

Research Report

KTC-15-17/SPR14-489-1F

DOI: <http://dx.doi.org/10.13023.KTC.RR.2015.17>

Redefining Commercial Vehicle Permitting and Credentialing Violations

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Research Report KTC-15-17/SPR14-489-1F

Redefining Commercial Vehicle Permitting and Credentialing Violations

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In cooperation with
Kentucky Transportation Cabinet
Commonwealth of Kentucky

and

Federal Highway Administration
U. S. Department of Transportation

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August 2015

| | | | |
|--|--|---|---|
| 1. Report No. KTC-15-17/SPR14-489-1F | 2. Government Accession No. | 3. Recipient's Catalog No | |
| 4. Title and Subtitle Redefining Commercial Vehicle Permitting and Credentialing Violations | | 5. Report Date August 2015 | |
| | | 6. Performing Organization Code | |
| 7. Author(s): Andrew Martin, Jennifer Walton, and Valerie Keathley | | 8. Performing Organization Report No. KTC-15-17/SPR14-489-1F | |
| 9. Performing Organization Name and Address Kentucky Transportation Center College of Engineering University of Kentucky Lexington, KY 40506-0281 | | 10. Work Unit No. (TRAIS) | |
| | | 11. Contract or Grant No. SPR-14-489 | |
| 12. Sponsoring Agency Name and Address Kentucky Transportation Cabinet State Office Building Frankfort, KY 40622 | | 13. Type of Report and Period Covered Final Report | |
| | | 14. Sponsoring Agency Code | |
| 15. Supplementary Notes Prepared in cooperation with the Kentucky Transportation Cabinet | | | |
| 16. Abstract The objective of this study was to analyze enforcement and adjudication of common commercial vehicle tax, credentialing, and safety offenses. This study examined violations of the International Fuel Tax Agreement and the Kentucky Intrastate Tax, Kentucky's weight distance tax, Unified Carrier Registration, Kentucky size and weight laws, and federal safety regulations from 2004 to 2013. Statistical analysis showed declining conviction rates, increasing dismissal rates, and a drop in collections of court costs and fines associated with these offenses. In addition, adjudication varied significantly from district court to district court, which is creating an equity issue for motor carriers and the drivers who operate in Kentucky. Surveys of other states and conversations with Kentucky officials were used to develop two policy alternatives to the current system. The first policy is a piecemeal reform of current practices, and the second policy establishes a civil penalties system where a review board adjudicates commercial vehicle offenses in lieu of district courts. An implementation analysis shows the latter would be a more equitable, efficient, and fiscally responsible alternative to current practices. | | | |
| 17. Key Words Civil Penalties Motor Carriers Commercial Vehicle Offenses District Courts | | 18. Distribution Statement Only distributed by permission of the Kentucky Transportation Cabinet. | |
| 19. Security Classification (report) Unclassified | 20. Security Classification (this page) Unclassified | 21. No. of Pages 74 | 19. Security Classification (report) Unclassified |

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Executive Summary

This study analyzes the adjudication of commercial-vehicle-related misdemeanors and violations in the Commonwealth of Kentucky. Specifically, it evaluates performance trends in the judicial processes and institutions responsible for enforcing commercial vehicle laws and regulations, analyzes the financial implications of declining revenue collections, and makes policy recommendations to increase conviction rates and ensure that laws and regulations are applied uniformly throughout the state. The research team examined violations pertaining to federal safety regulations, Kentucky Intrastate Tax (KIT) or International Fuel Tax Agreement (IFTA) violations, weight-distance (KYU) tax violations, size and weight violations (OW/OD), and Unified Carrier Registration (UCR) violations. The project study period encompassed 10 years — from 2004 to 2013.

