



## 2021 Anticipated Legislative Priorities

The following is a summary of DPA's top legislative priorities for the 2021 session.

**1. Jury Empowerment** – Rather than be required to impose mandatory enhancements or lifelong felony convictions, we believe jurors should have the ability to extend sentencing mercy in appropriate cases. We propose to amend KRS 532.030, KRS 532.080 and various other statutes to permit a jury to find, in the interest of justice, that a Class D felony, Persistent Felony Offender enhancement, or any other sentencing enhancement should not be applied to an offender's sentence in a given case. The offender would then be sentenced to a misdemeanor (rather than a Class D felony) or as if the enhancement did not apply.

**2. Amendments to DPA Organizational Statutes** - KRS Chapter 31, which established and defined the responsibilities and authorities of DPA, was written in 1972 and is in need of an update in these key areas. All of the bills have already been written, but did not get to the finish line in 2020. All of them are cost-neutral:

- *Pre-Arrest Representation* – A criminal suspect often has a constitutional right to counsel, but the statute is unclear as to whether DPA can provide an attorney in advance of a charge, leaving suspects and law enforcement with nowhere to turn;
- *Necessary Defense Expenses and Witnesses* – The law authorizing expenditures needs to be clarified as to what is and is not an appropriate defense expense. Also, experts hired merely for evaluation and testimony on behalf of an indigent defendant should not be considered to be “practicing” a profession under professional licensing statutes; and
- *Attorney/Client File and Open Records* – The proposed change would exempt DPA attorney/client files from the Kentucky Open Records Act, treating public defender client files the same as prosecutor and private attorney files.

**3. An Adequate Defender Budget for the Right to Counsel** - DPA appreciates the continuation budget passed in 2020; however, DPA continues to remain woefully underfunded. Any cut to DPA's budget would imperil the state's constitutional obligation to fund the Right to Counsel. To fulfill the constitutional duty, more funding is needed, including resources to provide salary improvements

for defenders. In 2019, 20% of DPA attorneys resigned, most due to inadequate compensation. Funding is needed to improve salaries and stabilize indigent defense. Even in tough times, the criminal justice system and the constitutional right to counsel must be adequately funded.

**4. Criminal Justice Improvements** - Temporary reductions over the past six months cannot overshadow the fact that Kentucky continues to incarcerate too many of our neighbors. DPA is in favor of the enactment of sensible improvements to the criminal justice system, including:

- Bail Reform based on three simple principles:
  - 1) No one should be detained because he/she cannot post a certain amount of money;
  - 2) A strong presumption of pretrial release should only be overcome by meeting a heightened standard (i.e. clear and convincing evidence); and
  - 3) Anyone detained pretrial should have a statutory right to speedy trial.
- Eyewitness identification reform;
- Reclassify first-offense and second-offense drug possession to A Misdemeanor;
- Amend the definition of trafficking to distinguish addicts who share from commercial traffickers who profit;
- Sentencing reform, including reducing enhancements, restricting PFO to truly “persistent” offenders, and reducing non-violent low-level financial offenses to misdemeanors (i.e. criminal possession of forged instrument, 2<sup>nd</sup> degree); and
- Increase monetary damage thresholds to \$2,500 for felony

Improvements in these areas would reduce incarceration rate without threatening or reducing the public safety, provide better criminal justice outcomes and enhanced chances to succeed upon re-entry into society, and strengthen Kentucky families.

**5. Improve Casey’s Law** - Casey’s Law (KRS 222.430 to KRS 222.437) provides a mechanism for concerned family members or friends to petition a court to order a person addicted to drugs to undergo treatment. While the goals are laudable, the law fails to provide clarity in process and falls short of protecting the rights of the addicts, who have been convicted of no crime yet face a possible six-month jail sentence. Specific suggestions for improvement of Casey’s Law include establishing a clear burden of proof (currently probable cause), requiring that court orders be consistent with the recommendations of qualified health professionals, providing periodic reviews of treatment plans, and limiting jail time for noncompliance with treatment orders to three (3) days in jail.