

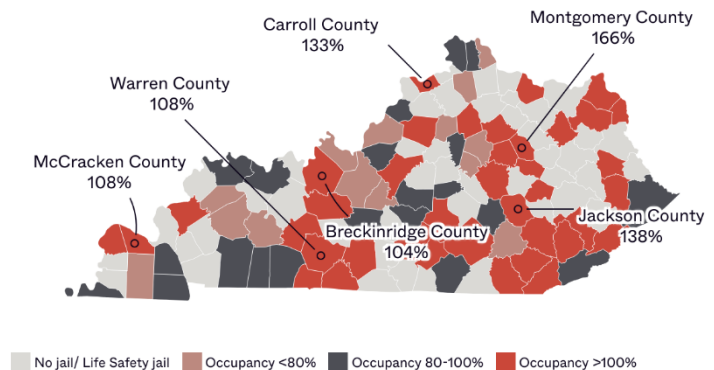
House Bill 5 Will Harm Kentucky Counties

The Kentucky state legislature is currently considering [House Bill \(HB\) 5](#), which would create new felonies and enhance penalties for many existing offenses. These harsh penalties along with other harmful provisions, like banning bail funds, criminalizing homelessness, and taking a punishment-based approach to the fentanyl crisis will significantly add to Kentucky’s already overfilled jails and prisons at a high financial cost to both counties and the state, while also undermining public safety.¹ To create safe and thriving communities, Kentucky needs to invest in behavioral health programs and workforce development, not higher jail populations.

By increasing jail populations, HB 5 will impose an expensive burden on Kentucky counties that are already straining under the cost of overfilled jails.

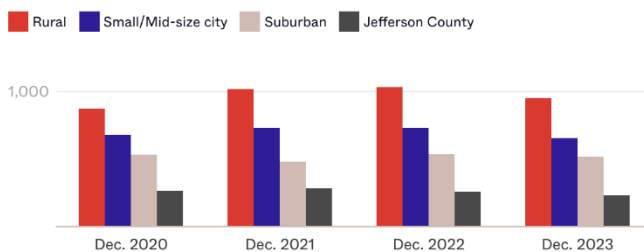
Most people in jail in Kentucky are being held pretrial—the costs for which will not be reimbursed by the state. People detained pretrial are held on unaffordable money bond, a situation that will be exacerbated by HB 5.² As of February 2024, more than 40 of Kentucky’s jails were already at or over their capacity.³ The cost of such high jail populations is astronomical: the state and its counties spent more than \$400 million on jails in fiscal year 2019.⁴

Kentucky jails over 100% occupancy, December 2023



Source: Weekly jail population reports released by the KY Department of Corrections, <https://corrections.ky.gov/About/researchandstats/Pages/WeeklyJail.aspx>

Total Jail Incarceration Rate per 100,000 residents ages 15-64



Jail population data comes from the weekly jail population reports released by the KY Department of Corrections, <https://corrections.ky.gov/About/researchandstats/Pages/WeeklyJail.aspx>. Resident population data comes from U.S. Census and National Center for Health Statistics, “U.S. Census Populations with Bridged Race Categories,” https://www.cdc.gov/nchs/nvss/bridged_race.htm.

The fiscal and human impacts of HB 5 will hit rural Kentucky counties especially hard.

After an initial decline across the state at the beginning of the pandemic, jail populations rebounded more sharply in rural counties than anywhere else.⁵ Rural counties, which have the highest incarceration rates in the state, already face outsized jail costs. This burden will only increase with HB 5.

HB 5 will worsen pretrial detention by leading judges to set money bail more often.

