

Kentucky's Criminal Justice Landscape: Pending Legislative Reforms and Policy Updates

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With 2024 now underway, a lot is happening in criminal law and criminal justice reform. First, anyone interested in the criminal justice system in Kentucky should be monitoring the "Safer Kentucky Act," a sweeping reform package currently being considered by the General Assembly. Officially titled House Bill 5, the Act has had a polarizing effect. Its advocates argue that it champions public safety and remain optimistic that it will lead to meaningful reform. On the opposite side of the political spectrum, detractors warn that it criminalizes poverty and homelessness, encourages unnecessarily harsh penalties and runs the risk of encumbering the Commonwealth's courts, jails and prisons.

While the Act is extensive, a few provisions are getting the most attention. Perhaps most relevant to Louisville, **the Act takes aim at reducing homelessness by criminalizing "unlawful camping."** Under the proposed Act, first-time offenders will be subject to a violation, but subsequent offenders (or first-time offenders who refuse to comply) may incur a Class B misdemeanor. Beyond criminalizing "unlawful camping," the Act also includes a "physical force" provision that provides force used against the homeless will be justifiable if it is "occurring on property owned or leased by the defendant, the individual engaged in unlawful camping has been told to cease, and the individual committing the offense has used force or threatened to use force against the defendant." Those who stand by the Act contend that this is a necessary tool, but those opposed fear that it will increase the use of violence against the unhoused.

The Act also aims to **curb drug trafficking by imposing more stringent penalties on offenders.** In this respect, the Act would automatically reclassify a fentanyl trafficking conviction that results in the death of another person to first-degree manslaughter. This particular provision has been met with criticism, as some argue it will only exacerbate the incarceration rate while others assert that the more severe punishment will serve as a deterrence.

Also promoted by the Act is the **"Three Strikes Rule."** If passed into law, any offender who is convicted of three separate violent felonies will automatically face life in prison. As to the violent felonies themselves, the Act adds to the list of "violent offenses" under Kentucky law, including first-degree burglary (if a person apart from the burglar is at the scene), first-degree wanton endangerment, second-degree robbery, first-degree strangulation, carjacking and first-degree arson. Balancing the scales a bit, the Act also lessens existing penalties in limited circumstances. For example, a person seeking as-

sistance in preventing another from suffering from a fentanyl overdose would be shielded from prosecution for manslaughter charges stemming from that fentanyl consumption if the Act were to become law.

Second, the General Assembly is also considering the passage of **an Act that would compensate people who were wrongfully convicted** (House Bill 178) by providing \$65,000 for each year of wrongful incarceration; \$25,000 for each year the person spent on parole (or other forms of court-mandated supervision); and \$75,000 for each year for those who were wrongfully on death row. To qualify for compensation a judge would have to issue a certificate of innocence, and the action would have to be filed within two years of a dismissal in the plaintiff's favor or the granting of a pardon (claimants released prior to HB 178 going into effect will have two years from the effective date). Further, if the exoneree has won or settled a civil suit stemming from their wrongful conviction and incarceration, any payment under the Act would be offset by their past award. Notably, Kentucky is one of only 12 states that does not compensate the wrongly convicted.

Third, again very close to home, the **Jefferson County Attorney's Office has instituted a new amnesty docket.** Amnesty dockets are a progressive alternative to the current model, providing a sympathetic approach to those with outstanding bench warrants for low-level and nonviolent offenses. Under this model, these low-level and nonviolent offenders can resolve their cases without fear of being arrested.

Jefferson County's amnesty docket program is the culmination of an effort made by the County Attorney's Office with the support of many public officials, including the office of the Circuit Court Clerk David Nicholson, District Court Chief Judge Jessica Moore, Chief Court Administrator McKay Chauvin, Sherrif John Aubrey, Chief Public Defender Leo Smith and Commonwealth Attorney Gerina Weathers. This program was also brought into existence with help from the Louisville Urban League, private criminal defense bar, the Bail Project, the ACLU and various public officials. To this end, **in 2022, the ACLU and the community raised roughly \$300,000 to pay restitution in**

cases where bench warrants remained outstanding due to the lack of court ordered payment.

There will be three dockets offered: June 7, 8 and 9, at 1 p.m. in Jefferson County District Court. Those interested must sign up online or

in-person at the Hall of Justice by May 31. Cases will be screened for qualification, and those who are eligible will be notified of the date, time and courtroom. Notably, the following cases do not qualify for the amnesty docket: cases involving violent misdemeanors or violent Class D felonies; any domestic violence; any case involving a gun; and any Class A, B or C felonies. Looking to the future, Jefferson County's amnesty docket stands to serve as a steppingstone on the path to criminal justice reform.

Fourth, Republican Senator Chris McDaniel, R-Ryland, has again **proposed to amend the Kentucky Constitution to limit a sitting Governor's power to grant pardons or commute sentences** during the 30 days before a gubernatorial election through the next gubernatorial inauguration. Senate Bill 126 is designed to avoid a repeat of former Governor Matt Bevin's controversial, last-minute pardons, but it is unclear if it has the support to advance. If the bill does pass, then the ultimate decision of whether to change the current law would be left in the hands of Kentucky voters who would have to vote on the constitutional amendment.

Finally, we would be remiss in not mentioning that *there's a new sheriff in town.* **Attorney**

General Russell Coleman was sworn in as the Commonwealth's Chief Law Enforcement Officer in the early morning hours of January 1, 2024, and he hit the ground running. As the former United States Attorney for the Western District of Kentucky, Coleman brings prosecutorial experience to the helm at the Attorney General's Office that it has not seen in decades. AG Coleman has made clear that he wants his administration's emphasis to be on protecting the families of Kentucky. In his first month on the job, he has sought to bolster programs to protect children and has focused his budget on curtailing violent offenses and the flow of drugs into the Commonwealth.

Independently, or together, the policy changes discussed above have the capacity to engender tremendous change in the Commonwealth. No matter where you stand on the issues, make your voice heard. The issues facing the criminal justice system in Kentucky are serious, and it will take serious minds to fix these problems. Only together can we build a more just and accessible Commonwealth.

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