

[One year later: penal code reform and HB 463](#)

By Noelle Hunter - Staff Writer [The Morehead News](#)

June 8, 2012 — Kentucky's sweeping penal code reform went into law one year ago today and so far the result has been more former inmates released to communities, fewer people incarcerated at the pre-trial stage, the same irritation among most officials who interact with the law, and no sign of the projected cost savings that were intended to be passed on to local communities.

The Public Safety and Offender Accountability Act, also known as HB 463, was enacted on June 8, 2011.

Its primary purpose is to “reduce the number of repeat criminal offenders, control corrections costs, reinvest in treatment programs and supervision and maintain public safety,” according to a report issued last January by the Legislative Research Commission in Frankfort.

The law rolls out in segments over the next four years but certain provisions already in effect have changed the way things are done at the local level.

“We're ‘handcuffed’ in our ability to enforce the law and ensure public safety,” said Morehead Police Chief Mike Adams.

He said his department has seen an increase in marijuana possession, which he believes may be because low-level possession is now a citable offense instead of one for which a person can be arrested.

“We still have arrest powers from other places in Kentucky statutes, but that's just one example of how our work for public safety is being hampered,” Adams said.

Adams said there's been no corresponding decrease in drug-related crimes such as theft, burglary and home invasion.

“That's not to say the pill problem is any less, and, in fact, we are starting to see heroin come into the community as well,” Adams said.

The police chief said he's also seen a decrease in pill evidence taken in as a result of the way offenses are reclassified.

Recently-elected Commonwealth's Attorney Ronnie Goldy has not changed his opinion of the law.

“Like most prosecutors I am not a fan of HB 463,” he said. “I do not like the fact that the penalties for drug dealers were reduced which does nothing but allow drug dealers to be returned to the streets and back into our communities quicker”.

The legislation also introduced a bail credit provision which stipulates that for every day a person serves they get \$100 bail credit. Essentially, a person with a \$2,000 bond can be released in 20 days. Other provisions require pretrial services to conduct assessments to determine whether those charged with offenses should be released into the community pending trial.

District Judge Don Blair said such requirements have the effect of limiting the discretion a judge has to make decisions for the safety of both the individual before his court and for the community he’s sworn to serve.

He said the “one-size-fits-all” pretrial release requirements are inappropriate for Rowan County. Blair said that even the accused who return low flight risk ratings may still need to be incarcerated.

“It’s still frustrating to me, a year later,” Blair said.

“The thing I disagree most with is the state mandate. I know the people in Rowan County better than do judges in other counties,” he said.

“Even if a person is very low risk, they sometimes fail to appear.

He continued:

“I see someone in domestic court, for example. I know he drinks and gets violent because I’ve been seeing him for three years. So if even if he’s only picked up for alcohol intoxication, he may need to be held in custody,” Blair said.

The district judge said he and his colleagues still utilize clauses in the law that allows them to retain discretion and rule accordingly.

The law still is in early rollout, and many questions about its implementation remain unanswered.

How is the Kentucky Department of Corrections Mandatory Reentry Supervision (MRS) program faring with returning formerly incarcerated persons to their communities?

If cost savings are not expected to be seen until 2014, where will interim monies come from to fund reentry services and other costs associated with implementing the legislation?

Next week, DOC will answer those and other questions in this one year “lookback” at HB 463.

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[Despite criticism, Tilley is proud of HB 463](#)

4th in a series

By Noelle Hunter - Staff Writer [The Morehead News](#)

July 13, 2012 — You'll have to forgive Rep. John Tilley (D-Hopkinsville) if he gets a bit testy in defense of the Public Safety and Accountability Act, better known as HB 463.

It's just that he's quite passionate about a law that he says won't completely fix a terribly broken criminal justice system but still represents a vast improvement over what we had.

"Prior to the bill, Kentucky's prison population growth rate was 45 percent over the last decade, while the nation's was only 13 percent," Tilley said.

"We were incarcerating low-level drug addicts at alarming rates and population numbers were being driven largely by Class D felons with possession offenses."

Reform efforts began in 2010 with the inception of bi-partisan task force chaired by Tilley and HB 463 co-author Sen. Tom Jensen (R-London).

Tilley said the group was comprised of stakeholders from criminal justice and public safety areas, including judges, prosecutors, public defenders, victims' advocates, law enforcement, local government and others.

"This bill had input and support from every major association and stakeholder interest throughout the state," Tilley said.

He said the bipartisan task force that was formed to address budget-busting corrections spending had to look backwards to move ahead.

System reform under the auspices of HB 463 is a progressive means to reduce prison populations, slow growth in correctional spending and reinforce a reentry program to keep released inmates from reoffending, according to a report from the Kentucky Department of Corrections.

That boils down to three-pronged strategy at the DOC and the Administrative Office of the Courts: release, reentry, and evaluating the risk of re-offense.

That third prong is what's had local law enforcement officials, judges and prosecutors consistently crying foul. The judges, sheriff, police and jailer all say that they are seeing more people reoffending and being rearrested.

"I am very sensitive to law enforcement concerns and I am a former prosecuting attorney myself," Tilley said.

