



County Attorney Traffic Safety Programs

Research Report No. 473

Legislative Oversight And Investigations Committee

Kentucky Legislative Research Commission

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County Attorney Traffic Safety Programs

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Abstract

The report reviews the county attorney traffic safety programs (CATS). KRS 186.574(6)(a) authorizes county attorneys to offer individuals cited for traffic offenses the opportunity to have their cases dismissed upon completion of the program. Dismissal benefits participants by preventing points being assessed upon their license and potential vehicle insurance premium increases. In FY 2020, 102 counties operated CATS and 36,951 offenders completed the programs. Although statutory framework provides a general structure for CATS requirements and prohibitions, it does not address the need for adequate internal controls. The lack of internal controls for CATS is consistent with limited oversight of county attorney offices. The Auditor of Public Accounts and the Kentucky County Attorneys Association are working to implement Agreed Upon Procedures, but this is not a permanent solution. The lack of an adequate internal control framework creates inherent risk. Despite requirements to report CATS information, there is no process in place to ensure information is consistent and accurate. Potential inaccuracies were found in the information. Some offenders are prohibited from participating in CATS, including commercial driver's license (CDL) holders. There are reports that CDL holders have attended CATS. Vendors working with county attorneys to provide CATS do not use formal agreements, which may introduce risk. The Finance and Administration Cabinet and the Administrative Office of the Courts (AOC) receive funds from CATS for designated purposes. AOC is using funds correctly but may have a better alternative for tracking the money. The report has 10 recommendations.

Foreword

Legislative Oversight and Investigations Committee staff appreciate all those who provided assistance with this report. Leadership from the Kentucky County Attorneys Association and staff from the Prosecutors Advisory Council, Auditor of Public Accounts, Department for Local Government, Administrative Office of the Courts, and Transportation Cabinet Division of Drivers Licensing provided information, data, and feedback. Also, Finance and Administration Cabinet staff provided feedback used to finalize the report. Representatives from AdventFS and Drive Safe provided information about their traffic safety programs.

Leadership from the Kentucky County Attorneys Association also helped test the survey used in this report. Fifty-five county attorneys provided information and opinions through this survey.

Jay D. Hartz
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Legislative Research Commission
Frankfort, Kentucky
November 10, 2021

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Summary

This report reviews Kentucky's county attorney traffic safety programs (CATS). Kentucky Acts Chapter 190, section 15 from 2021 requires the Legislative Oversight and Investigations Committee to review the system of traffic safety programs for traffic offenders operated by county attorneys in the commonwealth in fiscal year 2020. The committee must report, at a minimum, preliminary findings of the review by December 29, 2021.

In the 2012 Regular Session, the General Assembly passed House Bill 480, granting county attorneys authority to "operate a traffic safety program for traffic offenders prior to the adjudication of the offense." Diversionary traffic safety programs result in the dismissal of a citation upon completion. Participants do not receive points on their licenses, and they avoid potential increases in insurance premiums, which would result from a guilty plea and payment of court costs and fines.

CATS eligibility is statutorily restricted by type of offense. Offenders alleged to have driven either under the influence (KRS 189A.010) or without insurance (KRS 304.39-080) are excluded. Offenders holding a commercial driver's license (CDL) and persons cited for a violation of KRS Chapters 177, 186, or 189 that has a penalty of mandatory revocation or suspension of license are also excluded. In addition, violations preclude eligibility if they occurred when the offending individual did not have a valid license, had a suspended license, or was subject to a license revocation.

County attorneys who operate programs use two methods to administer them. They may hire one of the two currently used vendors, AdventFS and Drive Safe, to administer an online course, or they may administer the program themselves. In FY 2020, 78 counties used vendors and 24 operated their own programs without a vendor.

Per KRS 186.574(6), county attorneys may charge CATS participants a "reasonable fee" that must be used to pay for county attorneys' operating expenses. An additional \$25 fee is payable to the court clerk and ultimately forwarded to the Administrative Office of the Courts (AOC) to fund the hiring of deputy clerks and the enhancement of their salaries. A \$30 fee in lieu of court costs is to be forwarded to the Finance and Administration Cabinet (FAC), where it is further distributed. Vendors charge a fee to each participant in counties using their services. In FY 2020, AdventFS charged \$35 to \$37.50 per participant and Drive Safe charged \$40.

In FY 2020, 102 counties operated CATS programs, with 36,951 reported participant completions. According to Prosecutors Advisory Council reports, the average total fee charged to participants was \$181.43, generating between \$4.9 million and \$5.1 million in estimated total revenue for county attorneys. AOC received \$923,775 and FAC received \$1.1 million from its portions of the total fee. AdventFS earned an estimated \$602,728, and Drive Safe earned an estimated \$484,080.

Although KRS 186.574 and 15.720 provide general structure for the operation of county attorney traffic safety programs, statute does not address the need for an adequate internal control

framework to ensure that statutory requirements are followed. Based on the preceding statutory authority, it appears that the Auditor of Public Accounts (APA), the Prosecutors Advisory Council (PAC), and the Department for Local Government each have some type of authority to oversee or establish guidelines for county attorney offices. However, with the exception of the APA's recent collaboration with the Kentucky County Attorneys Association (KCAA) to review county attorney offices under Agreed Upon Procedures, these entities have not worked collaboratively to identify an adequate framework for general oversight. The procedures are a step toward strengthening the internal control framework but are not a permanent solution.

Recommendation 3.1

The Auditor of Public Accounts and the Kentucky County Attorneys Association should continue moving forward with the establishment of Agreed Upon Procedures. Findings related to the procedures should be used as a basis from which to expand Agreed Upon Procedures cycles to reporting requirements, fee distributions, and ineligible offenders.

Recommendation 3.2

The Auditor of Public Accounts, Kentucky County Attorneys Association, Prosecutors Advisory Council, and Department for Local Government should work together to draft and propose for the legislature a more permanent internal control framework, once the Agreed Upon Procedures cycle concludes. Discussions should also include the findings and recommendations from this Legislative Oversight and Investigations report.

KRS 186.574(6)(c)2 requires county attorneys to annually report to PAC the fee charged to CATS participants and the total number of offenders diverted categorized by traffic offense for the preceding fiscal year. Each year, PAC distributes a form to county attorneys to collect this information. PAC uses the responses to produce an annual report. The FY 2020 form captures the following information:

- County
- Fee charged per offender (“Total Cost Less \$30 AOC Fee”)
- Number of offenders who completed the traffic safety program, categorized by
 - Moving violations
 - Equipment violations
 - License/registration violations
 - Total (violations)
- Certification that none of the offenders held a commercial driver’s license
- Signature
- Date

There is no process in place to ensure that information reported by county attorneys to PAC is consistent and accurate. Legislative Oversight staff requested and reviewed PAC reporting data from FY 2013 to FY 2020. The PAC form instructs respondents to provide total cost minus the AOC fee but does not mention the FAC or vendor fees. A PAC official stated the form should capture only the county attorney portion of revenue. However, most FY 2020 county attorney fees were higher than the average fee estimated by KCAA.

Recommendation 3.3

The Prosecutors Advisory Council should consider formally reviewing the County Attorney Traffic Safety Program Report form to determine whether changes are necessary. At a minimum, it should consider whether to disaggregate the total fee charged per offender by vendor fee, county attorney fee, Administrative Office of the Courts fee, and Finance and Administration Cabinet fee.

Recommendation 3.4

The Prosecutors Advisory Council (PAC) should consider whether to request that PAC staff develop processes to more formally follow up on incomplete or apparently inaccurate information from county attorney offices. For example, staff could on a quarterly basis review a sample of the County Attorney Traffic Safety Program Report forms to ensure that submitted data is consistent and accurate.

There is no formal process for determining whether ineligible offenders under KRS 186.574(6)(b) are participating in the county attorney traffic safety programs. Transportation Cabinet officials provided a table of 281 offenders who held commercial driver's licenses and claimed to have participated in county attorney traffic safety programs. These offenses occurred in 2007, 2010, and 2014 through 2021, across 65 Kentucky counties. The cabinet became aware of these instances when CDL holders contacted it to ask why convictions were still on their records. KRS 186.574(5)(e) requires the cabinet to notify the "sentencing court regarding any person who was sentenced to attend state traffic school who was ineligible to attend state traffic school." The statute also requires that a "court notified by the cabinet pursuant to this paragraph shall return the person's case to an active calendar for a hearing on the matter." There is no such requirement for county traffic school. Transportation Cabinet officials noted that when they become aware that a charge may have been omitted from the record because someone has attended a county traffic school, they "take corrective action to add the charge to the driver's record as required" by federal law and state statutes and regulations.

Recommendation 3.5

Transportation Cabinet staff should continue to document cases where offenders with commercial driver's licenses (CDLs) are participating in or have participated in a county attorney traffic safety program. They should also ensure that CDL offenders have not had convictions expunged from their records.

Recommendation 3.6

The Kentucky County Attorneys Association should work with the Transportation Cabinet to draft guidance for county attorneys to ensure that cabinet officials receive notice whenever an offender attends a county attorney safety program.

Recommendation 3.7

The legislature may wish to consider amending KRS 186.574(5)(e) to include county attorney traffic safety programs for notification of ineligible offenders.

Neither vendor used by county attorneys to operate CATS uses a formal written agreement. Although KRS 186.574(6) does not include requirements related to contracts and procurement of services, it is always desirable to enter into some type of agreement or contract when state funds and services are involved. KRS 147A.020(3)(b) grants the Department for Local Government's state local finance officer the authority "to provide technical assistance and information to units of local government on matters including but not limited to fiscal management, purchases, and contracts."

Recommendation 3.8

The Kentucky County Attorneys Association should consider working with the state local finance officer and Prosecutors Advisory Council to draft an agreement template for county attorney offices to use that outlines the responsibilities of the vendor and county attorney offices.

KRS 186.574(6)(c) explicitly restricts the use of CATS revenue to "county attorney office operating expenses," but statute does not provide a definition for that term. KCAA provides formal guidance on how fees or money paid to county attorney offices shall be used for the payment of operating expenses in the form of a Technical Bulletin supported by OAG 05-002. There is no formal process for ensuring that fees from county attorney traffic safety programs are expended for operating expenses, which increases the risk that fee revenue could be used for purposes contrary to state statute.

Recommendation 3.9

The Kentucky Attorney General's Office should consider promulgating regulations establishing additional parameters for the term *operating expenses* and a requirement for the use of agreements by county attorney offices when conducting business with traffic safety program vendors.

KRS 186.574(6)(d) requires each participant in CATS to pay a \$25 fee to the court clerk. This fee is paid into a trust and agency account with AOC. AOC uses Revenue Source Code R827, "Other Receipts," to track CATS revenue in the statewide accounting system. A specific code for CATS revenue already exists as R467, "Co Atty Operated Traffic School Fees." A representative of AOC stated that it was not aware of R467 when it requested that FAC create a revenue code for receipt of this revenue. AOC officials say they have started using this code.

Recommendation 3.10

The Administrative Office of the Courts should continue to use the R467 revenue source code in the future.

Chapter 1

County Attorney Traffic Safety Programs

Statute requires the Legislative Oversight and Investigations Committee to review the county attorney traffic safety programs.

Kentucky Acts Chapter 190, section 15 from 2021 requires the Legislative Oversight and Investigations Committee to “review the system of traffic safety programs for traffic offenders operated by county attorneys in the Commonwealth” for fiscal year 2020.^a The committee is required to report, at a minimum, preliminary findings of the review by December 29, 2021.

The statutory framework authorizing county attorneys to operate traffic safety programs provides a general structure for the programs’ operation.

The statutory framework authorizing county attorneys to operate traffic safety programs provides a broad structure for identifying general requirements and prohibitions. This framework became effective on July 12, 2012 (2012 Ky. Acts ch. 107, secs. 1 and 2) after amendments to KRS 186.574 and 15.720.

County attorneys who elect to operate traffic safety programs under KRS 186.574(6)(a) are required to annually submit a report to the Prosecutors Advisory Council (PAC), listing the fee charged for the program and the total number of traffic offenders diverted into the program, categorized by traffic offense. KRS 15.720(1)(b) requires the attorney general to annually submit this information to the Legislative Research Commission (LRC).

Under KRS 186.574(6)(b), traffic safety programs operated by county attorneys must exclude the participation of certain offenders, which include holders of a commercial driver’s license (CDL), as well as drivers charged with

- driving under the influence (DUI),
- motor vehicle security offenses,
- offenses requiring suspension or revocation, or
- driving without a license.

KRS 186.574(6)(c)1 allows county attorneys to charge a “reasonable” fee, which shall be used only for operating expenses of county attorney offices.

KRS 186.574(6)(d) and (e) require participants to pay an additional fee of \$25 to the Administrative Office of the Courts (AOC) to be used by circuit clerks to hire additional deputy clerks and to

^a After the 2021 Regular Session, the Program Review and Investigations Committee was renamed the Legislative Oversight and Investigations Committee.

enhance the salaries of deputy clerks. Participants must also pay a \$30 fee to the Finance and Administration Cabinet (FAC) for nine specific fund and agency distributions.

Major Objectives

This study had three major objectives.

The major objectives for this study were to

- examine and evaluate how county attorney traffic safety programs (CATS) are operated,
- determine whether the statutory requirements for CATS outlined in KRS 186.574(6) and 15.720 are being met, and
- examine and evaluate the existing internal control framework ensuring statutory compliance.

Methodology

This study focused on how county attorney offices with traffic safety programs operate their programs. More specifically, it sought to determine whether offices operate their programs within the statutory framework annotated in KRS 186.574(6) and 15.720.

The study also focused on whether an adequate internal control framework exists to ensure that statutory requirements are being followed. An internal control framework provides “reasonable assurance” that objectives are achieved, more specifically related to effectiveness and efficiency, reliable reporting, and compliance with applicable laws and regulations.¹

Control objectives address the risks related to achieving an entity’s objectives.² In regard to internal controls, *risk* is defined as “the possibility that an event will occur and adversely affect the achievement of objectives.”³ For the traffic safety program, a process may be a risk if it has the potential to deviate from statutory requirements.

Staff conducted the following research tasks:

- Reviewed applicable Kentucky Revised Statutes and Kentucky Administrative Regulations.
- Requested and analyzed CATS reports produced by the Prosecutors Advisory Council for FY 2013 through FY 2020 to determine
 - statutory compliance,
 - accuracy of information,
 - counties providing traffic safety programs,

- the types of offenses that participants were cited for that resulted in their participation,
- fees charged to participants,
- the number of participants who completed the programs, and
- revenue generated by programs. (Some county attorneys used a range of fees rather than a single fee. To compensate for variance, total revenue and average revenue were calculated for low- and high-revenue scenarios. In the low-revenue scenario, county attorneys with fee ranges charged all offenders the lowest possible fee. In the high-revenue scenario, county attorneys with fee ranges charged all offenders the highest possible fee.)
- Reviewed budget request documents for the Unified Prosecutorial System (UPS) to understand the county attorney portion of the request.
 - Reviewed budget instruction documents for the county attorney portion of the Unified Prosecutorial System.
 - Interviewed Budget Review staff regarding county attorney budget requests.
- Requested county-level funding data for county attorneys through the Prosecutors Advisory Council.
- Requested information from traffic safety program vendors AdventFS and Drive Safe to determine
 - counties served by the vendors,
 - how the vendors collect and disburse the funds they receive,
 - the structure of agreements with county attorneys, and
 - course pricing and contents.
 - (Staff did not review vendor systems for recording participant information because the study focused on actions of county attorneys and their agreements with the vendors.)
- Reviewed and extracted financial data from the statewide accounting system (eMARS) to determine how the Finance and Administration Cabinet and the Administrative Office of the Courts determine how they collect, track, and use funds from the traffic safety programs.
- Contacted representatives of the Administrative Office of the Courts to determine how they collect and disburse traffic safety program funds.
- Sent requests to the Administrative Office of the Courts for data on use of traffic safety program funds for fiscal years 2018, 2019, and 2020.

