

KENTUCKY SMART on crime

WORKING TOGETHER TO REFORM OUR JUSTICE SYSTEM

Kentucky Smart on Crime is a broad-based coalition working for common sense justice reforms that proactively address individual and systemic racial disparities and inequities, improve public health, enhance public safety, strengthen communities, and promote cost-effective sentencing alternatives.

Partner organizations include: American Civil Liberties Union of Kentucky, Kentucky Chamber of Commerce, Bluegrass Institute for Public Policy Solutions, Kentucky Center for Economic Policy, Kentucky Council of Churches, Catholic Conference of Kentucky, Kentucky Association of Sexual Assault Programs, Inc., Kentucky Coalition Against Domestic Violence, Kentucky Association of Criminal Defense Lawyers, Kentucky Youth Advocates, Volunteers of America Mid-States, Inc., NAACP Kentucky, Kentucky Criminal Justice Forum, and United Way of Kentucky.

SNAPSHOT OF KENTUCKY

Kentucky has the **8th-highest imprisonment rate** in the country ¹

Over **30,000 Kentuckians** are currently incarcerated ²

Kentucky's female imprisonment rate is more than **2x the national average** and 6th-highest in the U.S. ³

Kentucky spends over **\$700 million** a year incarcerating our fellow citizens ⁴

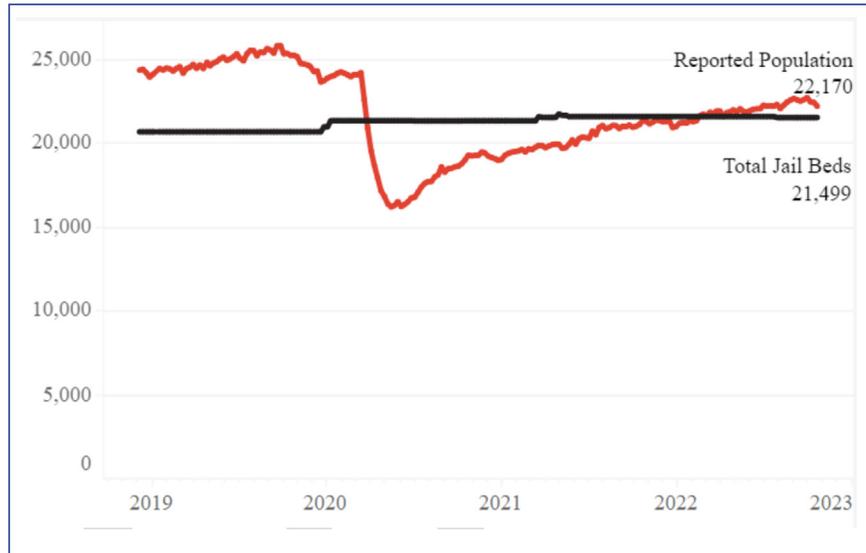
Kentucky has the **4th-most overdose deaths** in the nation ⁵

Black Kentuckians make up only **8.6%** ⁶ of our state population but account for nearly **21%** ⁷ of the individuals serving felony sentences in our jails and prisons

¹ <https://bjs.ojp.gov/library/publications/prisoners-2020-statistical-tables> ² <https://kypolicy.org/one-step-forward-six-steps-back-a-decade-after-widely-hailed-criminal-justice-reform-incarceration-is-worsening-in-kentucky/#:~:text=Today%2C%20there%20are%20over%2030%2C000,reduction%20related%20to%20COVID%2D19.> ³ <https://bjs.ojp.gov/library/publications/prisoners-2020-statistical-tables>. ⁴ <https://apps.legislature.ky.gov/record/22rs/hb1.html> ⁵ <https://www.wbko.com/2021/12/31/overdose-deaths-climb-2021-experts-preparing-year-ahead/#:~:text=Kentucky%20had%20the%20fourth%20most,Vice%20President%20of%20Operations%20said> ⁶ <https://www.census.gov/quickfacts/KY> ⁷ <https://corrections.ky.gov/About/researchandstats/Documents/Monthly%20Report/2022/Inmate%20Profile%202010-2022.pdf>

INCARCERATION EXCEEDING CAPACITY

Jail population and capacity



(Credit: Vera Institute)

TACKLING THE OVERDOSE CRISIS & THE OVERRELIANCE ON INCARCERATION

Kentucky’s current drug laws relating to possession are not working. The state experienced record overdoses in 2021. Over 2,250⁸ of our citizens died due to overdose. Kentucky must shift to a model that prioritizes rehabilitative options over incarceration. Increased treatment will improve public safety and health outcomes.

Reclassification of Simple Possession (KRS 218A.1415 & KRS 218A.1416):

Lawmakers should adjust the offense class for possession from a Class D felony to a Class A misdemeanor for the 1st and 2nd convictions and reclassify second-degree possession from a Class A misdemeanor to a Class B misdemeanor.



