

# How a ‘Tough-on-Crime’ State Became Smart on Crime

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## SPECIAL REPORT



Inside the Kentucky State Capitol

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**Kentucky’s overhaul of its criminal justice system this spring is a textbook example of genuine bipartisanship.**

For three decades, Kentucky politicians proved they were tough on crime. At every opportunity, they stiffened sentences and added offenses to the state’s penal code.

They nearly bankrupted the state.

Kentucky’s corrections budget grew from \$30 million in 1980 to nearly \$470 million in 2010, even as lawmakers cut \$1.8 billion from the state’s budget in the grip of a deep recession. The prison population grew 80 percent between 1997 and 2009, the year Kentucky led the nation in the rate of incarceration. Of 22,000 state felons that year, 8,000 were in county jails that became dependent on state funding.

But the crime rate remained relatively flat, below the national average, and about what it was when the tough on crime movement began.

The state’s justice system seemed ripe for change. But no one expected it to be easy.

When some legislators in the Kentucky General Assembly tried to reduce the strain imposed on the state budget by prison overcrowding in 2009, by inserting parole credit provisions in the budget to release around 1,500 prisoners, prosecutors and law enforcement howled.

A challenge from a local prosecutor and the state attorney general to remove the provisions lost in court. Nevertheless, few could have predicted what happened in late February this year. After a year of study, Kentucky lawmakers overhauled the state's drug laws, as well as its sentencing, probation and parole system. Following passage in the Kentucky House (Feb. 17) and Senate (Feb. 28), the [bill](#) became law upon the signature of Gov. Steve Beshear on March 3.

The law's provisions include:

- Alternative sentencing for non-violent offenders and strengthening supervision of high risk parolees, while providing incentives for reduced time for lower risk parolees. It also calls for greater supervision of prisoners reentering the community;
- Swift, but measured sanctions for parole violators;
- More information on sentences for crime victims;
- On drug sentencing, it distinguishes between simple drug possession and commercial trafficking, and provides for more drug treatment options for drug offenders.

Half the accrued savings of the reform are required to be ploughed back into the corrections budget and half of that is to be set aside to assist county jail costs. It also requires a certificate-of-need process before any new jail can be constructed.

The reform is expected to lower prison populations, expand drug treatment and save the state more than \$420 million over the next decade.

It was a landmark of bipartisanship, accomplished in the face of the kind of polarized political climate that has defeated similar reform attempts elsewhere.

Democrats and Republicans each control one chamber of the legislature, and the leader of the Republican Senate was openly planning to challenge the incumbent Democratic governor in the 2011 election. The story of how it happened might serve as an object lesson to other states.

#### **'Stars in Alignment'**

"(It happened) because all of the stars came into alignment and because of our ability to build on prior work," recalls Justice and Public Safety Secretary J. Michael Brown.

Indeed, the tentative steps to reduce costs and prison populations two years earlier by granting inmates parole credits set the template for what happened this year. Two committees had studied the problem. But the discussion became serious when the legislature appropriated \$200,000 to help fund a Pew Center of the States study of the problem.

A bi-partisan task force representing all three branches of government, and including a prominent defense attorney, former prosecutor and a county executive, was appointed.

Recognizing Kentucky's conservative trend and its burgeoning illicit drug problems, the task force decided to involve stakeholders to build as much support as possible for reforms.

According to Brown, the fact that the "early parolees" released under the 2009 cost-cutting measures didn't go on a crime spree was crucial to easing lawmakers' fears about the consequences of reducing prison populations.

That may have helped win a joint endorsement from Beshear, Democratic House Speaker Greg Stumbo and Republican Senate President David Williams of a task force working with Public Safety Performance Project of the [Pew Center for the States](#) to formulate statutory reforms.

"You sort of had the top lined up," Brown adds. "So the task became (reaching) the individual stakeholders who had deeply divided interests."

That still could have meant trouble. Those stakeholders included law enforcement, prosecutors, and county governments whose jails depended on state funding for housing felons whom the prisons couldn't accommodate.

### **Bleeding County Budgets Dry**

Jails were bleeding county budgets dry, but counties feared the task force would recommend changing low-level felonies to misdemeanors, thus shifting inmates and additional costs to them.

