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The Women's Network
Advocates For Democratic Principles



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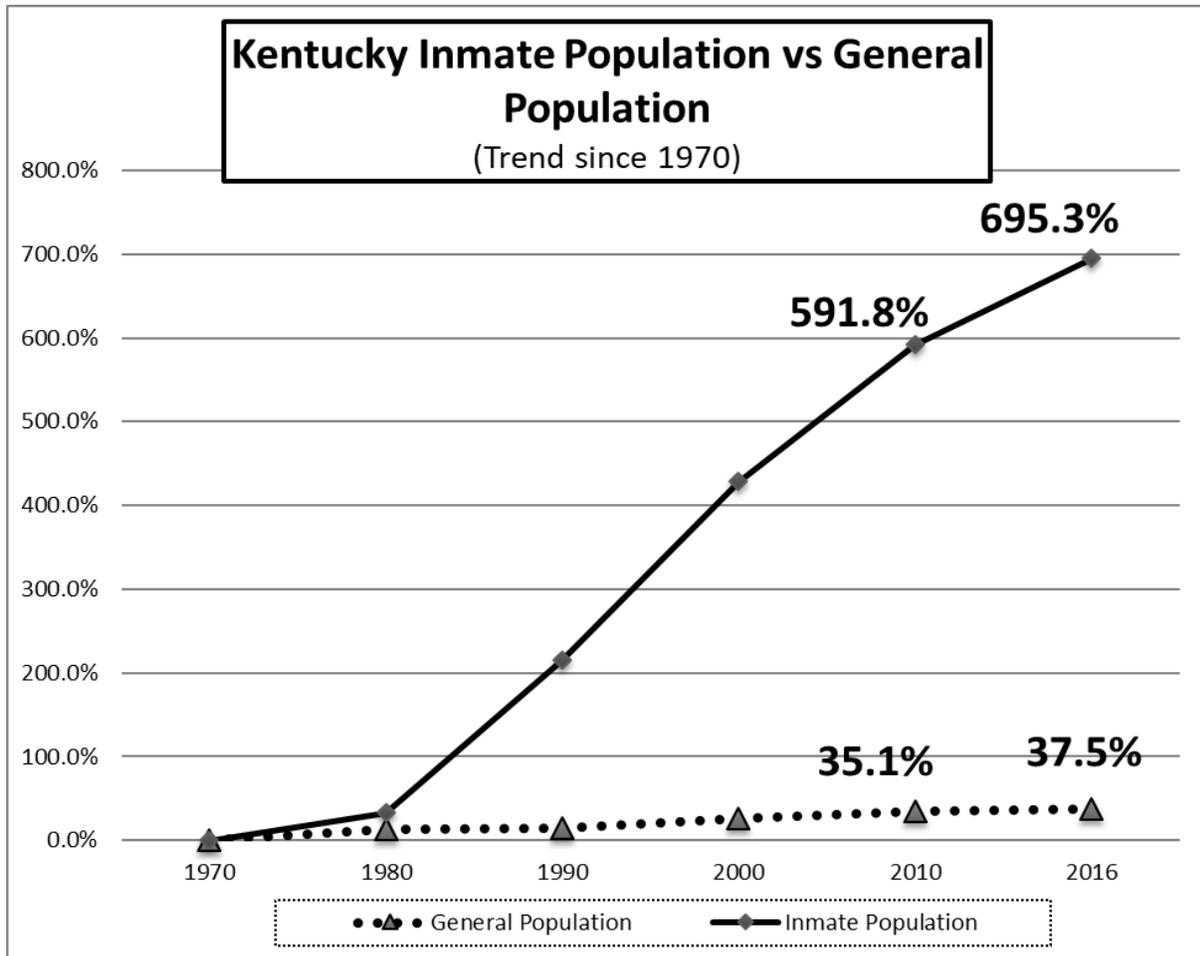
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The Editorial Board Fellows sincerely appreciate the time and expertise contributed by the Criminal Justice Study Committee as well as the experts they consulted. These individuals are named at the end of this report.

REPORT ON CRIMINAL JUSTICE ISSUES IN KENTUCKY

The Women's Network: Advocates for Democratic Principles Commonwealth Institute for Policy Issues and Civic Engagement

In 1980, the nation's and Kentucky's incarceration rates began to skyrocket with the tough on crime and three strikes and you're out policies as illustrated in the chart below.



