

Process and Results of Passing House Bill 5:
From Retired Jail and Corrections Employees

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EXECUTIVE SUMMARY

HB5, the “Safer Kentucky Act,” is emotion-based legislation, rather than the evidence-based legislation Kentucky deserves. Legislators and research organizations who presented data and asked hard questions were stonewalled at every step of development of this legislation.

Kentucky has the 8th harshest criminal sentencing statutes in the U.S., and this is a significant increase. Facts about the decrease in crime rates in Kentucky and the unknown billions of dollars HB5 will cost, were drowned out by “tough-on-crime” sermons, photos of crime victims, and incessant crime stories on our televisions and computers.

HB5 wrote a blank check on an account that is already overdrawn, and it **will** cause conditions of incarceration that are even more inhumane and dangerous than what we have now. Those of us who worked in prisons and jails over the past 50 years have first-hand experience resulting from legislation that created more incarcerated people without adding money to the corrections budget for humane housing, rehabilitation programs and staff.

Over the past 40 years, our legislature has enabled county jail beds to be used as state prisons, because jail beds are half the cost of state prison beds. Forty percent of state prisoners serving felony time are housed in jails designed for short term confinement, with no space or resources for humane living conditions and rehabilitation programs. Most county jails (45 of 74) are overcrowded. Twenty-eight jails have 120%, or more, people than beds and ten of those jails are more than 150% overcrowded. County budgets profit from overcrowding their jail with state and federal prisoners who come with per diems for the jail. If horses were treated this way, there would be public outrage. Kentucky has only one private prison. Our county jails are being

operated on a private prison business model and overcrowding prisoners brings in more money. Kentucky is the only state where jailers are elected officials who can lobby the legislature to support their interests. Kentucky's jailers are well on their way to controlling the Kentucky Department of Corrections and there is no means to hold these individual "Kingdoms" accountable.

Our state prisons and jails are facing dramatic and sustained staff shortages which create dangers for staff and prisoners alike. From 2022 to early 2024, Kentucky State Penitentiary operated at half capacity because of staff shortage. Luther Lockett Correctional Complex has Correctional Officers working 60-hour weeks in a prison holding twice the number of people it was designed for. Kentucky State Reformatory, once the largest state prison, is being closed for lack of staff. The largest state prison in 20 years is being built to accommodate geriatric prisoners. Louisville's Metro jail is 80 Correctional Officers short. In 2021, Lexington's jail considered using the National Guard for jail staff.

These issues require funds that could be spent on education, mental health, addiction and housing. HB5 dumped those problems on the legislators and citizens of tomorrow. In the meantime, we will all suffer when people held in inhumane conditions, without rehabilitation programs, are released. Kentucky's state prisons hold 11,500 people and county jails hold 20,000 more. There are 63,000 people on probation or parole. HB5 might feel tough on crime, but there is no evidence it will make anyone safer.

END OF EXECUTIVE SUMMARY

Those of us who have worked in prisons, jails and parole offices over the past 50 years believe the rush to pass HB5-the “Safer Kentucky Act” was a mistake and urged the legislature not to override the Governor’s veto. This is not evidence-based legislation. It is emotion-based legislation.¹ It is based on cut and paste data from Georgia and panders to public fear of the violent crime on daily TV news. It is based upon the unsupported belief that spending billions to lock more people up with longer sentences will make us safe. It will do the opposite.

One Senate Judiciary Committee Hearing for HB5 lasted two hours. Senator Gerald Neal had data showing the bill was unnecessary and asked the bill’s sponsors to present their evidence. Representative Michael Nemes said that he would get a list of the criminal justice experts they had interviewed. The unspoken message was clear: We have the votes and don’t have to argue about evidence. Senator Phillip Wheeler said it did not matter how much the bill cost. “Even if we have to spend a million dollars to save one life from crime it would be worth it.” This statement showed profound disrespect for the legislators of the future who will be tasked to allocate tax dollars for incarceration instead of education, mental health, drug treatment, employment programs or housing. At the end of the hearing, two research groups from the center-right and one from center-left got three minutes each to present their evidence opposing the bill.² The Chair of this committee, Senator Whitney Westerfield, a former prosecutor,

¹ <https://www.lpm.org/news/2024-03-12/the-safer-kentucky-act-source-list-is-cut-and-paste-from-a-georgia-policy-paper>; <https://www.lpm.org/news/2024-02-22/criminologists-cited-in-support-of-safer-kentucky-act-wonder-why>; <https://apps.legislature.ky.gov/CommitteeDocuments/75/28861/2.%20HB%205%20-%20Crime%20Statistics%20and%20HB%205.pdf>

² <https://kentucky Lantern.com/2024/03/12/opponents-from-across-the-political-spectrum-testify-against-sweeping-crime-bill/>

worked to make it less harsh and voted against it, saying it cast too wide a net. Evidence based legislation did not result from this process.

