in 1986. In addition, the 85% parole eligibility for violent offenders should be reduced to 50%, as it was from 1986 until 1998.
 - Eliminate revocations for violations of probation and parole conditions and substitute graduated sanctions and treatment.

Mr. Preston shared the following information:

- Statistics of note for DPA include
 - Pretrial Release Rate grew 3% in the first two years of HB 463 implementation.
 - Estimated that up to \$30 million saved in county jail expenses.
 - The number of persons arrested fell by 50,000 in the past two years.

DPA recommends:

- Expand the DPA Social Worker Programs
- Expand deferred prosecution
- Allow for presumptive parole
- Expand expungement
- Implement ABA Assessment Team recommendations for capital cases
- Create a gross misdemeanor class of offense
- Reform PFO laws
- Make modest amendments to the violent offender law
- Reclassify selected misdemeanors to violations, make many prepayable

COMMONWEALTH'S ATTORNEY ASSOCIATION

Matthew Leveridge, Commonwealth's Attorney for the 57th Judicial Circuit, presented on behalf of the Commonwealth's Attorney Association.

Mr. Leveridge shared the following recommendations:

- The Commonwealth's Attorney Association would like to see more truth in sentencing. The commonwealth's attorneys feel the current guidelines are confusing and make very little sense.
- The current penal code needs to be revisited as many of the current penalties do not make sense. (Example used a DUI 4th and a stolen license plate currently carry the same penalty.)
- Commonwealth's Attorney Association would like to see revisions to the statute allowing jail credit for home incarceration as they do not see that working as a deterrent for future crimes.
- Commonwealth's Attorney Association would like to see changes to current laws on penalties for possession offenses. There is a need for more treatment programs. Mr. Leveridge feels that prosecutors would be more likely to use deferred prosecution if they had more resources to treat the underlining issues causing people to commit crimes.

- The Commonwealth’s Attorney would like to see legislation that addresses some of the serious mental health issues and fill the gaps in the current system relating to people who are deemed competent to stand trial, but are not actually mentally stable.
- The issues surrounding meth and meth labs are also an ongoing problem that the Commonwealth’s Attorneys see.

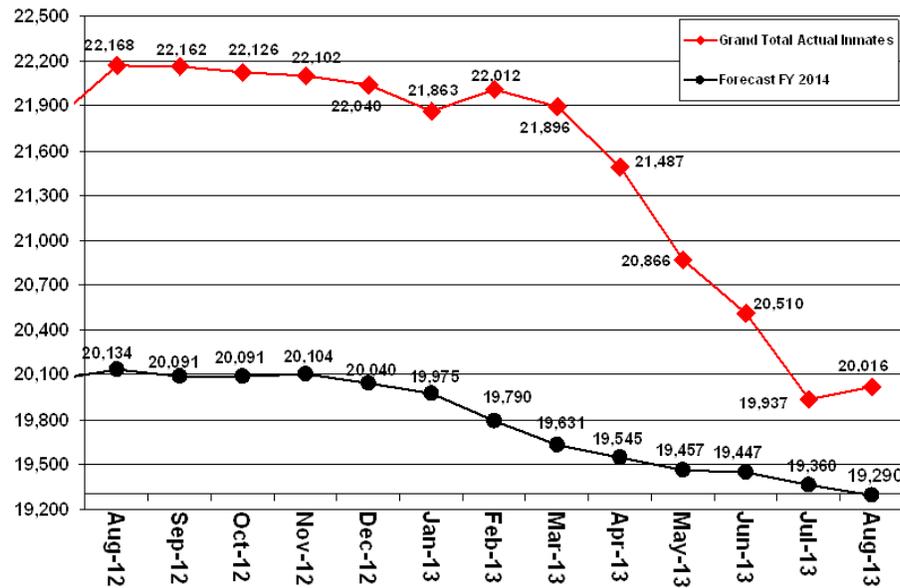
DEPARTMENT OF CORRECTIONS

Jim Erwin, Deputy Commissioner for the Department of Corrections (DOC) presented.

Commissioner Erwin shared the following information:

- As of September 5, 2013, there were 20,011 state inmates. This is down from the highest population since the passage of HB463 of 22,503 state inmates on August 30, 2012. That is a decrease in population of more than 2,200 inmates in one year.
- This reduction led to the decision not to renew the final private prison contract in KY. As of October 1, 2013, the entire state felon population will be housed in state facilities, community service centers, or local jails.

Overall state inmate population from August 15, 2012 to August 15, 2013



- The Mandatory Reentry Supervision (MRS) created by HB463 allows inmates to be released and spend the final six months of their sentence under the supervision of a probation and parole officer. Due to the fact that these inmates continue to earn good time credit, SB78 of the 2013 Regular Session amended the MRS program to allow inmates to serve additional time on MRS to ensure they have at least 6 full months of reentry supervision and support.

