



THE WOMEN'S NETWORK STATUS REPORT ON CRIMINAL JUSTICE

Criminal Justice Reform has recently emerged as a key humanitarian issue. The United States claims the highest incarceration rate in the world; we imprison a higher percentage of our citizens than does Russia, China, and even North Korea. The vast majority of the over 2 million Americans currently in prison are not in federal systems, but rather in state correctional institutions. Ranking 14th highest among US states, Kentucky contributes significantly to this national problem. Even if corrective federal legislation were enacted, Kentucky and other states would still need to undertake significant reforms if this problem is to be solved.

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

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

For statistics on incarceration rates, see Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (NY: The New Press, 2012), 8; Prison Policy Initiative, "States of Incarceration: The Global Context," <https://www.prisonpolicy.org/global/2016.html> (accessed September 12, 2017.)

WOMEN'S NETWORK ADVOCACY POSITIONS ON CRIMINAL JUSTICE

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

Currently Kentucky is one of the few states that have this low threshold for lower level felonies. This means, for example, that the theft of an iPhone is a felony, puts one in a category of a much more serious crime, and leads to incarceration where the offender learns to lead a life of crime. Most states have a threshold of \$2,000. This change will lower these kinds of property crimes to misdemeanor status instead of felonies.

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

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

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

Currently it takes \$500 and a waiting period of 5 years after getting out of prison to expunge one's record of a Class D Felony (the lowest level of felony). A record often prohibits an ex-offender from getting a job. Ex-offenders need money to pay for parole requirements they must meet, like child support and the cost of such things as monitoring devices, or they will be sent back to prison for breaking parole. Inability to get a job and have an income contributes to recidivism. When ex-offenders are found guilty of technical violations such as these and sent back to prison, it drives up the cost of our penal system.

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

SOLUTION: Talking to legislators and the public, explaining this issue and the costs of it the taxpayer as well as the ex-offender, should help to move this change along.

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

In recent years, a series of crime control practices known collectively as **Community and Restorative Justice** have reintroduced **rehabilitation and discretion** to control certain **minor crimes** and would alleviate many of the problems facing the criminal justice system. Community justice initiatives include community prosecution, community courts, sentencing circles, and citizen reparative boards; and in addition, advocate for local, decentralized crime control policies generated through widespread citizen participation. They emphasize attacking the causes of crime, rehabilitating individual offenders, and repairing the harm caused by crime, rather than punishing offenders according to traditional retributive or deterrent concerns. Community justice initiatives are flourishing even as the mainstream criminal system faces a crisis of legitimacy in which an unprecedented number of citizens, many of them African American males, are incarcerated. (*Harvard Law Review-Adrian Lanni*)

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

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

4. POSITION: CHANGE THE STATE'S BROAD REPEAT OFFENDER LAW (CALLED PERSISTENT FELONY OFFENDER OR PFO) SO THAT ONLY VIOLENT OR TRULY PERSISTENT OFFENDERS END UP SERVING THE LONGER SENTENCES MANDATED BY THE LAW.

This change would have the **largest impact over time in reducing the state's growing inmate population** and associated corrections spending. Under the current law a person charged with a Class D felony (the least serious felony) who has a qualifying prior felony faces a mandatory minimum sentence of 5 years in prison. He or she could have received a 1-year sentence for the offense without the Persistent Felony Offender (PFO) enhancement. If the person is charged with a higher-level felony (like first-degree robbery or a serious assault), his or her sentence goes from a possible range of a 10 to 20-year term to a mandatory sentence of 20 years up to life in prison.

With two separate prior felonies (only one of which has to be recent), the sentence for a lower level felony (it could be theft of an iPhone) goes all the way to a mandatory minimum of 10 years in prison (for conduct that could have received a one-year sentence without a PFO charge).

We support changing the law to make sure that a prior felony that makes a felony offender eligible for PFO be serious enough to have resulted in incarceration rather than probation. In addition, it is currently at the Prosecutor's discretion to apply the statute creating PFO enhancement. We support making it discretionary for the judge or jury, because currently a PFO enhancement must be applied if the prosecutor pursues it regardless if the judge or jury feels it is warranted.

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

SOLUTION: Ask legislators to eliminate PFO enhancements for lower level felonies or at least non-violent felonies and that someone who has committed just one prior felony offense isn't punished for being a "persistent" felon. They also need to give judges and juries more power over these decisions. **This change would lower incarceration rates for minor offenses.**

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

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

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

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

SOLUTION: Talk to legislators about the Baylor University study (see attachment) which confirms that PEP delivers best-in-class results and an estimated 340% Return on Investment (ROI). For facts that can be used for persuasion, see the attached handout on the PEP program with the statistics of its impact. Legislators should also be encouraged to support funding the expansion of the “Justice to Journeyman”.