The overcrowding in jails across Kentucky is tied to extremely high rates of financial bonds set. From 2017–2021, district court judges set money bail in 90 percent of felony cases and 79 percent of misdemeanor cases, while circuit court judges set bail 85 percent of the time.⁶ As HB 5 reclassifies at least 20 offenses

Vera works to end mass incarceration, protect immigrants’ rights, ensure dignity for people behind bars, and build safe, thriving communities. For more information, visit vera.org. For more information about this report or to request a county specific report, contact Monica Smith, associate director of policy and advocacy for Vera’s Beyond Jails initiative, at mosmith@vera.org.

into a more severe class of felony and creates new felony offenses, judges will likely increase the frequency and amount of bail set, and thus jail populations will inevitably soar as fewer people awaiting trial will be able to afford bail.

HB 5 is packed with draconian punishments that will undermine public safety across the state.

In addition to the financial costs, the penalties established by HB 5 go against all the evidence on public safety and incarceration. This bill takes an ineffective punishment-based approach to substance use and homelessness, which will only trap people in a cycle of incarceration instead of stabilizing Kentucky communities.⁷

Further, despite public perceptions about the effects of increasing possible time in jail and prison, study after study shows that lengthening sentences does not meaningfully deter crime.⁸ Instead, both prison and pretrial detention are shown to increase the risk of rearrest, which decreases public safety and destabilizes communities.⁹ When people go to jail for any amount of time, they can lose their job, housing, or custody of children—destabilizing not only their own life, but also their family and anyone else who depends on them.¹⁰ As a result, research in Kentucky has shown being detained before trial, even for 24 hours, can significantly increase the likelihood that someone will be charged with a new offense.¹¹ Overcrowded jails are also dangerous for officers, civilian staff, and those incarcerated.¹²

For safety, savings, and justice, Kentucky should carefully reduce jail populations.

While HB 5 will cost Kentucky counties dearly, that money could instead be spent on proven public safety solutions, like substance use and behavioral health treatment, and workforce development. While Kentucky legislators should reject HB 5, sensible reforms should also be added to improve the bill and offset its inevitable harms in case it passes:

- **Uphold the constitutional right to speedy trial.**
The use of money bail should be narrowly tailored only to people who pose a clear and convincing risk to public safety. The Senate should amend HB 5 to incorporate speedy trial provisions that will create a presumption of release for pretrial defendants held on unaffordable bail, after 90 days if charged with a misdemeanor or after 180 days if charged with a felony offense.
- **Expand the Behavioral Health Conditional Dismissal Program (KRS 533.270 to 533.290).**
Expanding diversion for people with behavioral health needs and those in need of services will preserve law enforcement resources, reduce jail costs, and support the long-term health of communities.¹³ While the Behavioral Health Conditional Dismissal Program is transformational for participants, out of 23,366 people screened for the program in 2023, only 1,345 people (5.8 percent) were statutorily eligible to participate.¹⁴ The Senate should expand diversion eligibility by statutorily increasing the number of eligible offenses and decreasing the lookback period from 10 to 5 years for prior convictions.
- **Restore funding for the Department of Public Advocacy's Alternative Sentencing Worker Program.**
A late amendment to HB 6 cut funding for 53 Kentucky Department of Public Advocacy social workers.¹⁵ Not only are these roles critical to the Public Defender's Office, but they are also instrumental in linking pretrial defendants to community-based treatment and other supports and services. To continue safely releasing pretrial defendants into the community, the Senate must restore this vital funding.

For a deeper look at jail spending in Kentucky counties, visit Vera's dashboard, *What Jails Cost*, at <https://www.vera.org/publications/what-jails-cost-statewide/kentucky>.