- Since the MRS program took effect in January 2012 the savings from the program total 21.1 million dollars.

Savings by quarter since January 2012.

Quarter	Total
2012 1st Quarter	\$2,345,696.18
2012 2nd Quarter	\$2,772,506.51
2012 3rd Quarter	\$2,986,314.41
2012 4th Quarter	\$3,133,119.34
2013 1st Quarter	\$2,955,399.78
2013 2nd Quarter	\$3,086,759.92
2013 3rd Quarter	\$3,873,834.38
Total	\$21,153,630.52

- There have been 6,299 inmates released on MRS since January 2012. The current return rate for the offenders is 20.07%. This is a population of inmates who previously were not paroled by the Parole Board and therefore would not have had any supervised time in the community.

QUARTER	COUNT
2012 1st Quarter	1585
2012 2nd Quarter	758
2012 3rd Quarter	616
2012 4th Quarter	779
2013 1st Quarter	736
2013 2nd Quarter	1029
2013 3rd Quarter	643
2013 4 th Quarter (October Only)	153
Total	6,299

HIGH_FELONY	PERCENTAGE
CLASS B	4.40%
CLASS C	28.80%
CLASS D	66.80%

LOCATION_TYPE	PERCENTAGE
Jail	51.60%
Institution	28.60%
Home Incarceration	19.20%
HWH/CSC	0.60%

*statistics as of October 3, 2013.

- Another key factor in population reduction has been the addition of additional Substance Abuse Program (SAP) slots. (Previously the Cabinet and the Department have referred to these as SAP beds, the changes to slots is to note that some of the additional programs are community based treatments and not residential programs.)
- At the end of 2007, there were 1,430 combined prison and jail treatment beds. (All were in-patient.) When HB463 passed in 2011, there were over 2,700 inmates on the waiting list for substance abuse treatment. The waiting list include inmates recommended for treatment and ‘parole upon completion of SAP’ inmates.
- As of September 2013, there are 5,987 total SAP slots, including 3,987 in-patient treatment beds located in jails, prisons, and the community, and 2,000 treatment slots through new contracts with the Community Mental Health Center (CMHC) and other community programs throughout the state. There have been 13 CMHC contracts signed since April 2013 and currently there are 1,300 inmates receiving treatment at a CMHC.
- The ‘parole upon complete of SAP’ waiting list has been eliminated due in part to a change in a Parole Board stipulation which allows DOC to release inmates to parole and allows for outpatient treatment.

DOC SAP Program Type and Capacity for each Program

Program Type	Capacity
Jails	987
Prisons	1,241
Community	1,159
Recovery Kentucky Centers	600
Outpatient	2,000
Total	5,987

- HB463, Section 67 mandated an expansion to the Kentucky Online Offender Lookup System (KOOL). The updates went into effect on July 1, 2013 and now provides more up-to-date information for victims, courts and others to reference for estimating the results of various sentencing scenarios.
- DOC and AOC continue to partner with the Public Safety Performance Project of Pew Center on the States (PSPPP) to evaluate the MRS provisions of HB463 and to analyze data on impact of the changes to the felony drug classifications and definition.
- DOC continues to implement and utilize the LS/CMI, the validated risk and needs assessment tool. Since July 2010, over 62,000 assessments have been conducted.
 - 2010 – completed 1,407 (1,159 in P&P and 248 in prisons)
 - 2011 – completed 17,447 (10,119 in P&P; 5,410 in prisons and 1,918 in jails/halfway houses)
 - 2012 – completed 26,751 (19,422 in P&P, 6,258 in prisons and 1,071 in jails/halfway houses)

- 2013 – completed 16,491 (Jan – May 31: 13,161 in P&P; 2,805 in prisons and 525 in jails/halfway houses) Anticipated completion of over 39,000 assessments in 2013.
 - Barriers to reentry for inmates returning to the community continue to be an area of focus for the Cabinet and the Department. In August 2013, a memorandum of agreement was signed between DOC and the Social Security Administration allowing reentry coordinators to apply for a duplicate social security card for offenders as they leave DOC facilities. This will allow those individuals to apply for jobs, housing and other necessities for living outside an institution.
- Recommendations:
- The Governor’s Reentry Task Force has several recommendations that would help reduce barriers to reentry including key areas of housing, treatment, and employment.