Differences of opinion and observation about HB 463 performance notwithstanding, perhaps all sides can agree on Tilley's assertion that the law represents a cultural shift in the state's approach to corrections.

Consider comments from the Kentucky Department of Public Advocacy which appeared in the June 2011 issue of 'The Advocate', the newsletter for public defenders:

"Revolutionary in its scope and concept, House Bill 463 will affect every facet of the criminal justice system," wrote Deputy Public Advocate Damon Preston.

Such a shift, Tilley maintains, is difficult, and he said the legislature and administrative agencies understand that revision will occur as the law continues to unfold.

"We've already corrected some unintended consequences regarding language on jail construction and some elements that were missing from the trafficking statute," Tilley said.

One year after it was implemented, HB 463 continues to draw the ire and interest of an array of stakeholders and perhaps all sides can agree that mixed returns early on even preliminary data must be considered in the context of this early stage.

"I guess what I'm asking for is some patience," Tilley said. "We've got one year in."

In the final installment in the series, we'll take a look at HB 463 by the numbers, as reported by AOC and DOC, and meet Lawrence Alleman, a career criminal, who previously was incarcerated in the Rowan County Detention Center and who represents the reason for HB 463.

[HB 463: by the numbers](#)

By Noelle Hunter - Staff Writer [The Morehead News](#)

July 17, 2012 — **Fifth of a series**

The Kentucky Department of Corrections projects that HB 463 will reduce the state's prison population by more than 3,000 inmates over the next 10 years.

That reduction is expected to generate \$422 million in savings, according to the Pew Center on the States, a non-partisan research and policy institute that helped write HB 463.

"We are reversing the trend of rapid growth in Kentucky's inmate population and its accompanying high price tag," wrote Lisa Lamb of Kentucky Department of Corrections in a recent brief on the controversial legislation.

None would disagree that the primary thrust of the law is to curtail spending on corrections, which in FY 2010 was \$440 million, but some argue that what's really occurring is a cost shift that counties are forced to bear.

"That's the biggest thing I'm upset about," said Chief Circuit Judge Beth Lewis Maze.

“What absolutely needs to happen is a change in the way counties are paid to house DOC inmates. The state needs to back up and reimburse the county for every day an inmate serves in a county jail,” Maze said.

The judge said reoffending inmates sit in jail awaiting trial for four to six months, but the state does not reimburse until the day they are sentenced.

It is a vast law, with elements already being implemented, and others set to roll out over time. Three elements especially—pre-trial risk evaluation, monitored controlled release and mandatory reentry supervision, are the focus of local attention, and local officials say these provisions are resulting in more offenders being out of jail while awaiting sentencing. So what do the numbers say?

Data from the Administrative Office of the Courts (AOC) obtained by The Morehead News charts the law’s performance in several areas including number of cases in the courts, pre-trial release, appearance rates, and average daily caseloads. The figures are representative of a pre and post HB 463 evaluation.

In the first year of HB 463 implementation, the court appearance rate for accused individuals released on pre-trial conditions increased one percentage point from 89 to 90 percent statewide and decreased one percentage point from 90 to 89 percent in Rowan County.

The number of cases in Rowan district and circuit courts went from 1,981 to 1,819, an eight percent decrease.

The AOC reports that Rowan County’s public safety rate, defined as the percentage of defendants who have not been charged with a new crime while on pre-trial release, showed a one percent increase.

Maze is among those who question whether those numbers accurately reflect recidivism rates in Rowan and surrounding counties because the law has made some fundamental changes in the criteria for how a person can be arrested, charged and sentenced.

For example, under the new law, officers must now cite persons for certain offenses, instead of arresting them as before. This could have the superficial effect of a lower number of cases that come before the district and circuit courts.

Yet Tilley says there have not been fundamental changes in how offenses are classified.

“We did not reclassify one felony to a misdemeanor,” Tilley said.

“We did distinguish low-level peddling to support a habit, because we didn’t have anything to distinguish one pill from 1,000 pills,” Tilley said.

There has been a four percent increase in the number of defendants who are screened for mental health and substance abuse issues, according to AOC data, which may indicate that a secondary goal of the bill—to help offenders get treatment— is being implemented.

More defendants, seven percentage points more, are being released on non-financial conditions since the law went into effect. Maze said she feels personally responsible when a defendant is released at the pre-trial stage and then commits another offense.

“I do feel responsible,” she said, “but it’s the legislature’s job to make the laws and it’s my duty to adhere to those laws,” Maze said.

Perhaps the best conclusion to draw from the statistics is that it’s too soon to draw conclusions, because observations from Rowan officials and data from the state are at odds. More than that, there’s just no way to tell so early on if the positive data changes are a result of HB 463, the economy or other variables.

Going forward, Tilley said there will be adjustments to the law, and he welcomes stakeholders to attend interim judiciary committee meetings where HB 463 will be discussed.

Rowan Chief Deputy Sheriff Joe Cline said he’d like to see stakeholder meetings held in the communities, including his own.

“I believe the best way to proceed is for the legislature to get input on this law and how it’s being implemented from those on the front lines,” Cline said.

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