- Sent data requests to the Transportation Cabinet to determine how county attorney traffic safety programs compare to state traffic school in length, content, and testing components.
- Analyzed data provided by the Transportation Cabinet regarding participation in traffic safety programs by ineligible participants. The data recorded instances of participation by individuals who were ineligible because they held commercial driver's licenses. Committee staff sent data requests to both vendors to determine the counties they serve, structure of contracts, pricing, and course elements.
- Designed an online survey via SurveyMonkey and distributed it to county attorneys on September 7, 2021, to provide an understanding of
 - which county attorneys operate traffic safety programs;
 - why county attorneys may elect not to operate a program;
 - the amount of funding county attorneys received from the commonwealth for personnel expenditures and operating expenditures;
 - the amount of funding county attorneys received from their county/urban-county governments for personnel expenditures and operating expenditures;
 - the amount of funding county attorneys generated in FY 2020 from
 - county attorney traffic safety programs (KRS 186.574(6)),
 - bad check collection (KRS 514.040(4) and (5)),
 - delinquent tax collection (KRS 134.504 and 134.545), and
 - other sources of funds for office operating expenses, excluding child support revenue.
 - whether county attorneys ensure that traffic safety program revenue is used only for appropriate expenditures per KRS Chapter 18;
 - how county attorneys verify the accuracy of data statutorily required to be reported to the Prosecutors Advisory Council per KRS 186.574(6)(c)(2); and
 - how important traffic safety program revenue is for meeting county attorney office operating expenditures
- Interviewed Kentucky County Attorneys Association (KCAA) leadership and Transportation Cabinet representatives to determine each entity's position on the cabinet's promulgation of regulations requiring certain elements of county attorney traffic safety programs and requiring approval of the programs by the cabinet.

- Requested that the cabinet provide records of potential participation of CDL holders in county attorney traffic safety programs despite statutory ineligibility.
- Analyzed technical audit bulletins provided by the association that describe acceptable uses of program revenue.
- Contacted leadership of the Kentucky County Attorneys Association to gain an understanding of upcoming Agreed Upon Procedures (AUP) with the Auditor of Public Accounts (APA).
- Contacted representatives of the Auditor of Public Accounts about statutory requirements for periodic audits of county attorneys and the upcoming Agreed Upon Procedures.

Data Limitations

Financial research was limited by a lack of immediate access to county attorney financial records that are not included in state budget documents. Program revenues, and expenditures funded by revenues, are off-budget, meaning the state and county/urban-county governments are not required to account for them in financial reporting. For this reason, the actual fees charged to offenders cannot be verified and program revenues are estimated using reports produced by the Prosecutors Advisory Council.

Fees charged by county attorneys cannot be verified because there is limited information on the reports. The reports ask for a single “Fee charged per offender (Total Cost Less \$30 AOC Fee).” A PAC official indicated this fee represents only the portion received by the county attorney.⁴ However, the form instructs county attorneys to only remove the Administrative Office of the Courts fee. It does not mention the Finance and Administration Cabinet or vendor fees. Most amounts submitted in FY 2020 were higher than an estimate provided by the Kentucky County Attorneys Association. This difference may indicate that the county attorney fee reports includes a higher dollar amount than intended.

Actual revenue cannot be determined using these reports because of variations in fee amounts within a fiscal year and in the same county that obfuscate the amount of revenue produced by each participant. Reasons for the variations include counties reporting a variable fee and switching midyear to a vendor that had different costs per participant. Counties are also asked to report the number of completions instead of the number of diversions, meaning

program revenue may be generated in the fiscal year prior to a completion being reported.

Survey results are self-reported by county attorneys and were not independently verified by staff. In addition, the survey response rate did not include all 120 county attorneys, so results are representative of only a sample. Also, staff was notified during the survey period of several issues with three of the survey questions that may have led county attorneys to report figures that cannot be compared with other responses. These data limitations are being disclosed based on generally accepted auditing standards.⁵

Major Conclusions

This report has seven major conclusions.

This report has seven major conclusions:

- Although statutes provide the general structure for CATS, they do not provide internal controls to ensure compliance with statutory requirements related to program reporting, eligibility, use of fee revenue, and fee revenue distribution.
- Agreed Upon Procedures with the Auditor of Public Accounts will address some controls for traffic safety programs but do not cover all CATS statutory requirements and will not be a permanent solution.
- Although the Prosecutors Advisory Council has developed a form to collect required information, errors were found on submitted forms, and the forms could be improved.
- Commercial driver's license holders are barred from attending CATS, but the Transportation Cabinet has interacted with CDL holders who claim to have attended CATS. People ineligible to participate in CATS have asked to have offenses expunged from their records.
- County attorneys are allowed to spend CATS revenue only on "office operating expenses," but the term is not clearly defined in statutes. The Kentucky County Attorneys Association has provided guidance, but more binding guidance may be appropriate.
- The common vendors for CATS do not establish contracts when working with county attorneys, which may lead to potential issues such as waste, fraud, and abuse.
- The Administrative Office of the Courts uses a generic revenue source code to track CATS revenue. A more specific revenue source code for CATS revenue already exists and would make CATS revenue tracking more transparent.

Structure Of This Report

Chapter 2 of this report provides background information, including program eligibility, participation in the program, county attorney funding, revenue generated from CATS, how revenue may be spent, and previous legislation.

Chapter 3 presents major findings related to the internal control framework, as well as 10 recommendations related to those findings.

Chapter 2

County Attorney Traffic Safety Program Background

HB 480 of the 2012 Regular Session granted county attorneys authority to operate traffic safety programs. These are diversionary programs that result in dismissal of citations upon completion.

In the 2012 Regular Session, the General Assembly passed House Bill 480, granting county attorneys authority to “operate a traffic safety program for traffic offenders prior to the adjudication of the offense.” Diversionary traffic safety programs result in the dismissal of a citation upon completion. Participants do not receive any points on their licenses, and they avoid potential increases in insurance premiums, which would result from a guilty plea and payment of court costs and fines. Table 2.1 provides the number of counties operating a program and the number of program completions between FY 2016 and FY 2020. Completions by individual counties appear in Appendix B.

Table 2.1
Counties Operating Traffic Programs And Completions
FY 2016 To FY 2020

	Fiscal Year				
	2016	2017	2018	2019	2020
Counties with traffic programs	90	92	94	97	102
Program completions	35,936	34,164	33,723	37,603	36,951

Source: Staff analysis of Kentucky. Office of the Attorney General, Prosecutors Advisory Council. *Traffic Safety Program Report*, FY 2013 to FY 2020.

County attorney traffic safety programs operate differently from the state traffic school offered by the Transportation Cabinet (KRS 186.574(1) to 186.574(5)). District Courts may offer the option of participation in state traffic school in lieu of other penalties such as fines and the assessment of points on an offender’s license. The state traffic school does not prevent potential insurance premium increases and still requires the payment of court costs as well as a \$15 fee.

Statutory Requirements

KRS 186.574(6) establishes county attorney traffic safety programs (CATS) and sets requirements for them.

CATS are primarily governed by KRS 186.574(6), which establishes CATS and sets most requirements. It allows county attorneys to operate a traffic safety program to divert traffic offenders. County attorneys may charge a “reasonable fee” to participants, which can be used only for office operating expenses.

County attorneys must annually report to the Prosecutors Advisory Council (PAC) the fees for CATS and the number of offenders diverted. PAC reports this information to the Legislative Research Commission (LRC).

By October 1 of each year, county attorneys must report to the Prosecutors Advisory Council the fee charged for the program and the total number of offenders diverted, categorized by traffic offense (KRS 186.574(6)(c)2). The Office of the Attorney General must then report this information to the Legislative Research Commission (KRS 15.720(1)(b)). Since FY 2016, PAC has sent these reports to the president of the Senate, the speaker of the House, and the chairs of the House and Senate Judiciary Committee.⁶

CATS participants pay an additional \$25 fee to the Administrative Office of the Courts (AOC).

KRS 186.574(6)(d) establishes an additional \$25 CATS fee payable to the court clerk, which is then paid into a trust and agency account with the Administrative Office of the Courts. This revenue is to be used for hiring deputy clerks and enhancing their salaries.

CATS participants pay an additional \$30 fee to the Finance and Administration Cabinet (FAC).

SB 117 of the 2015 Regular Session amended KRS 186.574(6)(e) and established an additional \$30 CATS fee in lieu of court costs, to be forwarded to the Finance and Administration Cabinet. The statute requires FAC to disburse the fee as follows:

- Send 33.2 percent to local governments, to be further divided in accordance with the formula in KRS 24A.176(5):
 - Equally divide 30 percent among local governments that have police departments or contract for police services.
 - Divide 50 percent among local governments on a per capita basis according to the number of certified police officers or the amount of spending on police service contracts divided by \$60,000.
 - Equally divide 20 percent among counties with counties with fiscal responsibilities for jails or transporting prisoners.
- Send 16.8 percent to the county sheriff in the county where the fee was received.
- Send 10.8 percent to the spinal cord and head injury research trust fund created in KRS 211.504.
- Send 9.1 percent to the county treasurer in the county where the fee was received, for defraying the costs of operating the county jail and prisoner transportation.
- Send 9.1 percent to the traumatic brain injury trust fund created in KRS 211.476.
- Send 8.3 percent to the Cabinet for Health and Family Services for operating a telephonic behavioral health jail triage system.
- Send 5.8 percent to the Department of Public Advocacy for the special trust and agency account set forth in KRS 42.320(2)(f).
- Send 5.7 percent to the crime victims compensation fund.

- Send 1.2 percent to the Justice and Public Safety Cabinet to defray the costs of conducting record checks on firearms purchasers and for the collection, testing, and storing of DNA samples.

CATS Eligibility

CATS eligibility is based on statute. Offenders holding a commercial driver's license (CDL) may not attend. Violations causing ineligibility include those that result in mandatory revocation or suspension of license.

CATS eligibility is statutorily restricted by type of offense. Offenders alleged to have driven under the influence (KRS 189A.010) or to have driven without insurance (KRS 304.39-080) are excluded. Offenders holding a commercial driver's license and persons cited for a violation of KRS Chapter 177, 186, or 189 that has a penalty of mandatory revocation or suspension of license are also excluded. In addition, violations preclude eligibility if they occurred when the offending individual did not have a valid license, had a suspended license, or was subject to a license revocation.

County attorneys have discretion to determine eligibility within statutory parameters.

County attorneys have discretion to determine eligibility standards for their programs within statutory parameters. An interview with KCAA leadership revealed that there is variation between counties in this regard. Some county attorneys do not allow an individual to participate if they have already done so within a certain timeframe. Prior offenses and the severity of current offense may also be factors in determining eligibility.⁷

KRS 186.574(6)(c)2 requires county attorneys to submit the number of offenders diverted, categorized by traffic offense, to PAC.

KRS 186.574(6)(c)2 requires county attorneys to submit to PAC the number of offenders diverted into the traffic program, categorized by traffic offense, but categories are not defined in statute. Annual PAC reports summarize offenses into three categories: moving, equipment, and license/registration.⁸ Table 2.2 provides the statewide number of individuals diverted for FY 2013 to FY 2020 by each of these categories.

**Table 2.2
 Offenders Diverted To County Attorney Traffic Safety Programs, By Type of Offense
 FY 2013 To FY 2020**

Offense	Fiscal Year							
	2013	2014	2015	2016	2017	2018	2019	2020
Moving	18,112	28,411	32,705	35,911	34,106	33,717	37,595	36,919
Equipment	56	39	15	2	19	2	3	25
License/registration	111	18	130	23	39	7	7	7
Total	18,279	28,468	32,850	35,936	34,164	33,726	37,605	36,951

Source: Staff analysis of Kentucky. Office of the Attorney General, Prosecutors Advisory Council. *Full CATS Report*, 2013–2020.

Information was not available to verify that ineligible offenders did not participate in CATS, but the Transportation Cabinet has reports of participation by CDL holders.

Information was not available to verify that individuals charged with statutorily disqualifying offenses have not participated in county attorney traffic programs. Individual offenses are not recorded, although the PAC report requires county attorneys to certify that CDL holders were not diverted.⁹ However, the Transportation Cabinet has reports of CDL holders participating in CATS. Legislative Oversight staff are working with the Transportation Cabinet to determine the accuracy of these claims. Chapter 3 discusses in detail the participation of CDL holders in CATS.

Administration of Programs And Vendors

County attorneys may hire a vendor to operate CATS, or they may operate CATS on their own. AdventFS and Drive Safe are vendors currently used by county attorneys.

Two methods of administration are available to county attorneys who operate programs. They may hire one of the two currently used vendors, AdventFS and Drive Safe, to administer an online course, or they may administer an in-person program themselves. Table 2.3 shows that, of the 102 counties operating a program, 78 used a vendor in FY 2020. Forty counties used only AdventFS, 35 used only Drive Safe, and three used both vendors. Reports of use of both vendors may represent a change in vendors during the year. Some counties may both self-operate an in-person program and use vendor services to administer an online option, but such counties cannot be identified using data available from PAC reports.¹⁰

Table 2.3
Counties Administering Traffic Safety Programs, By Method Of Administration
FY 2013 To FY 2020

Administration Type	Fiscal Year							
	2013	2014	2015	2016	2017	2018	2019	2020
Counties using vendors								
Only AdventFS	36	36	34	33	35	35	34	40
Only Drive Safe	0	0	0	26	29	30	30	35
Both vendors	0	1	3	7	4	4	4	3
Counties self-operating only	30	36	49	24	24	25	29	24
Total	66	73	86	90	92	94	97	102

Note: Counties may simultaneously use a vendor while also self-operating in-person programs. Prosecutors Advisory Council data does not include a list of such counties. The number of counties listed as self-operating in this paper describes those that did not use a vendor but operated a program.

Sources: Staff analysis of Kentucky. Office of the Attorney General, Prosecutors Advisory Council. *Traffic Safety Program Report*, FY 2013 to FY 2020; Josh Hartlage, president, AdventFS. Email to William Spears, Sept. 10, 2021; Harold “Mac” Johns, general counsel, Drive Safe Kentucky. Email to William Spears, Sept. 18, 2021.

AdventFS does not establish formal agreements with county attorneys. It is paid when offenders take its course. It trains county attorney staff to use its program platform.

There is no formal agreement between AdventFS and county attorneys using their services. AdventFS charges a fee of either \$35 or \$37.50 per participant, depending on whether a county uses other AdventFS services and is eligible for a discount. AdventFS receives payment from offenders when offenders take the course. The only agreements between AdventFS and county attorneys are for AdventFS to train a county attorney staff member to use the AdventFS eLearning platform on which the traffic courses are administered. No formal document was provided for this agreement, which appears to be oral in nature. County attorneys are not charged for accessing the eLearning platform and are not obligated to divert a minimum number of offenders.¹¹

Drive Safe establishes oral agreements instead of written agreements with county attorneys. Drive Safe receives the entirety of the fee paid by participants and forwards the remaining fee components.

