

Department of Public Advocacy

Agency Update and Legislative Proposals



DEPARTMENT OF PUBLIC ADVOCACY FISCAL YEAR 2019



PUBLIC ADVOCACY COMMISSION



Jerry J. Cox Chairman Mount Vernon



Cortney Lollar Vice-Chair Associate Professor UK College of Law



Dr. Crystal Rae Coel Professor Murray State University



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Robert C. Ewald Wyatt, Tarrant & Combs Louisville



K. Gregory Haynes Wyatt, Tarrant & Combs Louisville



Joseph Lambert Former Chief Justice Lexington



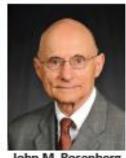
Luke Milligan Professor Brandeis School of Law



Lewis G. Paisley Stoll Keenon Ogden PLLC Lexington



Janice Powe Retired P&A Staff Frankfort



John M. Rosenberg Pillersdorf, Derossett, & Lane Prestonsburg



Mark Stavsky Professor Chase College of Law

Reception for Members Not Reappointed Today, 2:30 p.m. in Annex 125

Expungement Clinics



DPA would be happy to lead a clinic in your district

Review of #kyga19

Changes to Increase Reach and Costs of Criminal Justice System

New Crimes Added - 14

- Abortion for Discriminatory Reason
- Caller ID Spoofing
- Misuse of Voter Registration Roster
- Abortion for any reason (Post-Roe)
- Abortion With No Heartbeat Determination
- Abortion After Heartbeat Detected
- Sexual Crimes Against an Animal
- Strangulation, 1st Degree
- Strangulation, 2nd Degree
- Requesting Another to Blow Into Ignition Interlock
- Hiding Identity from Ignition Interlock Device
- Unlawful Practice of Midwifery
- Ignition Interlock Licensee Driving without an IID
- Assisting a Person in Making False Statement for Employer IID Exemption

Increased Penalties - 9

- Terroristic Threatening, 2nd Degree
- Man 2, Attempted Murder, Reckless Homicide as Violent Offender
- Insurance Fraud
- Boating While Intoxicated
- Abuse of a Corpse
- DUI (Suspension Periods)
- Drilling a Well Without a Permit
- Mining or Drilling After Notification of Violation
- False, Destroyed or Omitted Info Relating to Mining Report

Elements of Crime Expanded - 8

- Terroristic Threatening, 2nd Degree (Places of Worship)
- Criminal Trespass, 2nd Degree
- Manslaughter, 2nd Degree
- Terroristic Threatening, 2nd Degree (False Statements to Cause Evacuation of School)
- Trespass on Key Infrastructure Assets
- Promoting Contraband
- Unlawful Possession of Weapon on School Property
- Misrepresentation of an Assistance Animal

31 Changes Total

Changes to **Reduce**Reach and Costs of Criminal Justice System

Crimes Eliminated - 0

Decreased Penalties - 0

Elements of Crime Narrowed - 3

- Carrying a Concealed Deadly Weapon
- Prohibited Acts by Sports Agents
- Bootlegging

Reduce Prison Population - 3

- Eliminate Restriction on Angel Initiative
- Authorize Parole Supervision Continuation Sanction
- Service Credit for Life Skills Programs

6 Changes Total

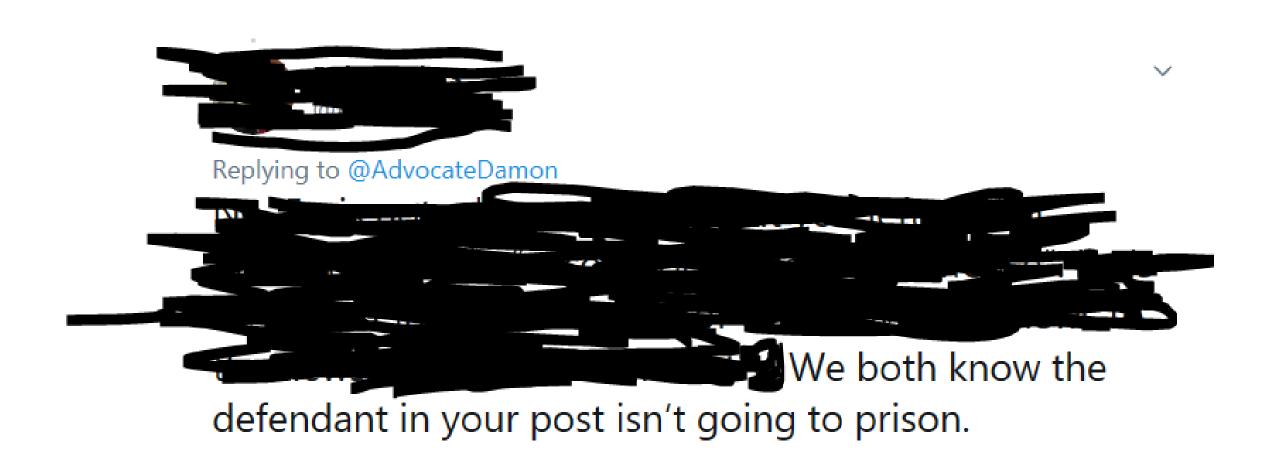
Strangulation Revisited

June 27, 2019 – September 6, 2019 (DPA Cases Only; Not Including Jefferson County)

Charged 84 times

- 47 Held to Grand Jury or Indicted (15 with PH scheduled)
- 77 Charged with Strangulation, 1st Degree
- 21 Charged with at least one other felony
- **39** Fayette County

Response to Marijuana Trafficking Post



Assumption:

Client will plead guilty (and receive probation or a non-prison sentence)

But what if he doesn't plead guilty?

What if he's innocent?

What if he has a valid legal defense?

What if he wants his day in court?

What if there's a story that

needs to be told?

0.33%

(1 out of 300)
DPA trial-eligible cases
end in a jury trial.

THE TRIAL PENALTY

THEN HE WILL GO TO PRISON, IF CONVICTED

Why so Few Trials? THE TRIAL PENALTY

- Multiple Overlapping Charges (consecutive sentences)
- Enhancements, including Subsequent Offenses and PFO
- "Extreme" Versions (i.e. Strangulation, 1st Degree)
- "Felony-Only" Offenses (Abuse of Corpse, Strangulation)

Going to Trial becomes too high a risk

An ACT relating to Juries

- Empowers juries, upon convicting a defendant of a Class D felony, to consider:
 - The nature and circumstances of the crime; and
 - The history and character of the convicted person

And reduce the Class D Felony to a Class A Misdemeanor if felony conviction is "unduly harsh"

Gives juries the power to decline to increase a sentence under PFO

An ACT relating to Juries

The proposed bill:

- Lowers no sentence; and
- Eliminates no enhancements

It simply gives the power to citizens to say the criminal law is too harsh in a specific case for a specific defendant

DPA Organizational Bills

- Limit and Clarify permissible uses of KRS 31.185 (expert witness fund)
- Clarify that expert evaluation, consultation, and testimony is not "practice" of a profession
- Reinstate and Clarify DPA authority to provide representation of suspects (who have a right to counsel)
- Exempt DPA attorney/client files from Kentucky Open Records Act

(all filed in 2019 by Rep. Massey as HB 388, 389, 390)

Criminal Justice Forum

Is Reducing Kentucky's Prison Population a Worthy Objective and a Realistic Goal?

October 23, 2019 11:00 a.m. – 3:30 p.m. (Lunch Included)

FREE, Registration Required

Grand Courtroom
University of Kentucky College of Law

Sponsored by the Criminal Law Section of the Kentucky Bar Association

come see the newly renovated UK Law School!!

http://tiny.cc/CriminalJusticeForum19