



The Criminalization of Poverty in Kentucky

**How Economic Crises and Flawed Reforms Fueled
an Incarceration Boom**

Vera INSTITUTE
OF JUSTICE

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August
2023

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Introduction

Over the past 50 years, Kentucky has become one of the most incarcerated places on earth, building a broad system of correctional control that is made up of local jails, state and federal prisons, and a vast array of supervision and monitoring programs. Systems of correctional control have increased in number and scope at the same time as the state has undergone significant economic restructuring. Kentucky's economy over the last 30 years has shifted away from goods-producing industries—such as manufacturing, construction, and mining—and toward service-providing industries such as health care, social assistance, educational services, and other professional services, with significant differences in how this transformation has played out regionally.¹ In the places hardest hit by the decline of manufacturing and coal extraction industries, local governments have attempted to turn their criminal legal systems into revenue generators to fund jail and court operations.

Counties have raced to collect per diem fees paid by the Kentucky Department of Corrections (DOC), federal agencies, and other Kentucky counties by building bigger jails to incarcerate people for other authorities. Counties also collect revenues from an elaborate system of jail- and court-related fines and fees collected from criminalized people, who are disproportionately poor. Private companies collect revenues by contracting with county jails, prisons, and courts, to provide, for example, telephone and canteen services. Companies pass on a portion of revenues to counties, incentivizing contracts that generate significant revenue, rather than those that come at a low cost to people in jail or prison.² In addition, private probation companies operate statewide with little oversight or regulation, extracting unknown amounts of money for pretrial and probation supervision and electronic monitoring devices.³ These entrenched financial incentives have hitched counties to the revenues generated from the criminal legal system and serve as powerful motivators for jailers, prosecutors, judges, and county commissioners to preserve the status quo of mass criminalization.

Kentucky’s most comprehensive effort to reform the criminal legal system to date—House Bill 463 (HB 463), “The Public Safety and Accountability Act”—passed in 2011. While it proposed to reduce the footprint and cost of Kentucky’s carceral system, it resulted in more criminalization and less health and safety. During a decade in which communities increasingly struggled with drug use, substance use disorders, and overdose deaths and were in need of real solutions to tackle this public health crisis, Kentucky’s lawmakers continued to pass laws allowing prosecutors and judges to impose harsh penalties for drug-related offenses. By 2020, Kentucky had the nation’s second-highest drug overdose mortality rate.⁴ Lawmakers also created a web of supervision programs that were intended to divert people charged with drug-related crimes away from jail and prison. In practice, by imposing onerous conditions and associated costs that make it impossible for many people to meet their requirements, these systems have instead become a major driver of re-incarceration.

Throughout the writing of this report, Vera Institute of Justice (Vera) researchers spoke with people across the commonwealth who had experienced criminalization.⁵ Most were recovering from substance use issues. Out of these conversations, a clear picture emerged of the deep connections between poverty and economic decline and the growth of incarceration, supervision, and surveillance across the state. Interviewees shared that stable housing, meaningful work, connections with a larger community (especially other people in recovery), and treatment—instead of correctional surveillance and incarceration—were the most important resources that helped them recover. In their experiences, court-mandated supervision and drug treatment programs carried onerous restrictions on their mobility and autonomy, and included unaffordable fines and fees that decreased their ability to support themselves financially. These conditions—combined with the threat of reincarceration in case of relapse—presented obstacles, rather than paths, to recovery for people experiencing substance use issues. Overall, people experiencing poverty and those in need of treatment described a criminal legal system that causes harm in their lives, instead of providing them with the resources that might enable them to survive and thrive.

By 2020, Kentucky had the nation’s second-highest drug overdose mortality rate.

This report explores the landscape of correctional control in Kentucky today and examines the structural, political, and economic dynamics that led to an explosion of people in jails and prisons and under supervision over the last 50 years in the commonwealth. Using a combination of interviews, archival research, and data analysis, Vera researchers tried to understand the consequences of this system for people’s daily lives, for counties that are bearing much of the financial cost of this incarceration, and for the commonwealth as a whole. Although Kentucky is an outlier in both incarceration and supervision within the United States, many of the same factors that have produced and continue to reproduce high incarceration and supervision in Kentucky are at play across the country. By providing a deeper dive into the commonwealth’s incarceration and supervision systems, this report helps shed light on the broader dynamics that have contributed to the growth of carceral systems across the United States.

The History of Incarceration and Supervision in Kentucky

THE LANDSCAPE OF CARCERAL CONTROL

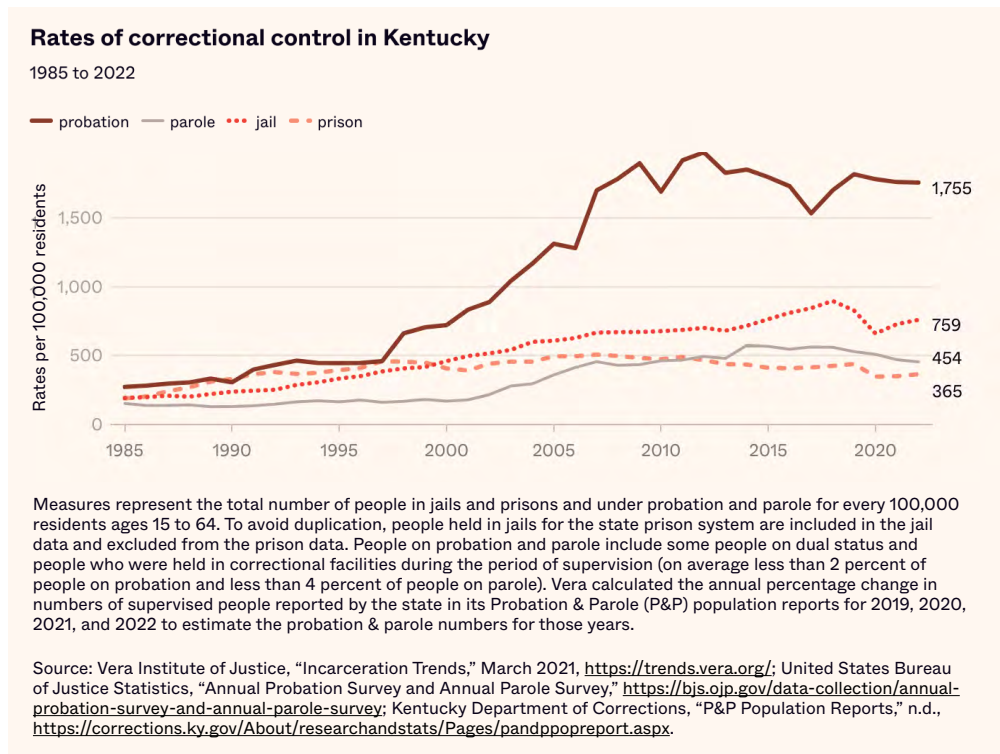
In mid-2021, Kentucky had the eighth-highest incarceration rate in the United States. It had the second-highest jail incarceration rate and the 10th-highest prison incarceration rate in the nation.⁶ Across the state, more than 20,000 people were locked in county and regional jails and more than 10,000 people were held in state prisons, excluding those held in jails on behalf of the state prison system.⁷ Alongside those imprisoned in jails and prisons, tens of thousands of people in Kentucky are subject to the vast system of correctional control made up of the state's probation, parole, and pretrial diversion systems. At the end of 2020, Kentucky had the seventh highest rate of community supervision in the United States, with 2,008 out of every 100,000 adult residents on probation or parole, compared to 1,511 out of every 100,000 adult residents nationwide.⁸ In June 2022, more than 62,000 people in Kentucky were held under some form of supervision. More than half of supervised people were on probation, almost a quarter were on parole, and almost another quarter were under pretrial supervision.⁹

Although often framed as alternatives to incarceration, probation, parole, and pretrial supervision are better understood as forms of carceral control—often imposing onerous conditions, financial burdens, and real barriers to full participation in family, community, and economy. These forms of control can be as limiting to people's freedom of movement as the physical confines of a jail or prison.

Incarceration and supervision rates were not always this high in Kentucky. From 1985 to 2018, Kentucky's overall jail and prison incarceration rate more than tripled, from 382 to 1,320 people behind bars for every 100,000 working-age residents.¹⁰ Over the same period, the rate at which people were on probation and parole skyrocketed, increasing five-fold.¹¹ The total incarceration rate

dipped sharply in 2020 as a result of reduced arrests, court dates, and policies meant to reduce jail and prison populations during the start of the COVID-19 pandemic. The “COVID decline” was temporary, however; the statewide jail population has since sharply rebounded to almost pre-pandemic levels, and the statewide prison population is also on the rise.

FIGURE 1



Today, approximately half of the people incarcerated in state and local facilities in Kentucky are held in the state’s 77 county and regional jails, and the remaining half are incarcerated in 14 state prisons.¹² Prisons are state or federal institutions that hold people who have been convicted of crimes and are serving sentences of imprisonment. Jails are locally run facilities that hold people who are un-convicted and awaiting the resolution of their case, people serving shorter sentences for misdemeanor or low-level felony convictions, or people accused of violating their probation or parole supervision.

In Kentucky, approximately half of people in jails are held pretrial, the majority of whom are held on unaffordable money bond.¹³ The state’s high rates of pretrial detention, in turn, impact the number

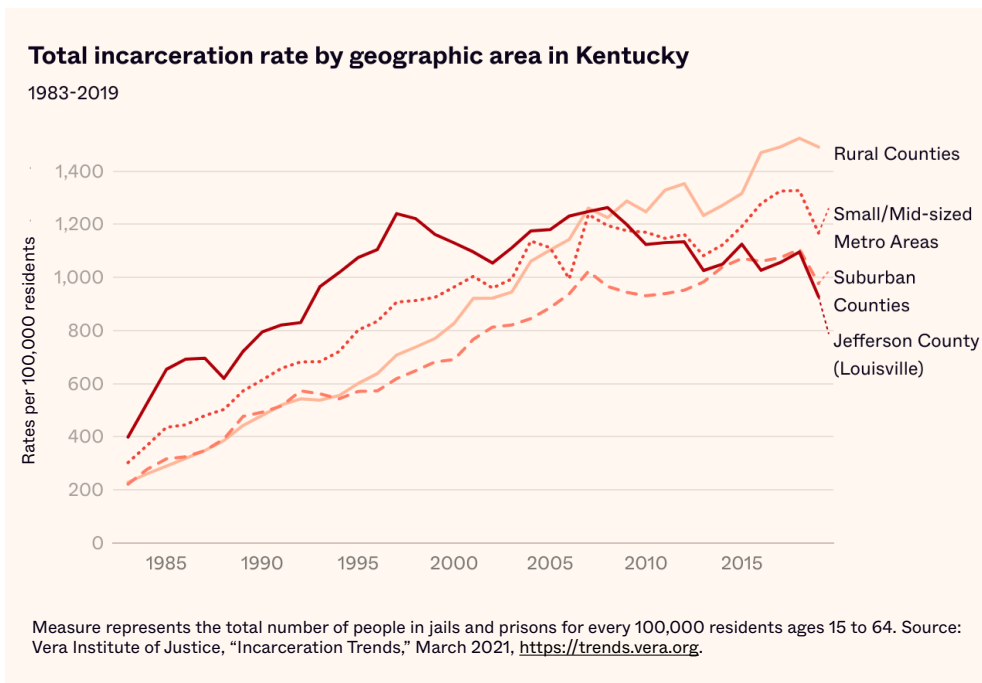
of people sentenced to serve jail or prison time. A 2013 study found that, controlling for relevant factors such as risk level, criminal history, charge type, and charge level, people detained pretrial in Kentucky were four times more likely to receive a jail sentence and three times more likely to receive a prison sentence than people who were released prior to trial.¹⁴ Their sentences were also longer than people who had been released before trial.



Harlan County, eastern Kentucky. Statewide, rural communities such as Harlan have the highest combined jail and prison incarceration rate, compared to other types of communities. Credit: Jack Norton

Rural communities and small towns bear the brunt of Kentucky’s high incarceration rate. Since 2009, rural communities in Kentucky have had the highest combined jail and prison incarceration rate—with more people incarcerated per 100,000 residents than small-to-mid sized cities, suburban counties, or Louisville and surrounding Jefferson County.¹⁵ The total incarceration rate has also increased the most steeply in Kentucky’s rural counties, rising by more than 550 percent from 1983 to 2019.¹⁶

FIGURE 2



THE IMPACT OF COVID-19 ON JAIL AND PRISON POPULATIONS

Kentucky's jail and prison populations declined significantly from 2019 to 2020 as courts, law enforcement, and supervision agencies worked to quickly reduce the spread of COVID-19 behind bars. In March 2020, the Chief Justice of Kentucky's Supreme Court ordered judges to take measures to reduce local jail populations to decrease the risk of COVID-19 outbreaks. Several additional significant policy measures followed this order. In April 2020, the Kentucky Supreme Court expanded eligibility for the statewide administrative release program. Prior to the pandemic, most people charged with a nonsexual, nonviolent misdemeanor were eligible for release on their own recognizance by pretrial services, prior to appearing before a judge. A court order issued during the pandemic expanded administrative release to people charged with nonsexual, nonviolent Class D felonies, who could be released under the supervision of pretrial services. The order further specified that people served with warrants for nonpayment of court costs, fees, or fines or failure to appear be given citations in lieu of arrest; that people could not be held in custody for failure to pay the \$25 bond filing fee required under state statute; and that most people arrested for contempt of court in civil matters or cases relating to nonpayment of child support or restitution had to be released on recognizance.¹⁷ To reduce the sentenced population, Governor Andy Beshear signed four executive orders from April 2020 to August 2020 for the early release and commutation of sentences for more than 1,800 people. This included people serving prison sentences for nonviolent, nonsexual Class C or D felonies with less than five years left to serve who were identified as being at higher risk for severe illness or death due to age or medical reasons, as well as people who were not medically vulnerable, but had less than six months left on a nonviolent, nonsexual conviction.¹⁸

The effects of these measures were widespread and significant in the months following their implementation. From January 1,

2020 to March 22, 2020, prior to the Supreme Court orders being implemented, only approximately 14 percent of pretrial interviews in district court cases resulted in administrative release, and about 48 percent of people interviewed by pretrial services were released the same day.¹⁹ From March 23, 2020 to August 31, 2020, after the orders were implemented, the percent of district court pretrial interviews resulting in administrative release had increased to 33 percent, and 61 percent of people were released the same day, on average. As a result of these measures, the statewide jail population declined by 21 percent from year-end 2019 to mid-year 2020. However, it has since rebounded to almost pre-pandemic levels, which indicates that many of the measures implemented in the early months of the pandemic were not sustained. Indeed, the Supreme Court order that expanded administrative release was amended in August 2021, reducing the number of people eligible for administrative release.²⁰

Overall, the reductions in the number of people in jails and prisons during the COVID-19 pandemic period demonstrate that decarceration is entirely possible when courts, jails, and the Department of Corrections (DOC) prioritize public health over criminalization. The number of people held in jails for the state prison system declined by 19 percent from year-end 2019 to mid-year 2020 and has not rebounded since then. The number of people in state prison (excluding those held in jails on behalf of the DOC) dropped by 22 percent from year-end 2019 to spring 2021, and then rose by about 4.5 percent by mid-year 2022.²¹ These efforts brought the number of people in Kentucky jails down to levels not seen since the early 2000s, and the number of people in prison to levels not seen since the early 1990s. However, jail populations had largely rebounded by fall 2021 and prison populations are again on the rise. This reflects a return to the status quo in many parts of the criminal legal system, in which the punitive policies and practices that produced Kentucky's historically high levels of incarceration are still very much intact.

DISPARATE IMPACTS OF INCARCERATION AND SUPERVISION

People of color are policed, arrested, prosecuted, and sentenced to incarceration or supervision at higher rates than white people in Kentucky. In 2020, 22 percent of people in state prison were Black compared to only 9 percent of Kentucky’s working-age residents.²² In contrast, white people made up 75 percent of people in prison and 85 percent of working-age residents. Black people are similarly and significantly overrepresented in jails; in 2019, Black people were jailed at almost 2.5 times the rate of white people in Kentucky.²³ Data on the number of Latino and Native American or Indigenous people in jails and prisons is limited, but existing research indicates that Latino people are also incarcerated at higher rates than white people.²⁴

Black people are also disproportionately subject to supervision in Kentucky. In 2018, Black people made up 19 percent of people on probation and 18 percent of people on parole—double their share of working-age residents (9 percent). The majority of people on supervision in Kentucky were white—making up 78 percent of people on probation and 79 percent of people on parole—but this still represents slightly less than the white share of working-age residents statewide (85 percent).²⁵ These disparities across all forms of correctional control mean that communities of color in Kentucky—and Black communities in particular—face the harmful consequences of incarceration and supervision at higher rates than white people.

Like most states across the country, Kentucky has also seen an exponential rise in the rate of women’s incarceration over the past several decades. From 1970 to 2019, the women’s jail incarceration rate increased 40-fold, from 8 to 332 women in jail for every 100,000 working-age residents.²⁶ The jail incarceration rate for women in Kentucky has been higher than the U.S. average every single year since 1983.²⁷ Similarly, from 1990 to 2019, the women’s prison incarceration rate increased from 39 to 201 women in

In 2018, Black people made up 19 percent of people on probation and 18 percent of people on parole—double their share of working-age residents (9 percent).

prison for every 100,000 working-age residents.²⁸ Compared to men, women in Kentucky are more frequently incarcerated for revocations of probation or parole, drug-related offenses, and low-level charges.²⁹

The large number of incarcerated women has far-reaching consequences for children and communities in Kentucky. In 2019, 64 percent of women in Kentucky jails and prisons had children who were minors, and an estimated 12 percent of children had a current or formerly incarcerated parent.³⁰ Children of incarcerated parents face severe consequences, including higher risk of future incarceration, behavioral health problems, and lower educational attainment, and decreased economic well-being.³¹

Vera researchers spoke with several women across Kentucky. Sharon, a social service worker in western Kentucky, explained that many women in Kentucky have their children removed from their custody by the Cabinet for Health and Family Services when they are incarcerated, especially if they cannot afford bail. “We’ve had a lot of parents [whose] rights have been terminated because they’ve been in jail for so long,” she said. “So, their [parental] rights get terminated, and it’s mainly just because they’re in jail.”³² Kentucky ranks 10th in the nation for the share of children living with relatives, with 14 percent of children living with grandparents, other relatives, or foster families.³³ As part of her work, Sharon met many women who experienced substance use disorders and domestic violence and who struggled to keep up with child support payments. Each of these circumstances made people vulnerable to criminalization, increasing the likelihood they would lose custody of their children.

Sharon emphasized that women who struggled with substance use disorders faced a difficult contradiction: many declined to seek substance use treatment because family services might remove their children while they were living in a residential rehabilitation facility. In other words, mothers were forced to choose between keeping their children and seeking treatment, which effectively discouraged them from participating in inpatient programming. Remaining in the community also leaves women vulnerable to arrest on drug related charges; if they were incarcerated, the



Women incarcerated in the Western Kentucky Correctional Complex in Fredonia, many on small drug charges that added up over time. Credit: Ashley Stinson

Cabinet for Health and Family Services would remove their children from their care, regardless. According to Sharon, the criminalization of drugs in Kentucky has been particularly detrimental to women and their families. “I think it’s just harmful,” she said. “If that’s the only reason they’re in jail, I think it’s harmful.” She said that families should be kept together, whenever possible, and that substance use disorders should be dealt with through health care, rather than incarceration. “To me,” she said, “I feel like jail should be more for if someone is a danger to society. You know? I don’t feel like it should just be the punishment for every little thing.”

Women in jail and prison are more likely than men to have unmet mental and behavioral health needs while incarcerated and to have experienced trauma both before and during incarceration.³⁴ However, because many incarcerated women are charged with or convicted of Class D felonies, they are disproportionately housed in county jails, where they are less likely to be able to access programming and substance use treatment than their male counterparts.³⁵ Anne, a woman Vera researchers interviewed who spent six months in a western Kentucky county jail awaiting trial on a first-time offense, said that the jail did not provide any support—

such as substance use treatment or technical programs—for women. “You don’t get nothing . . . you’re lucky if you even get medical treatment,” she said.³⁶

Jessica, another woman Vera researchers interviewed in western Kentucky, experienced what she referred to as a mental breakdown that landed her in jail. She told Vera that she did not recall her arrest and the ensuing altercation, but she was charged with assaulting a police officer. While she was locked in the county jail for 55 days, Jessica said jail administrators did not provide a mental health assessment. Instead, officers repeatedly assaulted her with mace and tasers while she was experiencing a mental health crisis and locked her in solitary confinement. “They thought I was under the influence of drugs,” she explained. “I was not.”³⁷ Jessica was able to get the care she needed only after she was released from jail. The nearest psychiatric hospital was about 75 miles away, more than an hour’s drive from the city where she was living. Jessica’s mother was willing to drive her to the hospital, but the distance would have been an insurmountable obstacle for anyone without reliable transportation.

How Did We Get Here?

ECONOMIC DECLINE, SUBSTANCE USE, AND RISING CRIMINALIZATION

Deindustrialization and disinvestment have economically devastated Kentucky's local economies over the last several decades. The loss of well-paying jobs coincided with the unfolding of the opioid crisis and an increasingly punitive criminal legal system, making people significantly more vulnerable to incarceration.

From 1990 to 2021, Kentucky experienced significant employment restructuring that moved away from the manufacturing and extractive industries toward the services sector. The effects of this occupational restructuring were perhaps most salient in eastern Kentucky, where 73 percent of the reduction in mining jobs occurred.³⁸ Although eastern Kentucky did see more than 12,000 new jobs in the health care and social assistance sector, it was not enough to counter the more than 19,000 lost coal jobs in this region alone.³⁹ In almost every year since at least 1990, eastern Kentucky has had the highest unemployment rate among regions in the state—averaging 9.4 percent, compared to 6.1 percent statewide.⁴⁰

The decline in manufacturing jobs was more widespread across the state, decreasing by more than 21,000 jobs statewide since 1990, while the education, health, and professional and business services sectors gained almost 250,000 new jobs statewide. However, most of the new jobs created since 1990 have been concentrated in central and northern Kentucky, with the eastern and western regions and rural communities largely bypassed by this job growth. Today, most jobs in Kentucky are in low-wage occupations, with the majority of working people in the state employed in the fast food industry—as laborers and freight movers, cashiers and salespeople, and in the fabrication and assemblage of machinery.⁴¹

In eastern Kentucky, Vera researchers spoke to Jesse, who reflected on his experience of substance use, incarceration, and recovery in the context of regional economic decline. “The coal industry has almost vanished,” he said. “Nobody works anymore because there’s nowhere to work. And if you do get a job, you’re lucky to have it.”⁴² Jesse explained that he, like many people, turned to selling drugs or other criminal activities in order to supplement his income. “The risks are pretty high,” he said. “But, if you need to make money quick, that’s about the fastest way to get money, is to sell drugs or something like that, or rob something or steal something from somebody and sell it.” Jesse’s experience demonstrates how workers locked out of the mainstream economy during Kentucky’s periods of economic decline often turned to precarious and illicit forms of work involving drug use and distribution.



Workers at a Kroger checkout counter in Versailles, Kentucky, in November 2020. Cashiers, who make a median salary of \$23,479 per year in Kentucky, are projected to be the third-most-common occupation statewide from 2020-2030. Credit: Perry/Bloomberg via Getty Images

Those who remained employed in manufacturing needed to find ways to grapple with strenuous working conditions. In western Kentucky, Garth, who worked for nearly two decades in automotive assembly, told Vera researchers that he first started using methamphetamine to cope with his grueling job. During busy production periods, he said that he often worked 80-hour weeks—12-hour days, seven days a week. “I was wearing out,” he recalled.⁴³ Garth told us that amphetamines helped him focus at work and keep up with productivity demands. “A buddy of mine said, ‘Now, I got something to help you work,’” Garth said. “So, he gave me a half gram of meth.” This set off what Garth referred to as a “snowball effect.” He developed a dependency and, after another coworker showed him how to manufacture it, began selling crystal meth to supplement his income and support his substance use.

Jesse and Garth’s experiences highlight the interdependent relationship between economic distress and continued high rates of substance use and overdose deaths in Kentucky. Although media coverage of the opioid crisis in Appalachia has often focused



on so-called pill-mills—that is pharmacies that over-prescribed pain pills—as the catalyst for the early wave of opioid dependency and overdose, recent studies have centered a more nuanced explanation of the opioid epidemic and subsequent drug overdose crisis. This research showcases the structural and socioeconomic factors behind the rising demand for opioids, such as lack of opportunity, poor working conditions, and social isolation.⁴⁴ Other emerging research suggests amphetamine use is prevalent amongst those working physically strenuous jobs with long hours, a theme echoed by people in Kentucky.⁴⁵ Another study highlighted that drug, alcohol, and suicide mortality rates are higher in counties with more economic distress—particularly in places that have experienced significant loss of industries that once provided jobs with livable wages and benefits for those without a college degree, such as the Appalachian counties of Kentucky and West Virginia.⁴⁶

In Kentucky, the overwhelming response to the host of social and economic factors underlying high rates of substance use and substance-related mortality—including economic restructuring, job destruction, pervasive poverty, and unemployment—has been criminalization. Indeed, Jesse had most recently been incarcerated for selling drugs and stealing to support his substance use.

Unemployed coal miner Bobby Farley stands outside his home in Harlan County, in 2013. Harlan county experienced the second-largest decline in coal jobs from 1999 to 2021. Credit: Luke Sharett/Bloomberg via Getty Images

Similarly, Garth’s first contact with the criminal legal system resulted from using and selling methamphetamines. As is explored in greater depth in the profile of McCracken County in the box below, the same people who were most harmed by economic upheaval in Kentucky—those living in areas characterized by severe job loss and high levels of disinvestment—often became the target for the harshest forms of drug criminalization. In some communities, government actors enforced criminalization in the name of local economic development—by framing it as necessary to attract wealthier residents and private investment. A complete analysis of Kentucky’s criminal legal system—one that foregrounds the complicated relationship between economic and social distress, substance use, and high rates of criminalization in the state—points to the need for solutions that prioritize public health and meaningful job opportunities over incarceration and supervision.

MCCRACKEN COUNTY PROFILE

McCracken County, located in the westernmost part of Kentucky, exemplifies many dynamics that are examined in this report—high jail incarceration rates and pretrial detention, criminalization of poverty and substance use, and a relatively high proportion of people held in the county jail on behalf of the DOC. McCracken County’s criminal legal system is one of the most punitive in the state. In 2019, its incarceration rate was nearly double that of Kentucky as a whole—with 2,412 of every 100,000 county residents detained in jail or prison.⁴⁷ In 2018, McCracken had the lowest rate of pretrial release on non-financial conditions (including release on recognizance, unsecured bond, or surety) of all Kentucky counties—meaning that money bond was set in most cases, and a large number of people likely remained jailed simply because they could not afford bail.⁴⁸

In 2021, when Vera researchers traveled to Paducah, the county seat and McCracken’s only city, they witnessed a picturesque

downtown area. Lower Town, as the neighborhood is known, is a bustling tourist destination with historic architecture, independent art galleries, craft breweries, and acclaimed eateries. The city's tourist-friendly appearance, however, clashed with the experiences related to researchers by interviewees living in Paducah, as well as with the history of aggressive policing, criminalization, and displacement that transformed Paducah's downtown in the 1990s.

Lower Town's transformation is the result of an aggressive, decades-long "urban revitalization" effort carried out by local officials in partnership with real estate interests and law enforcement. In 1989, city developers set their sights on Paducah's downtown, characterizing it in racially coded terms as a "war zone" filled with "drug houses" and "crime."⁴⁹ Then-Mayor Gerry Montgomery, in turn, pledged to "clean it all up" in the name of urban revitalization.⁵⁰ That year, there was a 70 percent increase in McCracken County's drug arrests.⁵¹ Mayor Montgomery celebrated the crackdown, declaring that 1989 had been a "banner year" for Paducah's revitalization.⁵²

County commissioners authorized the construction of a bigger jail, providing the infrastructure necessary to facilitate this crackdown. The new McCracken County Jail, located in the midst of Lower Town, was nearing completion in 1989. That same year, a front-page editorial in the local newspaper praised investment in the jail as a responsible political choice to guard against economic stagnation and decline in Lower Town, arguing that "good communities" with "low crime" are the ones that attract new industries.⁵³

News reports from the early 1990s suggest, however, that the criminalization of substance use, poverty, and mental illness, rather than a crisis of violent crime in Lower Town, were what catalyzed the expansion of the McCracken County Jail.⁵⁴ On a single day in 1991, for example, more than half of people charged with McCracken County crimes in the new jail were facing drug- and alcohol-related charges.⁵⁵ Many also had onerous bonds, set at \$100,000 (equivalent to more than \$200,000 in present-day dollars).⁵⁶

County politicians displaced many residents with the Lower Town Development Plan in the early 2000s. Central to the plan was the Artist Relocation Program, which sought to attract out-of-state artists to the neighborhood with housing incentives. The city demolished housing units, enforced immediate foreclosures, and reclaimed buildings to eventually sell them to newcomers and developers for well below market price.⁵⁷ News reports described how this “aggressive” strategy displaced local residents—specifically, that “poor, mostly Black people were being pushed out.”⁵⁸

Vera researchers spoke with Allen, a Black man who had lived in the city during this period of time, who spoke about how the city’s redevelopment program unfolded in his community. He described how the city knocked down two public housing complexes during this period, demolishing a total of 60 public housing units in Lower Town in 2000.⁵⁹ “Bunch of apartments just going to waste, that people could use,” he said.⁶⁰ At the time, the city promised to replace the complexes with “good, modern buildings,” as part of its efforts to make Lower Town what they called a more “appealing place” for residents.⁶¹ One of the vacant lots was replaced with 16 single-family homes, a fraction of the total housing space provided by the former public housing facilities.⁶² “The [local government] . . . put little houses out there,” Allen told Vera, “which is taking up all that extra space that people could be staying at.”⁶³ The other lot remained vacant until 2016, when the city converted it into a park.⁶⁴

Meanwhile, the Paducah Police Department responded to supposedly high crime rates in Lower Town by cracking down on residents, particularly around the use of substances. The Drug and Vice Enforcement Unit flooded the area with “aggressive,” street-level policing tactics, which targeted anyone who bought, used, or possessed crack cocaine, marijuana, and other drugs.⁶⁵ These tactics were backed up by city commissioners, who stiffened property offenses such as civil code violations, which became newly punishable by jail time. According to a city ordinance passed in 2000, the purpose

of code enforcement measures was to “protect the public from increased criminal activity which tends to occur in residential areas which are unstable.”⁶⁶ As Paducah’s development plan declared at the time, “No stone will be left unturned in cleaning up the neighborhood.”⁶⁷

Likely due to these law enforcement practices, from 2000 to 2005, the population at the McCracken Jail increased by 40 percent, reaching an all-time high of 402 people.⁶⁸ Reverend H.G. Harvey, a Black community leader, argued that the Paducah Police Department’s efforts to paint Lower Town as crime-ridden were racist. “Because [the neighborhood] is Black,” he said “then automatically a lot is said about it . . . I think it’s more of a phobia than anything.”⁶⁹ In 2005, 7 percent of Black working-age residents were prosecuted for drug charges, compared to 3 percent of white working-age residents.⁷⁰

Paducah’s redevelopment program transformed the city’s class and racial makeup by force. Between 2000 and 2010, the share of Black residents in Paducah shrank for the first time in at least three decades.⁷¹ This decline was particularly pronounced within Lower Town, where the city demolished housing and displaced residents; in one census tract, the number of Black renter households dropped by nearly 50 percent.⁷²

The spike in criminalization and displacement of communities of color is almost never mentioned in retellings of Lower Town’s development plan—which is frequently portrayed as a much-needed lifeline for a neighborhood characterized by urban blight and poverty. But, when Vera researchers went to Paducah in 2021, almost everyone commented on the area’s continued failure to meet the needs of its residents. Many described a dearth of stable housing, employment opportunities, mental health care, and substance use treatment. This lack of social services is further complicated by a lack of public transportation. One man told Vera that people often get “stuck out in the rural areas” and that residents “could use some

help . . . getting to, and from places. Interviews, jobs, things like that.”⁷³ Another woman echoed this: “In bigger cities like Louisville they have the transit system, you can pretty much get anywhere at any time. Around here they have a city bus but it hardly ever runs.”

Paducah’s top-down development strategy ignored the needs of the area by failing to invest in the types of physical and social infrastructure that would have promoted residents’ ability to lead healthy and meaningful lives. Instead, it relied upon the use of police to displace poor people—disproportionately people of color—and protect the interests of politically powerful groups. This strategy is far from unique. After the 2020 police killing of Breonna Taylor in Louisville, Kentucky, sociologist Brenden Beck described how intensified misdemeanor policing often accompanies periods of gentrification—and connected Taylor’s murder to Louisville’s attempts to “arrest its way toward economic redevelopment.”⁷⁴ In Paducah, the outsized role of law enforcement also fundamentally contradicts the collective care that residents told us they needed. Vera spoke with a social service worker in the city, who described the antithetical relationship between her role and that of law enforcement: “It’s a complicated relationship. ‘Cause, like, we’re there to help. And they’re there to, basically, take people to jail.” She continued, “I wish there was a different approach to it.”⁷⁵

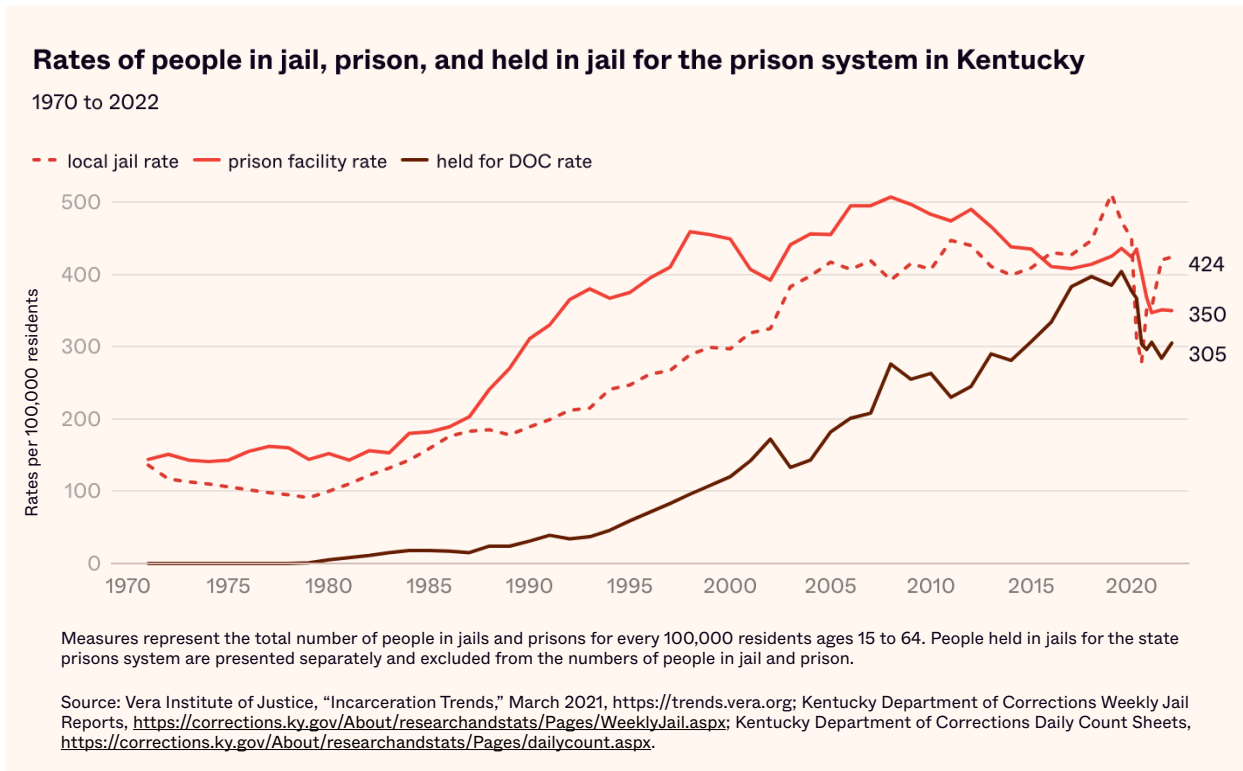
THE CLASS D FELONY PROGRAM AS A SOURCE OF COUNTY REVENUE

The decline of the manufacturing and coal industries has had a broader impact on county budgets. As tax revenues diminished, many local governments sought out new forms of revenue to pay for the mounting costs of operating local jails, courts, and law enforcement agencies—costs that have been increasing for decades due to increased incarceration as part of the “War on Drugs.” One form of revenue is payments from the Kentucky

DOC to local jails to hold people who would otherwise serve their sentences in crowded prisons. From 1987 to 2000, the state Supreme Court and General Assembly created the legal architecture for the Class D program, which required the Kentucky DOC to pay counties a per diem fee to incarcerate people convicted of low-level felonies, which typically lead to intermediate sentences of one to five years.⁷⁶ By 2016, nearly half of the people serving felony sentences for the state were locked up in county jails.⁷⁷

As early as the mid-1970s, Kentucky’s prisons incarcerated more people than they were designed to hold.⁷⁸ From 1974 (when lawmakers enacted a new penal code) to 1985, the General Assembly enacted statutes that increased criminal penalties, created new sentence enhancements and mandatory minimums, and eliminated many alternatives to incarceration, empowering prosecutors, courts, and the DOC to incarcerate more people for longer periods of time.⁷⁹ Prior to 1974, Kentucky operated five state prisons. After the 1974 penal code revision, however, the Kentucky

FIGURE 3



DOC embarked on a substantial prison expansion project, constructing seven new prisons over the following three decades.⁸⁰ Despite this construction boom, Kentucky's prisons continued to be filled beyond their designed capacity. Since the early 1980s, the continued rise of incarceration in Kentucky has been virtually unchecked.⁸¹ Instead of resolving the incarceration crisis in Kentucky's state prisons, the General Assembly transferred the crisis to local jails.

As a result of federal court orders that capped the number of people held in state facilities, the Kentucky Department of Corrections was temporarily prohibited from accepting people convicted of felonies into crowded prisons.⁸² Beginning in 1985, the DOC slowed its intake process, leaving many people with prison sentences to sit in county jails awaiting transfer.⁸³ Incarcerated people and Kentucky counties, separately, sued the DOC to compel it to transfer sentenced people out of crowded jails into state prisons.⁸⁴ In 1987, the Kentucky Supreme Court created the legal basis for counties to incarcerate people in local jails on behalf of the Kentucky Department of Correction, as long as the DOC reimbursed those counties.⁸⁵ With this ruling, the Supreme Court effectively transformed what had been a temporary stopgap measure into a long-term resolution to the prison-crowding crisis.

For the state DOC, the Class D program is a cheaper alternative to prison expansion because the cost of incarcerating people in county jails is significantly lower than in state prisons. In 2021, the average daily cost of incarcerating a person in Kentucky's county jails was \$44, compared with \$97.60 per day in Kentucky prisons. That year the DOC paid, on average, \$35.43 per person, per day to county jails to incarcerate people for the state; each county received an additional \$24,000 yearly (equivalent to about \$65 per day) from the state to offset the costs of operating their jails or incarcerating people in neighboring counties.⁸⁶ This funding did not fully cover the costs associated with jails, however, which includes debt servicing and not just operational costs.⁸⁷ In this way, the Class D felony program allowed the state to avoid costly prison expansion and pass down costs of incarceration to county governments.

Although the Kentucky Supreme Court allowed the DOC to pay counties to imprison people on their behalf throughout the 1980s, Kentucky lawmakers soon *required* it. In 1992, the General Assembly directed the DOC to incarcerate people convicted of Class D felonies in county jails rather than state prisons, formally institutionalizing the practice.⁸⁸ Two additional pieces of legislation passed in 2000, definitively narrowing the distinction between county jails and state prisons. First, the General Assembly expanded the Class D Program to include some people convicted of Class C felonies who have fewer than five years remaining on their sentence.⁸⁹ Class D and C felonies are, respectively, the lowest and second-lowest level felonies in Kentucky, and many drug charges are classified as Class D felonies.⁹⁰ Second, the General Assembly required jails that incarcerate people for the state to provide programs comparable to those available to people locked up in state prisons.⁹¹

There is also some evidence that the Class D felony program may have worsened the local incarceration crisis in another way—by incentivizing local judges and prosecutors to pursue more low-level felony convictions for which jails could be reimbursed by the state. An analysis of statewide conviction data from 2004 to 2019 shows an increase in Class D felonies as a share of overall convictions in every region of the state.⁹² For example, in Kentucky’s Appalachian counties, the annual number of Class D felony convictions almost doubled from 2004 to 2019.⁹³ Simultaneously, the number of misdemeanor convictions decreased 22 percent and cases in which a violation or local ordinance was the most serious conviction decreased by 50 percent. Similarly, in western Kentucky, Class D convictions almost doubled from 2004 to 2019, while misdemeanor convictions declined by 32 percent and convictions on violations or local ordinances were halved.⁹⁴ While there are some regional differences in terms of when convictions on misdemeanors and violations or local ordinances peaked, the statewide picture is of a significant shift toward Class D felony convictions.⁹⁵

Today, the Class D program drives incarceration by attaching financial incentives to imprisonment. Although counties receive a relatively small fee for incarcerating people on behalf of the DOC, rural Kentucky counties depend on this arrangement. So

many counties in Kentucky now house large numbers of people for the state prison system, federal agencies, and other counties that the payments from these entities make up the largest portion of statewide jail revenues, ranging from 37 to 44 percent of total jail revenues, on average, from 2007 to 2020.⁹⁶ Many people Vera spoke to in Kentucky were aware that counties generated revenue from their incarceration. Anne, a woman Vera researchers interviewed in western Kentucky, believed that the jailer was incentivized to lock up people who were charged with Class D felonies for as long as possible in order to earn per diem payments from the DOC.⁹⁷ “Why are you not transferring these people out?” Anne asked, referring to the people who were living inside crowded cells. “It’s money.” Researchers from the non-partisan research and policy organization KyPolicy also found that Kentucky’s Class D Program contributed to crowded jails. Counties are incentivized to lock up more people in their jails than they are designed to hold, KyPolicy researchers argue, in order to leverage “economies of scale.” “This approach works,” they explain, “because the fixed costs of operating a jail do not increase proportionately as more people are incarcerated, so housing two or more people in space meant for one person can provide significantly more income per square foot.”⁹⁸

Despite the problems caused by this arrangement, many counties have raced to increase their carceral capacity to lock up state-sentenced people in order to earn revenue from DOC per diems. Since 2004, 38 counties expanded their jails, 14 counties built new jails, and four counties invested in both expansion and new jail construction.⁹⁹ Some have explicitly expanded carceral capacity in an attempt to bring in more revenue from the DOC.¹⁰⁰ As one eastern Kentucky jailer told a Vera researcher in 2019, “If you’re going to build [a jail], you might as well build it to make a little revenue.”¹⁰¹ However, Kentucky’s decades-long incarceration boom has come with significant costs to counties. From 2007 to 2020, jail spending in Kentucky increased by 25 percent, adjusted for inflation, with most



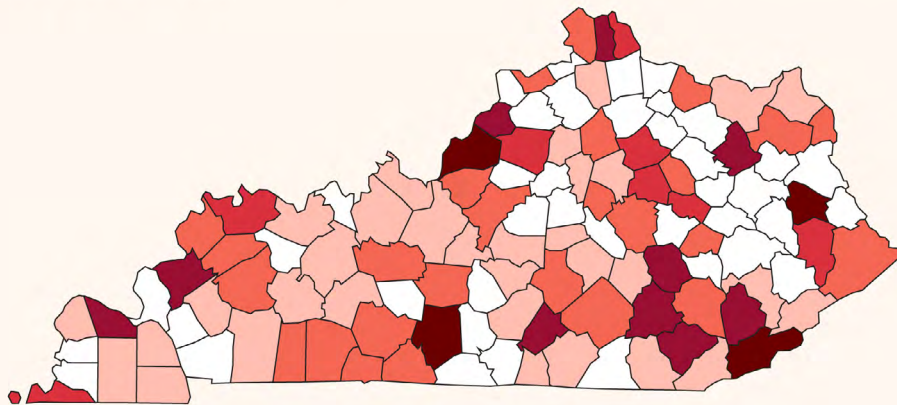
Whitesburg, Kentucky. The jail in Letcher County, where Whitesburg is located, regularly holds double the number of people as its rated capacity. Due to severe crowding, the jail is no longer permitted to house people for the state prison system. Credit: Jack Norton

of the increase occurring after 2016. In 2020, Kentucky counties spent more than \$417 million on local jails.¹⁰²

FIGURE 4

Jail expansions and new jails in Kentucky since 2004

In the last 18 years, 14 counties constructed new jails, and 38 expanded their existing jail. Four counties invested in both jail expansion and new jail construction.



- No jail
- Jail expanded multiple times
- No expansion or construction
- New jail constructed
- Jail expanded once
- New jail constructed and later jail expanded, or vice versa

Note: One county, Union, expanded its jail and subsequently closed it. It is included in the category of jails that expanded once since 2004, although it currently does not have a jail.

THE USE OF CRIMINAL LEGAL FINES AND FEES TO FUND JAILS AND COURTS

In addition to per diems earned from holding people for the state and other agencies, municipal and county governments in Kentucky have increasingly turned to criminal legal fines and fees and privatized probation to fund various aspects of government operations, including local jails and court systems. This is part of a broader trend that has played out in jurisdictions across the country.¹⁰³ Vera researchers spoke with people across the state who detailed how unaffordable fines and fees, combined with onerous conditions of court imposed supervision, kept them tethered to the criminal legal system, sometimes leading to

additional jail time. These monetary sanctions included monthly supervision fees, drug testing fees, restitution, and other court costs.

In western Kentucky, Allen had to pay \$100 per month in restitution and \$50 per month to Crossroads, a private agency that provides misdemeanor probation services for his county's district court.¹⁰⁴ When Vera researchers spoke with him, Allen was still on probation with Crossroads and had an outstanding debt of \$1,575—which he was struggling to pay since he was only working two days a week making \$12 an hour. Allen described reporting to Crossroads as an extremely burdensome process. Each time, he would go to the courthouse to obtain his outstanding balance, pay the fees at the Crossroads office, then return to the courthouse to deliver proof of the payment. He expressed frustration at these requirements: “[It] doesn’t make any sense. If I’m gonna pay it, I can pay it at the courthouse.”¹⁰⁵ According to him, Crossroads did not provide any formal services and instead existed “just to make sure that you’re paying something.” The company not only exploited Allen’s contact with the criminal legal system for profit, but also presented him with an additional bureaucratic hurdle in a criminal legal system that is already difficult to navigate.

Rather than raising taxes, fines and fees have been a preferred way to fund government operations in conservative-leaning states that were heavily influenced by right-wing political activist Grover Norquist’s “Taxpayer Protection Pledge,” an effort to enlist Republican candidates for office to oppose all tax increases.¹⁰⁶ In some places where this has occurred, the pressure to collect debts via local court systems has created elaborate systems in which people convicted of minor crimes are saddled with unaffordable fines and fees and threatened with jail time if they cannot afford to pay. In jail, they are then charged pay-to-stay fees, creating insurmountable debt that often traps them in the criminal legal system for years. This is a form of regressive taxation, extracting income from the poorest people rather than distributing the costs across society.

Garth, previously mentioned in this report, was released from jail on probation, which required him to see his probation officer once

a month and pay \$35 a week in “supervision fees”—on top of other fines and court costs. The supervision fees were waived because Garth was staying at a residential treatment center but, when Vera researchers met him, he still owed \$500. His main source of income was being a peer mentor, which earned him \$100 a week—barely enough to cover his basic necessities.

Garth described how such monetary sanctions can set off a vicious cycle that leads to further criminalization. “You get straight outta jail. And then a month later they want you to pay this \$800 fine. You ain’t got a job. . . . So they throw you right back into jail [for not paying it],” he said. “Or the person’s scared to go to court. Cause they know they ain’t got their money. So then they get a failure to appear”—which can result in a warrant for their arrest. “It’s like a setup,” he concluded.¹⁰⁷

The practice of jailing people for their inability to pay has resulted in litigation in multiple states—including Idaho, Louisiana, Missouri, Oklahoma, South Carolina, and Tennessee—on grounds that it violates the 14th Amendment to the U.S. Constitution.¹⁰⁸ For example, a class-action lawsuit against Rutherford County, Tennessee, and a private probation agency in 2015 resulted in a monetary settlement and permanent injunction prohibiting a person from being “held in jail for nonpayment of fines, fees, costs or a pre-probation revocation money bond imposed by a court without a determination, following a meaningful inquiry into a person’s ability to pay, that the individual has the ability to pay such that any nonpayment is willful.”¹⁰⁹

Kentucky employs a host of fines, fees, and charges for jail boarding, supervision, and court costs. State law allows courts to jail people for nonpayment of criminal legal debt or for failure to appear in court on a hearing set solely to address nonpayment of costs, fines, and fees.¹¹⁰ Perhaps in response to the litigation in neighboring Tennessee and in other states, Kentucky senate bill (SB) 120, passed on April 10, 2017, amended various Kentucky criminal statutes relating to the ability of the courts to jail people for nonpayment of fines and fees.¹¹¹ Among other changes, the bill broadened the use of Kentucky’s “sliding scale of indigency,” first established in 2010, to apply to all court cases—including



a determination of the ability to pay criminal fines and fees.¹¹² However, the scale was intended “only as a guideline for judges,” maintaining judicial discretion when making an ability to pay determination. Under current law, judges can still issue an arrest warrant for nonpayment of court costs, fees or fines, and people who are unable to afford their payments can opt to serve time in jail instead—a practice that directly criminalizes people for being poor. This practice leads to severe collateral consequences for people who are incarcerated, who are disproportionately from underserved communities. It also generates additional costs for the counties that bear the cost of incarceration, making it fundamentally antithetical to the goal of generating revenue. By continuing to jail people for their inability to pay fines and fees, Kentucky remains vulnerable to lawsuits similar to those that have been filed in other states.

People across the commonwealth told Vera researchers how their inability to afford court costs and supervision fees deepened their precarity and made them more vulnerable to reincarceration. Jessica, who was previously mentioned in this report, described how her incarceration and probation decreased her ability to earn an income. When Vera spoke to her in 2019, Jessica was working at a deli, earning \$9.75 an hour. She was expecting a

Workers at a butcher shop in Louisville, Kentucky, August 2022. Many people across Kentucky work in low-wage occupations, including in the food services industry. Credit: Luke Sharrett/Bloomberg via Getty Images

raise to \$10.75 an hour; but this amount was substantially lower than the \$15 to \$18 per hour she earned prior to her incarceration at a nearby poultry processing plant, a major supplier of KFC. When we met Jessica, she had been on probation for nearly two years. As part of her probation, she was required to report to court once every month, submit to periodic drug tests, and attend anger management classes. Her drug tests, classes, and court appearances all came with fines and fees, and she had to pay an additional \$20 per month in probation supervision fees. She struggled to keep up with these payments, given her relatively low income. “I live paycheck to paycheck,” Jessica told us. “I haven’t been able to pay.”¹¹³ Jessica’s outstanding criminal legal debt prolonged her probation, which would last until her court costs were paid in their entirety. As long as she was on probation, Jessica was prevented from leaving the county to seek better employment elsewhere. “I just wish there wasn’t so many court costs,” she said. “I don’t make that much. And it’s hard for me to come up with all that money at one time. . . . You’re always afraid,” she continued, “if you don’t pay your fines, that you’re going to jail.”

People in Kentucky are required to pay jail boarding fees for their time in jail if they are eventually convicted of the charge or charges against them. Counties can charge people up to \$50 per day in pay-to-stay fees, as well as an administrative booking fee, charges for any medical and dental treatment, and reimbursement for “property damaged or any injury caused” by the person while incarcerated.¹¹⁴ Payment for these fees can be automatically garnished from a person’s property or canteen account, and counties can contract with private debt collection agencies to collect unpaid jail debt. People who serve their sentences under Kentucky’s home incarceration program are responsible for the cost of a monitoring device and supervision fees.¹¹⁵ People who participate in jail work release programs can be charged up to 25 percent of their gross daily wages to offset their jail boarding fees.¹¹⁶ Jailers in Kentucky are also authorized to charge a “bond acceptance fee” of \$5 per bail bond.¹¹⁷

From 2007 to 2020, Kentucky counties—excluding the two largest counties, Fayette and Jefferson—collected at least \$53.5 million in revenue from jail boarding fees, \$13.7 million in revenue

from work release fees, over \$8.2 million in revenue from home incarceration fees, and more than \$8.2 million from jailer's bond acceptance fees.¹¹⁸ These amounts do not include additional fees and costs such as the inflated charges for telephone calls and video chat services that incarcerated people pay as a result of "telephone commissions"—a percentage of revenue paid to the local jail by private communications providers. Nor do they include the money spent on jail commissary for basic necessities like soap and shampoo. People accused of crimes can also be further impoverished by civil asset forfeiture, the legal scheme that allows law enforcement to seize money, property, and other assets that they suspect or allege are connected to illegal activity. Women disproportionately shoulder the financial costs when family members are incarcerated, including bail, attorney fees, and court fines and fees.¹¹⁹

Upon release, people in Kentucky are also charged fees while on probation, parole, or other forms of supervised release. The fees amount to \$10 per month or up to \$2,500 per year for each felony, and \$10 per month or up to \$500 per year for each misdemeanor; nonpayment is grounds for revocation of supervision.¹²⁰ Kentucky law allows community supervision fees to be higher in a city or consolidated urban-county government such as Fayette and Jefferson counties. People are also responsible for the costs of alcohol monitoring or GPS monitoring devices and associated administrative fees if they are imposed as supervision conditions.¹²¹ Statewide, counties and courts often assign people to the supervision of private probation and electronic monitoring companies. These companies typically operate without contracts or legal agreements and without meaningful oversight from the Kentucky Administrative Office of the Courts or other agencies.¹²² As a result, it is unknown how many companies exist in the state, how many people they monitor, in which counties they operate, how much they charge for their services, or how much they make in profits.

Across the state, low wages combine with high criminal justice fines and fees to make people poorer. Vera researchers spoke with Benjamin in eastern Kentucky about his experience with outstanding court debt and probation costs. Benjamin told Vera

that minimum wage work was practically all that was available to many residents in his county. “[This county] really don’t have much,” he said. “The only kind of work you’ve got around here [are] restaurants or gas stations. And that’s it.”¹²³ In 2020, the average median household income in eastern Kentucky, where Benjamin lived, was about \$33,000, which was 40 percent lower than the median household income statewide.¹²⁴ Kentucky’s minimum wage has been \$7.25 since 2007.¹²⁵ If Benjamin managed to work a job full-time, earning about \$1,160 per month, the twice-weekly drug tests mandated as a condition of his probation would wipe out almost one 10th of his gross income at \$13 per test.

People can also be charged fines for each conviction depending on the class of the offense, either in lieu of incarceration or in addition to a sentence. They range from \$500 for a Class A misdemeanor, \$250 for a Class B misdemeanor or violation, and anywhere from \$1,000 to \$10,000 from the commission of one or more felonies.¹²⁶ People are charged an administrative fee of \$30 if they are convicted on charges categorized as sex offenses, for stalking, or for attempting or conspiring to commit those crimes.¹²⁷ The courts can also order people to pay restitution as a condition of their sentence or parole, and nonpayment is grounds for driver’s license revocation, contempt of court, and continued supervision—even if this would lengthen the period of supervision beyond the statutory limit for parole.¹²⁸

Finally, people are charged a range of court fees that vary depending on the specifics of a case. A \$100 fee is assessed on all criminal cases in Circuit and District Court. Kentucky statute stipulates that 49 percent of these funds must be distributed into the general fund, the primary fund that governments use to finance their core operations. The remainder is to be used primarily to fund various types of court and jail operations—for example, 5 percent of each court cost is allocated to hiring deputy clerks and deputy clerk salaries, 10.1 percent to the local sheriff, and 10.8 percent to the Kentucky Local Correctional Facilities Construction Authority.¹²⁹ In District Court criminal cases, additional fees include \$20 intended for police, jails, and housing or transporting people in custody, a \$10 fee on all misdemeanors for the training, salaries, and equipment of the Kentucky Internet Crimes Against Children



Task Force, a \$5 fee for the general fund, and a \$5 fee for the telephonic behavioral health triage system.¹³⁰ Counties are also authorized to pass local ordinances to assess various additional court filing fees.¹³¹ For example, from 2007 to 2020, Kentucky counties collected at least \$44.8 million in fiscal court filing fees.¹³² This list of fees is not exhaustive; additional miscellaneous court fees are scattered across Kentucky legislative statutes, creating a complicated web that makes it difficult to fully grasp all the costs that could be assessed in any given case.

Old rail cars on display by the active railroad in Hazard, Kentucky, once dubbed the “Heart of the Coal Fields.” As county governments have struggled with loss of revenue from coal and other industries, they have turned to per diem payments and criminal legal fines and fees to sustain their budgets. Credit: Jared Hamilton

By turning to criminal legal fines and fees to fund court and jail operations, jurisdictions across Kentucky create a vicious cycle that traps people in poverty and makes it more difficult for people to lead stable lives after incarceration. Being saddled with unaffordable fines and fees—particularly when combined with onerous conditions of supervision—makes it more likely that people will have continued criminal legal system contact in the future, thus working against the goal of public safety.¹³³ Furthermore, research from other states indicates that fines and fees are an inefficient source of government revenue because they are often imposed without consideration of a person’s ability to pay, raising the cost of collecting these revenues and making it unlikely they will ever be collected in full.¹³⁴

KENTUCKY'S BIGGEST EFFORT AT CRIMINAL LEGAL REFORM TO DATE

In 2011, the Kentucky General Assembly passed House Bill (HB) 463, *The Public Safety and Offender Accountability Act*, promising to shrink the state prison population, reduce corrections spending, and expand treatment and rehabilitation programs for drug users who otherwise would have been incarcerated.¹³⁵ A small, bipartisan task force in Kentucky in 2010 contracted with the Pew Center on the States Public Safety Performance Project to study the state's penal code and make recommendations to the General Assembly for reform.¹³⁶ Kentucky's task force included legislators, the chief justice of the Kentucky Supreme Court, a former prosecutor, a former public defender, a county judge executive, and the secretary of the Public Safety Cabinet. Criminal legal reform in Kentucky was top-down, with no meaningful seat at the table for people who were criminalized or the communities most affected by policing and imprisonment.¹³⁷

Kentucky's criminal legal reforms were part of a national Justice Reinvestment effort, funded primarily by the Bureau of Justice Assistance and supported by Pew and other technical assistance providers, including Vera. The reforms codified in HB 463 closely followed the policies produced by Pew in other states, including Texas and South Carolina.¹³⁸

Kentucky's HB 463 included two major sets of reforms. The General Assembly reformed some of the state's drug laws, reducing overall penalties for possession of controlled substances and eliminating sentencing enhancements of people who were charged with possession multiple times. HB 463 also ordered the state supreme court to establish new guidelines for judges pertaining to pretrial release, and carved out a set of alternatives to incarceration that were meant to create a path for people charged with drug possession to stay out of jail and prison.¹³⁹ Although the bill did not decriminalize drug use or mandate pretrial release for people with nonviolent, low-level charges, these changes, at least in theory, might have been a significant step towards reducing the number of people incarcerated and ratcheting down Kentucky's drug war.

The reforms failed to curtail the “War on Drugs,” however. An analysis of criminal cases in Kentucky shows that in the decade following the passage of HB 463, the share of prosecutions with a drug-related charge grew from 15 percent of all prosecutions in 2011 to a quarter of all statewide prosecutions from 2018 to 2021.¹⁴⁰ People increasingly faced felony charges; by 2018, 60 percent of drug-related cases were felony drug cases, up from 46 percent in the year before HB 463 was implemented. Despite the legislature’s reforms to possession statutes, prosecutors increasingly charged people with possession of controlled substances. From 2018 to 2021, drug possession cases made up almost 70 percent of all drug prosecutions, up from 58 percent in 2011. Although it was not the intention for the reforms to curb drug-related mortality, it is also worth noting that drug overdose deaths reached very high levels in the years after the legislation was passed—9.9 percent of all deaths in the Commonwealth in 2017 and 13.2 percent of deaths in 2020.¹⁴¹

The reforms were flawed from the outset because they were based on an approach to law enforcement that treats systematic issues as individual choices or failures. Instead of investing in the community-based social infrastructure that people in Kentucky need for substance use treatment and recovery, lawmakers maintained the criminalization of people who use drugs, expanded correctional supervision, and directed any potential money saved from the DOC budget as a result of HB 463 into additional correctional control and treatment resources for people who had already been convicted. In a December 2011 report on the implementation of HB 463, the taskforce noted that 50 new parole officers had already been hired to manage the additional caseload created by the bill’s mandatory reentry supervision requirements.¹⁴²

Criminal legal system responses to substance use can lead to harmful outcomes. Despite the widespread reliance on jail, prison, and involuntary institutional commitments to treat substance use disorder, a comprehensive review of involuntary treatment found no evidence that it was more beneficial than voluntary treatment, with some studies suggesting potential harms.¹⁴³ Research in other

Prosecutions with a drug-related charge grew from 15 percent of all prosecutions in 2011 to a quarter of all statewide prosecutions from 2018 to 2021.

states and internationally shows that the risk of opioid overdose is greatly elevated by incarceration.¹⁴⁴ This is partly because people lose tolerance while they are incarcerated because they are not using opioids, or the drugs they have access to in prison are lower quality, which greatly increases their chance of overdose once they are released from jail or prison. Jesse, mentioned earlier in this report, described to Vera researchers how jails served as de facto detox centers for him. While he was actively using heroin and cycling in and out of jails, Jesse experienced withdrawals with no medical support. “You just tough it out,” he said, “take a bunch of hot showers. That’s all you can do. . . . Whenever you go to jail, nobody cares.”¹⁴⁵

Withdrawal from substance use is exacerbated by a lack of access to community-based care, which might otherwise support safe recovery both pre- and post-incarceration. Anne, who struggled with alcohol use disorder after she was released from a western Kentucky jail, told us that she drove more than three hours outside of her county to enroll in a treatment program in Louisville. She explained that the area where she lived did not have a lot of sober living facilities, halfway houses, or homeless shelters—especially for women—to say nothing of a more permanent solution in stable, affordable housing. “As far as recovery . . . whether it’s from alcoholism, addiction, just getting your life back together . . . there’s hardly nothing in this area.”¹⁴⁶ In Lexington, Vera researchers also spoke with Maria, a housing coordinator at a social services agency, who described how people with criminal records often face barriers to accessing housing: “You have a lot of landlords that would just flat out say, ‘We don’t rent to [people with felony convictions].’”¹⁴⁷

People consistently pointed to their access to housing and connection with other sober people as vital resources in their successful recovery. Garth, who had been living at a western Kentucky residential drug treatment center for almost a year, told us that the area needed more facilities that provided people with both a safe place to live and the option to seek substance use treatment. He emphasized stable housing as a key element in his own recovery, contrasting his experience with that of a friend who was unhoused: “He’s [receiving substance use treatment]

one on one, but he’s sleeping here and there. He told me he got a tent.”¹⁴⁸ Garth viewed a lack of public services—especially housing and recreation options—as intrinsically linked with substance use issues. “That’s the reason why people sell drugs and do drugs. They got nowhere to live or nothing,” he said, “I wish I could open up somethin’ for young people around here. So they have something to do . . . besides drugs.” Garth, in short, argued that meaningful work and community, fulfilling recreation, and stable housing—not criminalization—were the resources that were most crucial to his recovery.

As explained by writer Tarence Ray, “the result” of the criminalization of substance use “has been an epidemic not suppressed but inflamed.”¹⁴⁹ In the wake of HB 463, overdose deaths continued to increase. The number of fentanyl-related deaths in Kentucky tripled from 2013 to 2014, and almost doubled from 2014 to 2015.¹⁵⁰ In response, the General Assembly rolled back many of the drug law reforms codified in HB 463. In 2015 and 2017, the legislature increased criminal penalties for trafficking.¹⁵¹ Lawmakers also increased penalties for people bringing heroin and/or fentanyl into the commonwealth in 2015 and 2022, respectively.¹⁵² Researchers found that from 2011 to 2021 the General Assembly instituted 59 bills that increased or enhanced criminal punishments, compared to 10 bills that reduced criminalization and incarceration.¹⁵³

HB 463 had several other crucial flaws that curtailed its potential impact. The reform’s shortcomings were, effectively, written into the bill, because lawmakers preserved expansive prosecutorial and judicial discretion to punitively charge and imprison people. For example, one objective of the reforms was to expand pretrial release without money bond for people considered to be at “low risk of flight” and “not likely to be a danger to others.”¹⁵⁴ The reforms were also meant to moderate the conditions of release based on a person’s likelihood of failing to appear in court or posing



The Park Theater in Middlesboro, located in Bell County in the eastern part of Kentucky, was last in operation in the early 1980s. Credit: Jared Hamilton

a safety risk—for example, only those who scored moderate or high on a pretrial risk assessment were to be placed on GPS monitoring. However, because the reforms preserved judicial discretion over the decision to release someone pretrial and their conditions of release, judges were not required to abide by the new provisions.

In the years after HB 463, studies found that while some judges initially followed the statutory guidelines to release people designated as moderate and low risk before trial, they quickly returned to exercising their discretion to hold people on unaffordable money bail. Between June 2011 and June 2012, for example, 15 percent of people recommended for unconditional release and 33 percent of people recommended for release with conditions were still detained pretrial based on judicial discretion.¹⁵⁵ Judges in some counties were particularly flagrant in their disregard of Pretrial Services' recommendations. McCracken County, for example, had the lowest average release rate (46 percent) in Kentucky during that same period.¹⁵⁶ By 2015, the pretrial release rate was lower than it had been prior to implementation of HB 463. Analysis also showed the judges ignored a provision of the law allowing for \$100 in “bail credits” to be earned for each day of detention, further eroding the law’s promise to expand pretrial release.¹⁵⁷

The bill’s goal to expand alternatives to incarceration for people who use drugs was also undermined by the preservation of broad prosecutorial and judicial discretion. HB 463 expanded what lawmakers called “evidence-based programs” for people under various types of supervision, such as residential and nonresidential recovery programs and behavioral change programs.¹⁵⁸ However, although HB 463 allowed judges to divert people charged with drug possession from incarceration via deferred prosecution, a person’s request to participate in the program can be denied by either a prosecutor or a judge with little to no justification. Similarly, although the bill allowed courts to order people convicted of drug possession to avoid incarceration by participating in alternatives like inpatient or outpatient substance use disorder or mental health programs, it ultimately preserved judges’ discretion to impose a sentence of incarceration and to determine the severity of people’s supervision requirements if they were released from

jail.¹⁵⁹ In other words, criminalized people are at the whim of judges and prosecutors, who can decide whether and for how long to imprison them and to determine the severity of their supervision requirements if they are released from jail.

Some of the people who are released pretrial are mandated by prosecutors or pretrial officers to participate in treatment or other programs; they are required to submit to onerous forms of correctional supervision that curtail their freedom and mobility and render them more vulnerable to criminalization and incarceration in the future.¹⁶⁰ For example, people subject to pretrial supervision may be required to obey a curfew imposed by a court or by a prosecutor, to submit to periodic testing for drugs and alcohol, to report to pretrial officers, and/or to submit to some form of electronic monitoring. People may be prohibited from driving or only permitted to drive under certain circumstances. They may be ordered to forgo contact with their alleged victims. They may be compelled to attend general equivalency diploma programs, obtain employment, and/or enter drug treatment or counseling programs. Many of these conditions, like drug testing and electronic monitoring, extract considerable fees from people; the state does not provide any funding to offset these costs.¹⁶¹ Judges are required to hold ability-to-pay hearings and are empowered to waive supervision fees.¹⁶² Many of the people in Kentucky with whom Vera spoke, however, reported that judges still required them to pay, even when they were unable to do so. Many of these conditions are expensive and time-intensive; they limit people's mobility, making it difficult to hold a job and maintain family commitments, such as childcare; and each of them are backed up with the threat of incarceration and further criminalization.

Although the reforms were intended to expand the availability of counseling and treatment programs as alternatives to incarceration, many people Vera researchers met said that substance use treatment was not easily accessible. Reflecting on his own experience and the experiences of many people he knew, Dan told Vera that “a crazy number of people” in western Kentucky where he lived had been placed on pretrial diversion without being given access to drug treatment.¹⁶³ Pretrial diversion is meant to be a mechanism for people who agree to plead guilty to

first-time, nonviolent charges—typically class D felonies—to avoid incarceration. People must meet conditions similar to those set for probation, such as not consuming any alcohol or illegal drugs and meeting regularly with a probation officer, to eventually have their charges dismissed. “But,” Dan explained, “without giving [people] any kind of treatment to drug and alcohol addiction. . . . That’s just settin’ ‘em up to go back to county jail.” Lawmakers did introduce what they called “Graduated Sanctions”—a series of actions that judges can take prior to revoking probation or parole—based on judicial discretion which, lawmakers hoped, would reduce the number of people returned to jail or prison for minor, technical violations.¹⁶⁴

Some people who did manage to access drug treatment found that it prolonged their involvement with the criminal legal system. Vera researchers interviewed Matt, who was released from jail pretrial on the condition that he attend a drug rehabilitation program. Matt enrolled in a 28-day program at a nearby residential treatment center in western Kentucky and, after graduating and completing another nine-month program, began working as a peer mentor in the facility, helping other people in recovery. Despite complying with the terms of his pretrial release, graduating from rehab, and working as a peer counselor for other people at the rehab center, Matt’s contact with the criminal legal system was far from over when Vera spoke with him in the fall of 2021. His case was still in the pretrial stage, and his court dates had been delayed multiple times while he stayed at the rehabilitation facility. Matt expected that, once he left the residential treatment facility where he was presently living, he would have to turn himself into the county circuit court and wait in jail until he was sentenced. Had Matt chosen to remain in jail pretrial at the onset of his case, his time served in the jail would have counted toward his later sentence. The time he spent in rehab, however, did not. Still, Matt said that he would “rather be in somewhere like this than in jail.”¹⁶⁵ The treatment center where he was living was a better environment for his mental health, he said, because it allowed him access to more resources and autonomy—including, for example, the ability to stay connected with others over the phone without having to pay costly fees.

Some people who did manage to access drug treatment found that it prolonged their involvement with the criminal legal system.

In December 2017, in response to persistently high incarceration in Kentucky, state leaders requested another round of technical assistance from the Justice Reinvestment Initiative. Then-governor Matt Bevin established a working group charged with proposing policy solutions that would “protect public safety, hold offenders accountable, reduce corrections populations, and safely reintegrate offenders back into a productive role in society.”¹⁶⁶ The working group found that growth in Kentucky’s prison population from 2012 to 2016 was primarily driven by increases in admissions of people convicted of Class D felonies and revocations of community supervision, and that the number of women in Kentucky prisons had grown at a much higher rate than the overall prison population rate, which was driven by low-level, nonviolent offenses. Among its 22 recommendations, the working group included reclassifying first and second convictions for simple drug possession from felonies to misdemeanors and revising Kentucky’s persistent felony offender statute for nonviolent offenses. The working group centered many recommendations around reducing the onerous pretrial, probation, and parole supervision conditions. This included

- limiting how long probation can be ordered;
- expanding eligibility for the lowest level of probation and parole supervision;
- expanding the use of earned credits for people on probation and parole;
- limiting how long someone can be jailed for a technical violation of supervision;
- and allowing a summons to be issued in lieu of an arrest warrant for people on parole who allegedly had a technical violation.

To date, versions of some of the working group’s recommendations have been passed into law, while others have been proposed in legislation. No comprehensive reform effort has been taken up, however.

Conclusion

Kentucky's incarceration and supervision systems have undergone a profound transformation over the past 50 years. Since the 1980s, dozens of prisons and jails have been constructed or expanded to hold the hundreds of thousands of people who are admitted to these facilities in the state every year. Simultaneously, increases in probation, parole, and pretrial supervision have contributed to a dramatic expansion of carceral control. These changes arose in the context of significant economic restructuring, the unfolding of the opioid crisis, and the increased criminalization of substance use, the effects of which are inextricably linked to incarceration and supervision.

People across the commonwealth shared their experiences of criminalization, and the effects of incarceration and supervision on their life trajectories, communities, and health and well-being. Their stories illuminate the human consequences of a system that continues to criminalize poverty, social precarity, and unmet public health needs. With an understanding that those who have been most impacted by the criminal legal system have a deep knowledge of its effects, Vera asked interviewees what people like them need in Kentucky—what sorts of social investment in the commonwealth would best address many of the problems that the state currently responds to with jail incarceration and correctional control. A theme that emerged throughout the interviews is a need for safety that cannot come from investment in jails or policing but rather from having

- reliable housing,
- economic opportunity,
- robust public health infrastructure,
- and a supportive community.

It is clear that ever-expanding correctional control is not a viable future for Kentucky, and continuing to detain thousands of people

for low-level felony and misdemeanor offenses has pushed both communities and the current carceral system to a crisis point. In late January 2023, weeks after the beginning of the legislative session, the Kentucky Jailers Association; Campbell, Kenton, Boyd and Marion Counties; and their elected jailers filed a complaint against the Kentucky Department of Corrections.¹⁶⁷ The plaintiffs pointed to the state prison system's failure to promptly classify and transfer people sentenced to serve state time and to adequately compensate counties for the costs of incarceration, health care, and services. According to the complaint, the plaintiffs' goals are to alleviate an unfair financial burden on counties and to "improve conditions for county and state inmates" by reducing the number of people serving felony sentences in local jails. The counties and jailers have asked the court not only to ensure that the Kentucky Department of Corrections follows current law, but also to direct the agency to contract directly with counties. The following month, several state legislators filed a landmark jail moratorium bill, which would have halted the construction or expansion of nearly all local jails until 2028; a signal that counties shouldn't be building new and larger facilities while the system was in limbo.¹⁶⁸ The bill passed easily out of the house, only to die in the senate. Still, it is clear that Kentucky is poised, once again, to fundamentally rethink the structure and degree of incarceration statewide. A jail taskforce began meeting in summer 2023 to take up the issue of how and whether to overhaul jail incarceration across Kentucky. It remains to be seen whether the current crisis will lead to narrow technocratic changes or meaningful reform.

The section below outlines recommendations for state and local policymakers that would reduce the harms caused by incarceration and supervision systems in favor of broadening people's access to community-based care and resources.

POLICY RECOMMENDATIONS

1. Reduce or eliminate criminal penalties related to poverty, drug use, and technical violations of supervision.

- Reduce or eliminate criminal penalties for simple drug possession. De-felonize drug possession charges or eliminate criminal penalties altogether for drug possession charges in favor of referrals to community-based substance use treatment programs; decriminalize cannabis possession.
- Reduce or eliminate criminal penalties for technical violations of probation or parole.
- Eliminate the use of incarceration for unpaid legal debt. Meaningfully assess people's ability to pay criminal legal fines, fees, costs, and restitution; and replace provisions that allow people to opt to serve jail time in lieu of paying court costs, fines, and fees with community-based alternatives.

2. Expand access to resources and care across urban and rural Kentucky.

- Invest in safe and reliable community-based housing and homeless services; ensure that people with behavioral health needs and conviction histories have access to housing without onerous sobriety requirements.
- Invest in treatment resources for drug and alcohol use and mental health that are not tethered to the criminal legal system and that do not involve the threat of jail time as a penalty for non-compliance.
- Institutionalize a broad recognition that returning to drug use is a normal and expected part of recovery from substance use disorder and should not be criminalized.
- Invest in more and better public transportation options

that connect people to jobs, services, and recreation.

- Invest in job creation and education programs for people with criminal histories.

3. Eliminate revenue incentives that drive jail incarceration and further impoverish criminalized people.

- Eliminate the use of jail, court, and supervision costs, as well as fines and fees to pay for government operations; fully fund criminal legal system operations via tax dollars that are equitably shared across society rather than via costs imposed primarily on poor and underserved communities.
- Increase oversight of the state's private probation and electronic monitoring industries and eliminate fees paid to private providers for supervision services and monitoring devices.

4. Overhaul Kentucky's pretrial justice system

- Eliminate money bail or restrict money bail to those who pose a significant risk to public safety or are likely to flee.
- Create a meaningful speedy trial law to ensure that people are not detained indefinitely on unaffordable bond and that cases are resolved in a reasonable time frame.
- Ensure judges across the state follow the bail laws—including statutory release requirements—by creating oversight and accountability mechanisms.
- Expand opportunities for meaningful pretrial diversion by limiting prosecutorial discretion to deny people access to alternatives and eliminating narrow eligibility requirements. Ensure that behavioral health needs are assessed by clinicians rather than criminal legal system actors.
- Make pretrial release decisions based on an assessment of

the likelihood of willful flight as opposed to nonappearance; limit the issuance of warrants for missed court dates and ensure people have the transportation and resources needed to attend court.¹⁶⁹

5. Shrink the net of supervision and surveillance.

- Set the least restrictive conditions of supervision necessary to protect the safety of another person or people for those released pretrial, placed on parole or probation, or in diversion or deferred prosecution programs.
- Shorten the maximum lengths of probation and parole terms and increase the ways that people can earn reduced supervision terms.

Endnotes

- 1 Vera analysis of Kentucky Center for Statistics, “Local Area Unemployment Statistics Report,” database (Frankfort, KY: Kentucky Center for Statistics, accessed July 19, 2022), https://kystats.ky.gov/Ssrs/Index/Master_LAUS_Report.
- 2 See for example Jared Bennett, “Calls from Kentucky Prisons Become Cheaper for Some, More Expensive for Others under New Rate Cap,” Louisville Public Media, November 9, 2021, <https://perma.cc/44W9-256P>.
- 3 James McNair, “Inside Kentucky’s Unregulated Private Probation Industry,” Louisville Public Media, January 20, 2016, <https://perma.cc/TL2R-WM8G>.
- 4 Centers for Disease Control and Prevention, “Drug Overdose Mortality by State,” March 1, 2022, https://www.cdc.gov/nchs/pressroom/sosmap/drug_poisoning_mortality/drug_poisoning.htm.
- 5 From July 2021 to December 2021, Vera researchers interviewed 32 people who had been incarcerated and/or subject to some form of supervision in Kentucky. All interviews were conducted in confidentiality. The names of the interviewees have been changed and the specific locations of the interviews have been excluded to preserve anonymity. Eight of the interviewees were women, and 24 were men. Although interviewees hailed from across Kentucky and some had moved from out of state, Vera conducted most of the interviews in three sub-regions: Lexington (Fayette County), eastern Kentucky (Harlan, Knott, Letcher, and Perry Counties), and western Kentucky (McCracken and Mayfield Counties). By interviewing people in these sub-regions, researchers sought to reflect the diverse geography of Kentucky and to better understand the differences and similarities between rural and urban Kentucky, as well as between communities in the eastern mountains and those in western Kentucky and in the more agricultural Jackson Purchase Region. Researchers also considered how western Kentucky is understudied and wanted to understand the dynamics of jail incarceration and carceral control in that part of the state and how those dynamics reflect state-level policy in Kentucky more broadly.
- 6 Vera Institute of Justice, “Incarceration Trends,” updated March 2021, <https://trends.vera.org/>.
- 7 Kentucky Department of Corrections (DOC), *Weekly Jail Report: June 24, 2021* (Frankfort, KY: Department of Corrections, 2021), <https://perma.cc/LBC7-U8L7>; and DOC, *Statewide Population Report, Daily Count Sheet: July 1, 2021* (Frankfort, KY: Department of Corrections, 2021), <https://perma.cc/XZM9-KETK>.
- 8 Danielle Kaeble, *Probation and Parole in the United States, 2020*, Appendix Table 5, 17 (Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics [BJS], 2021), <https://perma.cc/UN24-FTYU>. Community supervision as used in these reports refers to people on probation and parole and does not include people on pretrial supervision.
- 9 Based on monthly probation and parole reports published by DOC. Numbers include approximately 21 percent of people who are under administrative capacity or who have an inmate status and are monitored by probation and parole. Kentucky DOC, *P&P Population Report: June 20, 2022* (Frankfort, KY: Department of Corrections, 2022), <https://perma.cc/ZDL2-3W7W>.
- 10 Vera Institute of Justice, “Incarceration Trends,” 2021. Numbers were extracted by navigating from the main trends.vera.org landing page to the “State-level

Incarceration Trends” and then accessing the Kentucky chart of the total jail and prison incarceration rate for the state in 1985 and 2018.

- 11 People on probation and parole include some people on dual status and people who were held in correctional facilities during the period of supervision (on average less than 2 percent of people on probation and less than 4 percent of people on parole). Vera’s analysis is based on data from BJS, “Annual Parole Survey Series” and “Annual Probation Survey Series,” 1994–2018, Inter-university Consortium for Political and Social Research, <https://www.icpsr.umich.edu/web/NACJD/series/328> and <https://www.icpsr.umich.edu/web/NACJD/series/327>. Annual parole and probation reports for 1985–1994 obtained directly from BJS, “Annual Probation Survey and Annual Parole Survey,” 1980–2021, <https://bjs.ojp.gov/data-collection/annual-probation-survey-and-annual-parole-survey#publications-0>.
- 12 Kentucky’s 77 jails include 70 full-service county jails, four regional jails, and three life safety jails. Life safety jails and county jail facilities are not authorized to hold people for the state prison system. Regional jails refer to jails that are either owned and operated by one county and that regularly hold people for other counties, either informally or by contract, or jails that are jointly owned and operated by multiple counties through a regional jail authority. Jail classifications are from the DOC website, “Local Facilities,” <https://corrections.ky.gov/Facilities/Pages/localfacilities.aspx>. An additional approximately 6,700 people are incarcerated in federal prisons in Kentucky, in five facilities with associated “camps” mainly located in the east and northeast part of the state. This report, however, does not explicitly focus on people in Kentucky federal prisons. For federal data, see Federal Bureau of Prisons Statistics, “General Inmate Population Reports,” last modified October 20, 2022, accessed October 25, 2022, https://www.bop.gov/about/statistics/population_statistics.jsp;#:~:text=158%2C974%20Total%20Federal%20Inmates,Last%20Updated%20October%2020%2C%202022.
- 13 Vera Institute of Justice, “Incarceration Trends,” 2021. For literature on the impact of money bond on pretrial detention, see Kentucky Advisory Committee to the U.S. Commission on Civil Rights, *Locked Up for Being Poor: The Need for Bail Reform in Kentucky* (Louisville, KY: Kentucky Advisory Committee, 2021), <https://perma.cc/CPX9-NXXZ>; see also Ashley Spalding, “Disparate Justice: Where Kentuckians Live Determines Whether They Stay in Jail Because They Can’t Afford Cash Bail,” Kentucky Center for Economic Policy, June 11, 2019, <https://perma.cc/KHM3-6RLW>.
- 14 Christopher T. Lowenkamp, Marie VanNostrand, and Alexander Holsinger, *Investigating the Impact of Pretrial Detention on Sentencing Outcomes* (Houston, TX: Laura and John Arnold Foundation, 2013), <https://perma.cc/CKF5-RCMN>.
- 15 Vera Institute of Justice, “Incarceration Trends,” 2021.
- 16 Vera Institute of Justice, “Incarceration Trends,” 2021.
- 17 Supreme Court of Kentucky, *Amended Order: Kentucky Court of Justice Emergency Release Schedule for Pretrial Defendants and Emergency Pretrial Drug Testing Standards in Response to COVID-19 Emergency* (Frankfort, KY: Supreme Court of Kentucky, 2020), <https://perma.cc/T3VX-6JLZ>.
- 18 Kentucky Executive Order No. 2020-267, “Conditional Commutation of Sentence” (April 2, 2020), <https://perma.cc/S2RD-BY2F>; Kentucky Executive Order 2020-293, “Conditional Commutation of Sentence” (April 24, 2020), <https://perma.cc/ZAA7-8ZJ8>; Kentucky Executive Order 2020-699, “Conditional Commutation of Sentence” (August 25, 2020), <https://perma.cc/QR9C->

EX3K; and Kentucky Office of State Budget Director, *2021-2022 Budget of the Commonwealth*, volume 1, part B (Frankfort, KY: Kentucky Office of State Budget Director, 2022), 230, <https://perma.cc/U6UH-GDGL>.

- 19 Based on Vera analysis of data from the state's Pretrial Release Information Management System provided by the Kentucky Administrative Office of the Courts. District courts are where most people enter the court system for the first time, and these courts handle most misdemeanors, violations, traffic cases, juvenile cases, civil cases under \$5,000, small court cases, and probate matters. Circuit courts have jurisdiction over all felony cases, civil cases of more than \$5,000, divorce and custody cases, appeals from district court, and contested probate cases.
- 20 Supreme Court of Kentucky, *Order 2021-29* (Frankfort, KY: Supreme Court of Kentucky, 2021), <https://perma.cc/K6VC-PFA5>.
- 21 Jacob Kang-Brown, Chase Montagnet, and Jasmine Heiss, *People in Jail and Prison in Spring 2021* (New York: Vera Institute of Justice, 2021), <https://www.vera.org/downloads/publications/people-in-jail-and-prison-in-spring-2021.pdf>. The 2022 jail population data comes from Vera's analysis of the DOC Weekly Jail Population Summary Reports, available at <https://corrections.ky.gov/About/researchandstats/Pages/WeeklyJail.aspx>. The 2022 prison population data comes from the DOC Daily Count Sheet for June 30, 2022, available at <https://perma.cc/4UH9-2Y9J>.
- 22 Vera Institute of Justice, "Incarceration Trends," 2021.
- 23 Vera Institute of Justice, "Incarceration Trends," 2021.
- 24 For example, a 2007 report by the Sentencing Project found that Hispanic or Latino people are incarcerated in jails and prisons at 1.3 times the rate of white people in Kentucky. See Marc Mauer and Ryan S. King, *Uneven Justice: State Rates of Incarceration by Race and Ethnicity* (Washington, DC: The Sentencing Project, 2007), 6, Table 2, https://www.researchgate.net/publication/242491046_Uneven_Justice_State_Rates_of_Incarceration_By_Race_and_Ethnicity. For the purpose of this analysis, researchers rely on the race and ethnicity categorization in the administrative data analyzed. Because state agencies often record racial and ethnic identities from a limited set of officially recognized categories, the terminology used to describe the information from the dataset does not always align with Vera's current style or community preferences. Criminal legal system data collection is particularly fraught for Latino populations, which encompass multiple racial and ethnic identities. This means that the way Latino people are officially categorized in this dataset may conflict with how they self-identify.
- 25 The number of people on probation and parole and working-age residents is from 2018. Probation and parole data comes from BJS, "Annual Parole Surveys and Annual Probation Surveys, 1985-2018," Inter-university Consortium for Political and Social Research, <https://www.icpsr.umich.edu/web/NACJD/series/328> and <https://www.icpsr.umich.edu/web/NACJD/series/327>. Resident population data comes from U.S. Census and National Center for Health Statistics, "U.S. Census Populations with Bridged Race Categories," https://www.cdc.gov/nchs/nvss/bridged_race.htm.
- 26 Vera Institute of Justice, "Incarceration Trends," 2021.
- 27 Vera Institute of Justice, "Incarceration Trends," 2021.
- 28 Vera Institute of Justice, "Incarceration Trends," 2021.
- 29 Kentucky Criminal Justice Policy Assessment Council (CJPAC) Justice Reinvestment Work Group (JRWG), *Final Report, December 2017* (Frankfort, KY:

- Kentucky CJPAC JRWG, 2017), <https://perma.cc/MHH3-TZY7>.
- 30 Kentucky Youth Advocates, *Blueprint for Kentucky's Children* (Louisville, KY: Kentucky Youth Advocates, 2020), <https://perma.cc/FA3Z-DVUT>.
- 31 Eric Martin, "Hidden Consequences: The Impact of Incarceration on Dependent Children," *National Institute of Justice Journal*, no. 278 (2017), <https://perma.cc/86C5-38GS>. See also the Annie E. Casey Foundation, *A Shared Sentence: The Devastating Toll of Parental Incarceration on Kids, Families and Communities* (Baltimore, MD: The Annie E. Casey Foundation, 2016), <https://perma.cc/XEU3-TSGJ>.
- 32 Interview with Sharon, in discussion with the authors, October 2021, western Kentucky.
- 33 Based on 2021 data from the U.S. Census American Community Survey 1-year estimates, accessed on October 28, 2022 via Steven Manson, Jonathan Schroeder, David Van Riper, et al., "IPUMS National Historical Geographic Information System: Version 17.0" [dataset] (Minneapolis, MN: IPUMS, 2022), <http://doi.org/10.18128/D050.V17.0>.
- 34 Jennifer Bronson and Marcus Berzofsky, *Indicators of Mental Health Problems Reported by Prisoners and Jail Inmates, 2011-12* (Washington, DC: BJS, 2017), 4, Table 2, <https://perma.cc/8TXJ-6XMU>; and Shannon M. Lynch, Dana D. DeHart, Joanne Belknap, and Bonnie L. Green, *Women's Pathways to Jail: Examining Mental Health, Trauma, and Substance Use* (Washington, DC: BJS, 2013), <https://perma.cc/K8FF-62A5>.
- 35 Kentucky CJPAC Justice Reinvestment Work Group, *Final Report*, 2017.
- 36 Interview with Anne, in discussion with the authors, October 2021, western Kentucky.
- 37 Interview with Jessica, in discussion with the authors, October 2021, western Kentucky.
- 38 See the following for a selection of literature: Judah Schept, *Coal, Cages, Crisis: The Rise of the Prison Economy in Central Appalachia* (New York: NYU Press, 2022); Jack Norton and Judah Schept, "Keeping the Lights On: Incarcerating the Bluegrass State," Vera Institute of Justice, March 4, 2019, <https://www.vera.org/in-our-backyards-stories/keeping-the-lights-on>; Annie Lowrey, "What's the Matter with Eastern Kentucky," *The New York Times*, June 29, 2014, <https://www.nytimes.com/2014/06/29/magazine/whats-the-matter-with-eastern-kentucky.html>; S. G. Stolberg, "Beyond Coal: Imagining Appalachia's Future," *The New York Times*, August 18, 2016, <https://www.nytimes.com/2016/08/18/us/beyond-coal-imagining-appalachias-future.html>; Matt Klesta, "Eastern Kentucky: A Region in Flux," *Forefront* 7, no. 1 (2016); and Brett Story and Judah Schept, "Against Punishment," *Social Justice* 45, no. 154 (2018), 7-34, <https://www.jstor.org/stable/26873823>.
- 39 Vera analysis of Kentucky Center for Statistics Quarterly Census of Employment & Wages data, accessed July 19, 2022. Data available for download at: <https://kystats.ky.gov/KYLMI/QCEWCoveredEmployment>.
- 40 Vera analysis of Kentucky Center for Statistics Local Area Unemployment Statistics data, accessed July 19, 2022. Data available for download at https://kystats.ky.gov/Srs/Index/Master_LAUS_Report.
- 41 Kentucky Center for Statistics, Workforce Overview Report for Kentucky Regions, accessed October 19, 2022, <https://kystats.ky.gov/Reports/Tableau/WORKR>.
- 42 Interview with Jesse, in discussion with the authors, July 2021, eastern Kentucky.

- 43 Interview with Garth, in discussion with the authors, October 2021, western Kentucky.
- 44 Nabarun Dasgupta, Leo Beletsky, and Daniel Ciccarone, “Opioid Crisis: No Easy Fix to Its Social and Economic Determinants,” *American Journal of Public Health*, 108, no. 2 (2018), 182–186, <https://perma.cc/XD2U-NDUJ>.
- 45 University of Oslo, “Amphetamine: Using Drugs to Work Long Hours,” *Science Daily*, February 20, 2015, <https://perma.cc/8T8M-6YKN>.
- 46 Shannon M. Monnat, *Deaths of Despair and Support for Trump in the 2016 Presidential Election* (State College, PA: The Pennsylvania State University, 2016), <https://perma.cc/S7JH-9APQ>.
- 47 Vera Institute of Justice, “Incarceration Trends,” 2021.
- 48 Ashley Spalding, “Disparate Justice,” 2019.
- 49 Wendy Brundige, “New York, Paris, Paducah? Kentucky Attracts Artists,” ABC News, December 23, 2006, <https://perma.cc/9UNW-RNB3>; and Gabe Semenza, “Is Paducah, Ky., A Glimpse of Victoria’s Future?” *Victoria Advocate*, September 4, 2010, <https://perma.cc/EA8V-CL9T>.
- 50 Semenza, “Is Paducah, Ky., A Glimpse of Victoria’s Future?” 2010.
- 51 Verne Brooks, “Montgomery Totes Up ‘89 as a Banner Year,” *Paducah Sun*, January 7, 1990.
- 52 Ibid.
- 53 Editorial, “Phony Outrage over County Tax,” *Paducah Sun*, May 21, 1989.
- 54 Robert Shibley, “Lower Town Artist Relocation Program,” in *Reinventing Downtown: 2005 Rudy Bruner Award for Urban Excellence*, by Robert Shibley, Emily Axelrod, Jay Farbstein Faia, and Richard Wener (Cambridge, MA: Bruner Foundation, 2005).
- 55 Bill Bartleman, “New Jail Holds 100 More,” *Paducah Sun*, July 4, 1991.
- 56 Ibid.
- 57 Leah Shields and Justin Jones, “An Experiment in the Arts,” *WPSD Local*, February 25, 2019, <https://perma.cc/5KfV-KL5C>; Mike Conklin, “Their New Kentucky Homes — and Art Studios,” *Los Angeles Times*, May 7, 2004, <https://www.latimes.com/archives/la-xpm-2004-may-07-et-conklin7-story.html>; Noah Adams, “In Paducah, Artists Create Something From Nothing,” *NPR*, August 9, 2013, <https://www.npr.org/2013/08/09/210130790/in-paducah-artists-create-something-from-nothing>.
- 58 Ibid.
- 59 David Fraser, “New Public Housing in Paducah to Get Away from Apartment Look,” *Paducah Sun*, April 4, 2000.
- 60 Interview with Allen, in discussion with the authors, October 2021, western Kentucky.
- 61 C.D. Bradley, “Homes Planned at Paducah Public Housing Site,” *Paducah Sun*, July 15, 2001.
- 62 John Null, “Paducah Receives Grant toward Future Fountain Avenue Health Park,” *WKMS*, March 23, 2016, <https://perma.cc/QSU6-VNL4>; and Bradley, “Homes Planned at Paducah Public Housing Site,” 2001.

- 63 Interview with Allen, in discussion with the authors, October 2021, western Kentucky.
- 64 Null, “Paducah Receives Grant,” 2016, and Bradley, “Homes Planned at Paducah Public Housing Site,” 2001.
- 65 City of Paducah Department of Planning, *Lower Town Neighborhood Plan* (Paducah, Kentucky: City of Paducah Department of Planning, 2002), <https://ddc.downtowndevelopment.com/wp-content/uploads/2019/08/LTpdfPlan.pdf>.
- 66 Ordinance No. 2016-12-8463, *Paducah Code of Ordinances*, effective April 1, 2000, accessed October 22, 2022; Adams, “In Paducah, Artists Create,” 2013.
- 67 City of Paducah Department of Planning, *Lower Town Neighborhood Plan*, 2002.
- 68 Vera Institute of Justice, “Incarceration Trends,” 2021.
- 69 Anne Thrower, “Making the Set Safe Again,” *Paducah Sun*, February 10, 2002.
- 70 Approximately 7 percent of Black working-age residents were prosecuted for drug charges, compared to 3 percent of white working-age residents. Based on Vera analysis of data on criminal cases provided by the Kentucky Administrative Office of the Courts.
- 71 Based on Vera analysis of U.S. Census Bureau data using the Decennial Census of Population and Housing Datasets for 2000–2010.
- 72 Based on Vera analysis of U.S. Census Bureau data using the Decennial Census of Population and Housing Datasets for 2000–2010.
- 73 Interview with Ian, in discussion with authors, October 2021, western Kentucky.
- 74 Brenden Beck, “The Role of Police in Gentrification,” *The Appeal*, August 4, 2020, <https://perma.cc/Y25L-M4GB>.
- 75 Interview with Sharon, in discussion with authors, October 2021, western Kentucky.
- 76 Ashley Spalding, Pam Thomas, and Dustin Pugel, “The Golden Key: How State-Local Financial Incentives to Lock Up Kentuckians Are Perpetuating Mass Incarceration,” Kentucky Center for Economic Policy (KyPolicy), October 21, 2021, <https://perma.cc/8CRQ-SYBV>.
- 77 Kentucky CJPAC Justice Reinvestment Work Group, *Final Report*, 2017.
- 78 Robert G. Lawson, “Turning Jails into Prisons—Collateral Damage from Kentucky’s War on Crime,” *Kentucky Law Journal* 95, no. 1 (2006), 1–51, <https://perma.cc/WF4F-MXST>.
- 79 Ellie Hamrick, LeiLani Dowell, Robin McGinty, and Emily Clark, *Castles in Kentucky: Prison Expansion in the Bluegrass State*, The Graduate Center, City University of New York, 2016, <https://www.youtube.com/watch?v=zq6bCcS6Yg>; and Robert G. Lawson, “Difficult Times in Kentucky Corrections—Aftershocks of a ‘Tough on Crime’ Philosophy,” *Kentucky Law Journal* 93, no. 2 (2005 2004), 305–376, <https://perma.cc/A3U8-SPVW>.
- 80 Hamrick, Dowell, McGinty, and Clark, *Castles in Kentucky*, 2016.
- 81 Vera Institute of Justice, “Incarceration Trends,” 2021.
- 82 Lawson, “Turning Jails into Prisons,” 2006. See, for example, *Kentrick v. Bland*, 541 F Supp. 21 (1981) <https://cite.case.law/f-supp/541/21/>; *Tate v. Frey*, 735 F.2d 986 (1984) <https://cite.case.law/f2d/735/986/>.

- 83 Ibid.
- 84 Ibid.
- 85 *Campbell County v. Commonwealth*, 762 S.W. 2d (Ky. 1988), <https://cite.case.law/sw2d/762/6/>.
- 86 Spalding, Thomas, Pugel, “The Golden Key,” 2021.
- 87 Ibid; Vera Institute of Justice, “What Jails Cost Statewide: Spending on Jails Across the Rural-Urban Spectrum,” 2020, <https://www.vera.org/publications/what-jails-cost-statewide/kentucky>.
- 88 1996 Ky. Acts ch. 108, sec. 7. Ky. Revised Statute §532.100.
- 89 2000 Ky. Acts ch. 384, sec. 3.
- 90 Class D felonies carry sentences between one and five years, while Class C felonies carry sentences between five and 10 years.
- 91 2000 Ky. Acts ch. 401, sec. 36. Ky. Revised Statute §532.100, 2000, 1054-55.
- 92 Using records from the Kentucky Administrative Office of the Courts Court Net database, Vera researchers took cases with a conviction, grouped by their most-serious conviction charge class, and compared how those numbers changed over the years.
- 93 Appalachian counties include the 53 Kentucky counties covered by the Appalachian Regional Commission but does not count Clark County, now considered part of the Fayette Metropolitan area.
- 94 Western Kentucky includes Paducah and the surrounding counties: Ballard, Calloway, Carlisle, Fulton, Graves, Hickman, Livingston, McCracken, and Marshall.
- 95 Vera also looked at the total number of unique charges by charge class in each year to rule out the possibility that the increase in Class D felony convictions could be the result of legislation creating more Class D felony offenses over time.
- 96 Analysis excludes Fayette and Jefferson Counties, Kentucky’s two most populous counties. Based on Vera analysis of county budget data published by the Kentucky Department for Local Government. For more information, see Vera Institute of Justice, *What Jails Cost Statewide: Spending on Jails Across the Rural-Urban Spectrum* (New York: Vera Institute of Justice, 2020), <https://www.vera.org/publications/what-jails-cost-statewide/kentucky>.
- 97 Interview with Anne, in discussion with authors, October 2021, western Kentucky.
- 98 Spalding, Thomas, and Pugel, “The Golden Key,” 2021.
- 99 This data is based on ongoing jail construction and expansion tracking by Sarah Minion at Vera Institute of Justice and is on file with the authors at Vera.
- 100 Norton and Schept, “Keeping the Lights On,” 2019.
- 101 Norton and Schept, “Keeping the Lights On,” 2019.
- 102 Vera analysis of county budget data published by the Kentucky Department for Local Government. For more information, see Vera Institute of Justice, *What Jails Cost Statewide: Spending on Jails Across the Rural-Urban Spectrum* (New York: Vera Institute of Justice, 2020), <https://www.vera.org/publications/what-jails-cost-statewide/kentucky>.

- 103 Tony Messenger, *Profit and Punishment: How America Criminalizes the Poor in the Name of Justice*, 1st ed. (New York: St. Martin's Press, 2021). See also Ram Subramanian, Jackie Fielding, Lauren-Brooke Eisen, et al., *Revenue Over Public Safety: How Perverse Financial Incentives Warp the Criminal Justice System* (New York: Brennan Center for Justice, 2022), <https://www.brennancenter.org/our-work/research-reports/revenue-over-public-safety>.
- 104 Based on a Vera researcher's phone call with Crossroads staff, who described how the agency only services McCracken County. Reportedly, the county district court orders people to report to Crossroads, which then monitors people's conditions of misdemeanor probation—for example, for “counseling, insurance, anger management, and domestic violence” cases.
- 105 Interview with Allen, in discussion with authors, October 2021, western Kentucky.
- 106 Tony Messenger, *Profit and Punishment*, 2021. See also Americans for Tax Reform, “About the Pledge,” accessed October 11, 2022, <https://www.atr.org/about-the-pledge/>; and “Kentucky Senate President at Americans for Tax Reform,” *Enterprise*, October 6, 2022, <https://perma.cc/QK35-RRVA>.
- 107 Interview with Garth, in discussion with authors, October 2021, western Kentucky.
- 108 Tony Messenger, *Profit and Punishment*, 2021.
- 109 Rodriguez v. Providence Community Corrections, Inc., No. 3:15-cv-01048, PACER (M.D. Tenn. Jul 5, 2018) (Case Summary), Civil Rights Litigation Clearinghouse, accessed October 5, 2022, <https://clearinghouse.net/case/15160/>.
- 110 Ky. Revised Statute §534.070, “Incarceration for failure to pay fine or court costs or failure to appear in court — Daily credit against fine or court costs for time served — Application of partial payment,” (Current through legislation effective January 6, 2023), <https://perma.cc/PY5J-CAH4>.
- 111 Fines & Fees Justice Center, “Kentucky SB 120: An Act Relating to Crimes and Punishments and Making an Appropriation Therefor,” February 20, 2017, <https://finesandfeesjusticecenter.org/articles/kentucky-sb-120-fines-fees/>.
- 112 Fines & Fees Justice Center, “Kentucky Supreme Court Order 2017-07: Sliding Scale of Indigency,” July 15, 2017, <https://finesandfeesjusticecenter.org/articles/kentucky-court-order-2017-07-sliding-scale-of-indigency/>.
- 113 Interview with Jessica, in discussion with authors, October 2021, western Kentucky.
- 114 Ky. Revised Statute §441.265, “Required reimbursement by prisoner of costs of confinement — Waiver of outstanding expenses and reimbursement if prisoner not convicted — Local policy of fee and expense rates — Adjustments to per diem rate — Billing and collection methods” (Current through legislation effective January 6, 2023), <https://perma.cc/4GPJ-683J>. Regarding the home incarceration program, see Ky. Revised Statute §532.358, “Prisoner to pay reimbursement and restitution” (Current through legislation effective January 6, 2023).
- 115 Kentucky's Home Incarceration Program is an alternative sentencing program with similar conditions as probation, parole, and pretrial supervision. See Ky. Revised Statute §532.200 through §532.245, (Current through legislation effective January 6, 2023), <https://perma.cc/Y826-YD79>.
- 116 Ky. Revised Statute §439.179, “Release of misdemeanants — Purposes for which permitted — Earnings of prisoner, records, and disposition — Authority of District Judge and jailer” (Current through legislation effective January 6, 2023), <https://perma.cc/KY6U-WUHW>.

- 117 Ky. Revised Statute §431.5305, “Jailer permitted to prepare or accept bail bond — Fee — Reporting” (Current through legislation effective January 6, 2023), <https://perma.cc/H9YN-AP5R>.
- 118 Based on Vera analysis of county budget data published by the Kentucky Department for Local Government. Numbers were converted to 2020 dollar amounts to account for inflation.
- 119 Elizabeth Swavola, Kristine Riley, and Ram Subramanian, *Overlooked: Women and Jails in an Era of Reform* (New York: Vera Institute of Justice, 2016), 29, https://storage.googleapis.com/vera-web-assets/downloads/Publications/overlooked-women-and-jails-report/legacy_downloads/overlooked-women-and-jails-report-updated.pdf; and Saneta deVuono-powell, Chris Schweidler, Alicia Walters, and Azadeh Zohrabi, *Who Pays? The True Cost of Incarceration on Families* (Oakland, CA: Ella Baker Center, Forward Together, and Research Action Design, 2015), 9, <https://perma.cc/UFE4-WMUV>.
- 120 Ky. Revised Statute § 439.315, “Payment of fee by released person — Amount — Waiver of payment — Applicable to persons released by county containing a city of the first class or urban-county government” (Current through legislation effective January 6, 2023), <https://perma.cc/8NFG-9U48>.
- 121 For alcohol monitoring devices, see Ky. Revised Statute § 431.068, “Use of alcohol monitoring device as condition of pretrial release” (Current through legislation effective January 6, 2023), <https://perma.cc/85UC-UCTR>; for GPS monitoring devices, see Ky. Revised Statute § 431.517, “Authorization for home incarceration as a form of pretrial release — Court ordered participation of global positioning monitoring system — Costs” (Current through legislation effective January 6, 2023), <https://perma.cc/J79D-2R33>.
- 122 James McNair, “Inside Kentucky’s Unregulated Private Probation Industry,” Kentucky Center for Investigative Reporting, January 20, 2016, <https://perma.cc/5J4H-AR9E>. For an example of a private probation company serving western Kentucky, see Christian County Alternative Services, LLC, “Western Kentucky’s Choice for Electronic Monitoring,” accessed October 27, 2022, <https://www.ccasem.com/>.
- 123 Interview with Benjamin, in discussion with authors, July 2021, eastern Kentucky.
- 124 Vera analysis of U.S. Census Data, American Community Survey 5-year estimates from 2016–2020.
- 125 Ky. Revised Statute §337.275, “Minimum wage,” (Current through legislation effective January 6, 2023), <https://perma.cc/LRW6-PW4M>.
- 126 See Ky. Revised Statute §534.030 for felonies (<https://perma.cc/F29K-W8YM>) and Ky. Revised Statute §534.040 for misdemeanors (<https://perma.cc/C4BJ-LRLJ>).
- 127 See Ky. Revised Statute §24A.178, “Additional fee for sex crime, stalking, or related inchoate offenses” (Current through legislation effective January 6, 2023), <https://perma.cc/Y5WA-ZKZN>.
- 128 See Ky. Revised Statute §532.356, §439.563, §532.032, and §532.033.
- 129 See Ky. Revised Statute §42.320, “Court cost distribution fund — Disbursements — Payments into general fund” (Current through legislation effective January 6, 2023), <https://perma.cc/CT4L-HBAQ>.
- 130 See Ky. Revised Statute §24A.175, §24A.1765, §24A.179, §23A.205, and §24A.176.

- 131 See Ky. Revised Statute §24A.185, §23A.220, and §64.091. For example, Oldham County charges the following fees for District court cases: \$10 in traffic cases, \$20 in misdemeanor cases, and \$10 in filing fees. It also charges the following fees in Circuit court cases: \$25 in criminal cases, and \$25 for cases that are appealed. (Source: Oldham County Ordinance Code, §36.01 District and Circuit Court Filing Fees and Court Costs, accessed October 18, 2022, https://codelibrary.amlegal.com/codes/oldhamcounty/latest/oldhamcounty_ky/O-0-0-614).
- 132 Based on Vera analysis of county budget data published by the Kentucky Department for Local Government. Numbers were converted to 2020 dollar amounts to account for inflation.
- 133 Alicia Bannon, Mitali Nagrecha, and Rebekah Diller, *Criminal Justice Debt: A Barrier to Reentry* (New York: Brennan Center for Justice, 2010), <https://perma.cc/4SAR-WZ4M>.
- 134 Subramanian, Fielding, Eisen, et al., “Revenue Over Public Safety” 2022.
- 135 Pew Center on the States, *2011 Kentucky Reforms Cut Recidivism, Costs* (Washington, DC: Pew Center on the States, 2011), <https://perma.cc/6L7L-PKF3>.
- 136 The task force members included state Democratic Representative John Tilley, Republican state Senator Tom Jensen, the Kentucky Supreme Court Chief Justice John Minton (appointed in 2006 by Republican Governor Ernie Fletcher), Secretary of the Justice and Public Safety Cabinet J. Michael Brown (appointed in 207 by Democratic Governor Steve Beshear), and Democratic LaRue County Judge-Executive Tommy Turner.
- 137 Marie Gottschalk, *Caught: The Prison State and the Lockdown of American Politics* (Princeton: Princeton University Press, 2015).
- 138 House Judiciary Committee, Discussion of HB 463 “An Act Relating to the Criminal Justice System, Making an Appropriation Therefor, and Declaring an Emergency,” *KET.org*, February 15, 2011, <https://www.ket.org/legislature/archives/?nola=WGAOS+012072&stream=aHR0cHM6Ly81ODc4ZmQxZWQ1NDIyLnNOcmVhbWxvY2submVOL3dvcmlRwcmVzcy9fZGVmaW5zdF8vbXA0OndnYW9zL3dnYW9zXzAxMjA3Mi5tcDQvcGxheWxpc3QubTN1OA%3D%3D>.
- 139 Kentucky General Assembly, House Bill 463, “An Act Relating to the Criminal Justice System, Making an Appropriation Therefor, and Declaring an Emergency,” 2011 Regular Session, March 3, 2011, <https://perma.cc/E97A-WVCD>.
- 140 Vera analysis based on records from the Kentucky Administrative Office of the Courts Court Net database.
- 141 Centers for Disease Control and Prevention, “National Vital Statistics System, Mortality 1999-2020,” CDC WONDER online database, (Atlanta, GA: Centers for Disease Control and Prevention, 2021), accessed October 31, 2022, <https://wonder.cdc.gov/controller/saved/D77/D311F192>. Data are from the “Multiple Cause of Death, 1999-2020” files, as compiled from data provided by the 57 vital statistics jurisdictions through the Vital Statistics Cooperative Program. Drug overdose deaths are identified using underlying cause-of-death codes from the Tenth Revision of ICD (ICD-10): X40–X44 (unintentional), X60–X64 (suicide), X85 (homicide), and Y10–Y14 (undetermined).
- 142 Legislative Research Commission, *Report of the 2011 Task Force on the Penal Code and Controlled Substances Act (2011 House Bill 463)* (Frankfort, KY: Legislative Research Commission, 2011), <https://perma.cc/RQK8-K4ZE>.
- 143 Dan Werb, Adeeba Kamarulzaman, M.C. Meacham, et al., “The Effectiveness of

Compulsory Drug Treatment: A Systematic Review,” *International Journal of Drug Policy* 28 (2016), 1–9, <https://doi.org/10.1016/j.drugpo.2015.12.005>.

- 144 Lauren Brinkley-Rubinstein, Alexandria Macmadu, Brando D. L. Marshall, et al., “Risk of Fentanyl-Involved Overdose Among Those with Past Year Incarceration: Findings from a Recent Outbreak in 2014 and 2015,” *Drug and Alcohol Dependence*, 185 (2018), 189–191, <https://pubmed.ncbi.nlm.nih.gov/29459328/>. See also Elias Nosrati, Jacob Kang-Brown, Michael Ash, et al., “Economic Decline, Incarceration, and Mortality from Drug Use Disorders in the USA between 1983 and 2014: An Observational Analysis,” *Lancet Public Health* 4 (2019), 326–333, [https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667\(19\)30104-5/fulltext](https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667(19)30104-5/fulltext).
- 145 Interview with Jesse, in discussion with authors, July 2021, eastern Kentucky.
- 146 Interview with Anne, in discussion with authors, October 2021, western Kentucky.
- 147 Interview with Maria, in discussion with authors, October 2021, north-central Kentucky.
- 148 Interview with Garth, in discussion with authors, October 2021, western Kentucky.
- 149 Tarence Ray, “United in Rage: Half-Truths and Myths Propelled Kentucky’s War on Opioids,” *Baffler* no. 58, July 2021, <https://perma.cc/5HFB-WED6>.
- 150 Svetla Slavova, Julia Costich, Terry L. Bunn, et al., “Heroin and Fentanyl Overdoses in Kentucky: Epidemiology and Surveillance,” *International Journal of Drug Policy* 46 (2017), 120–129, <https://doi.org/10.1016/j.drugpo.2017.05.051>.
- 151 Carmen Mitchell, Pam Thomas, Ashley Spalding, and Dustin Pugel, “In Decade Since Major Criminal Justice Reform, the Kentucky General Assembly Has Passed Six Times as Many Laws Increasing Incarceration as Decreasing It,” *KyPolicy*, December 9, 2021, <https://perma.cc/T7N4-NEFR>.
- 152 Kentucky SB 192 (2015), <https://apps.legislature.ky.gov/record/15rs/sb192.html>; and Kentucky HB 215 (2022), <https://apps.legislature.ky.gov/record/22rs/hb215.html>.
- 153 Mitchell, Thomas, Spalding, and Pugel, “In Decade Since Major Criminal Justice Reform,” 2021.
- 154 Kentucky HB 463 (2011), <https://apps.legislature.ky.gov/record/11rs/hb463.html>.
- 155 Robert Veldman, “Pretrial Detention in Kentucky: An Analysis of the Impact of House Bill 463 During the First Two Years of Its Implementation,” *Kentucky Law Journal* 102, no. 3 (2013–2014), 777–813, <https://uknowledge.uky.edu/klj/vol102/iss3/8/>.
- 156 Ibid.
- 157 Megan Stevenson, “Assessing Risk Assessment in Action,” *Minnesota Law Review* 103 (2018), 303–384, https://www.minnesotalawreview.org/wp-content/uploads/2019/01/13Stevenson_MLR.pdf.
- 158 Kentucky HB 463 (2011), <https://apps.legislature.ky.gov/record/11rs/hb463.html>.
- 159 Kentucky HB 463 (2011).
- 160 See for example Andrew Critchelow, “A Look into Kentucky’s Court-Supervised Class,” *College Heights Herald*, June 2, 2017, <https://perma.cc/E8UF-GGS8>.

- 161 Mark Heyerly, “Pretrial Reform in Kentucky,” *Administrative Office of the Courts*, January 2013.
- 162 Ky. Revised Statute §439.315, “Payment of fee by released person — Amount — Waiver of payment — Applicable to persons released by county containing a city of the first class or urban-county government” (Current through legislation effective January 6, 2023), <https://apps.legislature.ky.gov/law/statutes/statute.aspx?id=19166>.
- 163 Interview with Dan, in discussion with authors, October 2021, western Kentucky.
- 164 Ashley Spalding, “Corrections Data Shows Positive Impact of HB 463 that Additional Criminal Justice Reforms Can Build On,” *KyPolicy*, September 28, 2016, <https://perma.cc/95V8-VA64>.
- 165 Interview with Matt, in discussion with authors, October 2021, western Kentucky.
- 166 Kentucky CJPAC Justice Reinvestment Work Group, *Final Report*, 2017.
- 167 Ana Medina, “Lawsuit Filed by Jailers against Dept. of Corrections Wants Contract Negotiations and Reimbursements,” *WTVQ*, February 21, 2023, <https://www.wtvq.com/lawsuit-filed-by-jailers-against-dept-of-corrections-wants-contract-negotiations-and-reimbursements/>.
- 168 Josh Bray, Michael Meredith, David Osborne, et al., HB 507, accessed May 19, 2023, <https://apps.legislature.ky.gov/record/23rs/hb507.html>.
- 169 For more information, see Lauryn P. Gouldin, “Defining Flight Risk,” *University of Chicago Law Review* 85, no. 3 (2018): 677–742, <https://chicagounbound.uchicago.edu/uclrev/vol85/iss3/3/>.

Acknowledgments

The authors would especially like to thank the people who graciously agreed to be interviewed for this report and who candidly shared their experiences with the criminal legal system and with substance use and recovery.

The authors would also like to thank the following people who helped to shape the research design for this report, who were invaluable in the interview phase of the research, and without whose support this report would not be possible: Robert Gipe, Amanda Hall, Keturah Herron, Marcus Jackson, Amelia Kirby, Carmen Mitchell, Nicole Musgrave, Tarence Ray, Judah Schept, Ashley Spalding, and Pam Thomas.

The authors would also like to thank our colleagues Jacob Kang-Brown, Joyce Tagal, and Ari Kotler for their support with sourcing, cleaning, and conducting quality assurance and analysis of data used in this report; Jasmine Heiss, Monica Smith, Nina Siulc, and Cindy Reed for their careful reviews and feedback; Lisha Nadkarni for editing the report; Abbi Leman and EpsteinWords for editorial support; and Patrick M. Design for their design of the report.

This report has been made possible in part by the Bill & Melinda Gates Foundation as part of the Voices for Economic Opportunity Challenge. It was published as part of a broader project entitled “Transforming Rural America by Ending Mass Incarceration” which aims to lead a narrative change campaign challenging the criminalization of poverty in smaller cities and rural communities.

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SUGGESTED CITATION

Bea Halbach-Singh, Jack Norton, Stephen Jones, and Jessica Zhang, *The Criminalization of Poverty in Kentucky: How Economic Crises and Flawed Reforms Fueled an Incarceration Boom* (New York: Vera Institute of Justice, 2023).