Drive Safe establishes oral agreements with county attorneys instead of written ones, but it does have a written agreement drafted. Officials can request the use of the written agreement, but none have done so. The written agreement is representative of the oral agreements with county attorneys.¹² The agreement establishes that Drive Safe will receive the entirety of the fee paid by participants and will forward the remaining fee components to AOC, FAC, and county attorneys monthly. The amount to be sent to AOC and FAC is set in the agreement and matches statutory requirements. Drive Safe retains \$40 for each participant. In addition, Drive Safe must present safety courses at local high schools and events at no cost. The agreement also states that Drive Safe may, from time to time, participate in Law Enforcement Appreciation Days at the request of the county attorney. Agreements remain in effect until either party provides written notice of termination, upon which the agreement is terminated after a 30-day period.¹³

Program Contents

There are no requirements for contents of CATS. Each vendor has standardized courses. County attorneys operating their own programs have significant discretion.

There are no statutory requirements or regulations addressing what program contents or curriculum must be included. Vendors have standardized programs, but county attorneys operating their own programs have significant discretion to determine the length, curriculum, testing component, and rigor of the courses they develop independently. In FY 2020, 24 counties operated a county attorney traffic program without using a vendor.¹⁴ Program components may vary significantly between them.

AdventFS's 1-hour and 2-hour online courses address topics such as speeding, distracted driving, and avoiding collisions with bicyclists and pedestrians.

According to AdventFS, its program uses a behavioral driving instruction methodology developed by the Gold Cross Safety Corporation. Its 1-hour online program focuses on poor driving

behaviors such as speeding, tailgating, traffic control device violations, lane-space violations, and distracted driving violations. AdventFS also offers a 2-hour defensive driving course that expands upon the Gold Cross behavioral driving curriculum by adding the following topics:

- How driver attitude influences collision risk
- Strategies for avoiding collisions with bicyclists and pedestrians
- Strategies for driving in inclement weather
- Strategies for parking, backing, and avoiding road hazards

AdventFS courses include quizzes and a final test. County attorneys determine passing scores for tests.

AdventFS is also developing a 4-hour Traffic Misdemeanor course, which includes and expands on the two shorter courses. All courses include quizzes between sections that must be correctly answered to proceed. A test is administered at the end of the course, and a percentage score is provided to county attorneys, who have the discretion to determine what qualifies as a passing score.¹⁵

Drive Safe uses a 2-hour online course. It includes topics such as a review of traffic rules, defensive driving, and distracted driving.

Drive Safe offers an online driver safety education program designed to increase driver awareness and change driving behaviors. The online program is composed of 101 slides divided into six chapters that include educational information, videos, and quizzes that must be passed in order for the participant to proceed to the next chapter. The course takes approximately 2 hours to complete. Chapters are grouped by the following topics:

- Vehicle and equipment preparation
- Driver preparation and review of traffic rules
- Safe and defensive driving
- Seat belt usage
- Distracted driving and associated dangers
- Driving under the influence

The Drive Safe course does not have a final test but has quizzes. Quizzes may be attempted up to four times.

The quizzes between sections must be answered correctly, but the participant may attempt the questions up to four times. There is no test at the end of the course and no score for county attorneys to review.¹⁶

Improv provides a 4-hour online course for the state traffic school. It includes topics such as defensive driving, traffic laws, and distracted driving.

The online Improv course offered for the state traffic school requires offenders to stay at least four hours in the course. Progress may be saved, and the course may be completed in multiple sessions. The program's contents are divided by topic into 18 chapters, which broadly include educational material about defensive driving, road and highway safety, Kentucky traffic laws, preparation of vehicle and driver, recognizing hazardous situations,

driver attitude, distracted driving, driving while impaired, and other useful driving advice.

Improv's course has chapter quizzes and a final exam. Offenders must score at least 80 percent on the exam and are given three attempts.

The course has chapter quizzes and a final examination. A score of 80 percent on the 30-question final examination is necessary to pass the course. Participants are allowed three attempts to pass the final examination. After three attempts, participants will need to reregister and retake the course.¹⁷

The state traffic school has a 4-hour in-person course. Topics include defensive driving, factors that create risk, and distracted driving. The course has an exam, and offenders must score at least 80 percent to pass.

Kentucky Safe Driver provides the in-person 4-hour state course, which is similar to the online course. The course is divided into four lessons, which broadly cover defensive driving, factors that create risk, recognizing hazardous situations, aggressive driving, distracted driving, driving while impaired, and connecting driving behavior to thoughts and reason.

A 10-question exam is administered at the end of the class. A score of 80 percent or higher is required to complete the program.¹⁸

The four programs' course contents are similar. Time commitment varies between the programs; the AdventFS and Drive Safe programs are half the length, or less, of state traffic school options.

Information provided by Drive Safe, AdventFS, and the Transportation Cabinet indicates that the four programs' course contents are substantially similar. Curriculum broadly overlaps, according to summaries of Drive Safe and AdventFS programs and the full content of the State Traffic School programs.

Time commitment varies among these four programs. Both the classroom-based program and the online program offered by the state are 4 hours long; the AdventFS program is 1 or 2 hours, and the Drive Safe program is 2 hours. Both state programs include a testing component that requires an 80 percent passing score. AdventFS's course allows county attorneys to determine their own minimum passing score. Drive Safe's program includes quizzes, which can be retaken up to four times, but does not include a final examination.

CATS Fees

KRS 186.574(6)(c)1 allows county attorneys to charge a reasonable fee for CATS. In FY 2020, the average county attorney fee was \$126.43. AdventFS charged an additional \$35 to \$37.50, and Drive Safe charged an additional \$40.

The total fee for county traffic school participation is composed of four parts. KRS 186.574(6)(c)(1) allows county attorneys to charge a reasonable fee to CATS participants. This is the only portion of the total fee that provides revenue for county attorney offices. Revenue may be used only for "county attorney office operating expenses." In FY 2020, the average county attorney fee was \$126.43. In FY 2020, the per-participant cost vendors charge to

counties using their service was \$35 to \$37.50 for AdventFS and \$40 for Drive Safe.¹⁹ The full list of fees appears in Appendix B.

The reported county attorney portion of fees may include other fees.

A PAC official indicated that this fee represents only the portion received by the county attorney.²⁰ However, the form instructs county attorneys to provide the total cost minus the AOC fee. It does not mention the FAC or vendor fees. For FY 2020, KCAA estimated that the average county fee portion should be approximately \$80.²¹ More than 90 percent of FY 2020 fees were greater than \$80. This difference may indicate that responses are including additional fees beyond the county attorney fee.

There was significant variation in county attorney fees and total fees. In FY 2020, a participant in the county with the lowest total fee paid 41 percent of the amount paid by a participant in the county with the highest fee.

Table 2.4 provides the range of fees charged by county attorney offices providing CATS and the range of total fees charged to offenders. When an office used a range of fees, the midpoint was used to represent a typical fee. There was significant variation in both the county attorney portion and the total fee charged to participants. Also in FY 2020, a participant in the county charging the lowest fee would be charged approximately 41 percent of the amount charged to participants in the most expensive county.

Table 2.4
County Attorney Portion Of Total Fee Charged To Traffic Safety Program Participants
FY 2016 To FY 2020

Fee	Fiscal Year				
	2016	2017	2018	2019	2020
County attorney portion					
Minimum	\$50.00	\$30.00	\$30.00	\$50.00	\$50.00
Average	122.38	122.05	122.93	123.97	126.43
Maximum	170.00	162.00	170.00	170.00	202.50
Total fee					
Minimum	105.00	85.00	105.00	105.00	105.00
Average	207.10	206.61	207.29	207.02	181.43
Maximum	265.00	257.00	265.00	265.00	257.50

Note: The total fee was calculated by adding the Finance and Administration Cabinet, Administrative Office of the Courts, and vendor fees to the county attorney portion reported by the Prosecutors Advisory Council. When counties had a range of fees, the midpoint was used for calculations. Figures in this table may be overestimates. Calculations assumed that the fee reported only included the county attorney portion, but the request form asks for the total cost minus one of potentially three fees.

Sources: Staff analysis of Kentucky. Office of the Attorney General, Prosecutors Advisory Council. *County Attorney Traffic Safety Program Report*, FY 2013 to FY 2020; Josh Hartlage, president, AdventFS. Email to William Spears, Sept. 10, 2021; Harold “Mac” Johns, general counsel, Drive Safe Kentucky. Email to William Spears, Sept. 18, 2021.

CATS Revenue

To provide context for CATS revenue, the report explains county attorney funding. County attorneys receive funds from the state and from local sources, such as CATS, local governments, cold check fees, and delinquent tax collection.

To provide context for the importance of CATS revenue to county attorney offices, the overall funding process for county attorneys will be discussed. County attorneys receive funding from two general sources: state revenue and local revenue. State revenue, sometimes referred to as “on-budget” revenue in state budgeting, is requested through the Prosecutors Advisory Council. The commonwealth pays county attorneys for office operating expenses incurred in the performance of duties as a criminal prosecutor (KRS 15.750(3)).

Local revenue, sometimes referred to as “off-budget” revenue in state budgeting, includes revenue from CATS and from sources such as local government support, bad check collection, and delinquent tax collection. The fiscal court or urban-county council for a county attorney is to pay office operating expenses incurred in the performance of duties as a legal adviser to the county (KRS 15.750(4)).

County attorneys may charge a \$50 fee to issuers of cold checks (KRS 514.040(5)). County attorneys may enter into an agreement with the Department of Revenue to collect delinquent property taxes in exchange for 20 percent of the amount due, which is added to the delinquent sum, or 33 percent if a court action or cross claim is filed (KRS 134.504(7)). Cold check and delinquent tax revenue may be spent only on office operating expenses.

A 2020 APA examination noted that statutes do not define *county attorney office operating expenses*. A 1958 court decision, *Funk v. Milliken*, examined office operating expenses related to attending a state school for county attorneys and found that expenses should be “reasonable in amount, beneficial to the public, and not predominately personal to the officer in the sense that by common understanding and practice they are considered to be personal expenses.”²² An Opinion of the Attorney General later cited this case when discussing office operating expenses with respect to travel expenses. The Opinion of the Attorney General said county attorneys may rely upon 2004 guidelines established by the Kentucky County Attorneys Association.²³

County Attorney State Revenue

County attorney state revenue is requested through PAC, which uses annual surveys to determine county attorney need.

State revenue is requested through PAC, which is responsible for budgetary decision making for the unified prosecutorial system (KRS 15.705). County attorneys are required to submit proposed

budgets to PAC to be included in the unified prosecutorial system budget (KRS 15.750(1)). PAC annually distributes a mandatory survey to county attorney offices. Responses are used to project a budget for the next biennia.²⁴ When considering additional funding, PAC considers current requests, pending requests, and factors such as population, case load, and current staffing.²⁵ County attorneys must separately request additional staff, but PAC typically does not budget for the full amount of the position. Budget requests are usually built off previous budgets, with incremental changes.²⁶

In FY 2020, the average county attorney office received nearly \$334,000 from the state, but there was significant variation.

As a comparison for the amount of revenue received from CATS, Table 2.5 provides the different sources of state revenue received by county attorney offices in FY 2020. Offices typically received nearly \$322,000 in general personnel funds, but three offices received more than \$1 million: Jefferson (\$5.9 million), Fayette (\$2.5 million), and Kenton (\$1.1 million). Offices are budgeted \$3,000 of operating costs, but some offices do not use it all.²⁷ Operating cost revenue was requested by 117 counties. Three counties used no funds for operating costs: Barren, Bullitt, and Lee. Fifty-three counties requested more than \$3,000 for operating costs.

Table 2.5
State Revenue For County Attorneys By Revenue Source
FY 2020

Revenue Source	Minimum	Average	Maximum	Total
General personnel	\$201,462.06	\$321,997.05	\$5,928,348.93	\$52,189,758.31
General operating	0.00	2,998.92	10,863.78	358,483.48
Federal and restricted personnel	0.00	0.00	102,949.59	1,259,932.24
All state revenue	\$203,138.85	\$333,890.31	\$5,932,253.93	\$53,808,174.03

Note: For the average, the median was used instead of the mean because of the presence of counties with significantly more funds. A total of 14 county attorney offices received federal personnel funds, 33 offices received restricted personnel funds, and 117 offices received general operating funds.

Source: Gina Carey, program coordinator and budget adviser, Prosecutors Advisory Council. "LRC FY 2020 County Atty UPS Expenses." Email to Jacob Blevins, Sept. 10, 2021.

Program Revenue

Determining exact CATS revenue is difficult because of insufficient information. In FY 2020, the average office could have earned between \$48,057 and \$50,215. There was significant variation among offices.

County attorneys operating CATS may charge a reasonable fee to participants, but the revenue may be used only for county attorney office operating expenses (KRS 186.574(6)(c)). Determining the exact amount of revenue generated for county attorneys is difficult because some offices use a range of fees but do not report the amount charged to individual offenders. To provide an estimate, a potential range for revenue was generated. The low end assumes all offenders were charged with the lower range of fees, whereas

the high end assumes all offenders were charged with the higher range of fees. The results appear in Table 2.6.

Table 2.6
Total Revenue And Average Revenue Per County Attorney Office
Generated By Traffic Safety Programs
FY 2016 To FY 2020

Fiscal Year	Total Revenue		Average Revenue Per Office	
	Low Estimate	High Estimate	Low Estimate	High Estimate
2016	\$4,680,269	\$4,806,163	\$52,003	\$53,402
2017	4,390,791	4,508,636	47,726	49,007
2018	4,351,608	4,441,878	46,294	47,254
2019	4,938,732	4,979,597	50,915	51,336
2020	4,901,793	5,121,963	48,057	50,215

Note: Traffic safety programs were provided by 90 counties in FY 2016, 92 in FY 2017, 94 in FY 2018, 97 in FY 2019, and 102 in FY 2020. Some county attorneys used a range of fees. Low estimates are calculated assuming all offenders were charged the lowest fee. High estimates are calculated assuming all offenders were charged the highest fee. For average revenue, each estimate summed revenue for all counties using either the lowest possible revenue or the highest possible revenue and then divided by the number of counties offering a traffic safety program. Figures in this table may be overestimates. Calculations assumed that the fee reported included only the county attorney portion, but the request form asks for the total cost minus one of potentially three fees.

Source: Staff analysis of Kentucky. Office of the Attorney General, Prosecutors Advisory Council. *County Attorney Traffic Safety Program Report*, FY 2016 to FY 2020.

Regardless of method, county attorney offices received on average of approximately \$46,000 to \$54,000 per year. However, there is significant variation among offices. Under the low estimate for FY 2020, 29 offices received less than \$10,000 in revenue, while 12 offices received more than \$100,000. Even under the high revenue estimates, total CATS revenue is relatively small compared to state revenue. FY 2020 revenue by county appears in Appendix B.

AOC and FAC also earn revenue from CATS. In FY 2020, AOC earned \$923,775 and FAC earned \$1.1 million.

KRS 186.574(6)(d) requires each CATS participant to pay \$25 to the court clerk, which is paid into a trust account with AOC and is to be used to hire additional deputy clerks and to enhance deputy clerk salaries. KRS 186.574(6)(e) requires each CATS participant to pay \$30 in lieu of court costs, which is forwarded to FAC for nine purposes. The FAC fee was first collected in FY 2016.

Table 2.7 provides the revenue generated for the two agencies for FY 2016 to FY 2020.

Table 2.7
Administrative Office Of The Courts
And Finance and Administration Cabinet
Revenue Generated By County Attorney
Traffic Safety Programs
FY 2016 To FY 2020

Fiscal Year	Administrative Office Of The Courts	Finance And Administration Cabinet
2016	\$898,400	\$1,078,080
2017	854,100	1,024,920
2018	843,075	1,011,690
2019	940,075	1,128,090
2020	923,775	1,108,530

Source: Kentucky. Office of the Attorney General, Prosecutors Advisory Council. *County Attorney Traffic Safety Program Report*, FY 2016 to FY 2020.