Between 2006 and 2013, the overall conviction rate for all offenses fell from 61.1 percent to 45.9 percent, with rates falling in all categories. Over the same period, dismissal rates increased from 28.6 percent in 2004 to 40.9 percent in 2013. The research team speculated that a number of factors contributed to these trends, including the economic downturn, significant increases in court costs that took effect in the mid-2000s, and the possibility that Kentucky district court judges may be less familiar with federal and inter-jurisdictional agreements, making them more inclined to dismiss them as opposed to Kentucky-specific offenses. This theory is supported by the higher conviction rates for offenses related to state law (KYU, OW/OD) as compared to federal and inter-jurisdictional violations. What also stood out was the spatially uneven patterns of conviction rates around Kentucky. Counties in northern Kentucky had consistently higher conviction rates than other parts of the state. Also, the conviction rate in counties with operational weigh stations had a significantly higher conviction rate than counties lacking one — 66.6 percent versus 37.8 percent. Looking at the financial implications showed that the majority of revenue collections — 69.3 percent — were allocated to court costs, with remaining funds going toward fines. After peaking in 2008 at just over \$2 million, collections have spiraled downward, hitting a new low of \$1.37 million in 2013. If corrective policies are not installed, it is anticipated that revenue collection will continue falling.

To identify policy solutions, KTC investigated the enforcement mechanisms used by other states in the southeast — Florida, Mississippi, and Georgia. Based on this work, the report lays out two potential policy strategies that will increase revenue and improve commercial vehicle safety. The first solution is to install a series of piecemeal reforms that will increase enforcement and boost conviction rates, extending weigh station operating hours, creating a task force to address issues, increasing fine amounts, and focusing on getting final dispositions on FTA/FTV cases. The second — and preferred — solution is to establish a Motor Carrier Citation Board (housed at KYTC) invested with the authority to provide final rulings on commercial vehicle offenses. Mirroring a successful program in Florida, this board will hold periodic meetings around Kentucky at which violators may contest their citations. Further, all offenses under this setup would be pre-payable and the burden of responsibility would be shifted to carriers — away from drivers. Creating this board should increase conviction rates, restore a more equitable enforcement landscape, significantly reduce the number of outstanding cases that stem from defendants failing to appear in court, increase revenue, and eliminate systematic inefficiencies hampering the current system. Over the long-term, establishing a board is more likely to produce meaningful changes in a way that piecemeal reform would not.

Chapter 1. Commercial Vehicle Enforcement and Adjudication Processes

1.1 Introduction

Kentucky's enforcement and adjudication process for commercial-vehicle-related violations of state law is very complex. These charges are typically issued in citations written by the Commercial Vehicle Enforcement Division of the Kentucky State Police, but may also be issued by local law enforcement agencies. To satisfy the technical requirements of federal and state laws and regulations, the driver or company may have to purchase permits and/or credentials, update registrations, pay back taxes, reduce or divide an overweight load, or even complete truck repairs in order to resume operations. Satisfying the corresponding legal obligations frequently requires commercial vehicle operators to appear in the District Court of the county in which the citation was issued. Responding to charges can be confusing, time-consuming and can place a disproportionate burden on the driver if the violation pertains to credentialing usually thought to be the responsibility of the carrier. For example, if a charge involves a violation of the state's weight-distance tax (KYU) law, it is classified as a misdemeanor, and it will go on the driver's record even though the carrier is responsible for obtaining the license, filing returns, updating vehicle inventories and paying the tax. Additionally, the adjudication process imposes significant expenses on state and local governments, as it involves multiple law enforcement agencies, Circuit Clerk offices, county attorneys, district court judges, and, potentially, public defenders.

This study analyzes the enforcement and adjudication processes associated with commercial vehicle offenses and whether they are effective. It begins with an analysis of existing literature. To conduct the data analysis, researchers gathered data about commercial-vehicle-related offenses. Case and charges for offenses related to these laws and regulations — specifically the disposition of those cases — were analyzed for fiscal years 2004 through 2013. A disposition is the court's final determination of a particular criminal offense or lawsuit. Specifically, researchers attempted to determine if enforcement rates, conviction rates, and revenue collections associated with violations of these laws and regulations have changed over time. Information about adjudication policies for commercial vehicles in other states was also gathered to assess how Kentucky's policies compare, and whether there might be any advantages to alternative approaches. Finally, researchers developed a policy alternative to the current system that will improve the efficiency of enforcement while incentivizing better compliance with state and federal laws and regulations.