Endnotes

- ¹ Jamie Lucke, "Senate Should Save Kentucky from Another Incarceration Binge," Kentucky Lantern, February 14, 2024, <https://kentucky Lantern.com/2024/02/14/senate-should-save-kentucky-from-another-incarceration-binge/?emci=4ac213f7-bdca-ee11-85f9-002248223794&emdi=d13b8631-28cb-ee11-85f9-002248223794&ceid=433536>.
- ² Kentucky Advisory Committee to the U.S. Commission on Civil Rights, *Locked Up for Being Poor: The Need for Bail Reform in Kentucky: A Briefing Report of the Kentucky Advisory Committee to the U.S. Commission on Civil Rights* (Washington, DC: U.S. Commission on Civil Rights, 2021), <https://www.usccr.gov/files/2021-11/kentucky-bail-report.pdf>.
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- ⁴ Vera Institute of Justice, *What Jails Cost Statewide: Spending on Jails Across the Rural-Urban Spectrum* (New York: Vera Institute of Justice, 2020), <https://www.vera.org/publications/what-jails-cost-statewide/kentucky>.
- ⁵ For jail population data, see Kentucky DOC, *Weekly Jail*, 2024. Resident population data, used for calculating incarceration rates, comes from U.S. Census and National Center for Health Statistics, "U.S. Census Populations with Bridged Race Categories," https://www.cdc.gov/nchs/nvss/bridged_race.htm.
- ⁶ Kentucky Department of Information and Technology Services Research and Statistics, "Criminal Cases With First Bond Set CY 2017–2021 Statewide By County," (Frankfort, KY: Kentucky Department of Information and Technology Services Research and Statistics, 2022), https://www.kycourts.gov/AOC/Information-and-Technology/Analytics/Custom%20Reports/First_Bond_Amount_Criminal_Cases_CY17-21_Statewide.pdf.
- ⁷ Bea Halbach-Singh, Jack Norton, and Stephen Jones, et al., *The Criminalization of Poverty in Kentucky: How Economic Crises and Flawed Reforms Fueled an Incarceration Boom* (New York: Vera Institute of Justice, 2023), <https://www.vera.org/publications/the-criminalization-of-poverty-in-kentucky>; Greg A. Greenberg and Robert A. Rosenheck, "Jail Incarceration, Homelessness, and Mental Health: A National Study," *Psychiatric Services* 59, no. 2 (2008), <https://perma.cc/E6EK-SXR5>; and Pew Charitable Trusts, "More Imprisonment Does Not Reduce State Drug Problems," March 8, 2018, <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2018/03/more-imprisonment-does-not-reduce-state-drug-problems>.
- ⁸ National Institute of Justice, "Five Things About Deterrence," National Institute of Justice, June 5, 2016, <https://perma.cc/59A4-EWZ4>; and Daniel P. Mears and Joshua C. Cochran, "Progressively Tougher Sanctioning and Recidivism: Assessing the Effects of Different Types of Sanctions," *Journal of Research in Crime and Delinquency* 55, no. 2 (2017), <https://journals.sagepub.com/doi/10.1177/0022427817739338>.
- ⁹ Core Correctional Solutions, *The Hidden Costs of Pretrial Detention Revisited* (Houston, TX: Arnold Ventures, 2022), 4, <http://perma.cc/99VE-QLG8>; and Charles E. Loeffler and Daniel S. Nagin, "The Impact of Incarceration on Recidivism," *Annual Review of Criminology* 5 (2022), 133–152, <https://doi.org/10.1146/annurev-criminol-030920-112506>.
- ¹⁰ Léon Digard and Elizabeth Swavola, *Justice Denied: The Harmful and Lasting Effects of Pretrial Detention* (New York: Vera, 2019), <https://www.vera.org/downloads/publications/Justice-Denied-Evidence-Brief.pdf>.
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- ¹³ Akhi Johnson and Mustafa Ali-Smith, "Diversion Programs, Explained," Vera Institute of Justice, April 28, 2022, <https://www.vera.org/diversion-programs-explained>.
- ¹⁴ Kentucky Administrative Office of The Courts, "2023 SB 90 Behavioral Health Conditional Dismissal Program Annual Report," (Frankfort, KY: Kentucky Administrative Office of the Courts, 2024), 13.
- ¹⁵ Joe Sonka, "Ky. House Budget Defunds Program Steering Defendants to Drug Treatment," Kentucky Public Radio, February 7, 2024, <https://www.lpm.org/news/2024-02-07/ky-house-budget-defunds-program-steering-defendants-to-drug-treatment>.