There is insufficient information to determine revenue earned by vendors. In FY 2020, AdventFS earned at least \$602,728 and Drive Safe earned at least \$484,080.

Table 2.8 shows the amount of revenue generated by each vendor. In each year, some offices used both AdventFS and Drive Safe. CATS reports do not indicate the number of offenders who were diverted to each vendor, so it is not clear how much revenue was received by each vendor in those counties.

Table 2.8
Vendor Revenue Generated
By County Attorney Traffic Safety Programs
FY 2016 To FY 2020

Fiscal Year	AdventFS Revenue	Drive Safe Revenue
2016	\$527,895	\$539,880
2017	537,600	460,760
2018	535,200	454,480
2019	616,240	511,080
2020	602,728	484,080

Note: Both vendors were used by seven counties in FY 2016, four counties in FY 2017 to FY 2019, and three counties in FY 2020. There is not enough information to determine the funds received by each vendor in each year. This unallocated amount varies from \$40,680 in FY 2018 to \$73,190 in FY 2016. In FY 2020, AdventFS also charged multiple rates for the three counties using both vendors, preventing a revenue estimate for those counties.

Source: Staff analysis of Kentucky. Office of the Attorney General, Prosecutors Advisory Council. *County Attorney Traffic Safety Program Report*, FY 2016 to FY 2020.

Expenditure Of Program Revenue

CATS revenue must be spent on “office operating expenses.” This term is not defined in statute, but the Kentucky County Attorneys Association (KCAA) has developed guidance through technical bulletins. Its 2004 bulletin was recognized by a 2005 Opinion of the Attorney General.

KRS 186.574(6)(c)1 requires county attorneys to spend revenue generated by traffic school and other programs on “office operating expenses,” a term not statutorily defined. In 2004, the Kentucky County Attorneys Association adopted a Technical Audit Bulletin that provided generally accepted standards for the expenditure of revenues generated by cold check and delinquent tax collection programs.²⁸ The following year, an Opinion of the Attorney General formally recognized the Technical Audit Bulletin, citing *Funk v. Milliken* as supporting legal precedent.²⁹

Statutory language for cold check collection and delinquent tax collection requires that proceeds be used for office operating expenses, mirroring the requirements for CATS revenue (KRS 514.040(5) and 134.545). Although this guidance predates statutory changes in 2012 enabling revenue from CATS, the guidelines still apply to any revenue used for “office operating expenses” unless otherwise contradicted by statute.

The KCAA guidance allows for spending on employee salaries but not salary supplements of the county attorney in excess of statutory limits.

The bulletin lists “Generally Accepted Standards for Defining Operating Expenses Associated with the Office of the County Attorney” and “Unauthorized Expenditure of fees.” Notably, “Salaries of employees employed by the County Attorney’s Office” is included as an allowable expenditure while “Salary supplementation in excess of statutory limit” is listed as an unauthorized expenditure.³⁰ An updated 2021 bulletin provided by the KCAA also includes “Any expenditure that uses public funds to the direct personal benefit of the County Attorney or staff and does not benefit the public in any way” in its list of inappropriate expenditure of fees.³¹

Potential Transportation Cabinet Regulation Of CATS

House Committee Substitute 1 for Senate Bill 131 from the 2021 Regular Session would have required the Transportation Cabinet to promulgate regulations for CATS.

Though it was not ultimately included in the final bill, House Committee Substitute 1 for Senate Bill 131 from the 2021 Regular Session would have required the Transportation Cabinet to promulgate regulations for CATS. To promote uniformity among programs, the Transportation Cabinet would have been tasked with establishing required elements of traffic programs and requiring county attorneys to submit program curriculum for approval by the Transportation Cabinet.

KCAA members did not support HCS 1; they were not consulted during its development.

KCAA members stated that county attorneys were unaware of HCS 1 until 30 minutes before the House voted on SB 131.³² Once

they became aware, county attorneys did not support the language because they were not consulted during its development. The KCAA president said county attorneys would want to collaborate with legislators if they decide to write similar legislation in the future, but they did not otherwise have strong feelings against regulations.³³

Transportation Cabinet staff said there were concerns about a lack of uniformity, program rigor, contents, effectiveness, and compliance with eligibility restrictions.

Representatives of the Transportation Cabinet stated that there have been concerns about a lack of uniformity among county attorney traffic safety programs, but they were unaware of any discussion about the specifics of potential regulations. Transportation representatives mentioned concerns surrounding program rigor, contents, effectiveness, and compliance with statutory eligibility restrictions.³⁴

Auditor Of Public Accounts Oversight Of County Attorneys

The Auditor of Public Accounts (APA) has permissive authority to audit county attorneys. An examination of nine county attorney offices found questionable spending. The APA is working with the KCAA to conduct reviews of county attorney offices.

The APA has permissive authority to audit “books, accounts and papers” of county attorneys (KRS 43.070(2)(a)). The APA’s 2020 special examination of nine county attorney offices found questionable spending practices, lack of oversight, and weak internal controls.³⁵ The Kentucky County Attorneys Association is working with the APA to finalize an Agreed-Upon Procedures review of county attorney offices.³⁶

In an Agreed-Upon Procedures review, an auditor performs specific procedures on a subject matter or assertion and then reports the findings without providing an opinion or conclusion.³⁷ Although it is not a financial audit, it will cover CATS revenue through the following procedure:

If the county attorney has a traffic safety program, determine if the fees collected from program participants are deposited and used for the county attorneys office operating expenses in accordance with KRS 186.574(6)(c)(1) by judgmentally selecting a sample of 15 disbursements.³⁸

Chapter 3

Findings And Recommendations

This review produced two major finding areas and 10 recommendations.

The review of county attorney traffic safety programs produced two major finding areas and 10 recommendations, including one matter the General Assembly may wish to consider.

Internal Controls Could Be Improved

Statutes for CATS provide a general structure for identifying requirements and prohibitions.

The statutory framework authorizing county attorneys to operate traffic safety programs provides a structure for identifying general requirements and prohibitions. This framework became effective on July 12, 2012 (2012 Ky. Acts ch. 107, secs. 1 and 2) after amendments to KRS 186.574 and 15.720. The statutes require county attorneys to annually report the fee charged and the total number of offenders diverted into the program by traffic offense to the Prosecutors Advisory Council. The attorney general must annually submit the same information to the Legislative Research Commission.

KRS 186.574 also establishes the types of offenders prohibited from participating in CATS. The same statute requires county attorneys to charge a “reasonable” fee and requires additional payments of \$25 to the Administrative Office of the Courts and \$30 to the Finance and Administration Cabinet.

Internal controls to ensure statutory requirements are followed do not exist.

Although the statutory framework provides general structure for the operation of county attorney traffic safety programs, an adequate internal structure to ensure statutory requirements are followed does not exist. Internal controls can address the risks related to achieving objectives.³⁹ *Risks* are any possibility that an event will occur and adversely affect the achievement of objectives.⁴⁰ Outside of the statutes cited above, there are no regulations or policies to ensure that statutory requirements are being carried out.

KCAA has provided guidance on using CATS revenue for office operating expenses.

However, the Kentucky County Attorneys Association does provide formal guidance on how fees or money paid to county attorney offices shall be used for the payment of operating expenses. More specifically, it provides guidance related to the use of fiscal court contributions and fees pursuant to KRS 186.574

(CATS), KRS 134.545 (delinquent taxes), and KRS 514.040(5) (bad checks).

The guidance provides 18 examples of appropriate expenditures of fees and 14 examples of inappropriate expenditures. Although salaries, benefits, and retirement costs for personnel are considered appropriate expenditures, salary supplementation of “the elected county attorney in excess of statutory limit” is not allowed. Included in the guidance are 10 recommended financial best practices to include establishing separate bank accounts for fee accounts, which are “segregated from any private accounts and from the child support contract monies.”⁴¹

Existing Structure

Lack of internal control framework of CATS is consistent with oversight of county attorney offices in general.

The lack of specificity with respect to internal control framework of county attorney traffic safety programs appears to be consistent with broader oversight of county attorney offices by the Auditor of Public Accounts, Prosecutors Advisory Council, and Department for Local Government (DLG). Although these entities play some statutory role with respect to county attorney offices, none of their duties are specifically directed at traffic safety programs.

The APA has authority to audit county attorneys but is not required to do so.

Auditor Of Public Accounts. The APA’s authority to audit county attorney offices is permissive, allowing the auditor to audit the “books, accounts and papers of all county judges/executive, county attorneys, coroners and constables” (KRS 43.070(2)(a)). In contrast, KRS 43.070(1)(a) *requires* the auditor to annually audit the “funds contained in each county’s budget” and the “books, accounts, and papers of all county clerks and sheriffs.” The latter statute envisions an annual presence to detect “unauthorized, illegal, irregular, or unsafe handling or expenditure of revenue or other improper practice of financial administration,” but the former does not.

Financial audits conducted under KRS 43.070(1)(c) primarily focus on providing independent assessment of whether “financial information is presented fairly, in all material respects, in accordance with recognized criteria. Financial audits conducted in accordance with [generally accepted government auditing standards] include financial statement audits and other related financial audits.”⁴²

The APA and KCAA are finalizing Agreed Upon Procedures, a type of attestation engagement, for county attorney offices.

According to officials from the APA and KCAA, the two agencies are finalizing Agreed Upon Procedures, which are one type of attestation engagement defined in government auditing standards.

Attestation engagements can “cover a broad range of financial or nonfinancial objectives” without a financial audit. Unlike in an examination or a review, however, reasonable or limited assurance (the level of assurance required in a financial audit) is not required as the basis of any AUP findings.⁴³

The Agreed Upon Procedures include determining whether CATS revenue is spent as required by KRS 186.574(6)(c)1.

The APA envisions reviewing FY 2022 documents and, ideally, reviewing approximately one-third of county attorney offices.⁴⁴ Although it is not a financial audit as envisioned under KRS 43.070(1)(a), the AUP specifies procedures to be performed by the APA, which include the following:

If the county attorney has a traffic safety program, determine if the fees collected from program participants are deposited and used for the county attorneys office operating expenses in accordance with KRS 186.574(6)(c)(1) by judgmentally selecting a sample of 15 disbursements.⁴⁵

KRS 43.070(2) does not specifically discuss AUPs with respect to county judges/executive, county attorneys, coroners, and constables. However, KRS 43.070(1)(c) does prescribe criteria by which audits of county clerks and sheriffs may be conducted by an AUP. Agreement between the two parties related to specific Agreed Upon Procedures appears to be consistent with what could result in an audit engagement under the provisions of KRS 43.070(2).

County attorneys must submit a proposed budget to the Prosecutors Advisory Council. PAC does not oversee CATS revenue.

Prosecutors Advisory Council. PAC is responsible for the “administration of the unified prosecutorial system.” The UPS was established to “provide for the general supervision of criminal justice by the Attorney General as chief law enforcement officer of the Commonwealth” (KRS 15.700).

As part of PAC’s administrative responsibilities, KRS 15.750(1) requires each county attorney to submit a proposed budget to PAC for its review, “to be included in the total budget of the unified prosecutorial system and submitted as part of the budget of the Office of the Attorney General in accordance with KRS Chapter 48.” This requirement goes on to state: “Nothing contained herein shall be construed as limiting, restricting, or terminating the authority of local governmental units, including cities, counties, and urban counties, to provide financial support for the office of any prosecutor.” According to PAC officials, it does not oversee fees received by county attorney offices from traffic safety programs.⁴⁶

PAC must send a summary of CATS diversions and CATS fees to LRC. PAC does not verify that this data is correct.

In addition to fiscal administrative responsibilities related to county attorney offices, KRS 15.720(1)(b) requires PAC to send an annual report to the Legislative Research Commission “setting forth the total number of traffic offenders diverted into county attorney-operated traffic safety programs for the preceding fiscal year categorized by county and by traffic offense, and the fee charged by each county attorney-operated traffic safety program.” This information is a summary of information submitted to PAC pursuant to KRS 186.574(6)(a) by October 1 of each year.

According to PAC officials, staff ensures only that submitted data is complete. It does not verify that data is correct, nor does it follow up with county attorney offices.⁴⁷ PAC uses an electronic County Attorney Traffic Safety Program Report To Prosecutors Advisory Council form requesting the following data:

- Fee charged per offender (“Total Cost Less \$25 AOC Fee”)
- Number of offenders who completed the traffic safety programs, categorized by moving violations, equipment violations, and license/registration violations
- Certification that none of the offenders held a commercial driver’s license
- Signature and date

KRS 15.707 provides PAC with broad subpoena power. More specifically, PAC “shall have the power to issue subpoenas requiring the attendance of such witnesses and the production of such records, books, papers, and documents as it may deem necessary for investigation of any matter that it is authorized to consider or reasonably necessary therefor.”

The Department for Local Government (DLG) has broad authority for the administration of the county uniform budget system, which is under the state local finance officer.

Department For Local Government. DLG has broad authority for the administration of the county uniform budget system, which is under the state local finance officer. More specifically, KRS 147A.021(4) requires DLG to “exercise all of the functions of the state local finance officer provided in KRS Chapters 66, 68, and 131 relating to the control of funds of counties, cities, and other units of local government.” KRS 147A.020(1) requires the state local finance officer to “exercise all administrative functions regarding county and local government budgets, as provided in KRS 68.210 to 68.360.”

County attorneys are not explicitly mentioned in statute, but KRS 68.210 grants the state local finance officer authority to inspect financial operations for county officials.

Although county attorneys are not explicitly mentioned, KRS 68.210 grants specific authority to the state local finance officer, who “may inspect and shall supervise the administration of accounts and financial operations and shall prescribe ... a system of uniform accounts for all counties and county officials.” The

state local finance officer is also required to “review the county uniform budget system to determine if it is consistent with state law and generally accepted accounting practices.” If inconsistencies are identified, the state local finance officer has the authority to “investigate, examine, and supervise the accounts and operations of all local governments and local government officers.”

In addition, KRS 46.010 requires county treasurers and county officers who receive or disburse state funds to “keep an accurate account of receipts and disbursements, showing a daily balance of receipts and disbursements.” Although KRS Chapter 46 does not define *state funds* or *public funds*, other statutory criteria exist. For example, for the purpose of general construction of statutes, KRS 446.010(41) defines *state funds* or *public funds* as “sums actually received in cash or negotiable instruments from all sources unless otherwise described” Although used primarily for special purpose governmental entities, KRS 65A.010(7) also provides guidance by defining *public funds* as “any funds derived from the levy of a tax, fee, assessment, or charge”

The APA, PAC, and DLG each appear to have authority to audit, investigate, or establish guidelines related to county attorney officers.

Based on the preceding statutory authority, it appears that the APA, PAC, and DLG each have some type of authority to audit county attorney officers, to investigate them, or to establish guidelines related to them. However, with the exception of the APA’s recent interaction with KCAA to bring county attorney offices under AUP oversight, these entities have not worked collaboratively to identify an adequate framework for oversight.

The APA’s Agreed Upon Procedures are a start toward assessing the internal control framework but do not cover some CATS-related areas.

Although the proposed AUP includes only judgmental sampling related to county attorney traffic safety program operating budgets, it provides an impetus toward further review of internal controls. Other areas that are not included in the AUP, however, include reporting requirements (KRS 186.574(6)(a) and 15.720(1)(b)), fee distribution (KRS 186.574(6)(d) and (e)), and ineligible offenders (KRS 186.574(6)(b)).

