



Kentucky's 2014 Juvenile Justice Reform

New Law Will Strengthen Community Supervision and Reduce Secure Confinement

Overview

After successful adult corrections reforms in 2011, Kentucky adopted comprehensive legislation in 2014 that was based on recommendations from a bipartisan, interbranch task force. Reforms enacted through Senate Bill 200 are expected to save Kentucky taxpayers as much as \$24 million over five years while protecting public safety, holding juvenile offenders accountable for their actions, and improving outcomes for these youth and their families.

Highlights

Problem

Kentucky spends a significant amount of money to send low-level status and public offenders¹ to out-of-home residential placements. More than half of the \$102 million budget of the Department of Juvenile Justice (DJJ) is spent on secure and nonsecure residential facilities, where the majority of beds cost \$87,000 per year.² In addition, the Department for Community Based Services spent an estimated \$6 million in fiscal year 2012 for out-of-home placement of status offenders.

Findings

The Task Force found that the majority of youth in out-of-home placements were lower-level offenders. They also found that the length of time spent out-of-home increased 31 percent for probation and court order violators and 21 percent for misdemeanor offenders between 2002 and 2012, and the length of time they spent in out-of-home facilities was similar regardless of the seriousness of their offenses.³

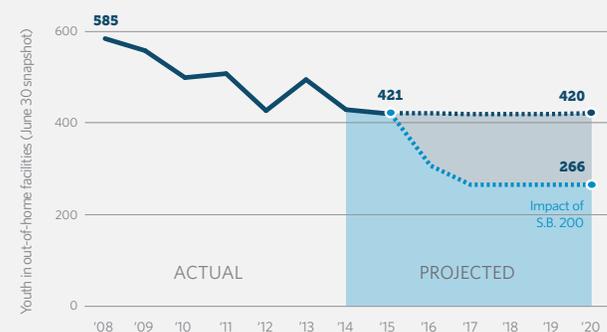
Reforms

The task force developed recommendations to focus expensive out-of-home facilities on the most serious offenders. Incorporated into S.B. 200,⁴ the reforms restrict the commitment of lower-level offenders and how long they may be placed out-of-home; increase and strengthen evidence-based programs; create a fiscal incentive program; and establish an Oversight Council. S.B. 200 passed both houses of the Legislature and was signed into law by Governor Steve Beshear in April 2014.

Impact

The reforms are projected to reduce DJJ's out-of-home population by more than one-third. The law also creates an enhanced pre-court process that will likely reduce the number of status and public offenders entering the court system. The reforms are expected to save Kentucky as much as \$24 million over five years (Figure 1). These savings may then be reinvested to expand community-based programs and proven practices to improve outcomes for children and families.

Figure 1
Reforms Expected to Reduce Out-of-home Population
Kentucky stands to save up to \$24 million over 5 years



Source: Kentucky Department of Juvenile Justice (historical data), Pew analysis (projected data)

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Background

During its 2010 session, the Kentucky General Assembly established the Task Force on the Penal Code and Controlled Substances Act to find ways to control prison growth and spending while protecting public safety. Based on that task force's work, the General Assembly in 2011 passed legislation to ensure that expensive prison beds are used for serious offenders, reduce recidivism by strengthening probation and parole, and establish mechanisms for measuring government progress.⁵

Following these successful adult reforms,⁶ the General Assembly decided in 2012 to review the state's juvenile justice system to improve public safety and achieve better outcomes for youth and their families. It created the Task Force on the Unified Juvenile Code, a bipartisan, interbranch group made up of stakeholders from throughout the juvenile justice system. In 2013, the General Assembly extended the task force to allow members additional time for analysis and developing recommendations for reform. The 2013 task force was led by the chairmen of the Senate and House judiciary committees, Senator Whitney Westerfield and Representative John Tilley.⁷

The task force met 10 times in 2013 and considered a detailed analysis of Kentucky's juvenile justice data, programs, and policies. Members reviewed trends related to complaints, petitions, admissions, dispositions, and placements for status and public offenders. The task force also gathered information from a wide range of stakeholders through numerous outreach meetings. Following the lengthy inquiry, the task force developed comprehensive recommendations, which were presented to the General Assembly in a report issued in December 2013.⁸

Sen. Westerfield incorporated the task force proposals into S.B. 200, introducing the bill in the 2014 legislative session. The reform package was widely supported by stakeholders and passed the Senate 32-6 and the House 84-15.⁹ Gov. Beshear signed it into law April 25, 2014.