1.2 Commercial Vehicle Offenses

Law enforcement agencies in Kentucky issue citations for a variety of commercial vehicle offenses, both at weigh stations and during traffic enforcement stops around the state. Infractions of commercial vehicle laws and regulations included in this study generally fall into three categories: 1) offenses related to tax policies, 2) fee-based policies, and 3) violations of federal safety regulations. This section describes specific motor carrier licensing, credentialing and safety requirements for trucking companies and drivers operating in Kentucky.

Tax policies generate additional revenue from commercial truck activity to fund highway infrastructure investments and maintenance. The International Fuel Tax Agreement (IFTA) is a fuel tax program that apportions payments based on the amount of fuel and the number of miles

a motor carrier logs in a member jurisdiction. Kentucky charges fuel surtax on vehicles weighing 26,000 lbs. or more, and that surtax is indexed to the wholesale price of fuel. Interstate carriers are required to log the number of miles traveled in each jurisdiction where they operate and the amount of fuel they purchase and consume in each state on a quarterly tax return. Based on the return, the carrier pays money to their base jurisdiction, which is then disbursed according to the tax or surtax owed in each state. The Kentucky Intrastate Tax (KIT) returns function in the same manner, except that it applies to intrastate operations. Failure to pay can result in the suspension and eventual revocation of a carrier's fuel tax license, which is a credential that allows them to operate legally on Kentucky roads. Carriers violating the policy may be impounded until all back taxes and penalties are paid, and charged with a misdemeanor criminal offense. The taxes and tax penalties are paid to the Kentucky Transportation Cabinet (KYTC), which then allocates funds to all of the jurisdictions to which a carrier owes money. The driver will be charged with a misdemeanor criminal offense, which carries a fine and court costs that must be addressed in the district court of the county where the citation was written.

Under the state's weight-distance tax (KYU) law (KRS 138.660), all carriers operating vehicles that weigh more than 59,999 lbs. in Kentucky must file quarterly mileage reports that tabulate the number of miles operated in Kentucky. They are then required to pay a tax of .0285 cents per mile. There are several types of violations that can occur for the weight-distance tax. Carriers may not have a KYU tax license at all, in which case they must set up an account or purchase temporary permits that allow them to operate in Kentucky for 72 hours for \$40. In other cases, carriers may have an inactive, suspended or revoked KYU license. Inactive licenses mean the carrier has cancelled its license in good standing, and has indicated that it will no longer operate. Suspended or revoked licenses mean that tax returns have not been filed and/or bills have not been paid. Another offense is the failure of carriers to maintain their vehicle inventory – carriers are required to report all vehicles operating under their KYU license to KYTC. Failure to add a vehicle to the vehicle inventory is also a KYU offense. Carriers with KYU violations that have a tax license number can have their vehicles impounded and compelled to pay all back taxes and penalties. Taxes, fees (for temporary permits) and tax penalties are paid to KYTC. Violators will be charged with a misdemeanor criminal offense, which carries a fine and court costs that must be addressed in the district court of the county where the citation was written.

Other offenses are related to fee-based programs that provide carriers with credentials needed to operate in a legally compliant manner. Unified Carrier Registration (UCR) refers to a federal credential carriers must obtain and pay a fee to maintain. UCR recently replaced the Single-State Registration System (SSRS). The objective of UCR is to inform federal and state officials that a carrier has obtained the appropriate operating authority to transport their cargo in the state in which the company is located. Failure to register and pay annual UCR fees is an offense. The revenues generated from this program must be used for UCR-related enforcement activities, safety programs, and general motor carrier enforcement activities. The funds cannot be used for highway infrastructure construction and maintenance. Carriers charged with UCR violations must register and pay outstanding fees. The driver will also be charged with a criminal violation, which carries a fine and court costs that must be addressed in the district court of the county where the citation was written.

Vehicles or loads that exceed Kentucky's size and weight limits are characterized as overweight or overdimensional (OW/OD). Legally moving these loads on Kentucky's highways requires authorization by KYTC, which is obtained by buying a permit. A single-trip permit costs \$60; annual permits range from \$20 to \$500, depending on the permit specifications. If a carrier does not obtain a permit, it constitutes a violation; similarly, a violation occurs when related safety requirements are ignored, including the use of vehicle escorts, lighting, signage, or deviating from the agreed-upon route. The highway pavement impact of overweight loads, the cost of employing engineers to do route and bridge analysis, and the cost of administering the permitting program are supposed to be covered by the associated OW/OD permitting fee. Carriers charged with violating size and weight regulations must buy a permit, and address any safety issues identified with their vehicle or cargo. The driver will also be charged with a criminal violation, which carries a fine and court costs that must be addressed in the district court of the county where the citation was written.