The task force included a noted defense attorney, Guthrie True, and an equally noted former prosecutor, Tom Handy. They co-authored an [op-ed](http://www.kentucky.com/2010/12/23/1577269/kentucky-needs-to-control-rising.html) piece <http://www.kentucky.com/2010/12/23/1577269/kentucky-needs-to-control-rising.html> - [more%23ixzz198oFPkqN](http://www.kentucky.com/2010/12/23/1577269/kentucky-needs-to-control-rising.html) arguing that reform reduced costs and increased public safety. The Supreme Court Chief Justice was a member, as was Brown and a county judge/executive.

The co-chairs were the legislature's Judiciary Committee chairmen: Democratic Rep. John Tilley, a former prosecutor; and Republican Sen. Tom Jensen, a criminal defense attorney.

Pew provided research about what had worked in other states, such as Texas, which reduced costs while lowering the crime rate. Polling showed the public preferred "swift and certain punishment" to long, costly sentences. The polls also indicated the public favored treatment over incarceration for nearly three-quarters of Kentucky inmates who were addicts.

Beginning in June of last year, the task force held public meetings, asking stakeholders for suggestions, hoping to head off public anxiety and political fears of lawmakers.

Sometimes the entire task force met with the groups, often incorporating suggestions. It convened in June of 2010 and met through early January 2011 when the state General Assembly convened in Frankfort. Tilley and Jensen traveled the state, meeting with prosecutors, county officials, and law enforcement. Describing the process later, Jensen said the task force decided to focus on drug crimes, treatment options and recidivism.

He and Tilley were in constant talks with Chris Cohron, a prosecutor and past president of the Commonwealth Attorneys Association who helped soothe prosecutors' fears. They softened the financial blow to counties by allowing state inmates to serve their final months in jails at state expense, and mandated a portion of savings produced by reform be set aside to help counties with jail costs.

Cohron said prosecutors understood the budget situation. "It was abundantly clear that they were going to do something," he said. "If we didn't participate in the process we'd be stuck with whatever they came up with."

At the last minute, hospitals got an amendment to the bill, over Tilley's and Jensen's objections, to prohibit so-called "prisoner dumping," or furloughing inmates for treatment without county liability for costs.

Counties weren't happy with this amendment. Jensen immediately gathered both sides and told them to work out an agreement "by tomorrow morning."

Tommy Turner, the county Judge/Executive on the task force and Vince Lang, head of the County Judge/Executives Association, jointly determined that counties would live with the provision in exchange for guaranteed Medicaid rates for prisoners.

### **Public Vote**

However reluctantly, stakeholders were now on board. The next and possibly hardest step loomed ahead. Lawmakers—vaguely aware of what the task force had been doing—suddenly faced a public vote on the bill.

The debate at first followed familiar rhetoric.

“You’re not asking us to vote for being soft on crime, are you?” asked a House committee chairman. Tilley responded that the bill “is not soft on crime; it’s smart on crime.”

It didn’t, for example, soften sentences for violent offenders or sexual crimes, he and other defenders noted. For further proof, they could point to Texas, which—though hardly known for a light touch on crime—passed similar legislation which saved millions even as its crime rate went down.

Another lawmaker told skeptics to talk to their local prosecutors, judge/executives and jailers.

“It’ll be all right,” the legislator insisted. “Just ask your people back home.”

They found them ready for change.

In the legislature, meanwhile, Jensen told Senate President Williams he’d resign his Judiciary Committee chairmanship if he were unable to persuade colleagues to pass the bill. He also told a member of the Democratic House leadership.

House Democrats concluded they could comfortably support the bill without having the Republican Senate exploit their votes for political advantage.

And the relaxation of Kentucky’s often-heated partisan climate was mirrored at the top. Jensen and Tilley, who had barely known each other previously, developed a bond and trust. Neither feared being grandstanded or sandbagged by the other.

Together they briefed each party’s caucuses in both chambers. The relationship was critical, said Chief Justice John Minton, who looked on as the bill passed the House with only two nay votes.

“They were from two different parties, from two separate parts of the state, but their perseverance caused all of us to lay down our differences for the greater good,” he recalled.

The key, Tilley said, for any state, especially a conservative one like Kentucky, was the willingness “to meet with anybody who had any interest in these issues and to give lawmakers assurance (that) their local officials’ voices were heard.

After House passage, the more conservative Senate passed the bill unanimously. Members in both chambers rose to their feet and cheered.

Kentucky’s lawmakers had finally decided to be smart on crime.