Key findings

The Task Force on the Unified Juvenile Code made several key findings:

The high cost of juvenile corrections. In fiscal 2013, DJJ spent more than half of its \$102 million budget on secure and nonsecure residential facilities, even though the majority of DJJ's population was on community supervision. These out-of-home placements are expensive, with a single bed at the state's secure youth development centers and detention centers costing more than \$87,000 in fiscal 2012 (Figure 2).

The state spends a significant amount on out-of-home placements for status offenders, those whose behaviors—such as skipping school or running away—would not be crimes if committed by an adult. Thirteen percent of juveniles held in secure detention centers are status offenders. Additionally, the Department for Community Based Services spent an estimated \$6 million in fiscal 2012 on residential placements for adjudicated status offenders.

Figure 2

High Cost of Kentucky's Out-of-Home Placements

All options top \$87,000 per year



Source: Pew analysis of data from the Kentucky Department of Juvenile Justice
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Many lower-level offenders in juvenile system and out-of-home population. In 2012, there were more than 20,000 referrals to the juvenile justice system for status offenses. These referrals were screened through a pre-complaint and diversion process that significantly reduced the number of these referrals that were ultimately filed as petitions in court to 4,161. Additionally, more than 19,000 public offense¹⁰ complaints were filed in 2012. The majority of public offense charges associated with these complaints were for lower-level offenses such as theft; in 2012, 13 percent of these public offense charges were Class D felonies and 73 percent were misdemeanors.

According to Administrative Office of the Courts data, 59 percent of the status complaints and 1 in 4 public offense complaints were school-related. While local practices can reduce referrals for public and status offense cases, such practices are not applied uniformly across Kentucky. The task force had hoped to conduct a more detailed analysis of school-related offenses but lacked sufficient data.

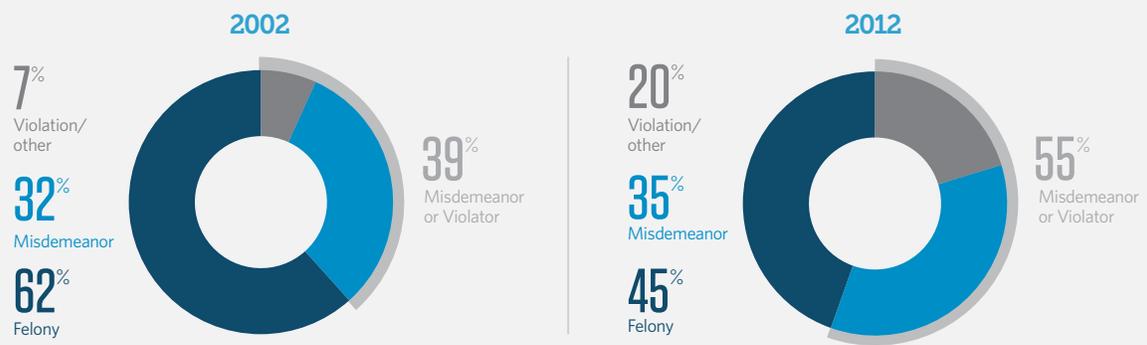
A significant share of the youth committed to DJJ are lower-level offenders (Figure 3). The most common offenses for youth who were placed out-of-home were misdemeanors and violations of the conditions of supervision.



We can no longer pour money into a system that produces such disappointing results, for taxpayers and for our young people... These reforms will create a more effective, fiscally sensible approach to how we manage youth in Kentucky whose lives are veering off-track."

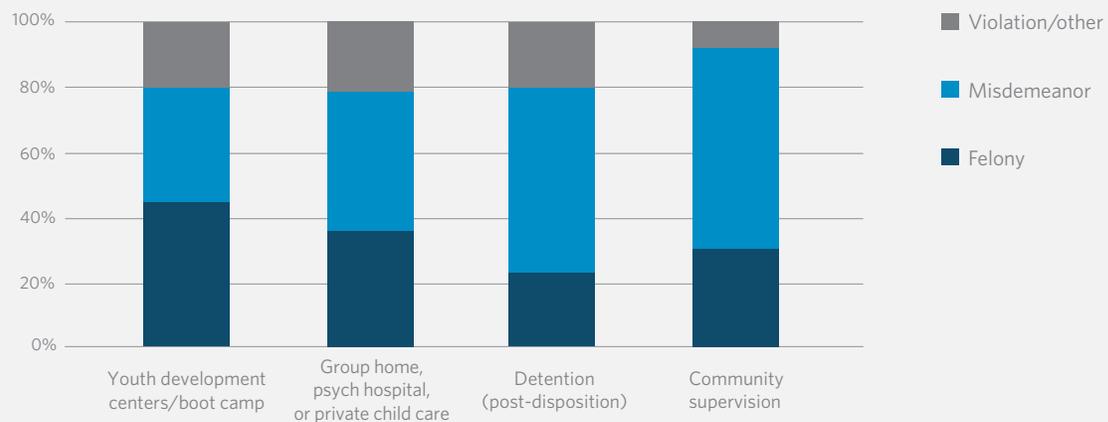
Sen. Whitney Westerfield, co-chair, Task Force on the Unified Juvenile Code