Federal safety offenses are related to vehicle safety regulations, driver issues pertaining to their commercial driver's license (CDL) or medical card documentation, logbook violations, insufficient hazardous materials credentials, lack of operating authority, failing to maintain cargo insurance, and myriad other violations. The Federal Motor Carrier Act (1980) contains regulations that specify what constitutes a violation, enforcement of which typically falls to the Federal Motor Carrier Safety Administration (FMCSA) in 49 C.F.R. Parts 300-399. The goal of federal safety regulations is to improve motor carrier safety, as crashes involving motor carriers tend to be deadlier and costlier than those involving only passenger cars. Trucks are subject to inspections at weigh stations, enforcement details, or traffic stops. The level of scrutiny depends on what kind of inspection an officer selects. A Level 1 inspection entails the most thorough inspection, including a complete vehicle and driver inspection, during which the vehicle is inspected for specific mechanical problems and driver and carrier credentials are checked against national and state databases. A Level 2 inspection includes a vehicle walk-around (which is less thorough than the Level 1 vehicle inspection), along with inspection of carrier and driver credentials. Level 3 inspections look only at the carrier and driver credentials. Once the inspection is complete, the driver is given a citation that includes all charges and is told if the vehicle, driver, or carrier must be taken out of service. Any mechanical or safety defect, along with any driver or carrier credential that is not compliant with existing laws and regulations, must be addressed with KYTC, FMCSA or the state DOT in the carrier's base state. If there are safety violations, the driver will also be charged with a criminal violation, which carries a fine and court costs that must be resolved in the district court of the county where the citation was written.

1.3 Commercial Vehicle Enforcement

Primary responsibility for enforcement of commercial vehicle laws and regulations falls on the Commercial Vehicle Enforcement Division (CVE) of KSP; however, other law enforcement agencies in Kentucky are also permitted to issue citations to commercial vehicle offenders. Most of these citations are written at weigh stations, but they may also be written at enforcement details and routine traffic stops. CVE officers have several tools available to them to make the screening of commercial trucks more efficient and accurate.

Kentucky is currently installing Kentucky Automated Truck Screening (KATS) systems at weigh stations throughout the state. These systems use automated license plate readers (LPRs) and USDOT number readers (USDOTRs) to capture and record the truck's license plate number and USDOT number. These cameras work with optical character recognition (OCR) technology, which transforms the characters and numbers into a string variable that the computer then uses to screen the carrier and vehicle information. This system checks several databases maintained by federal and state agencies that track carrier compliance against state and federal registration, credentialing, and safety requirements. It also collates the truck's weight data collected by the weigh-in-motion (WIM) scales on the weigh station's entrance ramp. The system is integrated with the station's WIM and truck sorting system so that carriers flagged as potential violators are pulled over for further inspection.

At stations with no KATS system, CVE officers or clerks key truck USDOT numbers using KYTC's mainframe system (soon to be phased out), Kentucky's Commercial Vehicle Information Exchange Window (CVIEW), or inSPECT, which is a software application that integrates the screening software with the inspection software used by officers when conducting an inspection. Like KATS, these applications check against motor carrier screening databases and flag any potential offense. These systems are not integrated with the station's WIM and sorting system, so trucks must be pulled in manually in these cases.

Once the driver enters the scale house, officers conduct an inspection. Depending on whether the inspection is Level 1, 2, or 3, they may check driver credentials, company credentials, and/or vehicle credentials, and they may also inspect the commercial vehicle. If any registration, credentialing, or safety offenses are discovered, the driver will receive a citation and an inspection report detailing the charges. Not all violations of federal safety regulations are citable offenses, so such violations may or may not appear on the citation; IFTA, KIT, KYU, OW/OD, and UCR offenses are all supposed to result in automatic citations. Another distinction that is important to make is that some types of violations are not violations under Kentucky's criminal law; they could be misdemeanors or not have an applicable criminal charge. Sometimes the terms "citations" and "charges" are used interchangeably; however, it is critical to make a distinction. Citations are the actual tickets received by offenders, while charges are listed on those citations. Each citation represents a case, no matter how many charges are present on the citation. For that reason, throughout this report, the term "violation" is used only made if a transgression qualifies as both a safety violation and a criminal violation. Otherwise, the terminology used is "offense."