Recommendation 3.1

Recommendation 3.1

The Auditor of Public Accounts and the Kentucky County Attorneys Association should continue moving forward with the establishment of Agreed Upon Procedures. Findings related to the procedures should be used as a basis from which to expand Agreed Upon Procedures cycles to include reporting requirements, fee distributions, and ineligible offenders.

Recommendation 3.2**Recommendation 3.2**

The Auditor of Public Accounts, Kentucky County Attorneys Association, Prosecutors Advisory Council, and Department for Local Government should work together to draft and propose for the legislature a more permanent internal control framework, once the Agreed Upon Procedures cycle concludes. Discussions should also include the findings and recommendations from this Legislative Oversight and Investigations report.

Traffic Safety Program Controls Could Be Improved

The lack of an adequate internal control framework for CATS creates inherent risk related to four statutory areas.

Although the statutory framework discussed in the previous finding establishes legislative expectations and prohibitions related to the county attorney traffic safety program, the lack of an adequate internal control framework creates inherent risk within the program. An internal control framework is an integral part of a process that provides reasonable assurance that objectives are achieved. Objectives include the effectiveness and efficiency of an operation, reliable reporting for internal and external use, and compliance with applicable laws and regulations. Various types of controls used by governmental entities to achieve objectives typically include plans, methods, policies, and procedures.⁴⁸

The lack of an internal control framework and oversight of the county attorney traffic safety program creates a risk that statutory provisions are not being carried out related to four statutory areas: reporting, ineligible offender participation, use of fee revenue, and distribution of fee revenue.

Reporting

There is no process in place to ensure that CATS information reported to PAC and LRC is consistent and accurate.

There is no process in place to ensure that information reported by county attorneys to PAC (and subsequent information reported by PAC to LRC) is consistent and accurate. In addition, the form leaves ambiguity with respect to county attorney fees and the number of offenders diverted into the program versus the number of offenders who completed the program. As a result, PAC and LRC cannot be reasonably confident that it is consistently and accurately reported each year, which presents challenges in using the information as a basis for considering changes to the program.

PAC approved a form for collecting CATS information used in annual reports to LRC.

PAC Form. According to PAC, the council approved the use of the Traffic Safety Program Report to Prosecutors Advisory

Council form for county attorneys in order to collect and subsequently report information. Each year, county attorneys complete the form and mail, fax, or email the completed form to PAC, which uses the information for its annual report. PAC may make changes to the form if statutory language changes or if it determines changes are needed related to data clarity.⁴⁹

The PAC form includes a certification that ineligible offenders, particularly CDL holders, did not participate in CATS.

Since 2013, changes to the PAC have been minimal, with the exception of one substantive change in 2014 where certification language was added.

The undersigned does hereby certify that to the best of their knowledge none of the above referenced offenders held a commercial driver's license and that the Traffic Safety Program operated by this County is in compliance with the provisions of KRS 186.574(6)(b) which **PROHIBITS** offenders holding a commercial driver's license from participation in a County Attorney operated Traffic Safety Program.

From 2013 to 2014, the form captured the following additional information:

- County
- Fiscal year
- Fee charged per offender
- Number of offenders diverted into Traffic Safety Program
 - Moving violations
 - Equipment violations
 - License/registration violations
 - Total (violations)
- Signature

In 2016, additional language was added to break out the statutory AOC fee, which was listed incorrectly as \$30 instead of \$25 pursuant to KRS 186.754(6)(d). For the 2021 form however, the fee amount was corrected to reflect the \$25 AOC fee amount. According to PAC, the modification occurred “to break out the AOC fee to avoid confusion with county attorneys as to what actual total cost PAC was looking for to complete the annual report. Since county attorneys were not sure if their data of total cost should include the AOC fee or not, so to avoid this we interpreted total costs as funds excluding the AOC fee. This allowed for consistent data.”⁵⁰

The PAC form is in line with statutory requirements but would benefit from adjustment to ensure consistency.

The PAC form is essentially in line with statutory requirements but would benefit from adjustment to ensure clarity and consistency. For example, whereas KRS 186.574(6)(c)2 requires “total

offenders diverted,” PAC’s form requests “number of offenders who completed traffic safety program.” This indicates that individuals may be diverted in a given fiscal year but not counted in that year if they complete the program in the subsequent fiscal year.

It should be noted that in 2015, the “number of offenders diverted into Traffic Safety Program” language was changed to the “number of offenders who completed Traffic Safety Program.” According to PAC, the change was made to better reflect that the participants counted “were just those that completed during the report period.”⁵¹

From 2013 to 2019, the PAC form provided space to identify which vendor was used. That space was removed in 2020, preventing calculation of fee components.

From 2013 to 2019, the PAC reports included a column that identifies selected vendors and associated fees. Vendors in the past have voluntarily shared lists of the counties they serve. PAC has received this information in previous years, but for the 2020 report, it did not include the vendor identification column, preventing use of the PAC report to calculate county attorney fee, county attorney revenue, vendor choice, and vendor cost.

Statute does not require a breakout of CATS fees, but disaggregated information could prove more meaningful to PAC and the legislature.

Although statute does not require a breakout of the total fee, disaggregated information could prove more meaningful to PAC and the legislature. For example, the “fee charged per offender” line could be disaggregated in order to clearly break out the four parts of the overall fee. For example, disaggregated information as follows could prove more beneficial.

Vendor fee	\$ _____ +
County attorney fee	_____ +
AOC fee	<u>25.00</u> +
FAC fee	<u>30.00</u> =
Total fee charge	\$ _____

Verification Of Reporting Information. According to KCAA officers, county attorneys generally do not verify the reporting information sent to PAC. Rather, it appears that county attorneys rely more on using the PAC form to certify information.⁵²

In a survey of county attorneys, 43 respondents (94 percent) said they perform some verification before submitting CATS information to PAC.

However, 46 county attorneys answered a Legislative Oversight survey question on data verification, and 43 of them (94 percent) indicated they do some type of verification of information before sending it to PAC.

Of the respondents who verified CATS information, most used vendor records or compared vendor records with their office records.

Of those 43 responses, 18 indicated that the county attorneys compare information in vendor reports with office records to verify accuracy. Fourteen responses said they use vendor reports to compile that information and share it with PAC but did not provide further clarification on their method of verification. Eleven indicated that they do verify the data but did not provide further clarification. The three remaining county attorneys (6 percent) stated they do not verify report information; one of them stated that in the future the office will keep a list of referrals and completions for verification. A summary of the county attorney survey appears in Appendix C.

A total of 90 percent of reported fees were greater than the average provided by KCAA. County attorneys may be including additional fees in the reports.

Legislative Oversight staff requested and reviewed PAC reporting data from 2013-2020. As part of its review, staff did identify instances that point to inaccuracies, which are not immediately conclusive without further analysis. For example, staff identified that for FY 2020, more than 90 percent of reported fees were greater than the \$80 average provided by KCAA.⁵³ A PAC official stated that the fee should include only the county attorney portion.⁵⁴ This indicates that county attorney offices could be including additional fees such as the AOC and FAC fees in the PAC report, which could give the impression that county attorney offices are collecting more fee revenue than they are actually receiving.

Recommendation 3.3

Recommendation 3.3

The Prosecutors Advisory Council should consider formally reviewing the County Attorney Traffic Safety Program Report form to determine whether changes are necessary. At a minimum, it should consider whether to disaggregate the total fee charged per offender by vendor fee, county attorney fee, Administrative Office of the Courts fee, and Finance and Administration Cabinet fee.

Recommendation 3.4

Recommendation 3.4

The Prosecutors Advisory Council (PAC) should consider whether to request that PAC staff develop processes to more formally follow up on incomplete or apparently inaccurate information from county attorney offices. For example, staff could on a quarterly basis review a sample of the *County Attorney Traffic Safety Program Report* forms to ensure that submitted data is consistent and accurate.

Ineligible Offenders

There is no formal process for determining whether ineligible offenders participate in CATS. There is a high risk of such participation.

There is no formal process for determining whether ineligible offenders under KRS 186.574(6)(b) are participating in the county attorney traffic safety programs. Ineligible offenders include commercial driver's license holders; drivers charged with DUI offenses, motor vehicle security offenses, and offenses with mandatory suspension and revocation; and drivers without a license. As a result, the risk is high that ineligible offenders are participating in county attorney traffic safety programs, contrary to statute.

The PAC report requires county attorneys to certify that ineligible offenders have not participated in CATS. CDL holders are explicitly noted in the certification.

As discussed previously, PAC updated its *County Attorney Traffic Safety Program Report To Prosecutors Advisory Council* in 2014. The update included a certification for county attorneys to sign, which acknowledges that, to the "best of their knowledge," ineligible offenders under the aforementioned statute are not participating in CATS. Offenders who hold a commercial driver's license are explicitly noted in the certification, but other ineligible offenders are not.

According to PAC, the 2014 change occurred so there would be no misunderstanding by county attorneys about whether CDL holders are eligible to participate in "any traffic safety programs."⁵⁵ Since the statute explicitly prohibits CDL holders from participating in local programs, including the certification in the PAC form is a positive step toward statutory compliance. However, there are no internal controls to routinely determine whether ineligible offenders are inadvertently participating.

In FY 2014, 17 county attorneys stated that ineligible offenders participated in CATS.

In its review of county attorney forms, Legislative Oversight staff noticed 17 instances where county attorneys stated that ineligible offenders inadvertently participated in the program in FY 2014. The counties involved were Boyd (2), Franklin (5), Green (1), and Hardin (9). After reviewing the forms from 2015-2020, staff did not identify additional instances. Although Transportation Cabinet officials began tracking CDL holder inquiries in 2018, the 17 instances identified by staff suggest a problem prior to that year.

Transportation Cabinet officials provided a list of 281 CDL offenders who claimed to have completed CATS. Cabinet officials began tracking CDL offenders in 2018 after some asked why convictions were not removed from their records.

As part of discussions with Transportation Cabinet officials, staff were provided with a table of 281 instances of CDL offenders who participated in county attorney traffic safety programs, according to the cabinet. These offenses occurred in 2007, 2010, and 2014 through 2021, across 65 Kentucky counties. The cabinet was made aware of these instances after CDL holders contacted them to ask why convictions were still on their records. It also became aware

of instances from expungement orders that cabinet staff review for CDL citations and from reports that provide disposition of diversions.⁵⁶ Table 3.1 provides CDL offenders by the original year charged and the type of charge.

Table 3.1
CDL Offenders Diverted To County Attorney Traffic Safety Programs By Year Charged And Offense Collected From 2018 To September 28, 2021

Year Charged	Speeding	No Insurance	Other	No Match	Total
2007	0	0	1	0	1
2010	0	0	1	0	1
2014	0	0	1	0	1
2015	0	1	1	0	2
2016	6	0	3	0	9
2017	31	7	19	2	59
2018	37	12	12	0	61
2019	33	5	12	0	50
2020	41	1	18	3	63
2021	24	2	6	0	32
Unknown	2	0	0	0	2
Total	174	28	74	5	281

Note: The year represents the year the offender was originally charged. The “No Match” category represents citations with a code that does not match the standardized charge codes.

Source: Staff analysis of data from Tabatha Aldridge, program coordinator, Kentucky Transportation Cabinet, Graduated Licenses Program. “Diversion Table.” Email to William Spears, Sept. 28, 2021.

Transportation Cabinet officials have spoken to county attorneys, judges, court clerks, and AOC representatives to let them know CDL holders are not eligible for CATS.

Cabinet officials began tracking CDL holder inquiries in 2018, but the 17 instances from the county attorney form suggest such inquiries had also been happening previously. After further discussion, officials stated that even though CDL offenders participated in the county attorney traffic safety programs, their convictions cannot be set aside. Officials went on to state that they also spoke to multiple county attorneys, judges, court clerks, and AOC representatives to let them know that CDL holders are not eligible to participate in local programs.⁵⁷

Transportation Cabinet officials said it would be beneficial if they received notice when an offender attends CATS so they may check whether the conviction is eligible for diversion.

If needed, Transportation Cabinet officials use CourtNet to verify the status of CDL offenses and whether CDL holders are participating in or have participated in a county attorney traffic safety program. Officials stated that it would be beneficial if they received notice whenever an offender attends a county attorney safety program, which would allow them to “check the record to see if their conviction is eligible to be diverted or if it needs to stay on the record such as with a CDL holder.”⁵⁸ Officials did not discuss checking for other offenses, but comparing diversions with

CourtNet would allow them to identify other ineligible offenses, such as DUI offenses.

The Transportation Cabinet must notify courts when ineligible offenders are sent to the state traffic school. A similar requirement for CATS could enhance communication between the cabinet and county attorneys.

After reviewing Kentucky Revised Statutes, Legislative Oversight staff identified KRS 186.574(5)(e), which requires the cabinet to notify the “sentencing court regarding any person who was sentenced to attend state traffic school who was ineligible to attend state traffic school.” The statute also requires that a “court notified by the cabinet pursuant to this paragraph shall return the person’s case to an active calendar for a hearing on the matter.” A similar requirement related to county attorney traffic safety programs could enhance communication between the Transportation Cabinet and county attorneys.

Transportation Cabinet officials noted that, when they become aware that a charge may have been omitted from the record because someone had attended a county traffic school, they “take corrective action to add the charge to the driver’s record as required” by federal law and state statutes and regulations.⁵⁹ However, Legislative Oversight staff are in the process of working with the Transportation Cabinet and reviewing CourtNet to ensure there are no outstanding issues to be resolved with the 281 offenders.

Recommendation 3.5

Recommendation 3.5

Transportation Cabinet staff should continue to document cases where offenders with commercial driver’s licenses (CDLs) are participating in or have participated in a county attorney traffic safety program. They should also ensure that CDL offenders have not had convictions expunged from their records.

Recommendation 3.6

Recommendation 3.6

The Kentucky County Attorneys Association should work with the Transportation Cabinet to draft guidance for county attorneys to ensure that cabinet officials receive notice whenever an offender attends a county attorney safety program.

Recommendation 3.7

Recommendation 3.7

The legislature may wish to consider amending KRS 186.574(5)(e) to include county attorney traffic safety programs for notification of ineligible offenders.

County Attorney Office Operating Expenses

KRS 186.574(6)(c) requires CATS revenue to be used for “county attorney office operating expenses” but does not define the term. There is no formal process to ensure CATS fees are expended for operating expenses.

KRS 186.574(6)(c) allows county attorneys to charge a reasonable fee to program recipients but explicitly restricts the use of that revenue. Although the statute intends for fee revenue to be used for “county attorney office operating expenses,” it does not define that term. There is also no formal process for ensuring that fees from county attorney traffic safety programs are expended for operating expenses. The absence of such a process increases the risk that fee revenue could be used for purposes contrary to state statute.

In a survey of county attorney offices, 47 offices indicated they use guidance to determine appropriate expenditures of CATS revenue. They were most likely to use internal guidance and least likely to use local guidance. Offices commonly used multiple sources.

In Legislative Oversight’s survey, county attorneys were asked to indicate the types of guidance used to ensure CATS revenue is not being used for inappropriate expenditures. Internal guidance from PAC was used most often, and local guidance was used the least. Most offices used multiple types of guidance, with only three offices using a single source. The most common number of sources used was three, in 17 offices. Two offices reported using all five categories, and one of those two offices indicated that it also paid for an audit at least every office term. Table 3.2 provides more detailed information.

