

# Racial Disparities & Bail Reform in



Even without a major research effort, it was plain that, until recent reforms, defendants in Kentucky were being detained far more often than they were released pretrial. Some speculate that the marketplace drove bond amounts too high, where those with means could secure release and the poor were left to languish. Even when Kentucky outlawed the use of commercial bonds, the typical bond amounts remained at unreasonably high levels. A rise in the crime rate between 1960 and the 1990's is what some argue led to the diminished reliance on a presumption of pretrial release. But as the crime rates dramatically receded, courts did not change in favor of pretrial release. High bonds and cash-only bonds had become the de facto standard, even though 75% of indigent clients were not making the standard bail. Jails became overcrowded.

In 2011, Kentucky's General Assembly enacted HB 463, a bill designed to address Kentucky's over-incarceration problem, ushering in a systemic culture shift to be "smart" on crime. The legislation reformed significant portions of Kentucky's drug penal code, and addressed reform in the areas of parole, probation, classification of crimes, and pretrial release. Through its reform efforts, Kentucky also embraced "evidence-based practices," requiring the courts and court service vendors to use evidence-based methodologies and tools in pretrial release and post-conviction monitoring.

Kentucky's Administrative Office of the Courts' Pretrial Services Division obtained validation of its pretrial risk assessment instrument, which assigned statistical probabilities of whether someone would reoffend or fail to come to court, based on objective criteria. The instrument was in the 90th percentile for accuracy in predicting whether persons released under a low or moderate risk finding would appear in court and not commit a new offense. In the years since this initiative began, some progress has been

made. Release rates have gone up 3%, which translates into \$4-5 million reduction in jail costs for every percent saved every year in Kentucky. Meanwhile, during the same period of time, appearance rates and public safety rates have remained consistently in the ninety percentiles for low and moderate risk individuals.

B. Scott West  
General Counsel  
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*"Under our current system in Kentucky, Pretrial Officers interview and complete an objective risk assessment on newly arrested defendants. A recommendation is made to the court for an initial release decision within 24 hours. Our risk assessment is based strictly on criminal history and charging documents and as such, is completely objective and neutral. Previous tools used in Kentucky included factors such as home ownership, who the defendant lives with and source of income. These factors have been questioned as potentially having a disparate impact on people of color. We are unique in that our recommendations are made to judges by telephone, so the judge does not see the defendant. Based on the extensive research by the Laura and John Arnold Foundation, the tool currently in use in Kentucky has been validated neutral as to gender, race and ethnicity. As a result of changing to the current risk assessment, our jail population essentially mirrors the state's population in terms of racial and ethnic demographics. This was not the case before. Of course, we cannot control who gets arrested, but at least we have achieved a process for a neutral and objective release-or-detain decision."*

**Tara Boh Klute**, General Manager, Division of Pretrial Services Kentucky Court of Justice, Administrative Office of the Courts