After receiving a citation, the driver will be instructed as to whether or not he or she can leave the weigh station before resolving any pending credentialing, permitting or safety offenses. Drivers may have to contact officials at KYTC's Division of Motor Carriers (DMC), or use the state's temporary permits web application to obtain the credentials or permits needed to resume operations. Drivers may need to secure the assistance of a mechanic or roadside service to address mechanical issues, or procure another truck if they are required to split an overweight load. If a driver is placed out-of-service, he or she is to be replaced by a driver with the appropriate CDL as well as medical card documentation. The dispatcher or company office may be responsible for straightening out these issues if the driver is not an owner-operator. The

required action is contingent upon the specifics of each case. If a citation is issued, however, a final resolution will require court action.

1.4 Kentucky Court System

In 1975, Kentucky added an article to the state constitution that created a unified court system.¹ This system consists of four levels of state courts. The district court system handles local ordinances, traffic violations, probate, and domestic violence cases. Most cases in district court involve misdemeanors. Appeals of district court rulings are sent to the circuit courts. Circuit courts adjudicate felonies as well as cases of contested wills, property disputes, and civil cases over \$5,000. Family courts are also under the jurisdiction of the circuit courts and handle divorces and custody matters.² There are two appellate courts in Kentucky. Circuit court appeals are sent to the Kentucky Court of Appeals. The Court of Appeals reviews cases and publishes decisions. The majority of appeals must go through this court. The second appellate court is the Supreme Court of Kentucky.

Adjudication for commercial vehicle offenses is almost exclusively the responsibility of Kentucky District Courts. More than 99 percent of all commercial vehicle offenses included in this study go through the district court system. There are 60 state district court districts, with some districts spanning multiple counties and others covering only a single county. KRS 24A.040, 24A.050 and 24A.060 stipulate that 28 districts have one judge, 28 districts have two judges, and four districts have three judges, meaning there are 96 district judges serving the state. In contrast to the eight-year terms served by justices or judges on the Kentucky Supreme Court, Kentucky Court of Appeals, and Kentucky circuit courts, Kentucky district court judges are elected to four-year terms.

1.5 Commercial Vehicle Adjudication Process

If individuals receive a citation, they have to address legal charges in their district. Citations are issued at the discretion of officers. The majority of violations included in the study result in a citation, but not all of them. Figure 1 details the process through which each case flows. The process that occurs with respect to CVE and KYTC has already been described, but all taxes and fees required to obtain necessary credentials must be paid. All safety issues related to the driver, vehicle, and carrier must be addressed as well. Once legal issues have been resolved, impounded vehicles will be released for continued operation.

KSP maintains records of citations written by their officers. If those citations are electronic, they go directly into Kentucky's Open Portal Solution (KYOPS), KSP's data entry and management software application for traffic collisions, crimes, and citation reports. According to a 2012 National Highway Traffic Safety Administration (NHTSA) survey completed by the Kentucky Administrative Office of the Courts (AOC), approximately 72 percent of citations were electronic. For commercial vehicle citations, the percentage of electronic citations was higher — roughly 95 percent. Paper citations are stored at the circuit court clerk's office in the county where the citation was written. In those instances, a clerk enters citations into KYOPS.

¹ No author. 2011. "Kentucky Court of Justice: The Judicial Branch at a Glance." Kentucky Court of Justice. Accessed 25 July 2014 at: <http://courts.ky.gov/resources/publicationsresources/Publications/P2KCOJBrochure.pdf>

² Ibid.