Figure 3
Growing Proportion of Lower-Level Offenders in Secure Facilities
 Non-felonies in youth development centers, boot camps rose sharply



Source: The Pew Charitable Trusts' analysis of data from the Kentucky Department of Juvenile Justice
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Figure 4
Majority of Offenses Are Misdemeanors and Supervision Violations
 In 2012, fewer than half of youth in out-of-home programs committed felonies



Source: Pew analysis of data from the Kentucky Department of Juvenile Justice
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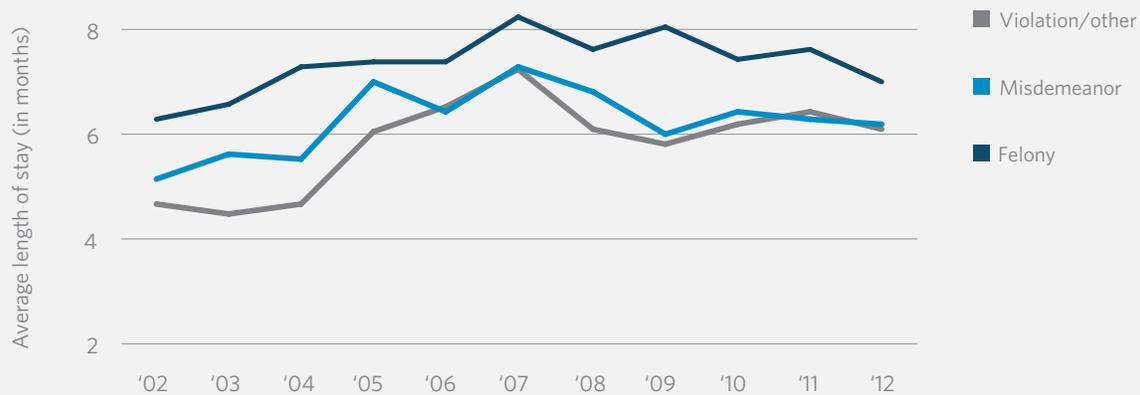
These lower-level offenders account for a majority and growing share of juveniles in secure youth development centers: From 2002 to 2012, they increased as a share of the secure population, from 39 to 55 percent. A significant portion of these youth had few or no prior adjudications of delinquency or violations of supervision before their most restrictive out-of-home placement with DJJ (Figure 4).

During that period, the average length of stays in out-of-home placements increased 31 percent for probation and court-order violators, 21 percent for misdemeanor offenders, and 11 percent for felons. The average length of stay did not vary substantially based on the severity of the offense: For felons, it was approximately seven months; placements of misdemeanor offenders and probation or court-order violators lasted an average of six months¹¹ (Figure 5).

Looking more closely at probation and court-order violators, the task force noted that the lengthy supervision terms are a likely contributor to out-of-home placement. Under current law, juveniles remain on supervision until age 18 unless they are affirmatively discharged from supervision by the agency supervising the youth or by the court. During their terms of supervision, many of these juveniles are placed out-of-home by DJJ for violating conditions of supervision and are held for approximately the same amount of time as felons and misdemeanor offenders. For the majority of these juveniles, out-of-home placement is ordered even if they have one or no prior court appearances for violations of their conditions of supervision.

The task force also found that a substantial number of status offenders were placed out-of-home for behaviors that would not be crimes if committed by an adult. As of October 2013, more than 250 such youth were in

Figure 5
Time Out-of-Home Increased for All Offense Types
 Little Difference in Time Out-of-Home Regardless of Offense



Source: Pew analysis of data from the Kentucky Department of Juvenile Justice

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Incarceration has become the solution to every social problem that we encounter. If [a child] is doing bad at school, lock them up. If there is a problem in the home or a behavior problem, lock them up. So we have criminalized an entire population of our young people instead of dealing with it appropriately in the community, schools, or in the home.”

Hasan Davis,
former commissioner,
Kentucky Department of
Juvenile Justice, on the
PBS program “Frontline:
Prison State,” April 29, 2014

out-of-home placements. Status offenders placed by the Department for Community Based Services in out-of-home care stayed an average of 8.5 months and may be housed with public offenders. Thirteen percent of the juveniles held in Kentucky’s secure detention facilities in May 2012 were status offenders detained for violating court orders.

Lack of community options contributes to out-of-home placement. The task force determined that Kentucky lacks adequate community programs for juvenile offenders. Where services did exist, gaps in data made it difficult to evaluate their consistency or effectiveness. For example, in fiscal 2013, only 261 adolescent youth received substance abuse treatment through community mental health centers, which are the primary source of mental health and substance abuse services for youth in Kentucky.¹²

The shortage of services, including aftercare for youth leaving secure facilities, has impeded the ability of DJJ to provide supervision. Stakeholders told the task force that youth were sometimes committed to out-of-home placements so that they and their families could receive services not available in the community. The task force also found that insufficient funding was a key reason for the lack of community-based services.¹³

Inconsistent use of assessments influences disposition and placement decisions. In reviewing factors influencing disposition and placement decisions, the task force found inconsistencies across agencies in the use of objective risk and needs assessment tools. For example, DJJ uses the Youth Level of Service/Case Management Inventory for predisposition reports that are prepared for courts as well as to guide the agency’s decisions on placement and supervision. But the assessment is not completed for every case before disposition and has not been validated for use on Kentucky’s juvenile population. The task force also learned that agencies lack a structured decision-making tool to objectively guide decisions about sanctions for probation violations or guidelines for when juveniles should be discharged from supervision.

Lack of data collection and reporting. The task force learned that the state did not collect some juvenile offender data, such as recidivism rates. Statistics on status offenders committed to the Department for Community Based Services also were not readily ascertainable in the data system and some information related to school offenses was not collected.



This is an extremely well thought out piece of legislation from the General Assembly. It is due in large part to the extensive stakeholder input into the process and development of these policies.”

Mary C. Noble, deputy chief justice, Kentucky Supreme Court

S.B. 200: Comprehensive juvenile system reforms

Based on their findings, members of the Task Force on the Unified Juvenile Code developed recommendations that became the foundation of S.B. 200.

The reforms are projected to reduce DJJ’s out-of-home population by more than one-third and save Kentucky as much as \$24 million over five years. By shifting lower-level youth and resources from out-of-home placement to evidence-based community programs, the legislation seeks safer communities and better outcomes for Kentucky youth and their families.

S.B. 200 included policy changes in three key areas.

Focuses the most-expensive resources on the more-serious offenders.

- **Creates an enhanced pre-court diversion process for status and lower-level public offenders.**¹⁴ The enhanced pre-court process is available for youth charged with low-level offenses who have little or no history of offenses. Before referring these cases to the county attorney, court designated workers will use evidence-based tools to screen and assess youth and make referrals to appropriate services. Case management and monitoring of youth and families will ensure accountability and help these diverted youth overcome barriers to completion of program requirements and services.

The law also creates a multidisciplinary review mechanism, the family accountability, intervention, and response team, to provide oversight of and assistance to all cases. The team will review decisions by the court designated workers on the assessments, service referrals, efforts to assist with barriers to completion, responses to failure to comply with the services by the youth or family, and decisions to terminate the diversion for lack of completion. The school director of pupil personnel may also appeal decisions by the court designated workers in truancy cases directly to the team. The law prohibits county attorneys from overriding a decision to allow a misdemeanor case to be handled in this pre-court process and from filing a petition in court when the offender has no history of adjudications or diversions.¹⁵ Kentucky expects that a significant number of lower-level status and public offenders will be managed successfully through the pre-court process, avoiding court intervention. Court filing remains an option for those failing to complete the process and for more serious offenders.

- **Restricts commitment of lower-level offenders in certain instances.** The law prohibits a misdemeanor and Class D felony offender from being committed to DJJ unless the youth has been adjudicated for a deadly weapon offense or an offense that would classify him as a sex offender, or unless he has three or more prior delinquency adjudications or four or more prior adjudications for supervision violations.



We need to be smarter about how we respond to juvenile crime, and our legislation was crafted using the best available research about what works and what doesn't."