**Table 3.2
 Sources Of Expenditure Guidance For County Attorney Offices**

Internal	Prosecutors Advisory Council	Attorney General	Auditor Of Public Accounts	Fiscal Court/ Urban-County Council	Other	Total Offices
36	35	27	27	4	20	47

Note: The number of offices using each method sums to more than 47 because respondents could select more than one answer.

Source: Legislative Oversight survey.

Of the 20 offices that indicated “Other” guidance, seven mentioned receiving guidance from the Kentucky County Attorneys Association, either directly or through technical bulletins. Seven offices mentioned that they receive opinions from certified public accountants or through audits. Two offices followed the standards of *Funk v. Milliken*. One office used statutes, and another followed ethics ordinances and segregation of duty policies. Another office used the category to say they “have no inappropriate expenditures.”

One office’s response said its staff was unsure what spending of CATS revenue is authorized and was “very reluctant to spend the money.”

One office’s response said its staff was unsure of what is considered authorized, so it was “very reluctant to spend the money.” Another office used the category to state that there was not enough revenue to pay for anything outside of personnel and

office supplies. One office's response stated that it turned over all funds to the local fiscal court and then the court provided a budget for operating expenses.

Despite guidance, a previous APA found questionable expenditures by county attorneys.

Although 47 county attorney offices use some type of guidance to ensure that traffic safety program revenue is expended correctly, there is still a high risk that revenue could be used contrary to state statute. For example, the auditor of public accounts has firmly established a high risk of questionable expenditures, primarily related to a lack of segregation of duties and lack of supporting documentation. More specifically, the APA identified questionable expenditures related to donations, bonus payments, and one-time payments during a 2020 examination of select Kentucky county attorney offices. These expenditures were paid with funds that share statutory restrictions similar to those for CATS revenue, and one office spent CATS revenue on credit card payments.⁶⁰

KCAA has provided expenditure guidance for county attorneys, including examples of appropriate and inappropriate expenditures, as well as financial best practices.

Kentucky County Attorneys Association And Auditor Of Public Accounts. As discussed previously, KCAA provides formal guidance on how fees or money paid to county attorney offices shall be used for the payment of operating expenses. This guidance includes the use of CATS revenue, and provides 18 examples of appropriate expenditures and 14 examples of inappropriate expenditure of fees. In the guidance are 10 recommended financial best practices, including the establishment of separate bank accounts for fee accounts, which are "segregated from any private accounts and from the child support contract monies."⁶¹

KCAA is working with the APA to finalize Agreed Upon Procedures, which will sample CATS revenue use.

The KCAA is also working with the APA to finalize Agreed Upon Procedures, which include a procedure to judgmentally sample county attorney traffic safety program revenue.

If the county attorney has a traffic safety program, determine if the fees collected from program participants are deposited and used for the county attorneys office operating expenses in accordance with KRS 186.574(6)(c)(1) by judgmentally selecting a sample of 15 disbursements.⁶²

The initial KCAA technical audit bulletin was based on a case discussed in OAG 05-002, where the Attorney General opined that "A county attorney may use proceeds from the county attorney's delinquent real estate tax collection account to pay for travel to board meetings and other events sponsored by the Kentucky County Attorneys' Association because these constitute county attorney office operating expenses pursuant to KRS 134.545."⁶³

The 2005 opinion concluded by stating that the Attorney General’s Office was in the process of promulgating regulations, which would delineate additional parameters.

Although there is a risk that county attorney offices will make expenditures contrary to state statute, the cooperation between KCAA and the APA decreases that risk. For example, the current KCAA guidance and the proposed AUP cycle can work in tandem to strengthen internal controls. Findings from AUPs can also provide information to help strengthen future KCAA guidance, as well as helping to establish additional internal controls to ensure statutory requirements are being carried out.

One area not addressed by the APA or KCAA is the lack of contracts or procurement processes for CATS vendors.

One area, however, that the APA and KCAA have not addressed is the lack of contracts or procurement processes at the county attorney office level. Although KRS 186.574(6) does not include requirements related to contracts and procurement of services, it is always desirable to enter into some type of agreement or contract when state funds and services are involved. Such processes “simplify, clarify, and modernize the law governing purchasing by the Commonwealth,” according to Kentucky’s Model Procurement Code (KRS 45A.010(2)(a)).

Working with KCAA and PAC, the state local finance officer could assist with strengthening internal controls for contracting processes and templates for county attorneys.

KRS 147A.020(3)(b) also grants the state local finance officer with the authority to “provide technical assistance and information to units of local units of local government on matters including but not limited to fiscal management, purchases, and contracts.” Working with KCAA and PAC, the state local finance officer could lend assistance with strengthening internal controls in the area of establishing contracting processes and templates for county attorney offices to use.

Neither Advent nor Drive Safe uses written agreements with county attorney offices.

Finally, during discussions with KCAA officers, Legislative Oversight staff were told that 44 counties use Advent as their vendor and 39 counties use Drive Safe Kentucky.⁶⁴ Neither vendor uses a written agreement with county attorney offices. Drive Safe has a drafted agreement available upon request, but no officials have asked for it. The contract lists 17 provisions of agreement and is representative of oral agreements that are made with county attorneys according to Drive Safe.

- 1) Purpose of traffic safety program, 2) provision of services by Drive Safe, 3) discretion of county attorney, 4) cost of program, 5) payment to Drive Safe, 6) disbursement to circuit clerk, 7) disbursement to KY Finance Cabinet, 8) disbursement to county attorney, 9) allowance for chargebacks, 10) school safety program, 11) law

enforcement appreciation day/local festivals, 12) intellectual property, 13) survival of agreement, 14) term of agreement, 15) terms and conditions for use of web site, 16) counterparts, and 17) miscellaneous.⁶⁵

Providing agreements on behalf of CATS vendors and county attorney officers creates a strong internal control.

Providing agreements on behalf of traffic safety program vendors and county attorney offices creates a stronger internal control to ensure that all parties' responsibilities are clearly annotated, helping to reduce the risk of potential issues related to waste, fraud, and abuse.

Recommendation 3.8

Recommendation 3.8

The Kentucky County Attorneys Association should consider working with the state local finance officer and Prosecutors Advisory Council to draft an agreement template for county attorney offices to use that outlines the responsibilities of the vendor and county attorney offices.

Recommendation 3.9

Recommendation 3.9

The Kentucky Attorney General's Office should consider promulgating regulations establishing additional parameters for the term *operating expenses* and a requirement for the use of agreements by county attorney offices when conducting business with traffic safety program vendors.

Fee Distribution

KRS 186.574 requires CATS participants to pay \$25 to AOC and \$30 to FAC.

KRS 186.574(6)(d) requires each CATS participant to pay a \$25 fee to the court clerk. This fee is paid into a trust and agency account with AOC. KRS 186.574(6)(e) requires participants to pay a \$30 fee to the county attorney in lieu of court costs, which is forwarded to FAC for further distribution.

Advent says it receives offender payments through an online technology, then distributes the funds monthly to other parties.

Vendor Participation. Advent and Drive Safe were both asked how they receive fees from participants and how the fees are distributed to county attorneys, AOC, and FAC. Advent stated that it received offender payments through its online and lockbox payment technologies. It then distributes funds monthly to other parties.⁶⁶

AOC's portion is sent to the court clerk of each county with an itemized report of students. FAC's portion is sent to FAC with an itemized report of all counties for which fees were collected. The county attorney portion is sent with an itemized report of all students.

The \$25 AOC fee is sent to the court clerk of each county through a single check with an itemized report of all students. The \$30 FAC fee is sent to FAC by a check, with an itemized report of all counties for which fees were collected. The county attorney's portion of the payment is sent through a check or electronic transfer with an itemized report of all students for funds reconciliation. All disbursement activity is auditable through Advent's online platform.⁶⁷

Drive Safe sends individual checks for monthly totals to the court clerk, FAC, and the county attorney, accompanied by a list of offenders.

Drive Safe also collects all fees from participants. Each month, Drive Safe sends individual checks for monthly totals to the court clerk, FAC, and the county attorney. Drive Safe also sends reports of offenders who have completed the program to each entity. The reports contain the name, license number, offense, and date of completion for each participant. County attorneys also receive emails when individual offenders complete the program.⁶⁸

Legislative Oversight Staff Verification. To verify that FAC is distributing its portion of the fee, staff used the statewide accounting system (eMARS) and accessed FY 2021 annual revenue data for all agencies. Revenue Source Code R467, "Co Atty Operated Traffic School Fees," was identified as the code used to track CATS revenue. For FY 2021, \$1.1 million was sent to agencies for disbursement.

According to statewide accounting system data, FAC is appropriately distributing its fee to the required agencies and funds.

Using the functionality in eMARS's financial accounting system, the \$1.1 million was disaggregated to seven departments and eight funds. The disaggregated amounts were compared to percentages required by KRS 186.574(6)(e). Table 3.3 provides the disaggregated amounts and illustrates the proper disbursement of FAC fees.

Table 3.3
Finance And Administration Cabinet Distribution
Of County Attorney Traffic Safety Program Revenue
FY 2021

Recipient	Fund	Revenue	Statutory %	KRS Section
Department of Public Advocacy	Court Cost Fees	\$64,488.55	5.8%	186.574(6)(e)3
Kentucky State Police	Forensic Lab-DNA Analysis	13,342.46	1.2	186.574(6)(e)5
Public Protection Cabinet	Office of Claims and Appeals Administration	63,376.66	5.7	186.574(6)(e)4
Cabinet for Health and Family Services, Department for Aging	Brain Injury Trust Fund	101,180.31	9.1	186.574(6)(e)7
Cabinet for Health and Family Services, Department for Public Health	Spinal Cord Trust Fund	120,082.13	10.8	186.574(6)(e)1
Cabinet for Health and Family Services, Behavioral Health	Community Mental Health Services Fund	92,285.34	8.3	186.574(6)(e)9
Finance and Administration Cabinet, County Costs Executive Branch Department Funds	FIN-CO-Cost-Court CST Allocation Fund	369,141.33	33.2	186.574(6)(e)8
Finance and Administration Cabinet, County Costs Executive Branch Department Funds	Ct Cost PD and Local Governments Fund	287,718.22	25.9	186.574(6)(e)2 186.574(6)(e)6
Total		\$1,111,615.00		

Source: Staff analysis of eMARS, Financial Accounting System 3 expenditures for Revenue Source Code R467, FY 2021.

There was no information available to verify how FAC CATS revenue was expended by departments and funds that received it.

Staff attempted to find corresponding expenditures related to the FY 2021 FAC amounts by fund and department but could identify only aggregated expenditures from those funds by object name and disaggregated expenditures by various object codes within those categories. In other words, staff could provide assurance that disbursements were made properly but could not verify how receiving departments and funds expended the money. In response to this finding, the Office of the Controller said it is willing to work with any of the eight agencies to track expenditures of the fees.⁶⁹

AOC uses a generic revenue source code for its CATS revenue, even though a specific code is available.

For AOC fees, staff accessed FY 2017 annual revenues using eMARS's financial accounting system. An APA data bulletin identified AOC's FY 2017 CATS revenue as \$843,997.85.⁷⁰ By comparing the APA-identified amount with records from the Circuit Clerks Fund, staff identified Revenue Source Code R827 "Other Receipts" as the code used for AOC CATS revenue.

Because of the irregularity of CATS revenue, AOC does not use it to hire additional deputy clerks or enhance salaries. Instead, deputy clerks receive a one-time payment each year.

AOC officials stated that in FY 2018 to FY 2020, no additional deputy clerks were hired, nor were existing deputy clerks' salaries enhanced with CATS revenue. Since the funds are not guaranteed to come in or be at the same level every year, it is impossible to

calculate a recurring cost related to the fee revenue. Instead, AOC gives the deputy clerks a one-time payment each fiscal year.

The amount of this payment depends on the revenue and the number of deputy clerks during any given fiscal year. For FY 2018, each full-time deputy clerk received (pre-tax) \$335; for FY 2019, each received \$400; and for FY 2020 each received \$486.90. Part-time deputy clerks received half of what the full-time deputy clerks received in each fiscal year.

AOC also indicated that when it asked FAC to create a revenue code for receipt of this revenue, AOC did not know about the appropriate revenue source code (R467).⁷¹ In response to this finding, AOC officials say they have started using this code.⁷²

Recommendation 3.10

Recommendation 3.10

The Administrative Office of the Courts should continue to use the R467 revenue source code in the future.

Appendix A

Responses To This Report

Kentucky County Attorneys Association

November 8, 2021

Rep. Jason Nemes, Co-Chair
Sen. Danny Carroll, Co-Chair
Legislative Oversight & Investigations Committee
c/o Mr. William Spears, LRC

Re: County Attorney Traffic Safety Programs

Dear Committee:

The Kentucky County Attorney’s Association (hereinafter “KCAA”) appreciated the opportunity to discuss County Attorney Traffic Safety Programs (hereinafter “CATS”) administered by Kentucky’s County Attorneys.

The CATS programs serve a dual purpose. First, the programs offer corrective driving techniques to motorists cited for a traffic offense—helping work toward safer roads and highways. Second, they provide much needed supplemental funds to county attorney offices, the DPA, the brain and spinal cord injury trusts, counties (for jail related costs), the victim’s compensation trust, and deputy clerks.

While the legislature funds some salary costs associated with our prosecutorial duties on behalf of the Commonwealth, many offices face the challenge of having to supplement those state salaries to keep up with the challenging work environment. That revenue comes in part from CATS programs.

The CATS programs also help offset the associated costs of operating a prosecutorial office. With only \$3,000 allocated by the state to run an office for the entire year, CATS revenues help pay for computers, internet, copiers, phones, postage, and other basic requirements for prosecuting the hundreds of thousands of cases filed against those alleged to have broken state laws.

As noted in the report, most of our county attorney offices use a vendor to help administer the program. Other counties, like Fayette and Henderson, opt for an in-person class utilizing prosecutors and law enforcement personnel. Regardless of the method, county attorneys and staff must be “hands on” in following the cases and inputting the data to ensure that the dockets are up to date and cases are dismissed appropriately. Each office must verify and track the data—otherwise our court dockets would be chaos. The KCAA believes the work of our staff in collecting and tracking the data can be reasonably relied upon to produce the reports

required by the statute.

The KCAA offers no objection to some of the simple, low-cost proposals contained in the report. For example, re-drafting the form that gets reported by the Prosecutor’s Advisory Council to better detail the information requested is a good step. The KCAA does have concerns about other proposals that would duplicate the work already being done by our staff and for which the associated costs would undoubtedly outweigh the benefit.

Over the past several months the KCAA and the Kentucky Auditor’s Office worked together on proposals for agreed upon procedures to review county attorney offices. Larger counties, such as Jefferson, Fayette, Kenton, and Boone already pay for full-scale audits of operating funds. Other smaller counties, such as those operating on budgets of \$25,000 or less, simply cannot afford the cost. We look forward to continuing our dialog with the APA and working toward a solution that ensures transparency without decimating small county budgets.

The KCAA proactively worked to further detail appropriate expenditures through the revised Technical Bulletin adopted earlier this year. Other agencies declined to put a proverbial “stamp of approval” on the guidelines but did provide feedback and review. We welcome further input.

We strongly recommend that each legislator reach out to his or her local elected county attorney(s) with questions about the program offered in his or her community. As with all cases, it is vital that prosecutors retain discretion—this includes the discretion to run a traffic safety program.

This review has highlighted the importance of these programs to county attorneys. Should any legislative change be desired, we request that the KCAA be consulted at the beginning of the process to ensure the opportunity to provide input to a program that impacts us so directly.

The KCAA refers the committee to our original responses to the draft report. These responses provide more detailed information in response to the proposed recommendations.

We look forward to continuing to work with our partners in the legislative, executive, and judicial branches on this and other issues of mutual concern. Please do not hesitate to reach out should you require further information or have additional questions.

Sincerely,

Stacy FL Tapke, President
Kenton County Attorney

Also Signing:

Jenny Oldham, President-Elect, Hardin County Attorney
Martin Hatfield, Immediate Past-President, Pulaski County Attorney
Jennie Haymond, Secretary, Madison County Attorney
Alan George, Treasurer, Woodford County Attorney

Legislative Oversight And Investigations

Michael O'Connell, Director, Jefferson County Attorney
Joe Ross, Director, Logan County Attorney
Jeremy Logsdon, Director, Grayson County Attorney
Kevin Cockrell, Director, Montgomery County Attorney

Prosecutors Advisory Council

The Prosecutors Advisory Council did not provide a written response.

Auditor Of Public Accounts

November 5, 2021

Legislative Oversight and Investigations Committee
Legislative Research Commission
702 Capital Avenue
Frankfort, Kentucky 40601
Delivered via email

To Whom It May Concern:

The Office of the Auditor of Public Accounts (“APA”) appreciates the opportunity to comment on the recommendations in this report of the Legislative Oversight and Investigations Committee. APA would first like to note that while it is not a regulatory or direct oversight agency for county attorneys, APA “may” conduct audits of county attorneys pursuant to the authority granted in KRS 43.070(2)(a). Unlike other county fee officials, who are required to have annual audits under KRS 43.070(1)(a), county attorneys are not required to have annual audits under state law.

At my direction, APA exercised its permissive audit authority to conduct a special examination of certain county attorney offices after identifying concerns during an examination of the state’s Child Support Enforcement Program. In the fall of 2019, APA notified nine county attorney offices of its intent to conduct special examination procedures. On May 21, 2020, APA released its *Examination of Certain Financial Operations and Internal Policies and Controls of Select County Attorney Offices*. Among other issues, the report identified a lack of guidance and oversight of county attorney finances and operations, internal control weaknesses, and significant questionable spending practices, including the use of public funds to award employee bonuses and pay personal expenses.

APA agrees that state law provides limited guidance and oversight of county attorney offices, as detailed in Finding 5 of the aforementioned report. To address the issues identified in Finding 5, APA made the following recommendations to the Kentucky General Assembly:

- Consider additional statutory language clarifying the appropriate use of funds received by

county attorneys for the purpose of office operating expenses.

- Require an annual audit of public funds held by county attorney offices, permitting the Auditor of Public Accounts a right of first refusal to audit county attorneys each year similar to requirements established for funds held by fiscal courts, county clerks, and sheriffs. Regardless of whether the General Assembly enacts such a requirement, we recommend county attorneys obtain an annual external audit. To provide further transparency, the results of any audits should be published and available to the public.
- Consider establishing fiscal regulatory authority by expanding and clarifying the role of the Department for Local Government's State Local Finance Officer to include fiscal oversight of county attorney offices similar to the regulatory authority over budgets and handling of public funds by other county officials.

APA's role as an independent audit agency is not to oversee management or provide regulation, but rather to opine on the presentation of financial data and report deficiencies as to internal control or compliance with existing laws and regulations.

Two factors make it difficult to perform routine financial statement audits of county attorney offices in a way that is comparable to audits of other county fee officials—the absence of a regulatory body to provide oversight of county attorney offices and the lack of uniform financial reporting requirements for county attorneys. Legislative action would likely be necessary to clarify this oversight and establish reporting requirements, whether under the purview of the Department for Local Government, which provides this regulatory oversight for fiscal courts and other fee officials, or some other entity such as the Prosecutors' Advisory Council.

While the recently updated guidance from KCAA is helpful and instructive, it is not legally binding or authoritative as to what constitutes "county attorney operating expenses." The prior "Technical Audit Bulletin" was endorsed by an attorney general opinion, which added some legal weight to its guidance, but not the legal authority of a statute or regulation. That is why APA previously recommended the General Assembly "[c]onsider additional statutory language clarifying the appropriate use of funds received by county attorneys for the purpose of office operating expenses." Alternatively, the General Assembly could delegate authority to another agency to promulgate regulations that would establish more detailed guidance as to appropriate "operating expenses" and other procurement practices.

After the release of its report, APA entered into a discussion with the Kentucky County Attorneys Association (KCAA) to discuss the benefits of enhanced accountability and transparency and work toward more regular audits of county attorney offices in a way that would not create undue costs or other burdens for those offices. APA proposed beginning with Agreed-Upon Procedures (AUP) engagements of county attorney offices, with the first year of AUPs being on a voluntary basis if a sufficient number of county attorneys opt to volunteer.

These first AUPs would review the fiscal year ending June 30, 2022, and ideally, in the first year, approximately one-third of the county attorney offices in the state would receive an AUP. APA has already presented a proposed set of procedures to county attorneys for use in the first

year of these AUPs. APA will continue working cooperatively with KCAA to implement its plan to perform AUPs of certain county attorney offices for FY 2022 and additional offices in subsequent years.

While AUP reports will provide enhanced transparency and accountability as to the operations of county attorney offices, they should not be viewed as a direct oversight mechanism. For future years, APA will consider additional or expanded AUP procedures related to traffic safety program reporting requirements, fee distributions, and ineligible offenders.

APA agrees that the planned AUPs may contribute to strengthening internal controls at county attorney offices. When employees or officials know there is potential for external review by an independent auditor, this alone can discourage questionable spending and encourage diligent management of taxpayer funds. However, APA wants to clarify that the planned AUP procedures are not designed to test or opine on the adequacy of internal controls.

APA continues to support its prior recommendations to the General Assembly and will work with all stakeholder groups and interested legislators to assist in the development of legislation that would establish more effective guidance and oversight for county attorney offices. In an effort to give timely input to the General Assembly, APA strongly recommends those discussions proceed concurrently with the planned AUPs, rather than waiting for the conclusion of the AUPs.

Please do not hesitate to contact me, or APA Chief of Staff and Legislative Liaison Sara Beth Gregory, to further discuss this matter.

Respectfully submitted,

Mike Harmon
Auditor of Public Accounts

Appendix B

FY 2020 County Attorney Traffic Safety Program Vendor, Completions, Total Fees, And Revenues

Table B.1 provides county attorney traffic safety program information by county for FY 2020. Three counties used both AdventFS and Drive Safe in FY 2020: Boyle, Fleming, and Russell. Completions are for the number of offenders completing a program for one of three types of offenses: moving violation, equipment violation, or license/registration violation. The total fee is the combination of the county attorney fee, the vendor fee for county attorneys using a vendor, the Administrative Office of the Courts \$25 fee, and the Finance and Administration Cabinet \$30 fee. Nine county attorneys used a range of fees instead of a single fee.

Fee and revenue figures in this table may be overestimates. Calculations are based on annual Prosecutors Advisory Council reports, but the report forms do not clearly ask for the county attorney portion of the fee. If a county attorney office included any other fee in its response, its entry in the table will be higher than the actual value.

Table B.1
County Attorney Traffic Safety Program Vendor, Completions, And Total Fees
FY 2020

County	Vendor	Completions	Total Fee	County Attorney Revenue
Adair	Self-operated	334	\$125.00	\$23,380
Allen	AdventFS	151	205.00	17,365
Anderson	AdventFS	266	232.50	37,240
Ballard	Drive Safe	112	244.00	16,688
Barren	AdventFS	557	232.50 to 357.50	77,980 to 147,605
Bath	Drive Safe	50	235.00	7,000
Bell	No program	N/A	N/A	N/A
Boone	AdventFS	1,366	230.00	191,240
Bourbon	Drive Safe	193	244.00	28,757
Boyd	No program	N/A	N/A	N/A
Boyle	AdventFS/Drive Safe	96	230.00 to 235.00	13,440
Bracken	AdventFS	7	157.50	455
Breathitt	AdventFS	5	187.50	475
Breckinridge	AdventFS	98	220.00	12,740
Bullitt	AdventFS	466	230.00	65,240
Butler	Drive Safe	132	234.00	18,348
Caldwell	AdventFS	104	232.50	14,560
Calloway	Self-operated	454	155.00	45,400
Campbell	AdventFS	1,479	230.00	207,060
Carlisle	Drive Safe	57	244.00	8,493
Carroll	Drive Safe	179	244.00	26,671
Carter	Drive Safe	352	235.00	49,280
Casey	Self-operated	109	155.00	10,900
Christian	Self-operated	457	130.00	34,275
Clark	AdventFS	366	230.00 to 310.00	51,240 to 80,520

County	Vendor	Completions	Total Fee	County Attorney Revenue
Clay	AdventFS	47	220.00	6,110
Clinton	No program	N/A	N/A	N/A
Crittenden	Self-operated	76	150.00	7,220
Cumberland	Self-operated	124	130.00	9,300
Daviess	Drive Safe	1,160	240.00	168,200
Edmonson	Drive Safe	42	235.00	5,880
Elliott	No program	N/A	N/A	N/A
Estill	AdventFS	61	207.50	7,015
Fayette	Self-operated	733	215.00	117,280
Fleming	AdventFS/Drive Safe	41	210.00 to 235.00	4,920 to 5,740
Floyd	Drive Safe	144	214.00 to 264.00	17,136 to 24,336
Franklin	AdventFS	1,516	215.00	189,500
Fulton	Self-operated	29	105.00 to 155.00	1,450 to 2,900
Gallatin	AdventFS	456	232.50	63,840
Garrard	Self-operated	592	200.00	85,840
Grant	AdventFS	494	232.50	69,160
Graves	Self-operated	736	115.00	44,160
Grayson	Drive Safe	205	224.00	26,445
Green	Self-operated	29	105.00	1,450
Greenup	Self-operated	121	125.00	8,470
Hancock	Drive Safe	109	204.00	11,881
Hardin	AdventFS	1,049	230.00	146,860
Harlan	No program	N/A	N/A	N/A
Harrison	Drive Safe	83	224.00	10,707
Hart	Self-operated	302	125.00 to 175.00	21,140 to 36,240
Henderson	Self-operated	300	150.00 to 175.00	28,500 to 36,000
Henry	Self-operated	157	180.00	19,625
Hickman	Self-operated	71	175.00	8,520
Hopkins	AdventFS	606	232.50	84,840
Jackson	No program	N/A	N/A	N/A
Jefferson	Drive Safe	5,491	244.00	818,159
Jessamine	Drive Safe	271	236.00	38,211
Johnson	AdventFS	18	212.50	2,160
Kenton	AdventFS	1,130	230.00	158,200
Knott	AdventFS	20	232.50	2,800
Knox	AdventFS	252	232.50	35,280
LaRue	AdventFS	237	232.50	33,180
Laurel	AdventFS	1,266	240.00	189,900
Lawrence	No program	N/A	N/A	N/A
Lee	No program	N/A	N/A	N/A
Leslie	No program	N/A	N/A	N/A
Letcher	Drive Safe	17	214.00	2,023
Lewis	Drive Safe	24	210.00	2,760
Lincoln	Self-operated	158	180.00	19,750
Livingston	Drive Safe	163	234.00	22,657
Logan	Drive Safe	229	215.00 to 270.00	27,480 to 40,075
Lyon	AdventFS	147	232.50	20,580
Madison	AdventFS	1,923	230.00	269,220
Magoffin	Drive Safe	2	235.00	280
Marion	AdventFS	167	230.00	23,380
Marshall	AdventFS	60	212.50	7,200
Martin	No program	N/A	N/A	N/A
Mason	AdventFS	25	210.00	3,000

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County	Vendor	Completions	Total Fee	County Attorney Revenue
McCracken	AdventFS	826	222.50	107,380
McCreary	Drive Safe	196	215.00	23,520
McLean	Drive Safe	99	235.00	13,860
Meade	AdventFS	100	220.00	13,000
Menifee	No program	N/A	N/A	N/A
Mercer	AdventFS	116	222.50	15,080
Metcalfe	No program	N/A	N/A	N/A
Monroe	Self-operated	62	150.00	5,890
Montgomery	No program	N/A	N/A	N/A
Morgan	Drive Safe	68	245.00	10,200
Muhlenberg	AdventFS	145	230.00	20,300
Nelson	Self-operated	413	180.00	51,625
Nicholas	Drive Safe	22	234.00	3,058
Ohio	Drive Safe	213	200.00	22,365
Oldham	Self-operated	1,915	185.00 to 225.00	248,950 to 325,550
Owen	No program	N/A	N/A	N/A
Owsley	No program	N/A	N/A	N/A
Pendleton	AdventFS	120	232.50	16,800
Perry	No program	N/A	N/A	N/A
Pike	Drive Safe	210	205.00	23,100
Powell	Drive Safe	62	235.00	8,680
Pulaski	Drive Safe	598	215.00	71,760
Robertson	No program	N/A	N/A	N/A
Rockcastle	Drive Safe	677	235.00	94,780
Rowan	AdventFS	45	205.00	5,175
Russell	AdventFS/Drive Safe	79	230.00 to 235.00	11,060
Scott	Drive Safe	207	244.00	30,843
Shelby	Drive Safe	284	234.00	39,476
Simpson	AdventFS	462	215.00	57,750
Spencer	Self-operated	191	150.00	18,145
Taylor	Self-operated	266	105.00	13,300
Todd	Drive Safe	91	234.00	12,649
Trigg	AdventFS	30	232.50	4,200
Trimble	Self-operated	88	180.00	11,000
Union	Drive Safe	76	210.00	8,740
Warren	AdventFS	537	232.50	75,180
Washington	AdventFS	118	222.50	15,340
Wayne	AdventFS	23	220.00	2,990
Webster	Self-operated	55	150.00	5,225
Whitley	No program	N/A	N/A	N/A
Wolfe	Drive Safe	92	224.00	11,868
Woodford	Drive Safe	192	244.00	28,608

Note: Fee and revenue figures in this table may be overestimates. Calculations assumed that the fee reported to the Prosecutors Advisory Council included only the county attorney portion, but its request form does not clearly indicate which parts of the fee are to be reported.

Source: Prosecutors Advisory Council Annual Reports FY 2020; Josh Hartlage, president, AdventFS. Email to William Spears, Sept. 10, 2021; Harold "Mac" Johns, general counsel, Drive Safe Kentucky. Email to William Spears, Sept. 18, 2021.

Appendix C

County Attorney Survey Results

As part of the review of county attorney traffic safety programs, all county attorneys were asked to provide program and financial information through a survey. A link to the survey was emailed to all county attorneys on September 7, 2021. The email said the survey would close on September 17, but the survey was kept open through September 21 to allow for late answers.

The survey resulted in 55 total responses, for a response rate of 45.8 percent. While a response rate of approximately 75 percent would have been preferable, the president of the Kentucky County Attorneys Association said its requests typically have a 50 percent response rate. Based on their experience, the response rate for the survey is about the average rate.⁷³

A total of 47 responses were from county attorneys with a traffic safety program, and 8 were from county attorneys without a program. Two responses were provided through email instead of through the survey form. A total of 13 responses were incomplete; they were not used in the analysis and are not included in the 55 total.

Survey Summary

Question 1

Asked for contact information including county, county attorney name, and phone number. This information was collected so staff could follow up with officials if necessary.

Question 2

Does your office operate a traffic safety diversion program (traffic school) for traffic offenders, per KRS 186.574 (6)?

Of the 68 officials who responded to this question, 60 selected yes and 8 selected no. The 8 who selected no were asked, “Why do you not offer a diversionary traffic school?” They provided the following responses:

- One official stated a concern about public perception of the office generating revenue by diverting cases when state traffic school already exists.
- Two officials stated that other avenues adequately accomplish the purpose of county traffic school, including pretrial diversion, state traffic school, and pleas.
- Two cited paperwork, accounting, or a lack of traffic citations.
- Three did not offer a reason.