(Kentucky Department of Public Advocacy, based on Department of Corrections and Census Data)

Over the last 39 years, the cost of this to families and taxpayers has also escalated. As a result, criminal justice reform has recently emerged as a key economic and humanitarian issue. The United States claims the highest incarceration rate in the world; we imprison a higher

percentage of our citizens than does Russia, China, and even North Korea. The vast majority of the over 2 million Americans currently in prison are not in federal systems but in state correctional institutions. Ranking 10th highest among US states in imprisonment rates overall and 5th in women incarcerated (twice the national average), Kentucky contributes significantly to these statistics. **For statistics on incarceration rates worldwide, see Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (NY: The New Press, 2012), 8; Prison Policy Initiative, “States of Incarceration: The Global Context,” <https://www.prisonpolicy.org/global/2016.html> (accessed September 12, 2017.)**

The Kentucky Criminal Justice Policy Assessment Council’s (CJPAC) Justice Reinvestment Work Group’s final report in December 2017 states “Since 2010, 31 states across the country have decreased imprisonment rates while reducing crime rates. Yet Kentucky’s prison population has grown by 8 percent in the last 5 years [2011-2016] reaching more than 23,500 by the end of 2016.” It concludes that this has had led to high costs for Kentucky taxpayers: \$570 million in FY 2017. Yet, the current approach is not working as in 2016, 41% of offenders returned to custody within two years of release.

As for the cultural and social impact of high incarceration rates, they rob children of the presence of a parent, reduce the available workforce, and cost our state millions of dollars each year. Once a convicted criminal serves his or her sentence, that person is saddled with enormous social and economic disabilities that make re-entry difficult and recidivism likely. Many lives have been unjustly ruined by our overly punitive system.

The enormous human toll of over-incarceration deeply concerns The Women’s Network but, in the current fiscal climate, the economic costs acquire added significance. Faced with a dire pension crisis and a budget shortfall, Governor Matt Bevin has demanded extensive cuts to nearly all parts of the state budget. This requirement comes after two years of major cuts and controversial plans to fix Kentucky’s persistent budgetary woes moving forward. Thus, we recommend criminal justice reform to address both fiscal responsibility and human justice.

The Women’s Network supports the twelve remedies described in this report to address this problem.

WOMEN'S NETWORK ADVOCACY POSITIONS ON CRIMINAL JUSTICE

1. POSITION: RAISE THE LOWER-LEVEL FELONY CEILING OF \$500 TO \$2000.

Kentucky is one of the few states that have this low threshold for lower-level felonies. This means, for example, that the theft of an iPhone is a felony, and puts one in a category of a much more serious crime which leads to incarceration where the offender learns to lead a life of crime. These ceilings vary across the country from \$300 to \$2500. States that have raised the ceiling have not seen any increase in these low-level crimes. ("What's the Punishment for Theft? Depends On What State You're In" The Marshall Project, September 9, 2017). This change will lower these kinds of property crimes to misdemeanor status instead of felonies.

CHALLENGES: Counties are reluctant to support this change because it will lead to crowding in county jails as misdemeanor cases are housed there if bail is not available. Thus, county jails will have less room to house state inmates for which they are paid allowances.

SOLUTIONS: In the short run this change increases costs, but in the long run this increase could be offset by the provision of moneyless bail. (This reform, which we hope will be passed in the not-too-distant future, means bail will be based on the seriousness of the crime and flight risk rather than the ability to pay bail. See Position 9 below.) Overall lowering this felony bail ceiling will cut costs across the board for our penal system.

2. POSITION: REDUCE THE COST OF EXPUNGEMENT FROM \$500 TO \$200 AND THE NUMBER OF YEARS BEFORE EXPUNGEMENT IS POSSIBLE FROM 5 YEARS TO 2 YEARS.

Currently, in Kentucky, it takes \$500 and a waiting period of 5 years after getting out of prison to expunge one's record of a Class D Felony (the lowest level of felony).* A record often prohibits an ex-offender from getting a job. Ex-offenders need money to pay for parole requirements they must meet, e.g., child support, monitoring devices. Failure to meet those requirements results in their being sent back to prison for breaking parole. Their inability to get a job and have an income contribute to recidivism. When ex-offenders are found guilty of technical violations such as these and sent back to prison, it drives up the cost of our penal system and has a detrimental impact on families and communities.

CHALLENGES: Educating Kentuckians that a sentence served is sufficient and that saddling ex-offenders with obstacles to successful re-entry into society and the workplace is detrimental to those offenders and to the economic health of the state.

SOLUTIONS: Communicating with legislators and the public, explaining this issue and the costs to the taxpayer as well as the ex-offender, should encourage passage of this reduction.

*The cost for expungement was reduced to \$300 by the General Assembly in 2018.

3. POSITION CREATE AND SUPPORT THE IMPLEMENTATION OF COMMUNITY AND RESTORATIVE JUSTICE PROGRAMS IN KENTUCKY. FUND AND PROVIDE RESOURCES TO FUND OFFICES IN FIVE REGIONS OF KENTUCKY.