Rep. John Tilley,
co-chair, Task Force on the
Unified Juvenile Code

- **Limits the length of out-of-home placement and length of supervision based on the seriousness of the offense and risk of reoffending.** The law requires that DJJ develop case plans using evidence-based tools that evaluate each juvenile's risk level and the seriousness of the offense. It also limits the amount of time the juvenile may be held in out-of-home placement by DJJ for treatment, and the total amount of time the youth may be committed or probated to DJJ or be under court supervision.
- **Ensures that out-of-home placement is used in response to violations of supervision to encourage compliance when other sanctions fail.** The law requires the use of graduated sanctions to encourage compliance with an offender's supervision conditions and, if necessary, permits detention for up to 30 days. Youth may not be committed or recommitted to DJJ for a violation of probation.

Strengthens evidence-based practices in local communities.

- **Requires use of objective, evidence-based tools in decision-making.** Evidence-based screening and assessment tools must be utilized by court workers and DJJ staff to guide treatment, supervision, and placement decisions. Results of a validated risk and needs assessment must also be provided to courts before disposition.
- **Establishes fiscal incentives to expand local program options to enhance public safety.** The law allocates 25 percent of the savings from reduced use of secure DJJ facilities to fund a new fiscal incentive program. The program offers two types of grants to local jurisdictions to increase services to juveniles and their families that will enhance public safety while reducing juvenile corrections costs. Ninety percent of the funding will be allocated to a competitive grant program for the purpose of establishing community-based sanction and treatment programs that provide alternatives to out-of-home placement. The funds must be used for alternatives to out-of-home placement that research shows are effective at reducing recidivism.

The remaining 10 percent of funding will pay for a second grant program available to judicial districts that did not receive grants under the competitive program. The grants under this program are one-time allotments that will provide services for a youth in each of those districts who could be served in the community rather than being placed out-of-home with this funding.

- **Increases engagement and accountability of families.** The law provides for increased involvement of families in the pre-court process and case planning.

Improves government performance.

- **Requires improved data collection and reporting to measure outcomes.** The law requires increased data collection and reporting by schools, the Administrative Office of the Courts, DJJ, and the Department for Community Based Services to measure the results of the programs and policies and ensure that they are delivering intended results. The law also requires the state to track juvenile recidivism outcomes and improve reporting of school-related offenses.
- **Establishes an Oversight Council.** The law establishes an Oversight Council to track implementation of the legislation, review performance data, make recommendations for changes or improvements, and continue a review of juvenile justice and education issues not addressed by the Task Force on the Unified Juvenile Code.
- **Requires reinvestment of savings achieved as a result of reductions in DJJ facilities.** Savings achieved as a result of a reduction in population in DJJ facilities are to be reinvested into supervision in the community through DJJ, day treatment centers, and the fiscal incentive programs.
- **Increase training and education.** The law requires juvenile justice-involved agencies to increase training and education of workers to improve the quality of services and outcomes.

S.B. 200 was supported by a broad range of Kentucky stakeholders, including

- County Attorney's Association
- Kentucky Chamber of Commerce
- Kentucky Association of Counties
- Kentucky Association of School Superintendents
- Kentucky Youth Advocates
- Catholic Conference of Kentucky
- Kentucky Association of Sexual Assault Programs
- Kentucky Council of Churches
- Kentucky Jailers Association
- Children's Alliance
- Necco
- Children's Law Center
- Bluegrass Institute for Public Policy Solutions
- Kentucky YMCA
- YMCA Safe Place Services
- ACLU of Kentucky
- Community Action Kentucky
- Kentucky Alliance of Boys and Girls Clubs
- Restorative Justice Louisville
- Kentuckians for the Commonwealth
- University of Kentucky professors of sociology:
 - Dr. Brea Perry
 - Dr. James G. Hougland
 - Dr. Claire Renzetti
 - Dr. Janet Stamatel
 - Dr. Edward Morris
- Kentucky Protection and Advocacy
- Kentucky Equal Justice Center
- Department of Public Advocacy
- Department of Juvenile Justice
- Administrative Office of the Courts
- National Alliance on Mental Illness Kentucky
- Juvenile Restorative Justice of Lexington

2013 Task Force on the Unified Juvenile Code

Sen. Whitney Westerfield, chairman, Senate Judiciary Committee (co-chair)

Rep. John Tilley, chairman, House Judiciary Committee (co-chair)

Harry L. Berry, Hardin County judge/executive

Hasan Davis, former commissioner, Department of Juvenile Justice

Glenda Edwards, Trial Division director, Department of Public Advocacy

Steven Gold, county attorney, Henderson County

Teresa James, commissioner, Department of Community Based Services

Lisa P. Jones, District Court judge, Daviess County

Bo Matthews, superintendent, Barren County School District

Mary C. Noble, deputy chief justice, Kentucky Supreme Court

Pamela Priddy, Necco executive director, Kentucky

Dr. John Sivley, clinical director, children's services, LifeSkills Inc.



A single bed in a secure facility, such as a youth development center or detention center, costs more than \$87,000 per year. That hefty sum would cover four years of tuition at any of Kentucky's state universities, with more than \$40,000 to spare."

Rep. John Tilley and Sen. Whitney Westerfield, *op-ed*, *Lexington Herald Leader*, March 2, 2014

Endnotes

- 1 A status offense action is any action brought in the interest of a child who is accused of committing acts that, if committed by an adult, would not be a crime. Such behaviors are not considered criminal or delinquent and include being beyond the control of schools or beyond the control of parents; habitual runaways; habitual truants; and tobacco and alcohol offenders. Kentucky Revised Statutes, 600.020(60)(a), <http://www.lrc.ky.gov/Statutes/statute.aspx?id=40868>.
- 2 Unless otherwise cited, all analyses in this report were conducted by The Pew Charitable Trusts, based on data provided by the Kentucky Department of Juvenile Justice, the Kentucky Administrative Office of the Courts, and the Kentucky Cabinet for Health and Family Services.
- 3 Offender risk level is an important factor in determining length of stay, but the task force was unable to consider risk level in its analysis because the risk assessment tool used for Kentucky youth committed to DJJ had not been recently validated. In 2004-06, DJJ worked with researchers at Eastern Kentucky University to study the Youth Level of Service/Case Management Inventory assessment tool and its potential use in Kentucky. However, this study did not meet the threshold of validation because it did not include any statistical analyses that determined whether the tool was predictive of Kentucky juveniles' recidivism outcomes.
- 4 Senate Bill 200 (2014), <http://www.lrc.ky.gov/record/14RS/SB200.htm>.
- 5 House Bill 463 (2011), <http://www.lrc.ky.gov/record/11rs/HB463.htm>; and The Pew Charitable Trusts, "Kentucky Reforms Cut Recidivism, Costs"
- 6 <http://www.pewtrusts.org/~media/Imported-and-Legacy/uploadedfiles/2011KentuckyReformsCutRecidivismpdf.pdf>
- 7 Senate Concurrent Resolution 35 (2013), <http://www.lrc.ky.gov/record/13RS/SC35.htm>.
- 8 Kentucky Legislative Research Commission, "Report of the 2013 Task Force on the Unified Juvenile Code" (December 2013), <http://www.lrc.ky.gov/lrcpubs/rm514.pdf>.
- 9 The Senate later concurred with the House amendments, 30-8.
- 10 A "public offense action" means a delinquent act. Kentucky law defines it as "an action, excluding contempt, brought in the interest of a child who is accused of committing an offense ... which, if committed by an adult, would be a crime, whether the same is a felony, misdemeanor, or violation, other than an action alleging that a child sixteen (16) years of age or older has committed a motor vehicle offense," Kentucky Revised Statutes 600.020(48), <http://www.lrc.ky.gov/Statutes/statute.aspx?id=40868>.
- 11 See Endnote 2.
- 12 Mark Fisher, Division of Behavioral Health, Cabinet for Health and Family Services, "Substance Abuse Treatment in Kentucky" (presented before the Kentucky General Assembly Interim Joint Committee on Judiciary, Sept. 6, 2013).
- 13 Sufficient data were not available to the task force to identify all services currently accessible to juvenile offenders in Kentucky and the funding for each service. The task force based this finding on information provided by its members and from other stakeholders.
- 14 The enhanced pre-court process is available for up to three status or non-felony public offense complaints per child and, with written approval of the county attorney, one felony complaint that does not involve the commission of a sexual offense or the use of a deadly weapon.
- 15 Task force members learned that 43 percent of public offense cases and 29 percent of status offense cases filed in court had been eligible for diversion but came to court because the county attorney or judge overrode the diversion decision.

For further information, please visit:

pewtrusts.org/publicsafety

Contact: Lesa Rair, communications officer

Email: lrair@pewtrusts.org

Project website: pewtrusts.org/publicsafety

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