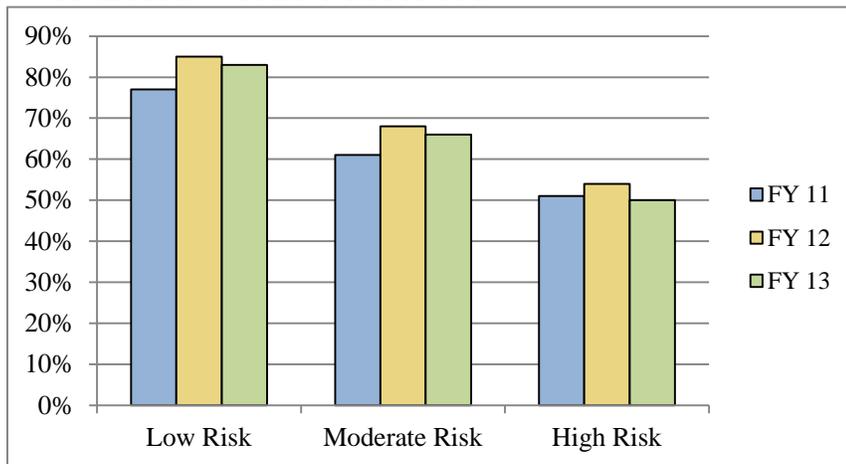
ADMINISTRATIVE OFFICE OF THE COURTS

Connie Payne, Executive Officer for the Administrative Office of the Court’s (AOC) Statewide Services presented.

Ms. Payne shared the following information:

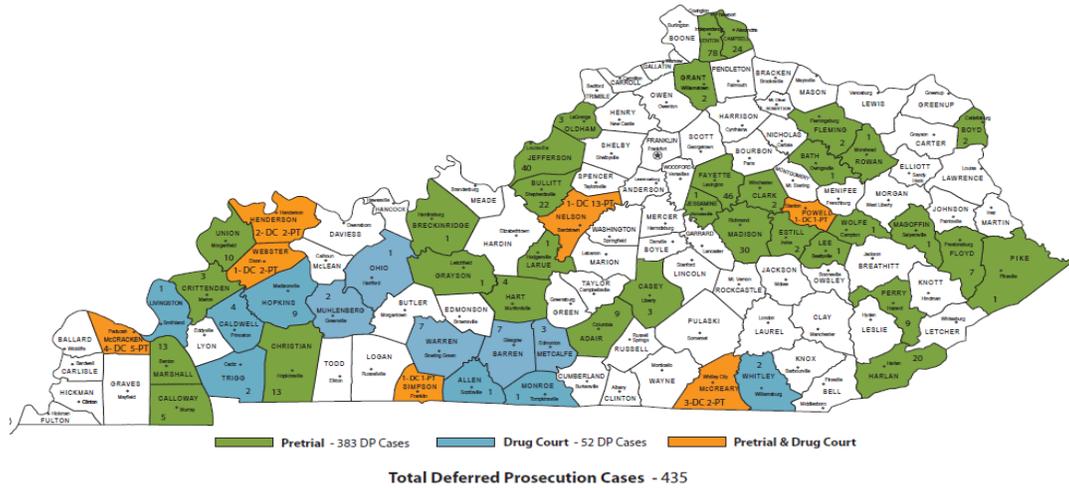
- Last year AOC reported a public safety rate of 92% which had increased from 90% prior to the implementation of HB463. AOC data shows that for FY13, the public safety rate remained 92%.
- AOC has also seen an increase in the appearance rate for individuals on pretrial release. In FY12, there was an 87% appearance rate. That number has increased by 2% to an 89% appearance rate in FY13.
- The graph below shows pretrial release trends. In FY11: 66,363 low risk releases, 45,648 moderate risk releases and 8,042 high risk releases. FY12: 65,694 low, 52,640 moderate, 10,556 high risk releases. FY13: 59,129 low, 48,998 moderate, 9,849 high risk releases. The numbers in FY13 are decreasing due to fewer arrests-the percentages are higher but there are less people. One reason for the decrease in arrests is the change in how low-level drug charges are addressed.

Pretrial Release Trends for FY11-FY13



DRUG COURT & PRETRIAL SERVICES DEFERRED PROSECUTION CASES

SEPTEMBER 2013



- The SMART (Supervision, Monitoring, Accountability, Responsibility, and Treatment) Program is a project that began on July 1, 2012 with 6 pilot sites and funded through a community correction grant for one year. The final report with evaluations of the pilot year is still pending. 294 defendants entered the program, 70 successfully completed, and 72 were terminated and their probation revoked. There were 82 referrals to inpatient treatment, \$12,865 collected in restitution, \$7,106 collected in child support, 1,338 hours of community service completed, and 3 individuals received their GED.

Recommendations and ongoing issues:

- An unintended consequence of HB463 is that the number of people participating in drug courts has been significantly reduced. Decreased penalties make drug court a less attractive program for a defendant. Prior to HB463, there were 2,754 participants in drug court. In September 2013, there were 2,152 participants.