Why Should KY Take This Step?:

- It will save lives
- Numerous state task forces have recommended KY amend its possession laws
- It brings KY in line with states like TN & SC and 17 others that treat possession as a misdemeanor⁹
- Pivots from an unsustainable, costly, and failing incarceration model to a sustainable, less costly rehabilitative model
- Increases eligibility for diversion and treatment for individuals with substance use disorder and mental health issues as opposed to “warehousing” people in prisons/jails where treatment and programs can be scarce

⁸ <https://spectrumnews1.com/ky/bowling-green/news/2022/06/14/kentucky-reports-deaths-of-2-250-people-from-drug-overdoses-last-year> ⁹ <https://www.nmlegis.gov/handouts/CCJ%20110817%20Item%203%20Drug%20Policy%20Alliance%20-%20Defelonization.pdf>

Clarify the “Good Samaritan” Amnesty Statute (KRS 218A.133)

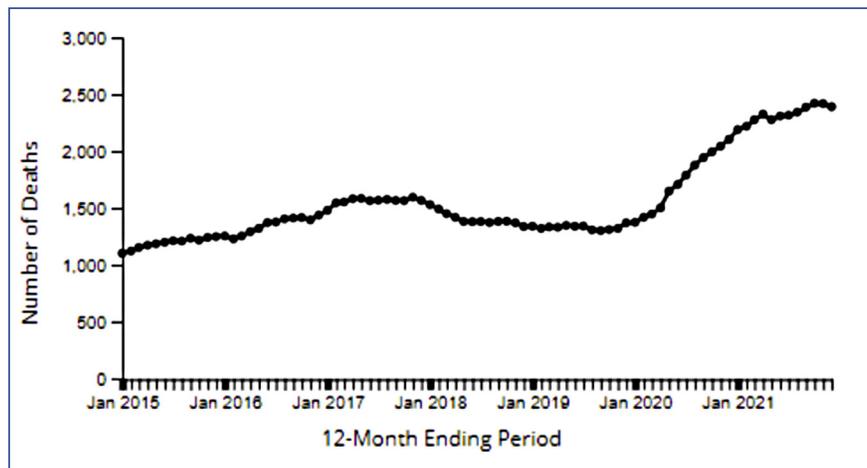
Kentucky is in the grips of a new surge in the opioid crisis. In 2021, fatal overdose deaths rose nearly 15%; between 2020 and 2021, with overdose deaths for Black Kentuckians doubling between 2019 and 2021.¹⁰ To prevent overdose deaths, the General Assembly passed the “Good Samaritan” statute to provide immunity from criminal prosecution for drug possession for individuals seeking emergency medical care for an overdose. A recent Kentucky Supreme Court decision narrowed this protection.¹¹



To save more lives we can:

- Amend KRS 218A.133 to strengthen immunity for those experiencing an overdose
- Expand protections for bystanders who call 911 for individuals overdosing

KENTUCKY OVERDOSE DEATH SURGE



(Credit: Kentucky Health News)

Invest in Substance Use Disorder and Mental Health Treatment

Substance Use Disorder increases a person’s chances of becoming justice-involved, yet the criminal legal system fails to adequately address this issue. Investing in recovery and mental health treatment can and will improve public safety and reduce recidivism.



Kentucky should:

- Expand Senate Bill 90’s Behavioral Health Conditional Dismissal Pilot Program to apply statewide
- Spend the Opioid Abatement Settlement Funds on Harm Reduction
- Create incentives for Kentucky students to enter into mental health professions



Reform the Persistent Felony Offender (PFO) Statute (KRS 532.080)

PFO sentence enhancements have been one of the greatest contributors to Kentucky's large incarcerated population. PFO has led to extremely long sentences for such non-violent offenses as:

- 60 years for selling \$100 worth of drugs¹²
- 20 years for missing a court date
- 10 years for cutting a hole in the top of a convertible
- 10 years for using counterfeit currency to purchase shoes

To fix these unjust and absurd results, lawmakers should:

- Empower juries to determine the length of an individual's sentence by modifying mandatory minimum sentence statutes for non-violent offenses
- Restore judicial discretion by lifting the prohibition against probation, shock probation, and conditional discharge for Class C & D for non-violent, non-sex offense crimes
- Limit the type of offenses that are PFO eligible



Unemployment Rate for Formerly Incarcerated¹³

Increase Access to Expungement

Expunging a criminal record can help open the door to a second chance at life. But even where the law allows for a clean slate, barriers remain. Expungement fees and a confusing legal process can prevent Kentuckians from truly obtaining a fresh start. In addition to discouraging job prospects, access to stable housing is often out of reach for those with a record. To help Kentuckians obtain meaningful employment, provide justice-involved individuals with a second chance, and reduce recidivism,



Kentucky must:

- Shorten the eligibility window from 5 years to 3 years for non-violent, non-sex offense crimes
- Eliminate or reduce fees for expungement
- Implement an automatic expungement process for non-violent, non-sex offense crimes
- Address the misdemeanor enhancement issue by creating a five year look back period for those offenses where there is currently no specified period for enhancement



Restore the Right to Vote!

Kentucky is one of two states that continues to apply a lifetime ban on voting for individuals convicted of a felony. Current law disenfranchises 6% of Kentucky's population — and 15% of Black Kentuckians of voting age (twice the national average disenfranchisement rate for Black Americans)¹⁴

- Allows those who have paid their debt to society to participate in an important civic activity. Civic engagement promotes public safety, strengthens communities, and reduces recidivism.¹⁵
- Automatically restore voting rights to most people with prior convictions who have completed their terms of incarceration, probation, and parole.

**The views expressed in this agenda are those of the coalition, and should not be interpreted as an endorsement of any specific piece of legislation by individual partners.*