Question 3

In FY 2020, how much funding did your office receive from the Commonwealth?

- a. *For personnel expenditures:*
- b. *For operating expenditures:*

A total of 33 officials entered an amount for personnel funding from the state, and 4 noted that staff can obtain this number from the Prosecutors Advisory Council (PAC). A total of 36 entered an operating expense amount funded by the state, and 3 noted that this figure can be obtained from PAC. The average reported personnel funding amount was \$102,711.70 in FY 2020, and the average funding for operating expenses in was \$4,574.76. PAC provided data on personnel and operating funding for all 120 counties, which was used in place of responses from this question in the main body of the report.

Table C.1
Summary Of Question 3 Responses
FY 2020

Funding Type	Average	Minimum	Maximum	Deferred To Council*	Responses
Personnel	\$102,711.70	\$0.00	\$449,178.00	4	37
Operating	4,574.76	0.00	71,135.00	3	39

* “Deferred to Council” = respondent said the amount could be requested from the Prosecutors Advisory Council.

Source: Staff analysis of 39 responses.

Table C.2
Personnel Funding From State
FY 2020

Funding Range	Responses
\$0	5
1 to 50,000	4
50,001 to 100,000	12
100,001 to 150,000	5
150,001 to 200,000	4
300,001 to 350,000	2
449,178	1

Source: Staff analysis of 33 responses.

**Table C.3
 Operating Expense Funding From State
 FY 2020**

Funding Range	Responses
\$0	5
1 to 2,000	2
2,001 to 3,000	25
3,001 to 4,000	1
4,001 to 5,000	1
10,000	1
71,135	1

Source: Staff analysis of 36 responses.

Question 4

In FY 2020, how much funding did your office receive from your county/urban-county government?

- a. For personnel expenditures:*
- b. For operating expenditures:*

A total of 45 officials entered a value for local government funding of personnel and operating expenditures. The average reported personnel funding amount was \$251,058.46 in FY 2020, and the average funding for operating expenses in was \$11,548.62.

**Table C.4
 Summary Of Question 4 Responses
 FY 2020**

Funding Type	Average	Minimum	Maximum	Responses
Personnel	\$251,058.46	\$0.00	\$7,684,362.00	45
Operating	11,548.62	0.00	202,420.00	45

Source: Staff analysis of 45 responses.

**Table C.5
 Personnel Funding From Local Government
 FY 2020**

Funding Range	Responses
\$0	7
1 to 50,000	15
50,001 to 100,000	11
100,000 to 200,000	5
200,000 to 300,000	4
300,000 to 400,000	2
7,684,362.00	1

Source: Staff analysis of 45 responses.

Table C.6
Operating Expense Funding
From Local Government
FY 2020

Funding Amount	Responses
\$0	17
1 to 3,000	10
3,001 to 10,000	8
10,001 to 30,000	7
30,001 to 100,000	2
202,420.00	1

Source: Staff analysis of 45 responses.

Question 5

In FY 2020, how much funding did the following sources provide for your office?

- a. *County Attorney Traffic School per KRS 186.574(6)*
- b. *Bad Check Collection per KRS 514.040(4), (5)*
- c. *Delinquent Tax Collection per KRS 134.504 and KRS 134.545*
- d. *Other source of funds for office operating expenses (Excludes child support revenue)*

A total of 48 officials entered the revenue generated for their office by their traffic safety programs, cold check collection program, and delinquent tax collection program in FY 2020. Of those officials, 34 specified the revenue generated by other sources excluding child support program revenues. Legislative Oversight staff were able to estimate traffic safety program revenue for all participating counties by using PAC annual reports. Revenue estimates from PAC data were used in place of responses to this question in the main body of the report.

Table C.7
Summary Of Question 5 Responses
FY 2020

Revenue Source	Average	Minimum	Maximum	Responses
Traffic safety programs	\$41,256.61	\$0.00	\$462,320.00	48
Cold checks	4,681.44	0.00	30,196.56	48
Delinquent tax collection	82,514.66	0.00	1,430,001.00	48
Other	22,293.57	0.00	250,625.00	34

Source: Staff analysis of 48 responses.

Table C.8
Traffic School Revenue
FY 2020

Funding Range	Responses
\$0 to 5,000	11
5,001 to 10,000	7
10,001 to 20,000	9
20,001 to 50,000	10
50,001 to 100,000	7
100,001 to 200,000	2
200,970	1
462,320	1

Source: Staff analysis of 48 responses.

Table C.9
Cold Check Collection Revenue
FY 2020

Funding Range	Responses
\$0	4
1 to 1,000	15
1,001 to 5,000	15
5,001 to 10,000	9
10,001 to 25,000	4
30,196.56	1

Source: Staff analysis of 48 responses.

Table C.10
Delinquent Tax Collection Revenue
FY 2020

Funding Range	Responses
\$0 to 20,000	10
20,001 to 40,000	17
40,001 to 100,000	13
100,001 to 200,000	6
256,937.54	1
1,430,001	1

Source: Staff analysis of 48 responses.

Table C.11
Other Revenues
FY 2020

Funding Amount	Responses
\$0	17
1 to 10,000	8
10,001 to 50,000	5
50,001 to 75,000	2
225,560	1
250,625	1

Source: Staff analysis of 34 responses.

Question 6

How does your office ensure that traffic school revenue is not used for inappropriate expenditures? Please check all that apply.

- a. *Guidance from the Kentucky Auditor of Public Accounts*
- b. *Guidance from the Office of the Attorney General*
- c. *Guidance from the Prosecutors Advisory Council*
- d. *Guidance from the fiscal court/urban-county council*
- e. *Internal Guidance*
- f. *Other (please specify)*

A total of 47 officials provided answers, with most using internal guidance and few using guidance from local governments.

Table C.12
County Attorney Offices Using Types Of Guidance For Expenditures

Internal	Prosecutors Advisory Council	Attorney General	Auditor of Public Accounts	Fiscal Court/Urban- County Council	Other	Total
36	35	27	27	4	20	47

Note: The number of offices using each method sums to more than 47 because respondents could select more than one answer.

Source: Legislative Oversight staff analysis of 47 survey responses.

Of the 20 offices that indicated “other” guidance, seven mentioned receiving guidance from the Kentucky County Attorneys Association, either directly or through technical bulletins. Seven offices indicated that they receive opinions from certified public accountants or through audits. Two offices followed the standards of *Funk v. Milliken* (317 S.W.2d 499 (Ky. 1958)). One office used statutes, and another followed ethics ordinances and segregation of duty policies. Another office used the category to say they “have no inappropriate expenditures.”

One office’s response said its staff was unsure of what is considered authorized, so it was “very reluctant to spend the money.” Another office used the category to state that there was not enough revenue to pay for anything outside of personnel and office supplies. One office’s

response stated that it turned over all funds to the local fiscal court and then the court provided a budget for operating expenses.

Question 7

Does your office verify the accuracy of traffic school information statutorily required to be shared with the Prosecutors Advisory Council per KRS 186.574 (6) (c) (2)?

a. If yes, please specify how accuracy of information is verified.

Of the 46 county attorneys who responded to the question, 43 indicated that they verify the accuracy of the information. Of those 43 responses, 18 indicated that they compare vendor reports containing that information with office records to verify accuracy. 14 responses said that they use vendor reports to compile that information and share it with PAC, but did not provide further clarification on their method of verification. A total of 11 indicated that they do verify the data, but they did not provide further clarification.

Three officials indicated that they do not verify accuracy. One of the three stated that they would keep a list of referrals and completions to verify numbers match before reporting to PAC. Two did not provide further comment.

Question 8

How important is traffic school revenue for funding your office's operating expenditures? Please explain.

- a. Very Unimportant*
- b. Unimportant*
- c. Neutral*
- d. Important*
- e. Very Important*

A total of 47 county attorneys answered this question, and 42 indicated that the funding is important or very important. Associated explanations generally mentioned that the revenue is directly vital to funding their office and that, without it, some costs could not be met. In multiple instances, officials mentioned additional financial strain from a decline in other revenue streams, such as cold check collection.

Five considered the funding unimportant or very unimportant. All of the explanations for those who selected "very unimportant" suggest that the officials intended to select "very important" but selected the opposite. Those four were added to the 33 "very important" entries. The single official who selected unimportant simply mentioned that the revenue is not crucial to their office.

Table C.13
Rating Of Importance Of Traffic School Revenue

Very Unimportant	Unimportant	Neutral	Important	Very Important	Total
0	1	4	9	33	47

Source: Staff analysis of 47 survey responses.

Question 9

Additional comments:

A total of 22 officials left a comment in the final question of the survey:

- A total of 18 expressed concerns about a lack of adequate funding for their offices. Of those, 4 specifically mentioned that state funding for county attorneys is not enough to meet costs.
- There were 14 who stated that funding from all sources is insufficient. Comments frequently mentioned that the COVID-19 pandemic affected program revenues, including traffic program revenue, which may not be reflected in FY 2020 data but would be in FY 2021 data if collected.
- Several comments expressed support for traffic programs and the revenue generated or service they provide to the community.
- Four comments involved survey logistics or offers to continue assisting in the research.

Endnotes

- ¹ US. Government Accountability Office. *Standards For Internal Control In The Federal Government*, September 2014, pp. 5-6.
- ² US. Government Accountability Office. *Government Auditing Standards, 2018 Revision*, sec. 1.27g, p. 15.
- ³ US. Government Accountability Office. *Standards For Internal Control In The Federal Government*, September 2014, p. 78.
- ⁴ Bobby Stokes, executive director, Office of the Prosecutors Advisory Council. Email to William Spears, Oct. 22, 2021.
- ⁵ US. Government Accountability Office. *Government Auditing Standards, 2018 Revision*, sec. 9.17a, p. 197.
- ⁶ Bobby Stokes, executive director, Office of the Prosecutors Advisory Council. Email to William Spears, Sept. 17, 2021.
- ⁷ Association Leadership, Kentucky County Attorneys Association, County Attorney Traffic School Informational Meeting. Aug. 20, 2021. Zoom meeting.
- ⁸ Kentucky. Office of the Attorney General, Prosecutors Advisory Council. *Full CATS Report, 2013–2020*.
- ⁹ Kentucky. Office of the Attorney General, Prosecutors Advisory Council. *County Attorney Traffic Safety Program Report To Prosecutors Advisory Council, 2020*.
- ¹⁰ Stacey Tapke, president and Kenton County attorney; Jenny Oldham, association vice president and Hardin County attorney; Joe Ross, at large member and Logan County attorney; Jeremy Logsdon, association director and Grayson County attorney, Kentucky County Attorneys Association. Aug. 20, 2021. Interview.
- ¹¹ Josh Hartlage, president, AdventFS. “Traffic Safety Diversion Data FY2020.” Email to William Spears, Sept. 10, 2021; Josh Hartlage, president, AdventFS. “LRC Traffic School Study Document.” Email to William Spears, Sept. 10, 2021.
- ¹² Harold “Mac” Johns, general counsel, Drive Safe Kentucky. “Letter to Will Spears re. Drive Safe Agreement 101221, Oct. 13, 2021.” Email from Rachael Stevenson to William Spears, Oct. 14, 2021; Harold “Mac” Johns, general counsel, Drive Safe Kentucky. “Letter to Will Spears re. Drive Safe Agreement 101421, Oct. 18, 2021.” Email from Rachael Stevenson to William Spears, Oct. 18, 2021.
- ¹³ Harold “Mac” Johns, general counsel, Drive Safe Kentucky. Email to William Spears, Sept. 18, 2021.
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- ¹⁵ Josh Hartlage, president, AdventFS. “LRC Traffic School Study Document.” Email to William Spears, Sept. 10, 2021.
- ¹⁶ Harold “Mac” Johns, general counsel, Drive Safe Kentucky. Email to William Spears, Sept. 20, 2021; Harold “Mac” Johns, general counsel, Drive Safe Kentucky. Email to William Spears, Sept. 18, 2021.
- ¹⁷ “Kentucky State Traffic School: Kentucky FAQ’s.” *Improv Traffic School*. N.d. Web; Kathy Humes, administrative branch manager, Transportation Cabinet, Division of Drivers Licensing. KY State Traffic School Curriculum, Secure File Transfer to William Spears, Sept. 28, 2021.
- ¹⁸ Kathy Humes, administrative branch manager, Transportation Cabinet, Division of Drivers Licensing. KY State Traffic School Curriculum. Secure File Transfer to William Spears, Sept. 28, 2021.
- ¹⁹ Josh Hartlage, president, AdventFS. Traffic Safety Diversion Data FY2020. Email to William Spears, Sept. 10, 2021; Harold “Mac” Johns, general counsel, Drive Safe Kentucky. Summary of Drive Safe Program Document. Sept. 18, 2021.
- ²⁰ Bobby Stokes, executive director, Office of the Prosecutors Advisory Council. Email to William Spears, Oct. 22, 2021.
- ²¹ Stacy Tapke, president, Kentucky County Attorneys Association. Email to Jacob Blevins, Aug. 20, 2021.
- ²² *Funk v. Milliken*, 317 S.W.2d 499 (Ky. 1958).
- ²³ Kentucky. Opinions of the Attorney General OAG 05-002.
- ²⁴ Gina Carey, program coordinator and budget adviser, Prosecutors Advisory Council. Sept. 7, 2021. Interview.
- ²⁵ Gina Carey, program coordinator and budget adviser, Prosecutors Advisory Council. Aug. 25, 2021. Interview.
- ²⁶ Gina Carey, program coordinator and budget adviser, Prosecutors Advisory Council. Sept. 7, 2021. Interview.
- ²⁷ Gina Carey, program coordinator and budget adviser, Prosecutors Advisory Council. Email to Jacob Blevin, Aug. 25, 2021.

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- ²⁹ Kentucky. Opinions of the Attorney General OAG 05-002.
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- ³⁴ Kathy Humes, administrative branch manager, et al., Kentucky Transportation Cabinet, Department of Vehicle Regulation. Sept. 28, 2021. Interview.
- ³⁵ Kentucky. Auditor of Public Accounts. *Examinations Of Certain Financial Operations And Internal Policies And Controls Of Select Kentucky County Attorney Offices*, May 21, 2020.
- ³⁶ Sara Beth Gregory, chief of staff, Auditor of Public Accounts. Sept. 27, 2021. Interview.
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- ³⁸ Stacy Tapke, president, Kentucky County Attorneys Association. Email to Jacob Blevins, Sept. 10, 2021.
- ³⁹ US. Government Accountability Office. *Government Auditing Standards, 2018 Revision*, sec.1.27g, p. 15.
- ⁴⁰ US. Government Accountability Office. *Standards For Internal Control In The Federal Government*, September 2014, p. 78.
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- ⁴⁷ Bobby Stokes, executive director, Office of the Prosecutors Advisory Council. May 10, 2021. Interview.
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- ⁵⁵ Bobby Stokes, executive director, Office of the Prosecutors Advisory Council. Email to Gerald W. Hoppmann. Oct. 7, 2021.
- ⁵⁶ Kenny Bishop, legislative director, Kentucky Transportation Cabinet. Email to William Spears, Oct. 19, 2021.
- ⁵⁷ Kathy Humes, administrative branch manager, Kentucky Transportation Cabinet. Email to William Spears, Oct. 4, 2021.
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- ⁶³ Kentucky. Opinions of the Attorney General OAG 05-002.
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