



## Testimony of the American Civil Liberties Union of Kentucky

To Members of the Senate Standing Committee on Judiciary

Regarding House Bill 361

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Chairman Westerfield and members of the Committee:

My name is Amanda Hall and I am a Smart Justice Field Organizer at the ACLU of Kentucky. Unfortunately, I am not able to attend the eighth meeting of the Senate Standing Committee on Judiciary in person due to limited Capitol access and public health recommendations to avoid large gatherings, as a result of COVID-19. I still wanted to share my testimony regarding House Bill 361, and hope you will accept this letter as my testimony.

The ACLU of Kentucky appreciates your efforts to address overcrowding in Kentucky jails and prisons and your ongoing work to change the unsafe conditions facing incarcerated Kentuckians. There are many aspects of HB 361 that ACLU-KY supports.

First, we are glad there will be more transparency, communication, and documentation when some individuals are transferred to other facilities. It is also a move in the right direction to modify Kentucky statute to stop the transfer of incarcerated people while they are:

- participating in programming approved by the Department of Corrections,
- incarcerated pre-trial,
- or receiving medical treatment.



However, we have a number of concerns arising from the following language in HB 361:

*if a jail is at or over 150% capacity, the Department of Corrections may direct the jail to transfer a specified number of state prisoners to vacant beds at other designated jails or state institutions.*

The Department of Corrections (DOC) has a constitutional obligation to ensure the civil rights of every person in its custody are protected. Problems stemming from overcrowding can include a higher risk of suffering violence or sexual assault, greater exposure to safety hazards in the event of a fire or other emergency, and decreased likelihood that medical staff will have the ability to provide necessary care in a timely fashion. People can—and have—suffered serious injury and death because of these unmitigated risks. DOC needs the flexibility and discretion to move state prisoners placed in county jails when the safety of incarcerated people demands it, not when overcrowding meets an arbitrary threshold.

This significant safety concern could be solved with one small change to House Bill 361: removing the threshold of 150%. This would grant DOC the flexibility to transfer individuals for reasons of safety, unhygienic living conditions, appropriate staffing capacity, and more.

This bill does set good standards for administering these transfers; however, the arbitrary 150% threshold may preclude DOC from transferring individuals away from inhumane living arrangements simply because the jail is “only” at 145% capacity. This standard is not as helpful a remedy to the unsafe conditions caused by overcrowding as it could be.

Jail overcrowding is a significant issue facing our Commonwealth, and we need substantial criminal justice reform to remedy this issue. This bill is a step forward in many ways, but removing the “150%” language will address overcrowding in a more meaningful way until real criminal



justice reform is enacted that addresses the root causes of Kentucky's rising incarceration rates.

Thank you for your consideration. I hope all staff and members of the General Assembly stay healthy during this time.

Sincerely,

Amanda Hall