Law enforcement officers and circuit court clerks have access to KYOPS and CourtNet, which is the database Kentucky's court system uses to track pending cases and provide information to members of the legal community. Data are continuously exchanged between these databases, as citations are passed from KYOPS to CourtNet. The court dates are assigned on the citation at the time of issuance, and each citation enters the court docket once the record is populated in CourtNet. Approximately 99 percent of all commercial vehicle charges are administered by the district courts. In many cases, the citations are pre-payable, comparable to other traffic cases. If a circuit court clerk rules a defendant is eligible to pre-pay the citation, they may do so in person or online (except in Harlan, Logan and Menifee counties).³ If the citation is pre-payable and the defendant pays the fine and court fees, the clerk will note the payment, remove the case from the docket, and enter a case disposition of "Pre-payable citation." If the citation contains charges that are not pre-payable, or the defendant does not opt to pay the charges before the court date, the case remains on the docket.

For some charges, defendants visit district courts in-person, where they will be arraigned on the charges that were issued on the citation. Individuals representing themselves will typically plead either guilty or not guilty. Guilty pleas will usually prompt a brief conversation between the county attorney and district court judge. The county attorney will make a recommendation to the judge, who will then determine which charges to uphold and the appropriate fine to levy. In most situations, the fines are the minimum allowable amount, and proceedings follow a standardized routine for these offenses. In some instances, individuals may retain legal counsel. They may plead guilty after the attorney negotiates a more lenient punishment, or not guilty if they intend to dispute the charges.

If the case is not resolved during the arraignment – because the defendant is adamant about their innocence, or needs time to obtain an attorney – the judge may schedule a trial as a follow-up at a later date. In the sentencing hearing or trial, the case is resolved and a number of outcomes are possible. The defendant could be found guilty, the charges could be dismissed, or the defendant and the state may reach another resolution, such as amended charges, a diversion program, or some other disposition status. Pretrial diversion programs are alternatives for non-violent criminal offenders who commit misdemeanors such as alcohol and drug offenses, disorderly conduct, or shoplifting. Unless the charges are dismissed or a deal is reached, the judge will consult the county attorney or a trial jury (if a trial is held) about the appropriate punishment. Trial cases are exceedingly rare in traffic cases, so generally the county attorney, district judge, defendant, and defense attorney decide on the appropriate resolution. After the case is settled, circuit court clerks will enter the district court records into the CourtNet database.

The process summarized in Figure 1 is a condensed version. For example, if individuals are in diversion programs but fail to meet the requirements, there will be further court action. Likewise, if a defendant does not appear at a court proceeding, they are charged with failure to appear in court, which carries additional penalties. Failing to pay fees or court costs within the pre-specified payment window also results in further court action. Under special circumstances, a judge may grant a defendant extra time to handle his or her case if the defendant needs more time to secure an attorney, make payments, or communicate with the company responsible for vehicle

³ No author. 2014. "Make Online Payments." Kentucky Court of Justice. Accessed 25 July 2014 at: <http://courts.ky.gov/payments/Pages/default.aspx>

credentials, taxes, and safety to determine if they will pay the fine. The flowchart also omits communication between district courts and KYTC.