For more information: Prison Entrepreneurship Program (PEP) How to Free a Prisoner
<https://youtube/gcuFknerurk>

Our Men	Our Programs	Our Impact
 <ul style="list-style-type: none"> • CONVICTED FELONS: Almost 50% for violent offenses, and 40% served prior sentences. • CRIME HISTORY: >75% were first arrested before age 18. • AGES: Age 18 - 63 (avg. 33). • RACE: ~35% black, ~35% white, ~30% Hispanic / other. • RECENT CLASSES: <ul style="list-style-type: none"> ○ ~50% had absent fathers; ○ ~40% have lost a close family member to violence; ○ ~33% had at least one incarcerated parent; ○ ~33% have experienced homelessness; ○ ~10% were in foster care; ○ ~10% are former military. • EDUCATION: ~85% have only a GED/HS Diploma. • COMMITTED TO CHANGE: About 10,000 eligible men per year, we accept only those truly committed to transformation. 	 <ul style="list-style-type: none"> • LEADERSHIP ACADEMY: 3 months of character development and computer skills • BUSINESS PLAN COMPETITION: ~6 months of college-level training, plus a full business plan they "pitch" 120+ times . • BUSINESS PLAN ADVISING: 400+ volunteers review and research business plans for participants (by email). • PUBLIC EVENTS: Over 90 hours of in-prison events with ~700 volunteer execs. • FAMILY REUNIFICATION: Staff helps rebuild relationships with loved ones and children. • RE-ENTRY: Housing, job placement assistance and 12 months of case management. • ENTREPRENEURSHIP SCHOOL: Weekly classes for graduates in the "free world." • MENTORING: Life coaching delivered by executives. • BUSINESS SUPPORT: Loans, consulting, customer referrals for graduates' businesses. 	 <ul style="list-style-type: none"> • 3-YEAR RECIDIVISM: <ul style="list-style-type: none"> ○ National ~50% ○ Texas ~25% ○ PEP ~ 7% • EMPLOYMENT: <ul style="list-style-type: none"> ○ 100% within 90 days of release from prison ○ 21-day avg. time "from prison to paycheck" ○ Starting wage >\$11/hour • BUSINESS FORMATION: <ul style="list-style-type: none"> ○ Almost 300 businesses started ○ At least six grossing over \$1MM+ per year • FRESH START: About 75% move into PEP-operated housing, often in a city where they have never lived before. • FAMILIES: Over 800+ relatives & children re-connected with PEP graduates each year. • INDEPENDENT CONFIRMATION: Baylor University study confirms that PEP delivers best-in-class results and an estimated 340% ROI.
<p>OVER 1,000 HOURS OF INTENSE, LIFE-TRANSFORMING SERVICES PER GRADUATE</p>	<p>GRADUATES EARN "CERTIFICATE IN ENTREPRENEURSHIP" FROM BAYLOR UNIVERSITY</p>	<p>2017 BUDGET = \$2.6 MM PUBLIC ROI = \$8.8 MM+</p>

6. POSITION: INCREASE FUNDING TO EXPAND THE KENTUCKY ALTERNATIVE SENTENCING WORKER PROGRAM (ASW) TO RAISE THE CAPACITY FOR DEVELOPING ALTERNATIVE SENTENCING PLANS FOR CONVICTED INDIVIDUALS WITH MENTAL ILLNESS OR DRUG ADDICTION WHO ARE BETTER TREATED IN THE COMMUNITY RATHER THAN STATE PRISON.

This program develops alternative sentencing plans that originate with defense initiatives rather than prosecutorial ones. The offenders play an active role in determining their degree of interest in seeking help through community services. Thus, it includes thinking of community-based services as part of the offender’s defense—but in a unique way. Defense teams are typically tasked with advocating on behalf of clients’ liberty interests. What is different about this approach is that it takes a longer view of client liberty interests. The defense wants to help keep clients from incarceration, but also to be less likely to be re-arrested or fall back into state custody. The solution involves alternative sentencing plans built around careful assessment of needs for rehabilitating the individuals facing incarceration. ASW clients need to complete service needs assessments and service plans for presentation to the court by the DPA attorney.

After plans are accepted by the courts, Alternative Sentencing Workers (ASW) assist getting clients into the proposed programs. ASW staff complete follow-ups on clients 12 months after the court acceptance of the plan. Alternative Sentencing Workers also spend time with community programs developing closer working relationships and referral procedures to enhance cooperation among service providers and the court system.

Table. Comparison of sentences imposed by the courts and actual days served in the 12 months following disposition (n=100)

	ASW sample (n=50)	Comparison Group (n=50)
Average sentence (in days) ***	798.0	1773.8
Average number of days incarcerated in the 12 months after court disposition***	43.49	260.88
Total misdemeanors before the court at the time plan was presented	48	57
Total felonies before the court at the time plan was presented**	66	111
Total violations before the court at the time plan was presented	7	7
Total revocations before the court at the time plan was presented**	19	41
Total all charges before the court at the time plan was presented****	140	216

Walker, Robert and Miller, Jaime. Kentucky Department of Public Advocacy, Alternative Sentencing Worker Program, SFY Evaluation Report, May 2016.

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

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