

Interim Judiciary Presentation
September 17th, 2020
Kentucky Association of Criminal Defense Lawyers
Legislative Agents: Rebecca Ballard DiLoreto, Philip C. Lawson



1. **Amend the Felony Threshold for Appropriate Crimes in Accord with Economic Realities:**

- A. **Felony Theft Threshold should be raised** whether as a stand alone amendment or in accord with other property and drug possession crimes.
- B. **Flagrant NonSupport Threshold should be raised or the offense returned to the civil** arena and remove incarceration except for contempt of court orders following a hearing that comports with Due Process.

2. **Law Enforcement Integrity and Accountability Measures in Accord with Public Concern:**

- A. **Require Body Cameras for all Officers** in preparation for engagement with persons/investigation of possible crime until conclusion of event, including any interrogations or arrests. Legislation must include mandatory performance standards that address when the cameras are to be turned on, who has access to the footage, under what conditions said footage is to be shared or distributed. These components of laws we need in place, deserve the input of the community and the standards are ones that citizens have a right to expect to be in place across their Commonwealth. Such standards will protect law enforcement from unfair scrutiny and are worth the cost.

- B. **End the use of No Knock Warrants** as law enforcement can rely upon right to respond to exigent circumstances should there be clear evidence of someone's life at risk or the immediate destruction of evidence as dictated by U.S. Supreme Court in *Muncy v. Arizona*, 98 S.Ct. 2408 (1978) and cases which follow its precedent. The standards bearing on whether officers can legitimately enter after knocking are the same as those for requiring or dispensing with knock and announce altogether. The Supreme Court has fleshed out the notion of reasonable execution on a case-by-case basis, but has pointed out factual considerations of unusual, albeit not dispositive, significance. The obligation to knock and announce before entering gives way when officers have reasonable grounds to suspect that an exigency, such as evidence destruction, will arise instantly upon knocking. *Richards v. Wisconsin*, 520 U.S. 385, 394, 117 S.Ct. 1416, 137 L.Ed.2d 615. Since most people keep their doors locked, a no-knock entry will normally do some damage, a fact too common to require a heightened justification when a reasonable suspicion of exigency already justifies an unwarned entry. *United States v. Ramirez*, 523 U.S. 65, 70-71, 118 S.Ct. 992, 140 L.Ed.2d 191. Pp. 524-525. However, every person living in the Commonwealth is justified in believing they are not at risk of being gunned down in their own home or their own bedroom by sworn law enforcement officers if the residents are not causing physical harm or death to others in their homes. If the situation is not exigent, the officers can secure a warrant and KNOCK to protect everyone's safety, this includes the officers' safety and those residing in the dwelling and the neighbors or citizens on the street. *United States v. Banks*, 540 U.S. 31, 31, 124 S. Ct. 521, 522, 157 L. Ed. 2d 343 (2003)
- C. **Amend state statutes to clarify the rights of all local communities to establish Citizen Review Boards that comport with national standards and meet local needs.**

The National Association for Civilian Oversight of Law Enforcement, which can be located on line at <https://www.nacole.org/> offers education and guidance concerning best practices for local civilian review boards.

Consistent with our understanding of and commitment to the Second Amendment of the US Constitution, local communities are entitled to input and oversight regarding how they are policed. Where we have elected sheriffs, we expect responsiveness by law enforcement. But where local law enforcement is protected and directed by collective bargaining agreements over which local communities have no control, the presence of effective and professional civilian oversight boards is an imperative to a democratic society.

3. **Kentucky Needs Pretrial Release Reform: Common Sense Improvements Will Embrace Three Principles :**

- A. Money bail should not be used as a bludgeon force to deny release. Thus, any financial condition must be something that the individual subject to bail can make.
- B. Anyone whom the court detains must be found by clear and convincing evidence, at a hearing, on the record, while being represented by counsel, to be such a danger to the public or reasonably identifiable person or persons that no condition or combination of conditions would reasonably assure the safety of the public.
- C. Anyone still detained after such a hearing should have a fast and speedy trial waivable only by the defendant.

4. **Adjust Kentucky's Treatment of Youthful Offender Cases to Improve Process:**

- A. Restore discretion to the elected juvenile court judge and local prosecutor regarding the decision to seek transfer in all qualifying cases, thereby removing mandatory transfer.
- B. End the transfer of youth who suffer serious intellectual disabilities which significantly impact their level of maturity and criminal responsibility and who would thereby require the individualized treatment targeted to meet their serious intellectual limitations available in the juvenile system.
- C. Standardize the collection of key demographic data across all government agencies in Kentucky that serve youth so that important points where discretion is exercised allow for transparency and can be appropriately scrutinized such that improvements in services and treatment of youth and family can occur. Such standardization only makes sense in a rationally based system of governance and will result in the effective and fair distribution of government resources with coherent and intelligent interventions and measurable results.

Respectfully submitted by,

Rebecca Ballard DiLoreto Rebecca.DiLoreto@gmail.com; Philip C. Lawson
plawson@truelawky.com on Behalf of the Kentucky Association of Criminal
Defense Lawyers