Figure 1. Adjudication Process for Commercial Vehicle Offenses

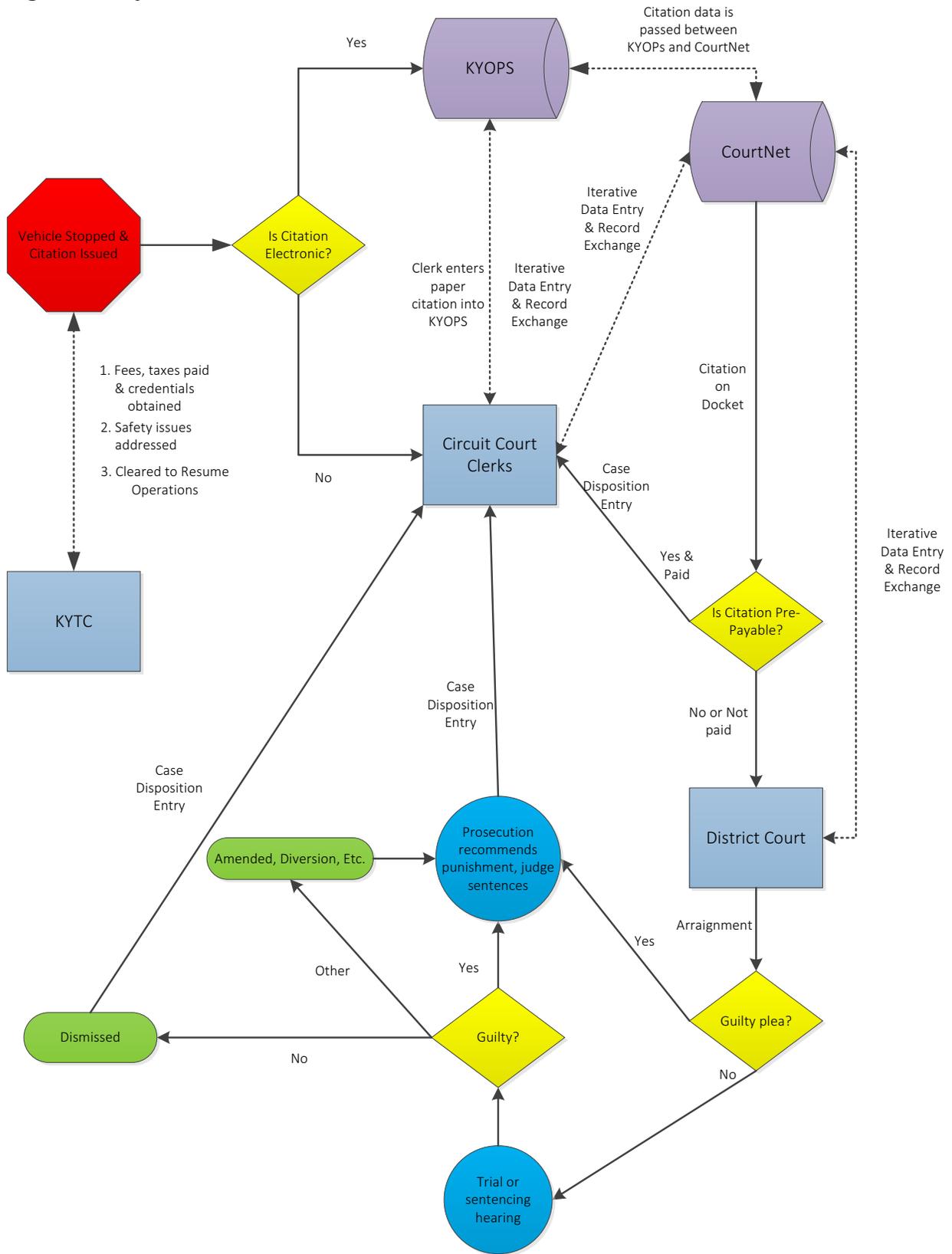


Table 1 and Table 2 list all of the offenses included in this study. The tables contain information about federal regulatory, KIT/IFTA, KYU, OW/OD, and UCR offenses. Listed alongside each charge are the applicable KRS statute, description, violation level, minimum fine, and maximum fine. In terms of the legal ramifications, Kentucky treats most of these offenses as criminal violations. According to KRS 431.060, “offenses punishable by a fine only or by any other penalty not cited herein, whether in combination with a fine or not, are violations.” The same statute classifies misdemeanors as offenses that may result in confinement and a fine. KYU, KIT and IFTA violations are treated as Class A misdemeanors. Felonies are offenses punishable by a fine and either confinement in a penitentiary or death (for capital offenses). None of the offenses included in the study are classified as a felony.

Fines are subject to the discretion of district court judges unless the citations are pre-payable, in which case the circuit court clerks typically accept the minimum fine associated with each offense. The first five federal regulatory violations in Table 1, which are related to hazardous materials offenses, carry fines ranging from \$250 to \$25,000. These fines are significantly higher than the fines for most other commercial vehicle offenses, likely because of the materials’ volatile nature, the safety risks they create, and the costs associated with cleaning up spills. After the hazardous materials violations, the table lists 15 violations of federal regulations that span a wide range of issues such as mechanical problems (e.g. brakes, lighting, tires), violations of household good requirements, taxicab operation requirements, violation of Federal out-of-service (FOOS) orders, and driver violations related to CDLs, medical cards, and logbooks. These offenses all carry fines of \$25 to \$200. Next are three offenses stemming from carriers failing to obtain proper operating authority. For example, if a carrier fails to declare to KYTC that it intends to operate as a for-hire carrier (i.e. carrying property owned by other businesses), or does not reveal what types of cargo it will haul, the carrier can be cited for lacking interstate- or intrastate-authorized authority. Fines for these offenses range from \$2,000 to \$3,500. The next two federal violations – though authorized by different statutes – are basically treated the same way as the 15 preceding the operating authority violations. The final offenses listed in Table 1 include the misdemeanor offenses associated with KIT, IFTA and KYU violations. All of these violations have maximum fines of \$500. KRS statutes do not specify minimum fines for these misdemeanor offenses.