Several Senators who sponsored HB5 were on the Legislative Research Commission’s “Jail and Corrections Reform Task Force.” This committee, co-chaired by former police officer and Jailer, Senator John Schickel, held 6 monthly meetings last year to hear testimony from invited guests.³ Research groups and others who might present troubling evidence or ask uncomfortable questions were not invited. The majority of testimony was given by elected Jailers and County Judge Executives from rural counties.⁴ They were looking for financial support from Kentucky Department of Corrections (KDOC) which houses 40% of the state prison population in jails.⁵

The Jail and Corrections Reform Task Force did not take time to:

1. See photos of dangerous and inhumane jail conditions or hear testimony about PTSD caused by serving time in jails or even learn how many people died in them.
2. Consider why Kentucky’s violent crime rate is the seventh lowest in the nation and why Kentucky had a significant drop in its violent crime rate from 2021 to 2022.⁶

³ https://www.youtube.com/playlist?list=PLB4pJ2v0CMGuv7VRjYeyY8zIG_ywf29tO

⁴ <https://apps.legislature.ky.gov/CommitteeDocuments/378/> see “J&C Minutes”

⁵ <https://corrections.ky.gov/About/researchandstats/Documents/Daily%20Population/2024/03/03-28-24.pdf>

⁶ <https://apps.legislature.ky.gov/CommitteeDocuments/75/28861/2.%20HB%205%20-%20Crime%20Statistics%20and%20HB%205.pdf> The Legislative Research Commission wrote this report for a March 14, 2024 Senate Judiciary Committee hearing <https://apps.legislature.ky.gov/CommitteeDocuments/75/>

3. Hear from KDOC Correctional Officers working 60-hour weeks at Luther Lockett Correctional Complex, a state prison holding twice as many people as it was designed for.⁷
4. Hear from the 550 Probation and Parole Officers who manage a total caseload of 63,000.⁸
5. Hear from anyone working in severely understaffed jails in Lexington and Louisville.⁹
6. Hear from KDOC about the 70% staff shortage at Kentucky State Penitentiary that results in operating at 50% of capacity.¹⁰
7. Discuss staffing issues that led to the decision to abandon Kentucky State Reformatory which was once the largest prison in the state.¹¹
8. Hear from any KDOC Jail Inspectors who see jail conditions firsthand and write reports that are ignored.¹² KDOC cannot afford to enforce humane jail standards because they have no place to put state prisoners from those jails.
9. Study the results of Kentucky's harsh sentencing over the past 50 years and why Kentucky has the 8th highest incarceration rate in the U.S.¹³

⁷<https://corrections.ky.gov/About/researchandstats/Documents/Annual%20Reports/FINAL%202022%20Annual%20Report.pdf>, page 74-75

⁸<https://corrections.ky.gov/About/researchandstats/Documents/Annual%20Reports/FINAL%202022%20Annual%20Report.pdf>, page 34

⁹https://edition.pagesuite.com/popovers/dynamic_article_popover.aspx?artguid=ef974bf5-8764-4768-9bad-4a4ae77932e8
<https://www.wlky.com/article/480-inmates-to-2-officers-metro-corrections-faces-critical-situation-due-to-staffing-shortage/37560110#>

¹⁰ <https://corrections.ky.gov/About/researchandstats/Documents/Daily%20Population/2024/03/03-28-24.pdf>

¹¹<https://corrections.ky.gov/About/researchandstats/Documents/Annual%20Reports/FINAL%202022%20Annual%20Report.pdf>, page 71

¹² <https://www.lpm.org/investigate/2024-03-04/as-gop-pushes-safer-kentucky-act-full-jails-prep-for-more-crowds>

¹³ <https://www.sentencingproject.org/research/us-criminal-justice-data/>
<https://kentuckylantern.com/2024/03/12/regressive-lock-them-up-house-bill-5-would-be-a-costly-mistake-for-kentucky/?emci=c22b17a8-0fe0-ee11-85fb-002248223794&emdi=0e4e6d49-57e0-ee11-85fb-002248223794&ceid=433518>

10. Study what is going right or wrong in other states.

11. Consider reasons Kentucky's prison population fell over 25% from 1940 to 1970.¹⁴

As we worked on the front lines of incarceration during the past 50 years, over 100 laws were passed that increased the length of sentences. We lived through years of daily panic as our prison population doubled in the 1980's and almost doubled again in the 1990's.¹⁵ Lawsuits and Federal Court Orders bloomed like dandelions. Governors formed committees and begged the legislature for more money. KDOC built 5 new prisons and double bunked several more.¹⁶ Contracts were signed to house state prisoners in three private prisons. Governors commuted sentences when requests for funding were ignored. This was not enough, and excess prison population flowed into county jails designed for short term incarceration. From 2000 to 2012, the number of jail beds increased from 10,477 to 19,727. Through all this, we did our best to preserve the humanity of incarcerated people so they might have a chance to succeed when they were released. HB5 adds gasoline to Kentucky's fire of harsh sentencing practices. Prisoners who lose hope for release are more difficult to work with. Staff without hope might decide to work elsewhere.

Jails lack space and resources for rehabilitation programs. In March of 2024, thirty-one of our 74 jails were more than 120% overcrowded. Nine of these 31 jails were over 150%. Six thousand people are held in these 31 jails, and over 2,500 of them (40%), are state or federal prisoners.¹⁷ In

¹⁴ <https://www.ojp.gov/pdffiles1/Digitization/113548NCJRS.pdf>

¹⁵ https://uknowledge.uky.edu/law_facpub/144/, page 325

¹⁶ https://uknowledge.uky.edu/law_facpub/144/, page 326

¹⁷ <https://www.lpm.org/investigate/2024-03-04/as-gop-pushes-safer-kentucky-act-full-jails-prep-for-more-crowds>

late 2022, ten jails in southeast Kentucky averaged 191% overcrowding. Two of every three women serving state felony sentences are housed in jails.

The state pays each county a per-diem to the county budget for each state prisoner held in its jail.¹⁸ In 2006, the Pulaski County Jail brought in a \$422,000 surplus. Jailer Mike Harris said, “It does pay to overcrowd your jail.”¹⁹ Over the past ten years, this jail has averaged 187% overcrowded. About half of Pulaski County jail beds are rented out for state or federal prisoners.

The supporters of HB5 did not know how much it will cost.²⁰ They used undocumented claims of a crime wave to write a blank check on an account that is already overdrawn.

Maybe something else is going on that would serve the vested interests of those who profit from incarceration.

From 2019 to 2024, the total population of county jails fell 17%.²¹ The number of KDOC prisoners that bring in per-diem payments fell 30%, from 10,951 to 7,692. During 2022 alone, state prisoners in jails declined by 1,400 people. This has happened before, and Jailers complained.

¹⁸ <https://www.lpm.org/investigate/2024-03-04/as-gop-pushes-safer-kentucky-act-full-jails-prep-for-more-crowds>

¹⁹ “More state felons held in jails” By Andrew Wolfson. Louisville Courier-Journal. July 9, 2006

²⁰ <https://kentucky Lantern.com/2024/02/14/senate-should-save-kentucky-from-another-incarceration-binge/?emci=4ac213f7-bdca-ee11-85f9-002248223794&emdi=d13b8631-28cb-ee11-85f9-002248223794&ceid=433536>

<https://kypolicy.org/house-bill-5-would-cost-kentucky-more-than-1-billion-over-the-next-decade/>

²¹ <https://corrections.ky.gov/About/researchandstats/Documents/Weekly%20Jail/2019/12-26-pdf>
<https://corrections.ky.gov/About/researchandstats/Documents/Weekly%20Jail/2024/03-21-2pdf>

In 2011, the Legislature passed laws that allowed 2,000 state prisoners an early release from jails. Several contracts with private prisons were canceled. Senator Jimmy Higdon, representing Marion County, expressed concern for the loss of 160 jobs at a private prison there. That same year, front page headlines of the Courier Journal read: “Early Release Arrests Jail Profits. Counties feeling the pinch as state needs decrease.”²² Christian County Jail could no longer collect \$200,000 per year for housing state prisoners and funds had to come from the county budget. Daviess County Jail lost about 100 state prisoners resulting in a loss of \$1. million per year. Fulton County Jail laid off employees after 70 state prisoners were released.

Responding to Jailers’ concerns in 2012, Secretary of the Justice and Public Safety Cabinet, J. Michael Brown said, “We recognize the situation the counties are in, but... the state’s goal is to reduce the number of people incarcerated, not to help fill the county jails.”

Kentucky is the only state where County Jailers are elected officials. Their influence in the legislature is reflected by the fact that over 40 jailers with no jail are elected and paid.²³

Kentucky is the only state to enact statutes that mandate state prisoners with 1-to-5-year sentences serve that time in a county jail.²⁴ (These are often young first offenders who could benefit most from the rehabilitation programs in state prisons.) In the private prison business,

²² “Early Release Arrests Jail Profits. Many counties feeling pinch as state’s needs decrease” By Emily Hagedorn. Louisville Courier-Journal June 18, 2012

²³ <https://www.lpm.org/investigate/2015-01-02/only-in-kentucky-jailers-without-jails>

²⁴ <https://apps.legislature.ky.gov/law/statutes/statute.aspx?id=50895>
<https://apps.legislature.ky.gov/law/kar/titles/501/002/060/>

deals like this are called “guaranteed occupancy clauses” and they reduce the financial risk of building unused bed space.

Through the Kentucky County Jailers Association, Jailers hire lobbyists to advocate for their interests. This means Kentucky has elected officials who are free to follow a private prison business model to benefit their county budgets. Senator Jimmy Higdon has stated that the main reason we don’t have more private prisons is because county jailers oppose them. He sponsored SB 283 which would allow jailers to negotiate with KDOC to set separate per-diem rates for each jail. This would provide more incentive to build huge jails and overcrowd them. SB 283 stalled in the Legislature, but the Kentucky County Jailers Association has an ongoing lawsuit against KDOC demanding higher per diem payment rates.²⁵

In 2006, State Auditor, Crit Luallen, recommended establishing a unified financial management system for jails and state prisons to be controlled by KDOC. This could have evened out unfair jail costs for some county budgets.²⁶ None of this was done. Almost all our county jails have no publicly available annual reports. Accountability is not possible if citizens are left in the dark until a huge crisis happens.

²⁵ <https://www.kentucky.com/news/politics-government/article271696302.html>
<https://www.lpm.org/investigate/2024-03-04/as-gop-pushes-safer-kentucky-act-full-jails-prep-for-more-crowds>

²⁶ <https://www.kacdl.net/files/July%20Edition.pdf>, page 2
<https://www.vera.org/publications/what-jails-cost-statewide/kentucky> Listed under: “Holding people in jail for other authorities” in the last paragraph

As our legislature increases incarceration, and continues to fund jails used as prisons, holding county jail “Kingdoms” accountable will prove impossible. The Kentucky County Jailers Association, with support from the County Judge/Executive Association and Sheriffs/FOP and prosecutors, might derail reform legislation that does not serve economic interests of their counties.

Judah Schept, Professor of Criminal Justice at Eastern Kentucky University, has written extensively about replacing coal jobs with incarceration jobs.²⁷ His 2022 book, Coal, Cages, Crisis: The Rise of the Prison Economy in Central Appalachia, documents this process. He also discusses disappointing economic benefits from three federal penitentiaries built in Kentucky’s poorest counties.

The co-dependent relationship between KDOC and Jailers has lasted 45 years. Incarcerated people and their families are exploited by increasingly harsh sentencing laws that force people to live for years in chaotic, dehumanizing jails without space for effective rehabilitation programs or separate spaces for aggressive or mentally ill people. Many jails give each prisoner “little more space than would be found in a large closet in an average American home.”²⁸ If horses were treated this way there would be public outrage.

²⁷ <https://www.vera.org/in-our-backyards-stories/keeping-the-lights-on#:~:text=Kentucky's%20prisons%20are%20full%20and,behind%20bars%20in%20113%20years>

²⁸ https://uknowledge.uky.edu/law_facpub/137/, page 25

The Legislature enables jails to hold state prisoners because jail beds cost half as much as beds in state prisons.²⁹ The human toll this takes is a distant afterthought. From 2011 to 2016 one hundred-forty people died in Kentucky's jails.³⁰ Voices calling for humane living conditions, rehabilitation programs and vocational training for incarcerated people have been drowned out by those who profit from "tough on crime." One of Kentucky's harsh sentencing laws is called "Truth-in-Sentencing." We need to hold legislators accountable to tell citizens monetary and human costs of long sentences. We need a "Truth-in-Legislation" statute.

Kentucky's incarceration percentage is higher than all states that surround it. We are in the group with states like Louisiana, Texas, Oklahoma and Mississippi.³¹ We can see where Kentucky is going by looking at what is happening in those states. We are racing to the bottom.

More than a hundred thousand people are released from Kentucky's prisons and jails every year.³² How people are treated in our jails and prisons can make our lives safer or more dangerous. HB5 will make our incarceration situation worse, and we will all be less safe as a result.³³

²⁹ <https://kypolicy.org/house-bill-5-would-cost-kentucky-more-than-1-billion-over-the-next-decade/>

³⁰ "State silent amid faults in jail health system" By R.G. Dunlop. Kentucky Center for Investigative Reporting. January 3, 2016. – Open Records Requests were required to get total deaths.

³¹ <https://kentuckylantern.com/2024/03/12/regressive-lock-them-up-house-bill-5-would-be-a-costly-mistake-for-kentucky/?emci=c22b17a8-0fe0-ee11-85fb-002248223794&emdi=0e4e6d49-57e0-ee11-85fb-002248223794&ceid=433518>

³² <https://www.prisonpolicy.org/blog/2024/02/28/releases-sex-state/>

³³ https://vera-advocacy-and-partnerships.s3.amazonaws.com/BJI_Kentucky%20HB%205%20Fact%20Sheet.pdf