In recent years, in some areas of the US, community restorative justice (CRJ) programs have reintroduced rehabilitation and discretionary sentencing to control certain minor crimes. Instituting some of the programs (like community courts and citizen reparative boards) that fall under the umbrella of community justice would alleviate many of the problems the criminal justice system now faces. These programs would set up local, decentralized, crime-control policies that encourage widespread citizen participation. They go beyond the crime itself: addressing the causes of the crime, rehabilitating local individual offenders, and repairing the harm caused by the crime. The offender accepts responsibility for the offense and makes good on the harm caused. This approach replaces the traditional punitive, incarceration protocols that often lead to the creation of a hardened criminal following the commission of a minor crime. These programs are becoming recognized as preventive while the mainstream criminal system faces a crisis of legitimacy in which an unprecedented number of citizens, many of them African American males, are incarcerated. (For a detailed review of these programs and their use, see Adriaan Lanni, "The Future of Community Justice," *Harvard Law Review*. <http://harvard.edu/urn-3:HUL.InstRepos:3333572>) It is anticipated that Kentucky could lower its incarceration rate as well as its crime rate if it adopted these programs.

CHALLENGES: Although throughout the Commonwealth there is some evidence that community justice programs exist, barriers prevent communities from implementing them. While some prosecutors and members of the defense bar and related criminal justice practitioners are familiar with Community Justice, others know very little. Education, training, infrastructure, and outreach are needed to implement citizen-driven solutions, and this requires Kentucky to appropriate funding and resources. Community justice has support and resistance on both sides of the political spectrum, e.g., some conservatives have lauded the aggressive enforcement of quality of life offenses as a way to clean up troubled neighborhoods; others criticize problem-solving courts as rehabilitation at the expense of accountability, even though the cost of this to the taxpayer as well as to the accused often does more damage than good. On the other hand, some of the general public have found the notion of community participation and empowerment attractive with its emphasis on treatment, the provision of social services, and offender reintegration in place of incarceration. (See Adriaan Lanni above.)

SOLUTIONS: Lobby the Kentucky legislature to enact the following measures: **1.** Training for all local, state, and criminal justice personnel in Community and Restorative Justice philosophy and practices. **2.** Establish a new law that creates a surcharge on all offender fees of \$10.00 to fund research, seed new CRJ projects around the state, and establish a state CRJ-Kentucky coordinator. **3.** Provide state grant incentives to cities, communities, and institutions that participate early in the roll-out of CRJ-Kentucky. **4.** Encourage communities to establish community collaborative labs that include community stakeholders, victims, offenders, and citizens working together to examine local and state policies, laws, and practices that create barriers to justice and foster poor legitimacy of public institutions. **5.** Identify and contract with an educational institutional partner to create, monitor, and provide a comprehensive study that measures rates, cost savings, and develops reports on evidence-based outcomes; and measures stakeholder satisfaction regarding the effectiveness of Community and Restorative Justice-Kentucky.

4. POSITION: CHANGE THE STATE’S BROAD REPEAT OFFENDER LAW (CALLED PERSISTENT FELONY OFFENDER OR PFO) SO THAT ONLY VIOLENT OR TRULY PERSISTENT OFFENDERS SERVE LONGER SENTENCES.

This change would have the largest impact over time in reducing the state’s growing inmate population and associated corrections spending. Under the current law, a person charged with a Class D felony (the least serious felony) who has a qualifying prior felony faces a mandatory minimum sentence of five years in prison. He or she might have received a 1-year sentence without the PFO enhancement. If the person is charged with a higher-level felony (like first-degree robbery or a serious assault), his or her sentence goes from a possible range of 10 to 20-years term to a mandatory minimum sentence of 20 years and a maximum sentence of life in prison. With two separate prior felonies (only one of which has to be recent), the sentence for a lower-level felony migrates to a mandatory minimum of ten years in prison (for conduct that could have received a one-year sentence without a PFO charge). We support changing the law to make sure that a prior felony that makes a felony offender eligible for PFO be serious enough to have resulted in incarceration rather than probation.

In addition, it is currently at the prosecutor’s discretion to apply the statute creating PFO enhancement. We support also making it discretionary for the judge or jury because currently a PFO enhancement must be applied if the prosecutor pursues it regardless of whether the judge or jury feels it is warranted.

CHALLENGES: Kentucky’s PFO law provides prosecutors with the option of lengthening an offender’s sentence if he/she has previously been convicted of almost any felony crime and no more than five years have passed since the completion of the prior felony sentence. This power of discretion exercised only by the prosecutor is the biggest challenge. It is often used to bring about a plea agreement but still leads to longer incarcerations for what may be a minor offense. Once charged, the only question is whether the defendant has the requisite prior felony. Neither the court nor a jury can reject a PFO charge solely on the basis of a belief that the higher sentence is not appropriate.

SOLUTIONS: Encourage legislators to eliminate PFO enhancements for lower-level felonies or at least for non-violent felonies and that someone who has committed just one prior felony offense isn’t punished for being a “persistent” felon, and to give judges and juries more power over these decisions. These changes would lower incarceration rates for minor offenses.

5. POSITION: INCREASE FUNDING TO EXPAND THE KENTUCKY ALTERNATIVE SENTENCING WORKER PROGRAM (ASW) SO THAT ALTERNATIVE SENTENCING PLANS FOR CONVICTED INDIVIDUALS WITH MENTAL ILLNESS OR DRUG ADDICTION CAN BE BETTER TREATED IN THE COMMUNITY RATHER THAN STATE PRISON.

This program develops alternative sentencing plans that originate with defense initiatives. The clients play an active role in determining their degree of interest in seeking help through community services. It means thinking of community-based services as part of the client’s defense—but in a unique way. Defense teams are typically tasked with advocating on behalf of clients’ liberty interests. What is different about this approach is that it takes a longer view of client liberty interests. The attorney would help keep clients from incarceration, but also be less likely to be re-arrested or fall back into state custody. The solution involves alternative sentencing plans built around a careful assessment of needs for rehabilitating the individual facing incarceration. After plans are accepted by the courts, ASW workers assist clients to get into the proposed programs. ASW staff complete follow-ups on clients 12 months after the court acceptance of the plan. Alternative Sentencing Workers also spend time with community programs to develop closer working relationships and referral procedures among service providers and the court system. ASW clients need to complete service needs assessments and service plans for presentation to the court by the DPA attorney. (see [Alternative Sentencing Worker Program](#), Kentucky Department of Public Advocacy, May 2016.)

CHALLENGES: The biggest challenge to expanding this program is the upfront investment in it. While almost everyone familiar with the program agrees that it is a positive investment,

appropriated funds are required to expand the program in the hope that money will be saved in future years. In today's budget environment, additional funding is hard to accomplish, despite it being a good investment. Another challenge, though fortunately not substantial, is the location of the program in the Department of Public Advocacy (DPA). Advocates or legislators supporting prosecutors may see additional funding for DPA as objectionable, regardless of the purpose of the funding. If they do not oppose the funding, they may ask that it be matched with additional funding for prosecutors, thus doubling the cost of the investment.

SOLUTIONS: Convince legislators and the public that this program has a proven record of saving correctional costs by creating efficient community treatment plans for convicted offenders rather than having those offenders be sentenced to prison. The corrections budget has risen dramatically over the last twenty years and will likely top \$600 million this year[1917]. To meet the other needs of the state (including pensions and education), practical, creative, and effective solutions have to be found to reduce the prison population and the ASW is nationally recognized as one of the best ideas for accomplishing that goal. We need to convince legislators that although operated out of the public defender offices, ASWs work to provide courts with better sentencing options, not to assist the defense team in winning cases. Additional funding of ASWs does not work to the disadvantage of prosecutors but serves the interests of the entire system and the entire state.

6. POSITION: SUPPORT FUNDING A PILOT PRISON ENTREPRENEUR PROGRAM (PEP) LIKE THE TEXAS MODEL AND SEEK ADDITIONAL FUNDING AND EXPANSION OF THE "JUSTICE TO JOURNEYMAN" PROGRAM.

The 3-year average recidivism rate nationally is 50%; in Texas, the rate is 25% and the Texas PEP program has an amazing 7% recidivism. Employment is one of the key factors for successful re-entry and 100% of graduates in this program have employment within 90 days with an average \$11/hour starting rate. PEP has had almost 300 businesses started with six businesses grossing over \$1M+ per year. The program has a leadership academy, business plan advising and competition, mentoring, business, an entrepreneurship school, re-entry and business support. Baylor University's Hankamer School of Business works closely with this program as do many CEOs and business leaders.

The Justice to Journeyman program allows inmates to earn nationally recognized journeyman credentials in a skilled trade through training received in Kentucky prisons. It also gives them access to private-sector employers who have agreed to consider former felons for jobs.

CHALLENGES: Convincing legislators to fund a pilot program in Kentucky that will take several years to show a cost-benefit is a major challenge. Legislators must understand that combating the increasing costs of incarceration and recidivism requires unique solutions. These costs harm both the families of inmates and society in general, as taxpayers continue to support a broken system that sets ex-offenders up to fail once they are released. Legislators must be convinced that the increasing costs of incarceration are unsustainable and unique solutions must be developed to transform lives and help ex-offenders become taxpayers and constructive citizens in our communities and our state. Individuals with criminal records are 50% less likely to get a job and many companies will not hire ex-offenders.

SOLUTIONS: Talk to legislators about the Baylor University study which confirms that PEP delivers best-in-class results and an estimated 340% return on investment. For facts that can be used for persuasion, see the site below for the PEP program with the statistics of its impact. Legislators should also be encouraged to support funding the expansion of the “Justice to Journeyman” as it, too, reduces recidivism. For more information: Prison Entrepreneurship Program (PEP) How to Free a Prisoner <https://youtube/gcuFknerurk>.

7. POSITION: IMPLEMENT A STRONG PRESUMPTION FOR PROBATION OR DIVERSION WITH TREATMENT RATHER THAN INCARCERATION FOR DRUG POSSESSION; FUND TREATMENT ALTERNATIVES ADEQUATELY SO EVERYONE IN NEED OF TREATMENT HAS ACCESS TO IT.

We need to rewrite drug sentences to be presumptively diverted or probated with reasonable exceptions that allow for judicial discretion when certain factors like a prior criminal record are present. Supervision is cheaper than incarceration so correctional resources can be shifted from the prison system to more probation and parole officers after a short transition period. Funding should also be allocated to ensure an adequate supply of drug treatment providers. This solution would lower correctional costs and address drug addiction more effectively.

In December 2017, the Justice Reinvestment Workgroup, commissioned by Governor Bevin, issued a report that showed a 102 percent growth in the number of drug possession offenders sent to prison between 2012 and 2016. In 2016, almost 2,000 defendants were sent to prison for drug possession. These data specifically refuted the myth that individuals who simply possess drugs are not imprisoned. (Kentucky CJPAC Justice Reinvestment Work Group, Final Report, December 2017, p.9.

<https://justice.ky.gov/Documents/KY%20Work%20Group%20Final%20Report%2012.18.pdf>.)

Drug possession, as opposed to drug trafficking or other criminal behavior, is usually reflective of a medical condition, a chemical addiction, rather than a predilection to crime. (See generally, *Drug Addiction is a Disease...*, http://www.drug-addiction.com/addiction_is_illness.htm.) A person charged only with the use and possession of drugs should not be treated the same as a person who victimizes others. The goal of the system in responding to the addicted person should be to address the addiction, not punish the offender.

Unfortunately, many courts and prosecutors view a violation of the Commonwealth's drug laws on par with the violation of any other criminal law and use prison to inflict societal retribution for the violation. This results in an increased prison population and an unaddressed addiction. It also results in inconsistent justice, as some addicts receive treatment while similar addicts in a neighboring county are incarcerated.

To change this misguided practice of imprisoning addicts, the sentences for drug possession charges should be diverted or probated in almost every case. This could be accomplished by creating a strong legal presumption for probation or diversion that could only be overcome with specific factual findings by a court (like prior violent convictions or other criminal behavior that occurred with the drug possession). The terms of diversion or probation would be enforced with a drug-court-like philosophy that recognizes that relapse is a part of recovery. Rather than responding to violations with a prison sentence, gradual sanctions and increased supervision would be used by the court. Revocation would be reserved only for non-technical violations, like new criminal behavior.

In order for diversion or probation with treatment to be successful, adequate treatment facilities must exist and be funded to meet the demand. In addition to changing the law to require probation or diversion in most cases, resources must be allocated for treatment providers. As incarceration is reduced, funds should be available from the correctional budget to meet this need.

CHALLENGES: Limited probation and parole resources make expanded probation and increased supervision difficult. Prosecutors and judges see prison as an important "hammer" to incentivize an addict to clean up and non-addicts to reject drug usage early on. Courts oppose presumptive outcomes as an infringement on their discretion. Policymakers mistakenly believe that addicts are not being sent to prison. Some areas of Kentucky do not have adequate access to treatment providers.

SOLUTIONS: Persuade the public, judges, prosecutors, and legislators that these changes are desperately needed to deal with the opioid crisis that has overtaken Kentucky families all over the state. Working with other groups who support this approach would move the issue forward.

8. POSITION: TRANSFORM KENTUCKY’S SOLITARY CONFINEMENT TO ADVANCE A MORE HUMANE RESPONSE TO CONFLICT, PROTECTION, SEGREGATION, AND SEPARATION OF PRISONERS IN KENTUCKY JAILS AND PRISONS.

Solitary confinement goes by many names: restricted housing, segregation, protective custody, controlled intake, and isolation. Prisoners are separated from the general population, held in their cells for 22 to 24 hours a day. Four types of solitary confinement exist including administrative, disciplinary, protection, and “other”. The confinement length of stay ranges from 1 week to 3 years. As jails and prisons remain overcrowded, the misuse of solitary confinement grows and impacts youth and adults in a myriad of ways, leaving in its wake mental health disorders, hallucinations, increased suicides, and deteriorating population of incarcerated citizens. (The Association of State and Correctional Administrators [ASCA] and the Arthur Linman Program, Yale Law School, *Aiming to Reduce Time-in-Cell: Reports from Correctional Systems on the Numbers of Prisoners in Restricted Housing and on the Potential of Policy Changes to Bring About Reform*. <https://www.law.yale.edu/centers-workshop/Arthur-linman-public-interest-program/linman-publications>.)

Policymakers, criminal justice experts and corrections officials mostly agree that solitary confinement is overused and does more harm than good. The Yale study above estimates 5% of the jail and prison population in the United States is in solitary confinement. In Kentucky that would translate to a rough estimate of 1200 people. And this estimate may not account for those in solitary in juvenile facilities, immigration detention, or at military bases. As of 2015, Kentucky was one of ten states that allowed juveniles to be kept in solitary confinement indefinitely with no restrictions on the length of confinement if an administrator approves it, according to a 2015 report from the law firm Lowenstein & Sandler. (Lowenstein and Sandler Pro Bono Report 2015, Criminal Justice, p. 14 “Reforming the Juvenile Justice System”) Though reforms are in motion across the US, there are still thousands of people in solitary confinement in the US and in Kentucky.

Reforms can be modeled in accordance to the best research in the United States such as the highly regarded Dr. Karamet Reiter, Associate Professor, Department of Criminology, Law &

Society and School of Law University of California, Irvine, (Dr. Karamet Reiter, *23/7 Pelican Bay Prison and the Rise of Long-Term Solitary Confinement*), and the Association of State Correctional Administrators 2015 Yale report on solitary confinement in the United States (see above). Much can be learned from states such as Ohio, North Carolina, and Virginia which have already implemented adult and juvenile reforms regarding solitary confinement to discern what can work best for Kentucky.

CHALLENGES: More research is needed to identify how many adults are in solitary confinement in Kentucky and how overcrowding, funding, disciplinary issues and lack of appropriate mental health care are influencing the use of solitary confinement.

SOLUTIONS: At the outset, the legislature should be urged to establish a committee to address these concerns and to develop policies that would rectify this kind of treatment. The public also needs to be apprised of what solitary confinement is, why it is wrong and counter-productive, and what can be done to eliminate it.

9. POSITION: TRANSFORM KENTUCKY'S MONEY-BASED BAIL STRUCTURE

A bedrock principle in the American criminal justice system is the presumption of innocence until proven guilty. According to data provided by the Louisville Pegasus Institute in 2016 more than 64,000 nonviolent suspects were detained in Kentucky jails with an average stay exceeding 100 days. Their nonviolent crimes include disorderly conduct, probation violations, or theft. (Mark Heyerly and a team at the Administrative Office of the Courts, quoted in pegasuskentucky.org, Josh Crawford, *Reform Opportunities in Kentucky's Bail System*, p. 2) While bail amounts are often less than \$1,000, it remains an overwhelming problem that disproportionately affects the poor. A 2017 Federal Reserve report found that 4 in 10 Americans couldn't cover an unplanned \$400 expense. (Board of Governors of the Federal Reserve System, *Report on the Economic Well-Being of U.S. Households in 2015*, May 2016.) The core reason for this large number of citizens in Commonwealth jails is financial: the suspect could not afford bail as a condition of pretrial release. In contrast, those with financial resources were able to effect release by posting bail, often for crimes worse than those who cannot meet bail. What does access to bail mean in terms of assessing a suspect's risk to public safety? Practical impacts due to the number of people incarcerated and their lengths of stay present financial pressures on local, city, and county budgets with overcrowding of jails. Length of stay also has other consequences. The Pretrial Justice Institute initiative, "3 Days Count," shows how just a few days in jail can result in job loss and put housing at risk for the suspect

and his/her family members. (<https://www.pretrial.org/what-we-do/plan-and-implement/3dayscount-for-state-level-change/source>) Recidivism likelihood is also linked to the length of stay according to Pegasus. (Laura and John Arnold Foundation, quoted in Pegasus report above, p. 7)

CHALLENGES: Kentucky does not permit private/commercial bail agents to issue bail bonds, ending that practice in 1976 and establishing the Pretrial Services Agency. This is a noteworthy step toward a more just, risk-based vs. money-based pretrial release process. Kentucky is among several states embarking on this important policy, and there are thoughtful discussions occurring across the business, community, and legislative sectors. However, stakeholders such as judges and prosecutors may be opposed as this limits their discretion. Many in the public may not understand the costs and injustices of the current system.

SOLUTIONS: Learning and borrowing from best practices (and avoiding missteps) from other jurisdictions that have recognized the need for justice reform are important. Legislators might be moved by using other states as examples. New Jersey's Criminal Justice Reform Act largely eliminated cash bail in January 2017. Washington, D.C. has long relied upon risk assessment tools to determine who is detained pretrial. District attorneys in Brooklyn and Manhattan in January ordered prosecutors not to request bail in most misdemeanor cases. Philadelphia District Attorney Larry Krasner put an end to cash bail requirements for low-level offenses in February 2018. There have been a number of federal bills attempting to address pre-trial release dynamics, including the bipartisan Pretrial Integrity and Safety Act sponsored by Senators Kamala Harris (D-CA) and Rand Paul (R-KY) in 2017. It is important to identify and dialogue with the various /diverse stakeholders, including local judges and prosecutors who fear the loss of power.

10. POSITION: SUPPORT AN AMENDMENT TO SECTION 145 OF THE KENTUCKY CONSTITUTION TO ALLOW PERSONS CONVICTED OF A FELONY TO VOTE AFTER EXPIRATION OF PROBATION, FINAL DISCHARGE FROM PAROLE, OR MAXIMUM EXPIRATION OF SENTENCE. THIS TO BE SUBMITTED TO THE VOTERS FOR RATIFICATION OR REJECTION.

While it has been common for states to make felons ineligible to vote (Maine and Vermont allow felons to vote, even while in prison), almost all states have moved to allow felons to vote after completion of their sentences, some with more restrictions than others. Kentucky is one of the most restrictive. "Persons convicted of treason, or felony, or bribery in an election, or of such high misdemeanor as the General Assembly may declare shall operate as an exclusion

from the right of suffrage, but persons hereby excluded may be restored to their civil rights by executive pardon” (KY Const. 145). Upon his election, Governor Matt Bevin reversed Governor Steve Beshear’s 2015 attempted restoration of voting rights (and the ability to hold public office) by executive order to certain offenders, excluding those who were convicted of violent crimes, sex crimes, bribery, or treason. (The National Conference of State Legislatures has a full description of every state’s current stance on this issue: www.ncsl.org/research/elections-and-campaigns/felon-voting-rights.aspx.) Florida just passed a ballot amendment similar to the position the Network espouses. It is obvious that allowing the governor to determine this by executive order leads to the vagaries of different governors’ positions and confusion.

CHALLENGES: There are legislators, law enforcement and legal providers, as well as citizens, who believe prison is to punish, not necessarily to rehabilitate and do not support this change. Administratively, it will require parole officers, the Department of Corrections, and the Secretary of State to follow through on putting these changes, if passed, into effect.

SOLUTIONS: Education, education, education. Talking to/lobbying legislators and the public (who often aren’t aware of how Kentucky handles voting rights compared to other states) is imperative. Florida’s example may encourage some in the Commonwealth to support this change as Florida had some of the most restrictive laws governing ex-felons in the US along with Kentucky. Joining forces with other groups and agencies around Kentucky who support reform will add to the drumbeat for change.

11: POSITION: PROVIDE FUNDING TO SUPPORT AND EXPAND THE RE-ENTRY CARE PLAN FOR THE INCARCERATED AS PUT FORTH IN THE 2018 STRATEGIC PLAN BY THE KENTUCKY DIVISION OF RE-ENTRY SERVICES; FOR THIS SERVICE TO BE PROVIDED AT THE BEGINNING OF INCARCERATION IN PRISONS AND JAILS.

Re-entry counseling must start early working to change the incarcerated individual’s attitudes and beliefs about crime: addressing mental health issues, providing mentoring, offering educational opportunities and job training, and connecting the incarcerated with community resources. Most if not all of these services can and should begin long before a person’s release date. Realizing that all offenders do not share the same needs and risk levels and learning how to accurately assess these attributes and deliver customized help is an important element to helping people get out of the criminal justice system. We need to build the re-entry strategy on the principle of a Risk Needs Response. This would help the re-entry administration assess individuals’ risk levels for recidivism and provide appropriate levels of response. An evidence-

based approach and new methods to track efforts and outcomes will hold participating organizations accountable. The successful completion of re-entry prison programs can and will substantially reduce recidivism (Adam Gelb & Tracy Velazquez, "The Changing State of Recidivism: Fewer People Going Back to Prison," The Pew Charitable Trusts, August 1, 2018). Collateral consequences of criminal convictions are legion and present significant and often insurmountable barriers to housing, public benefits, employment, and certain civil rights. Kentucky is a large state with 120 counties with over 24,000 inmates, and currently, there are only a few re-entry specialists and six regional administrators to cover statewide needs while a person is incarcerated as well as to work with communities.

(<https://corrections.ky.gov/About/researchandstats/Documents/Monthly%20Report/2018/Inmate%20Profile%20%2001-2019.pdf>) While the state is divided into re-entry regions with administrators for this program, more qualified staff is urgently needed to administer the program and ensure success. Hiring adequate staff for the regional offices and providing training to personnel working in prisons to provide services to those incarcerated focusing on re-entry is of the utmost importance.

CHALLENGES: This reform will require the legislature to appropriate funds for the program and while in the short term it will be expensive, in the long run, it will save the Commonwealth money. There will probably be people who will think doing this re-entry counseling is not part of the state's job, that it is only to punish the offenders for wrongdoing and will not be willing to support the expenditure.

SOLUTIONS: Persuading legislators, the incarcerated and the public that the old way is not serving anyone's best interests is of the first order. Educating Kentuckians that successful re-entry into the community is a high priority for lowering recidivism rates, for enhancing Kentucky's workforce and for saving taxpayer monies, in the long run, will help build support for these programs.

12. POSITION: ELIMINATE MANDATORY MINIMUMS FROM DRUG PENALTY PROVISIONS AND SUPPORT DRUG COURTS.

Research indicates that imprisonment does "not translate into lower rates of drug use, arrests, or overdose deaths." (*Brief from Pew Charitable Trusts*, March 2018 at 11.) Nonetheless, in 2017 Kentucky altered the penalty for transmitting other than personal use amounts of cocaine, heroin, methamphetamine, and related drugs from 1 to 5-year prison sentences to 5 year to 10-year sentences with parole eligibility altered from 20 percent of

their sentence (for small amounts of the drug) to 50 percent regardless of amount. (KRS Chapter 218A) In 2014, Kentucky ranked 10th in the nation for the rate of incarceration per capita for drug crimes, and 4th per capita for overdose deaths; this, despite the relatively severe sentences those offenses carry. "Putting More drug offenders behind bars for longer periods of time has not yielded convincing public safety returns. What it has generated, without doubt, is an enormous cost for taxpayers" (*kypolicy.org*, July 11, 2017) as well as for Kentucky families.

The annual costs to the state sentencing heroin abusers are projected to increase from \$4 million to \$30 to \$35 million. (*kypolicy.org*, March 30, 2017) Given the high cost of incarceration and the relative lack of deterrence such imprisonment yields, mandatory minimums should be eliminated and other approaches, including drug courts and the aforementioned Alternative Sentencing Worker Program along with presumptive probation and diversion, should be relied upon. Drug courts have been found to be effective in reducing the rate of recidivism to 20% from 57% for those on probation having been convicted of similar offenses. (Ashley Spalding, Ky. Center for Economic Policy, February 22, 2018.) Given the relative success of Drug Courts and other programs in reducing the rate of recidivism by drug offenders, more attention should be paid to relying upon those services. Correspondingly, legislation should be introduced to eliminate mandatory minimums for drug-related offenses. The savings realized by the reduction in costs associated with imprisonment may be delegated to "programs, practices, and policies that have been proved to reduce drug use and crime." (*Brief from Pew above*)

CHALLENGES: There are still legislators and Kentuckians who believe time in jail/prison will convince drug users to quit what is really an addiction/disease issue.

SOLUTIONS: Convince legislators and the public that the money spent on incarceration is not effective and will produce much better results if it is spent on policies that reduce drug use and, hence, crime.

Criminal Justice Study Committee Members

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SUMMARY OF ADVOCACY POSITIONS ON CRIMINAL JUSTICE

1. Raise the lower-level felony ceiling from \$500 to \$2,000 so that individuals who commit less-serious crimes are less likely to be incarcerated.
2. Reduce the cost of expungement from \$500 to \$200. Reduce the number of years before expungement is possible from five years to two years.
3. Support the implementation of Community and Restorative Justice Programs in Kentucky. Authorize funding for CRJ offices in five regions of the Commonwealth.
4. Change the state's Persistent Felony Offender (PFO) law so that only violent or truly persistent offenders serve longer sentences. Make sure that a prior felony that makes a felony offender eligible for PFO be serious enough to have resulted in incarceration rather than probation. Make it discretionary for both judges and juries.
5. Provide funding to expand the Kentucky Alternative Sentencing Worker Program (ASW) so that convicted individuals with mental illness or drug addiction can be better treated in the community rather than in state prisons.
6. Provide funding for a pilot prison entrepreneur program (PEP) like the Texas model and fund an expansion of the "Justice to Journeyman" program.
7. Implement a strong presumption for probation or diversion with treatment rather than incarceration for drug possession. Fund treatment alternatives adequately so everyone in need of drug treatment has access to it.
8. Transform Kentucky's solitary confinement laws to advance a more humane response to conflict, protection, segregation, and separation of prisoners in Kentucky jails and prisons.
9. Transform Kentucky's money-based bail structure.
10. Amend Section 145 of the Kentucky Constitution to allow persons convicted of a felony to vote after expiration of probation, final discharge from parole, or maximum expiration of sentence. (Constitution amendments require voter ratification.)
11. Fund expansion of the re-entry care plan for the incarcerated as put forth in the 2018 Strategic Plan of the Kentucky Division of Re-Entry Services. Enable this service to be provided at the beginning of incarceration in prisons and jails.
12. Eliminate mandatory minimum sentencing for drug-related offenses.