Table 2 displays all of the OW/OD and UCR charges included in the study, along with the applicable KRS statute, description, minimum fine and maximum fine. There are 27 OW/OD offenses enforced by CVE and other law enforcement agencies in Kentucky. They are collectively authorized by five statutes, KRS 189.06, 189.221, 189.222, 189.223, and 189.27. In most cases, the fines vary between \$10 and \$500. Alternatively, for weight-specific offenses the judge may fine a violator two cents per pound in excess of legal limits. If the truck is more than 5,000 lbs. overweight, the two cents per pound still applied, with the stipulation that the minimum fine be \$100 and maximum fine \$500. Not having a warning sign or signal flag for a projecting load carries a fine between \$20 and \$100. UCR is the last offense on the list, and carries a fine between \$25 and \$200.

In addition to fines, convicted defendants must also pay court costs, which vary by county. Generally, court costs are not assessed unless a defendant is convicted on at least one charge. There was some uncertainty over the ubiquity of this practice; however, it is not a major factor in

terms of explaining the challenges of commercial vehicle adjudication, as it does not relate to dismissals. There are challenges in terms of the availability of data related to fines and fees collected by charge and by county (see Chapter 3).

Table 1. Chargeable Commercial Vehicle Offenses (Federal Regulations, KIT, IFTA, KYU)

| Type | KRS | Description | Level | Min Fine | Max Fi |
|-----------------|------------|---|-------------|----------|--------|
| Fed. Regulation | 174.410 | VIOL PART 172 FED SAFETY REG-HAZARD MATERIAL COMMUNICATION | VIOLATION | \$250 | \$250 |
| Fed. Regulation | 174.410 | VIOL PART 173 FED SAFETY REG-HAZARD MATERIAL PACKAGING | VIOLATION | \$250 | \$250 |
| Fed. Regulation | 174.410 | VIOL PART 177 FED SAFETY REG-HAZARD MATERIAL BY PUBLIC HWY | VIOLATION | \$250 | \$250 |
| Fed. Regulation | 174.410 | VIOL PART 178 FED SAFETY REG-HAZARD MATERIAL SPEC PACKAGING | VIOLATION | \$250 | \$250 |
| Fed. Regulation | 174.410 | VIOL PART 180 FED SAFETY REG-HAZARD MATERIAL CARGO TANKS | VIOLATION | \$250 | \$250 |
| Fed. Regulation | 281.600 | NO LEASE AGREEMENT | VIOLATION | \$25 | \$2 |
| Fed. Regulation | 281.600 | NO EXTERIOR IDENTIFICATION/IMPROPER DISPLAY | VIOLATION | \$25 | \$2 |
| Fed. Regulation | 281.600 | REFUS COMM VEH OPER TO SUBMIT TO SAFETY INSPECTION | VIOLATION | \$25 | \$2 |
| Fed. Regulation | 281.600 | VIOL OF RULES/REGULATIONS - HOUSEHOLD GOODS CARRIERS | VIOLATION | \$25 | \$2 |
| Fed. Regulation | 281.600 | VIOLATION OF REGULATIONS - TAXI CAB OPERATIONS | VIOLATION | \$25 | \$2 |
| Fed. Regulation | 281.600 | VIOL PART 390 FED SAFETY REG - GENERAL POLICY | VIOLATION | \$25 | \$2 |
| Fed. Regulation | 281.600 | VIOL PART 392 FED SAFETY REG - DRIVING OF MOTOR VEHICLE | VIOLATION | \$25 | \$2 |
| Fed. