

Report of the 2011 Task Force on the Penal Code and Controlled Substances Act

(2011 House Bill 463)



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and Controlled Substances Act December 16, 2011

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Foreword

The Task Force on the Penal Code and Controlled Substances Act was created in 2010 by House Concurrent Resolution 250. The 2010 task force was directed to study potential changes to the Penal Code, the Controlled Substances Act, and other necessary statutes and to report recommended changes to the Interim Joint Committee on Judiciary and the Legislative Research Commission. Its work resulted in policy recommendations reflected in many of the provisions in 2011 House Bill 463, the Public Safety and Offender Accountability Act.

The task force was reauthorized in HB 463 for the purposes of monitoring the implementation of the bill's provisions and recommending further needed changes in Kentucky's criminal justice system that protect public safety in a fiscally responsible manner.

The task force members would like to acknowledge the criminal justice stakeholders who provided valuable responses to the task force survey as well as those who provided testimony and expert insight.

Robert Sherman
Director

Legislative Research Commission
Frankfort, Kentucky
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Contents

Summary.....	1
Background and Work of the 2011 Task Force.....	1
Status of HB 463 Implementation.....	2
Courts	2
Implementation Successes	2
Pretrial Services Outcomes	2
Department of Corrections	6
Strengths and Successes.....	6
Working Toward	7
Challenges	8
Statewide Education and Awareness	9
Criminal Justice Stakeholder Input.....	9
Recommendations	10
Conclusion	16
Appendix: Survey of Criminal Justice Stakeholders	17

List of Tables

1	Pretrial Data	5
2	Estimated Savings Pursuant to KRS 196.286 and 196.288	8

List of Figures

A	Outcomes for All Cases	3
B	Appearance and Public Safety Rates	3
C	Supervision Referrals and Caseloads	4
D	Pretrial Supervision Workload Increases.....	4

Summary

The 2010 General Assembly adopted House Concurrent Resolution 250 that created the Task Force on the Penal Code and Controlled Substances Act. The task force was directed to provide to the Interim Joint Committee on Judiciary and the Legislative Research Commission draft changes to the Penal Code, the Controlled Substances Act, and other necessary statutes. The work of the 2010 task force resulted in a final report with policy recommendations based on the principles of “Justice Reinvestment” to reduce the number of repeat criminal offenders, control corrections costs, reinvest in treatment programs and supervision, and maintain public safety. The report included recommendations to increase the use of alternatives to incarceration and the use of evidence-based community treatment, education, and rehabilitation programs that have been proven to reduce recidivism.

The recommendations from the task force were included in legislation for the 2011 Regular Session. House Bill 463, the Public Safety and Offender Accountability Act, was landmark legislation that received bipartisan support as the first major reform of criminal justice policy since the enactment of the Model Penal Code more than 30 years ago. The provisions in the bill had far-reaching implications across the criminal justice system.

Background and Work of the 2011 Task Force

Based in part on the success of the 2010 task force, the 2011 General Assembly reauthorized the bipartisan, inter-branch Task Force on the Penal Code and Controlled Substances Act in HB 463. All of the original task force members returned and are listed below:

- Senator Tom Jensen, task force Co-Chair and Chair of the Senate Judiciary Committee
- Representative John Tilley, task force Co-Chair and Chair of the House Judiciary Committee
- Secretary J. Michael Brown, Justice and Public Safety Cabinet
- Chief Justice John D. Minton, Jr., Kentucky Supreme Court
- Tom Handy, former Commonwealth’s attorney
- J. Guthrie True, former public advocate
- Judge/executive Tommy Turner, Larue County

Beginning in the summer of 2011, the task force members received updates from various agencies regarding the implementation of the provisions in HB 463, engaged in statewide education and awareness efforts about the bill’s policies and provisions, solicited input for additional recommendations from a wide range of stakeholders, and heard testimony and recommendations from agencies and stakeholders on a wide range of criminal justice topics. The task force used the information it received to develop new recommendations for potential future reforms.

The following is the result of this work.

Status of HB 463 Implementation

Courts

Implementation Successes

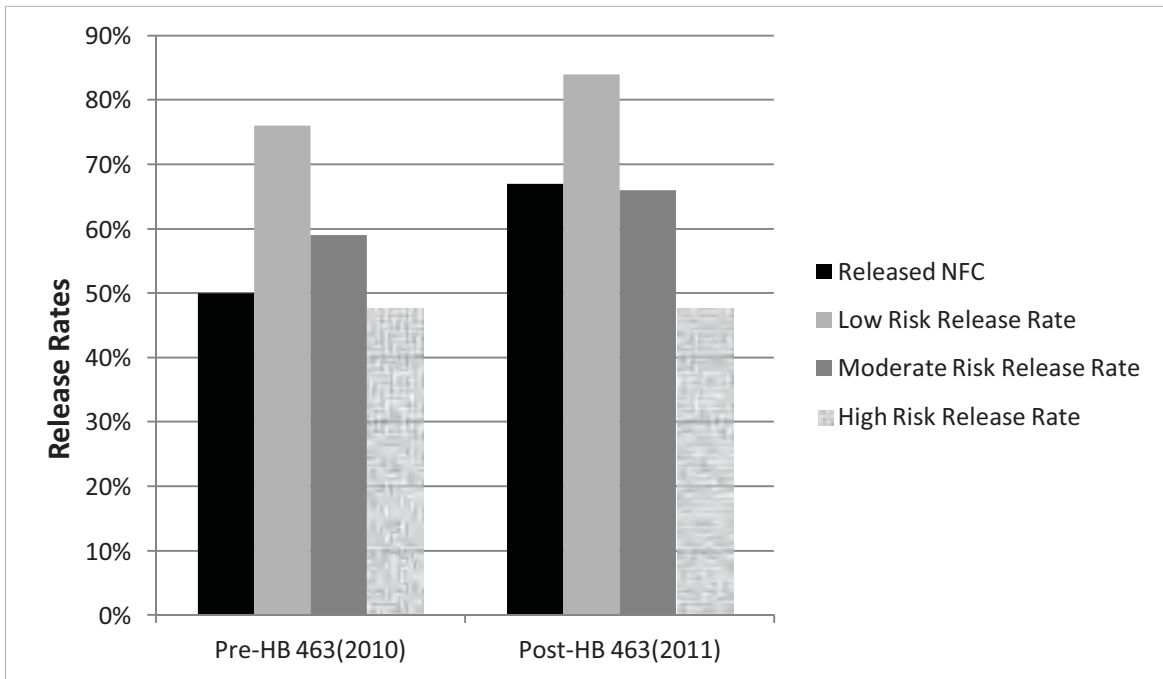
The judicial branch reported that it took substantial measures to implement HB 463 in a relatively short amount of time, given that most of the bill's provisions became effective June 8, 2011. Elected and nonelected court personnel spent many hours preparing to implement the provisions of the bill by creating new legal forms; revising the clerk manuals; changing internal processes; and providing education for justices, judges, Circuit Court clerks, and pretrial officers. The court system sponsored two educational conferences focused solely on HB 463. There were also presentations on HB 463 during the District and Circuit judges' colleges this fall and the Circuit Court clerk colleges this summer and fall. The Administrative Office of the Courts also worked with the legislative and executive branches, the Kentucky Association of Counties, and other key partners to coordinate efforts before implementation.

Pretrial Services Outcomes

Since HB 463 went into effect in June 2011, Pretrial Services data have shown a 15 percent decrease in the number of defendants arrested and a 4 percent increase in the overall release rate. While there has not been a significant increase in the overall release rate, the data show a substantial increase in nonfinancial releases and release for low- and moderate-risk defendants. The nonfinancial release rate has increased from 50 percent to 67 percent, the low-risk release rate has increased from 76 percent to 84 percent, and the moderate-risk release rate has increased from 59 percent to 66 percent. Furthermore, pretrial jail populations have decreased by 738 people, and appearance rates have remained consistent. The public safety rate—the percentage of defendants who have not been charged with a new crime while on pretrial release—also has remained consistent.

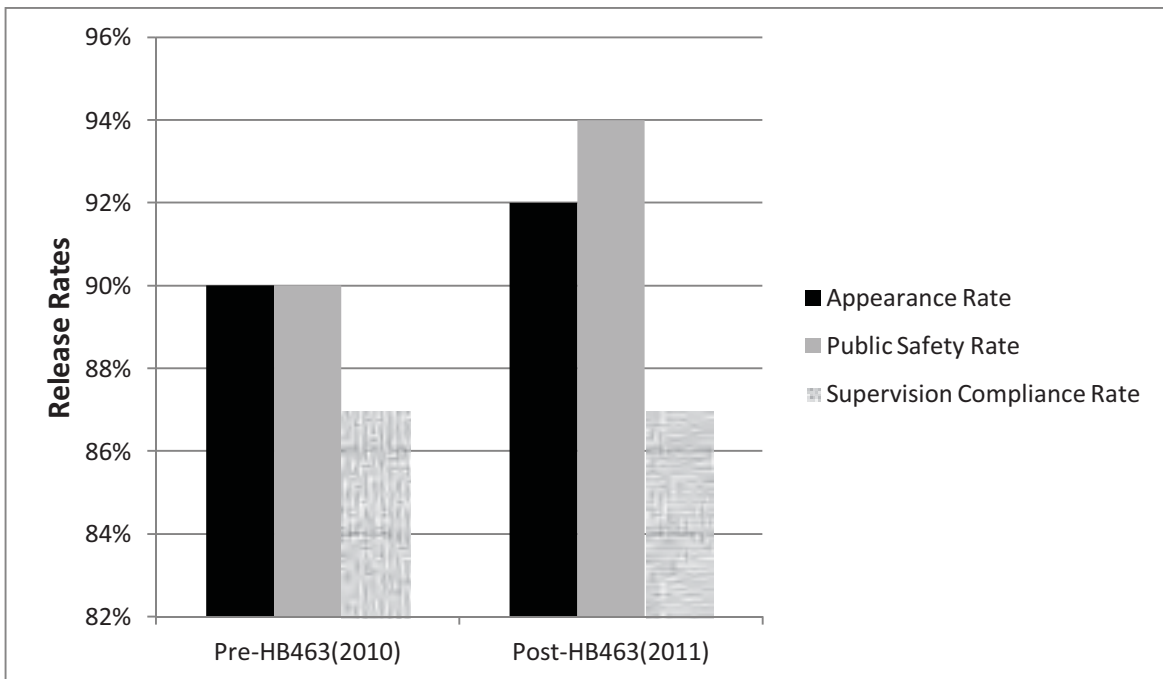
Pretrial Services also has seen a significant increase in the number of defendants ordered to the Monitored Conditional Release (MCR) program for pretrial supervision. This program is the mechanism by which Pretrial Services supervises compliance with release conditions for defendants. Risk-reduction plans that address a defendant's at-risk behaviors are formulated and presented to the court by pretrial officers. There were 1,285 more referrals to MCR from June 8, 2011, to December 1, 2011, than at the same time last year. This jump in the number of referrals has substantially increased the workload of pretrial officers. Since the passage of HB 463, pretrial officers have seen an increase of 4,493 defendant call-in reports, 3,934 additional curfew checks, 2,642 additional drug tests, and 6,737 additional defendant office visit reports. Given the significant increase in workload since June 2011, pretrial officers are finding it difficult to meet statutory requirements with current staffing levels. Figures A, B, C, and D and Table 1 illustrate the impact of HB 463 on Pretrial Services.

Figure A
Outcomes for All Cases



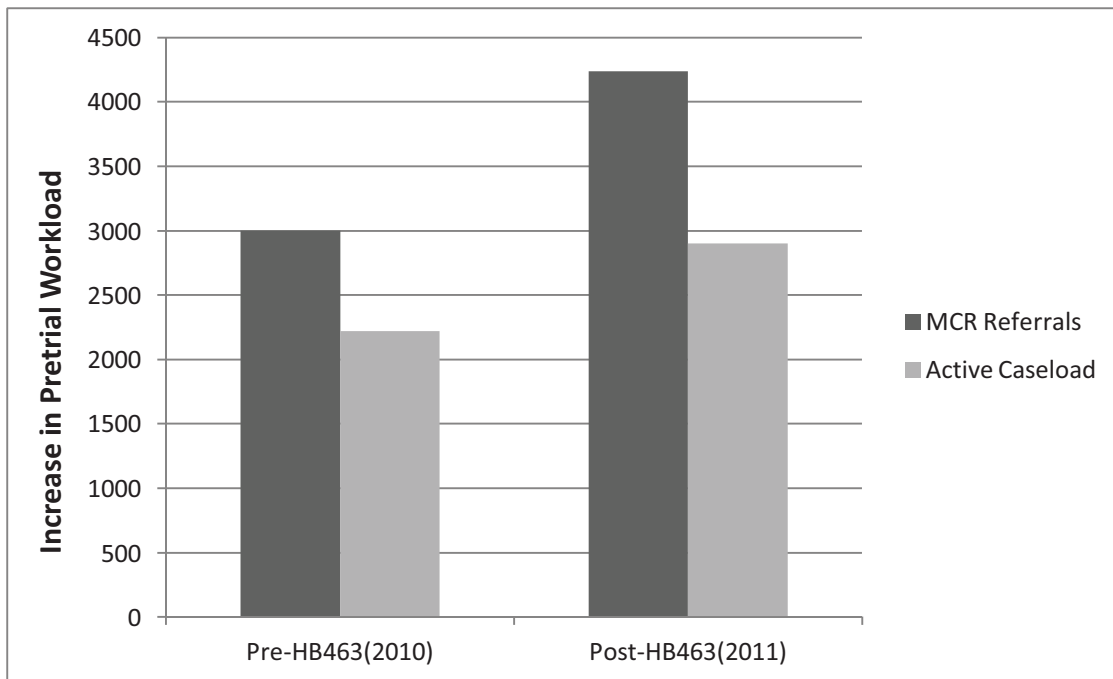
Source: Administrative Office of the Courts, Division of Pretrial Services PRIM case management system.

Figure B
Appearance and Public Safety Rates



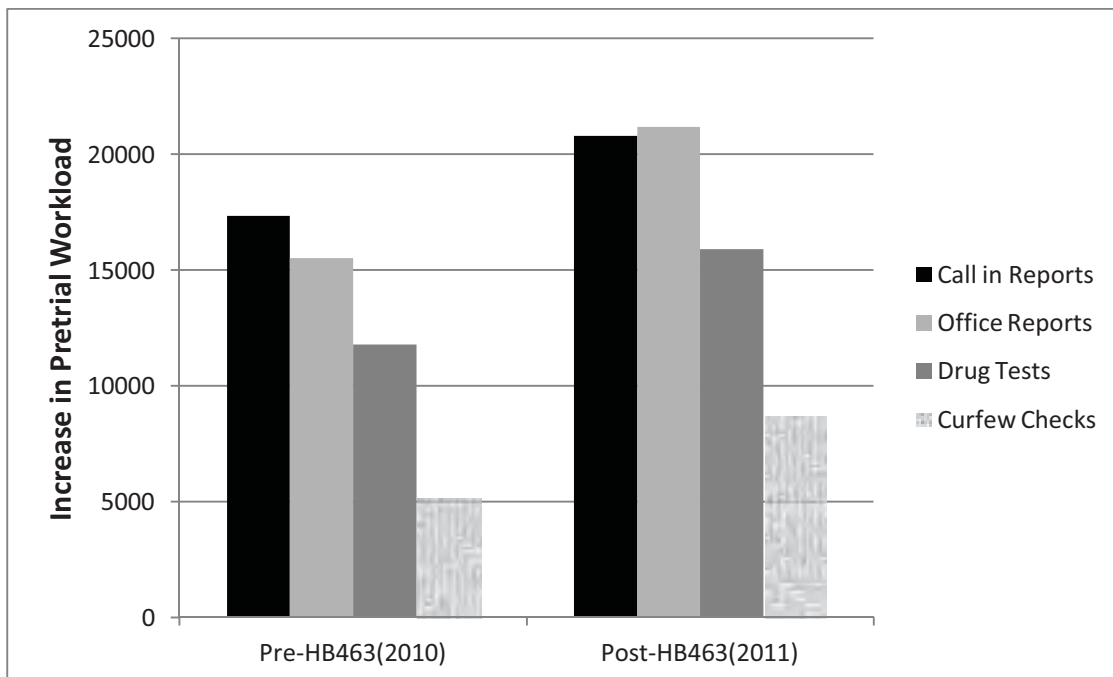
Source: Administrative Office of the Courts, Division of Pretrial Services PRIM case management system.

Figure C
Supervision Referrals and Caseloads



Source: Administrative Office of the Courts, Division of Pretrial Services PRIM case management system.

Figure D
Pretrial Supervision Workload Increases



Source: Administrative Office of the Courts, Division of Pretrial Services PRIM case management system.

Table 1
Pretrial Data

Pre-HB 463		Post-HB 463	
June 8, 2010 to November 8, 2010		June 8, 2011 to November 8, 2011	
Cases	117,247	Cases	99,488
Defendants	87,388	Defendants	74,825
Investigation Rate	84%	Investigation Rate	87%
% Obtaining Pretrial Release (75,641)	65%	% Obtaining Pretrial Release (68,583)	69%
% of Non-Financial Rels (ROR, USB, SUR)	50%	% of Non-Financial Rels (ROR, USB, SUR)	67%
% who were still in cust awaiting trial as of 12-5-11	< 1%	% who are still in cust awaiting trial as of 12-5-11	6%
% unable to make bail/held in jail until disp of case	34%	% unable to make bail/held in jail until disp of case	25%
Unable to make bail/%Disp.w/in 48 hours of arrest	70%	Unable to make bail/% Disp.w/in 48 hours of arrest	72%
Appearance Rate	90%	Appearance Rate	92%
Public Safety Rate	90%	Public Safety Rate*	94%
Low Risk Release Rate	76%	Low Risk Release Rate	84%
Moderate Risk Release Rate	59%	Moderate Risk Release Rate	66%
High Risk Release Rate	48%	High Risk Release Rate	48%
Low Risk Appearance Rate	93%	Low Risk Appearance Rate	94%
Moderate Risk Appearance Rate	88%	Moderate Risk Appearance Rate	91%
High Risk Appearance Rate	82%	High Risk Appearance Rate	89%
Low Risk Public Safety Rate	93%	Low Risk Public Safety Rate	96%
Moderate Risk Public Safety Rate	87%	Moderate Risk Public Safety Rate	93%
High Risk Public Safety Rate	81%	High Risk Public Safety Rate	89%
% of Cases that are a misd. Or less	73%	% of Cases that are a misd. Or less	71%
% of Def screened as having MH or SA issues	57%	% of Def screened as having MH or SA issues	62%
MCR Referrals	3,001	MCR Referrals	4,240
Active MCR Caseload on 11-8-10	2,219	Active MCR Caseload on 11-8-11	2,899
MCR Compliance Rate	87%	MCR Compliance Rate	87%
% of MCR that are Low Risk	50%	% of MCR that are Low Risk	41%
Pretrial Jail Population 11-8-10 (8,462)	45%	Pretrial Jail Population 11-8-11 (7,763)	41%

*Public Safety Rate is the percentage of defendants who have not been charged with a new crime while on pretrial release.

Source: Administrative Office of the Courts, Division of Pretrial Services PRIM case management system.

Department of Corrections

Strengths and Successes

The Department of Corrections (DOC) reported that it has worked to ensure HB 463 changes that were effective June 8, 2011, were implemented on time. The department is actively working toward implementing mandates that will be effective January 1, 2012. The agency has trained nearly 1,000 staff and community stakeholders on the use of the validated risk and needs assessment tool. The risk and needs assessment is an actuarial tool scientifically proven to determine a person's risk to reoffend and criminal risk factors, that when properly addressed, can reduce that person's likelihood of committing future criminal behavior. Prior to implementation of HB 463, this tool had already been selected, and staff was being trained on its use. This action enabled the department to move quickly to expand the target population for assessment. The department has also provided training to other criminal justice system partners, including jailers, county judge/executives, prosecutors, defense attorneys, and judicial staff regarding the risk and needs assessment tool. In addition to this training, DOC has trained its staff in Adult Institutions and Probation and Parole districts regarding HB 463 and its impact on the system. Local reentry councils have requested presentations from the co-chairs of the task force to ensure the councils are fully aware of and can implement the provisions in HB 463.

Since the enactment of the bill, the department has created or modified more than 35 policies. Four new administrative regulations have been created, and three existing regulations are under revision. Staff is operating under the provisions in the legislation while the new regulations and policies work through the promulgation process. DOC has a number of practices in place specifically related to the implementation efforts that were effective June 8, 2011. These include application of compliance credit to parolees, the use of a violation (graduated sanctions) matrix for probationers, scheduling of parole board hearings 60 days prior to parole eligibility date, placement of Class D offenders with sentences greater than 5 years but serving less than 5 years in local jails, expansion of the home incarceration program, completion of risk and needs assessments on offenders nearing release, and case planning as part of the institutional assessment process. The department also is undergoing a technology system update to support these functions. Key staff at DOC have continued to meet bi-weekly since March to discuss HB 463 implementation processes.

In addition, the department has hired 50 new parole officers to be trained and in place for the additional caseload created by the mandatory reentry supervision requirement that is effective on January 1, 2012.

DOC has worked to create partnerships with other criminal justice agencies and within the community to meet the requirements in the bill. The department met with the Administrative Office of the Courts (AOC) to create shared processes. The department also has provided information to the Community Corrections Commission regarding the relevant provisions in HB 463 and the process of awarding grant funds.

Some members of the DOC staff have had the opportunity to travel to learn best practices in other areas of the country. Staff reviewed some of those best practices through a site visit to the

Missouri Department of Corrections and the 4th Annual Community Reentry & Reintegration conference. DOC staff and Corrections Commission staff attended the Summit on Performance Incentive Funding to review methods to create additional incentives for communities to help prevent probation failures and support offenders upon release. DOC and Legislative Research Commission staff attended a seminar in Washington regarding the Results First model, which is a cost-benefit analysis model used for assessing various criminal justice policies.

The department reports that the Governor's Reentry Task Force continues to serve as a resource for corrections officials. The Governor's task force was established in April 2009 by executive order to provide support in addressing barriers for offenders in reentering society. The reentry task force has also made recommendations for legislative changes to assist offenders in overcoming barriers to reentry.

DOC has received numerous opportunities to obtain assistance with the implementation of many of the bill's provisions. The department has received Second Chance Act Demonstration Grant funds that support the cost of the risk and needs assessment implementation and additional direct service staff as well as community partnerships. DOC also has received an award of technical assistance from the Public Welfare Foundation to create a case management plan, address strategic planning, and review evidence-based programs. DOC was selected by the National Institute of Corrections within the Department of Justice as a National Institute of Corrections Transition from Prison to the Community Initiative state, which has enabled the department to develop a strategic plan for reentry services across the continuum of the corrections system. Most recently, DOC, in partnership with AOC, has been selected as a Justice Reinvestment Initiative Phase II site as part of an initiative by the Bureau of Justice Assistance with technical assistance from the VERA Institute of Justice.

Working Toward

DOC is working toward successful implementation of other requirements in the bill. The agency is preparing for the implementation of mandatory reentry supervision that will be effective January 1, 2012. As of December 12, 2011, 1,163 offenders will be eligible to be released statewide on January 3. Of the total number of inmates to be released, 251 of these are already in the community under home incarceration. As with other types of supervised release, the Department of Corrections Division of Probation and Parole will be responsible for the supervision of offenders released on mandatory reentry supervision. The offenders will be monitored for progress and compliance and subject to return to prison if they violate the terms of their release.

Other objectives the department is working toward include

- testing the implementation of the validated risk and needs assessment tool required at the time of the presentence investigation (effective 2013);
- partnering with AOC on shared technologies to support the flow of information;
- determining measurements for evidence-based practices;
- calculating the baseline measures for fiscal year 2011 to inform future data analysis; and
- completing the Kentucky Offender Management System changes to capture program outcomes.

Challenges

The department also is facing a number of challenges in implementation. DOC is actively seeking evidence-based programs that address criminogenic needs in the corrections system. The lack of financial resources for additional staff for implementation and funding for program materials is a barrier to providing the adequate number of programs in facilities. Also, the lack of resources in communities across the state is a significant issue when considering community-based services for offenders. A number of communities in the state have no resources to provide assistance to returning offenders, and if there are services available, their capacity is significantly less than the need in the area. Finally, although HB 463 requires DOC to provide sentencing and recidivism data to victims, prosecutors, and judges via a website effective January 2013, the department does not have the funding to create programs to provide the online data based on the level of factors required by HB 463. However, the department has agreed to provide the data it currently has available and will request funds for the additional requirements.

The information in Table 2 was included in the biennial budget request from the Department of Corrections

Table 2
Estimated Savings Pursuant to KRS 196.286 and 196.288
Fiscals Years 2013 and 2014

	FY 2013	FY 2013 Savings	FY 2014	FY 2014 Savings
Projected Reduction in Inmate Population				
Mandatory Re-entry Parole Supervision/Accelerated Parole Hearings	996	\$12,007,726	1,049	\$12,646,692
Drug Law Changes	561	\$6,763,388	958	\$11,549,600
Good Time Parole Credit	225	\$2,712,589	864	\$10,416,341
Total Savings from Reduction in Incarcerated Felons	1,782	\$21,483,703	2,871	\$34,612,632
Savings from Drug Law Changes - Expand Treatment		\$6,763,388		\$11,549,600
Projected Increase in Parolees (KRS 196.288)				
Increase in Parolees	1,221	\$1,159,303	1,913	\$1,816,336
Less Good Time Parole Credit	(225)	\$(213,631)	(864)	\$(820,342)
Total Increase in Parolees	996	\$945,672	1,049	\$995,994
Projected Net Savings		\$14,720,315		\$23,063,032
Distribution of Projected Savings (KRS 196.288(5)):				
(a). 25% Local Corrections Assistance Fund		\$3,680,079		\$5,765,758
(b)(1)(a). Expansion of treatment programs and P&P services		\$3,615,800		\$5,653,200
		\$7,295,879		\$11,418,958

Source: Department of Corrections.

Statewide Education and Awareness

Since the passage of HB 463, several of the task force members have traveled statewide to educate various groups about the bill's provisions, to raise awareness of the policies behind those provisions, and to receive feedback about the successes and challenges the bill has created. Many organizations invited task force members to give presentations during a variety of programs and conferences, including the Kentucky Bar Association, local bar associations, District and Circuit judges, the Kentucky Association of Criminal Defense Lawyers, the Department for Public Advocacy, the Prosecutors Advisory Council, the Kentucky Association of Counties, local law enforcement agencies, corrections commissioners, the Division of Probation and Parole, jailers, numerous continuing legal education programs, and the Parole Board. In addition to these responsibilities, many of the task force members have also granted numerous interviews to the media.

National and international organizations are also interested in the policies behind the bill and have invited the co-chairs of the task force to discuss them with other policy makers. These organizations include the National Conference of State Legislatures; the National Governors Association; the National Pretrial Conference; and the Policy Exchange in London, England.

Criminal Justice Stakeholder Input

Recognizing the need to engage criminal justice stakeholders in its 2011 efforts, the task force created a survey requesting input for needed changes to the state's criminal justice system (See Appendix). The survey was distributed to stakeholders across the state, including judges, prosecutors, defense attorneys, law enforcement, jailers, service providers, public officials, and other persons interested in the criminal justice system. The survey requested detailed suggestions listing specific statutes, the nature of the problem, and the proposed solution to the problem. Recommendations for the improvement of criminal justice programs were also requested.

The task force received testimony regarding recommendations for policy reforms and suggested improvements for some of the provisions in HB 463 from a variety of organizations, including Commonwealth's attorneys, judges, the Department for Public Advocacy, the Parole Board, criminal defense attorneys, and law enforcement, as well as other individual criminal justice stakeholders.

After careful review and consideration of the survey results and the testimony received from stakeholders, the task force proposes the following recommendations.

Recommendations

Recommendation 1: Reform the Penal Code

The current Penal Code was enacted more than 30 years ago after years of extensive research and with expert assistance. A broad review of the Penal Code should be conducted to consider whether it reflects current best practices and the state's criminal justice needs. Any statutes that are rarely used or antiquated should be considered for repeal. A comprehensive Penal Code review should also include a reassessment of the offense classifications, as recommended by the task force in this report.

The task force had aspired to begin the discussion for Penal Code reform and make more detailed recommendations for broad reform; however, the task force was unable to accomplish this goal within its five meetings due to the complexity of the subject matter and the time-consuming task of overseeing the implementation of HB 463.

Recommendation 2: Reclassify offenses and modify sentencing structure

Prosecutors and criminal defense attorneys testifying before the task force agreed that the current classification of criminal offenses is not an adequate system for categorizing offenses and assigning penalties. The current system uses five felony classifications: Capital offenses, Class A for the most serious offenses; Class B; Class C; and Class D, which is designated for the less serious felonies and carries a penalty of 1 to 5 years in prison. The next lowest offense is classified as a Class A misdemeanor, for which a defendant can be incarcerated for up to a year.

The task force recommends that a thorough review be conducted of the current offense classifications and sentencing structure and that serious consideration be given to modifying the classifications and their associated penalties, including the persistent felony offender provisions, current sentence enhancements, and parole eligibility categories. Potential options include creating a more distinct delineation between offenses against persons versus offenses against property and the creation of a new offense classification that would fall between the current Class D felony and Class A misdemeanor.

Recommendation 3: Modify trafficking in the second and third degrees

HB 463 modified the trafficking statutes by creating different penalties for trafficking based not only on the type of substance trafficked (as in previous law) but also on the amount of controlled substances trafficked. The quantities were used to distinguish between a "true" trafficker and a peddler who is selling to support his or her own habit. Higher quantities meant higher penalties. Penalties were decreased for quantities less than those threshold amounts listed in statute. In KRS 218A.1412, trafficking in a controlled substance in the first degree, the threshold quantity could be accumulated over a 90-day period.

The General Assembly should consider amending KRS 218A.1413, trafficking of a controlled substance in the second degree, and KRS 218A.1414, trafficking of a controlled substance in the third degree, to allow a similar accumulation of the specified drug amounts in those offenses over a 90-day period similar to the accumulation of amounts in trafficking in the first degree.

Recommendation 4: Create a generally applicable synthetic drug statute

Another issue presented to the task force is the continual creation of new synthetic drugs with unknown and potentially dangerous side effects. These drugs are marketed with seemingly innocuous names, are readily available in many stores, and can be sold to children. When policy makers enact legislation to ban a specific synthetic drug, manufacturers can alter the composition to create new drugs that do not fit the chemical criteria in the new law. Adopting new legislation every session for the latest synthetic drugs is an ineffective method to address this issue. The task force recommends the creation of a new statute that would be generally applicable to all synthetic drugs.

Recommendation 5: Clarify deferred prosecution provisions

HB 463 created the concept of deferred prosecution to be used for persons charged with a first or second offense for possession in the first degree, which is a Class D felony. For a defendant to be eligible, the prosecutor must agree to and set the terms and conditions of the defendant's deferred prosecution and the court must approve the terms and conditions. The defendant is not required to enter a guilty plea, and the maximum length of participation is 2 years. If the defendant successfully completes deferred prosecution, the charges are dismissed and the records are sealed, except for purposes of determining future eligibility for deferred prosecution.

The policy behind deferred prosecution was to provide defendants who have been charged with felony possession an opportunity to change their behavior before giving them a permanent felony record. There are some inconsistencies across the state in the implementation of the deferred prosecution provisions. The task force recommends that these provisions be clarified for more consistent use and application. Some suggested improvements received by the task force are to define "deferred prosecution," specify the agency responsible for supervising participants, address procedural issues in sealing the records, and set parameters or authorize regulations for the supervision of participants.

Recommendation 6: Investigate methods for combating methamphetamine

Recognizing that the issue of methamphetamine has been and will be a matter before the General Assembly, the task force generally recommends further investigation of additional methods for combating the problems and costs associated with methamphetamine.

Recommendation 7: Investigate better methods for combating pill mills

A growing part of the prescription drug problem faced by the Commonwealth is the increasing number of pill mills in the state, a number likely to rise as other states tighten their controls on these entities. To combat this influx, the General Assembly should consider the adoption of additional regulatory controls, including such areas as clinic ownership, record-keeping, monitoring, and staff educational requirements, as well as means to enhance the tracking and dispensing of controlled substances. This issue is already being addressed by several members in prefiled legislation for the 2012 Regular Session.

Recommendation 8: Clarify various provisions in the Drug Court statute

The Kentucky Court of Justice has requested minor revisions in KRS 26A.400, the drug court statute, to further clarify unresolved questions regarding the scope of the program.

The task force recommends that these revisions be reviewed and considered for possible inclusion in legislation.

Recommendation 9: Address concerns of law enforcement regarding misdemeanor citation and arrest

HB 463 modified Kentucky's arrest provisions to require that a citation be used for misdemeanor offenses, except for sex offenses, assaults, firearm offenses, or driving under the influence. Also, regardless of the misdemeanor charge, the officer could proceed to an arrest if the defendant posed a danger to himself, herself, or another person; the defendant refused to follow the officer's reasonable instructions; or there were not reasonable grounds for believing that the person would not appear to answer the charge. No changes were made to an officer's authority to make an arrest for felony offenses.

Law enforcement officers point to what they consider several confusing arrest provisions and inconsistencies in the related statutes. Current arrest law is located in several statutes that cross-reference each other and at times are inconsistent with each other. The arrest provisions are found by referencing one statute for the rule (and myriad variations on the rule), referencing a different statute for exceptions to the rule and for exceptions to the exceptions, and then referencing other outlying statutes containing their own stand-alone arrest authority. There are also a few classes of peace officers whose implementing statutes could be read to grant an authority to arrest that is greater than that allowed for the great majority of officers under HB 463.

The task force recommends further study of this issue to address the concerns of law enforcement.

Recommendation 10: Clarify application of bail credits

The bail credit provisions in KRS 431.066 need clarification because they reportedly present challenges in local jurisdictions. In sum, these provisions require a credit of \$100 per day toward a defendant's bail for each day spent in jail and require release after the defendant has enough credit to meet bail. These provisions could be amended to provide several key clarifications to allow more consistent application of the credit across the Commonwealth. The task force received the following suggestions for clarification:

- Define the amount of time necessary to constitute a "day" as used in the statute because defendants may receive credit for a day even if as little as a few minutes of a day are actually spent in a detention facility;
- Determine how bail credit should be applied to partially secured (or "10 percent" bonds) as it is unclear whether the credit is to be applied to the partially secured amount or the total amount of the bond;
- Clarify how KRS 431.066 affects statutory preset bonds; and
- Clarify how bail credit should be applied when a defendant has multiple cases pending, either within the same jurisdiction or a different jurisdiction.

Recommendation 11: Clarify pretrial release provisions

As noted previously, early data indicate that the provisions in HB 463 for release of low-, moderate-, and high-risk defendants are resulting in more early releases for pretrial defendants without demonstrable increases in failures to appear for new court dates or new charges filed against defendants during the period of time they are released pending trial.

The task force received detailed feedback from the Kentucky Court of Justice (KCOJ) regarding several of the pretrial provisions that are in need of clarification. KCOJ has requested new definitions for various terms to more accurately reflect pretrial procedure and to clarify ambiguities in an effort to promote more uniform application of the law's provisions. Because Pretrial Services cannot provide a risk assessment level to the reviewing court until a defendant is determined to be verified and eligible, one suggested clarification is the addition of a definition for a "verified and eligible defendant."

The task force recommends clarification of the pretrial provisions as requested by the Kentucky Court of Justice and a review of pretrial procedures to ensure the provisions do not contain ambiguities and that they accurately reflect the information necessary for uniform application.

Recommendation 12: Reevaluate employment restrictions for felons

Convicted felons lose or are banned from receiving a license in dozens of occupations including chiropractic care, barbers and hair stylists, emergency medical technicians, paramedics, dispatchers, motorcycle safety instructors, and private investigators. They also are barred from working in any establishment with an alcoholic beverage license for 2 years after conviction. The task force recommends reevaluating the employment restrictions on felons and considering removing those restrictions when there is no nexus between the underlying offense and the employment. This will require reviewing and amending numerous statutes.

Recommendation 13: Review challenges presented in misdemeanor expungement

KRS 431.078, relating to the expungement of misdemeanor and violation records, contains language that states that in the 5 years prior to the conviction sought to be expunged, a person seeking expungement cannot have been convicted of any other misdemeanor or violation (which is a fine-only offense); and in the 5 to 7 years since the conviction, the person cannot have been convicted of a felony, a misdemeanor, or a violation. The task force received reports that, based on this language, some jurisdictions will not grant misdemeanor expungement to a person who has a traffic citation (a fine-only offense) during the time periods specified in statute.

The task force recommends reviewing the relevant language for potential clarification of whether a fine-only offense should prevent the expungement of a misdemeanor.

Recommendation 14: Create a uniform statewide gang database

Prosecutors testified that there are no current provisions in the law to track increasing gang membership and the associated problems in most areas of the state. This makes it difficult for law enforcement to address the criminal activity of gangs, which are by their nature geographically transient. To enable law enforcement to track gang membership and criminal activity, the task force recommends the creation of a statute that requires gang reporting by all public safety agencies, such as law enforcement, jails, Department of Corrections, and Department of Juvenile Justice. A uniform, shared statewide gang information database could be

used to validate an individual as a gang member, determine the number of gang members, and track crimes committed by gang members and the penalties received. This will allow agencies to share information to find patterns of activity and to determine concentrated areas of gang crime, where it originated, and how to address it.

Recommendation 15: Ensure confidentiality for victims of sexual offenses

To promote community safety and protect victim privacy, the task force recommends excluding all names of victims of sexual offenses from all appellate court opinions and extending this policy so that it applies to all briefs and other pleadings filed in the appellate courts.

Recommendation 16: Investigate better methods to combat human trafficking

“Human trafficking” is generally defined as labor or services or commercial sex acts obtained through the use of force, fraud, or coercion. The most common types of human trafficking include forced labor, sex trafficking, bonded labor or debt bondage, and involuntary domestic servitude. In the United States, victims of human trafficking can be found working as prostitutes or in massage parlors, strip clubs, domestic service, agriculture, construction, manufacturing, landscaping, and hospitality industries. Traffickers recruit and transport their victims internationally or within the US from state to state. Victims are held against their will through various means, including the use of threats, confiscation of documents, or violence.

Kentucky enacted human trafficking legislation in 2007 providing certain protections for victims, such as the right not to be held in a detention center pending trial. However, the task force heard testimony that there have been approximately a dozen human trafficking cases charged under Kentucky law, and none has yet resulted in a conviction. The Polaris Project, the agency funded by the federal government to run the National Trafficking Victims Hotline, has ranked Kentucky in its second-lowest tier for state laws on human trafficking. National and local advocates, including police, prosecutors and victim advocates, argue for additional state legislation.

The task force recommends further investigation to find more effective tools to combat human trafficking and legislation to enact those tools.

Recommendation 17: Ensure protection of child victims from internet exploitation

The task force recommends further consideration be given to legislation that would create a distinction between offenses involving inappropriate chatting with a child over the Internet without effort to meet the child and offenses involving travel to exploit a child whom a perpetrator has contacted via the Internet.

Recommendation 18: Ensure justice reinvestment

The success of the policies behind HB 463 depends on savings from the reduced reliance on incarceration being reinvested into alternatives to incarceration, including substance abuse programs, treatment options, supervision, and evidence-based practices that have been proven to reduce recidivism. During the 2011 Regular Session, the General Assembly enacted KRS 196.286 and KRS 196.288 requiring the calculation of the recognized savings and the reinvestment of those funds. These provisions expressed the will of the General Assembly to reinvest HB 463 savings into expanded evidence-based treatment programs, probation and parole

services, additional pretrial services and drug court case specialists, and the local corrections assistance fund.

This reinvestment will be vital to the success of the policies in HB 463. Examples of the need for reinvestment have already been reported to the task force. DOC has reported that its main challenges going forward are the general lack of program availability and scarcity of community resources, particularly in rural areas. Those within the judicial system have pointed to the rapidly growing caseloads of pretrial services officers and the need to hire additional officers to meet the demands of the increased workload. Reinvesting in these areas and others is vital to maintaining public safety and reducing recidivism.

The task force strongly urges the General Assembly to maintain the goals of enhanced public safety, decreased recidivism, and decreased incarceration for low-risk offenders through the use of justice reinvestment principles. The task force recommends ensuring the reinvestment of savings resulting from HB 463 into supervision services and additional programs targeting offenders' risks and needs.

Recommendation 19: Address issues relating to the electronic monitoring of offenders

The task force received reports from various agencies that use electronic monitoring. Based on that testimony, the task force recommends further investigation of problems with effective implementation, the challenges of the technology in a rural state, and potential operational parameters for future systems. Consideration should also be given to whether there should be a uniform, statewide system or a regional, local, or other type of system.

Recommendation 20: Create a task force to review juvenile justice matters

Task force members repeatedly received input from stakeholders regarding the importance of addressing a person's risks and needs at an earlier age to prevent the need for incarceration later in life. Kentucky's high rate of incarceration for status offenders and lack of other resources for juveniles have only compounded the problem. Therefore, the task force recommends the creation of a juvenile justice task force to review juvenile justice matters during the 2012 Interim.

Recommendation 21: Use the Results First cost-benefit model to identify evidence-based programs that have the most potential to provide net benefits

Results First is a cost-benefit analysis model that helps states determine which combinations of programs and policies can yield the greatest benefit in the most cost-effective way. The model uses national research to identify evidence-based programs that work and applies those findings to state-specific population data to estimate the fiscal and policy impact of potential investments in programs that are designed to reduce crime and recidivism. The model uses Kentucky fiscal data to predict the costs and benefits of each program option, producing an estimated return on investment for each program examined. The model determines the probability, within a standard error range, that a state would lose money or fail to achieve crime reductions if a proposed policy or program were implemented. It also has the capability of using a portfolio approach that assesses the impact of a combination of policies or programs and could be a resource as Kentucky considers policy choices and investments in criminal justice programs. Results First was authorized as a pilot project for the task force.

The task force recommends that the General Assembly, when appropriating and allocating corrections savings for reinvestment, consider the results from the model as one factor in identifying evidence-based programs that have the most potential to benefit the Commonwealth as proven methods for reducing recidivism.

Recommendation 22: Continue the Results First pilot project

If the General Assembly reauthorizes the current task force or creates a juvenile justice task force, the General Assembly should also continue the Results First pilot project for further development and use by the task force.

Recommendation 23: Require detailed reporting on evidence-based programs

The task force recommends that the Department of Corrections include information on the number, type, and outcomes of the evidence-based programs that it implements in its annual reports to the governor, the General Assembly, and the Court of Justice.

Conclusion

HB 463 was groundbreaking legislation with far-reaching implications. The complexity and scope of the bill's provisions had a broad impact across the entire criminal justice system. Providing education and awareness for criminal justice stakeholders demanded much of the task force members' time. The task force also faced the responsibility of determining the current status of implementation and addressing challenges faced by the stakeholders. These responsibilities created time constraints for the task force and limited its ability to address additional large-scale criminal justice reform. Given these considerations, the task force makes the final recommendation that the co-chairs and staff of the House and Senate Judiciary Committees continue to work through the 2012 Regular Session with public safety agencies and criminal justice stakeholders to craft any necessary additional statutory improvements and revisions that have become apparent since the implementation of the provisions of HB 463.

Appendix

Survey of Criminal Justice Stakeholders

TO: Members of the criminal justice community and other interested parties

FROM: Senator Tom Jensen and Representative John Tilley, Co-chairs,
Task Force on the Penal Code and Controlled Substances Act

DATE: June 6, 2011

SUBJECT: Soliciting input for changes to the Kentucky Penal Code, Controlled Substances Act and related statutes

In 2010, Kentucky lawmakers created the Task Force on the Penal Code and Controlled Substances Act to recommend changes to the state's penal code and drug laws that would control the growth in corrections while maintaining public safety. In addition to our membership as co-chairs, the task force members were: Chief Justice John D. Minton, Jr., Secretary of the Justice and Public Safety Cabinet J. Michael Brown, County Judge/Executive Tommy Turner, Tom Handy, a former prosecutor, and Guthrie True, a former public defender.

For six months in 2010, we jointly led a bipartisan group of stakeholders from across the criminal justice system and state and local government on a quest to reduce Kentucky's prison costs and increase the public's return on its corrections investment by reducing recidivism and incarceration rates. The task force conducted an extensive review of Kentucky's corrections data to identify what was driving increases in the state's prison population and costs. The task force crafted recommendations for legislative reform based on that data, resulting in House Bill 463, which was signed into law on March 3rd, 2011.

You can access HB 463 at <http://www.lrc.ky.gov/record/11rs/HB463.htm>.

You can access the Report of the Task Force at <http://www.lrc.ky.gov/lrcpubs/rm506.pdf>.

As the Task Force on the Penal Code and Controlled Substances Act begins its new interim meeting period, the task force is seeking suggestions regarding needed changes in the criminal law of Kentucky from judges, prosecutors, defense attorneys, law enforcement, jailers, service providers, public officials and other persons interested in the criminal justice system.

The Task Force is requesting detailed suggestions listing specific statutes, the nature of the problem, and the proposed solution to the problem. Specific recommendations for the improvement of criminal justice programs are also welcome.

Your prompt response will permit the Task Force to assess our state's criminal justice needs.

Please submit responses in the format on the second page of this memo. If you have any questions, please contact Joanna Decker at (502) 564-8100 ext. 490.

****Please note:** these responses will be considered to be open records. Responses may be distributed to task force members, and it is possible that responses could become public with the responder's name attached, even without an open records request.

1. Contact information:

- a. Name;
- b. Business or agency name (optional);
- c. Telephone number; and
- d. E-mail address

2. List statutes in the Penal Code, Controlled Substances Act, or other chapters relating to the criminal justice system that:

- a. Conflict with each other;
- b. Are rarely used, out-of-date, or unneeded;
- c. Have disproportionately high or low penalties;
- d. Need clarification of their elements; and
- e. Need reclassification of their penalties - for example, to add more classifications of penalties or to distinguish between offenses more proportionately

3. Describe other recommendations that do not currently exist in statute, but for which there is a need.**4. If any of the above responses will require a statutory change, attach a marked-up copy of the statutes involved, if possible.****5. Provide any other background information for your suggestions as necessary.****6. Would you would be willing to submit further information if necessary?****7. Would you would be willing to appear at a task force meeting to present your suggestion(s)?**

Please e-mail your replies to: Joanna.Decker@lrc.ky.gov or call (502) 564-8100 ext. 490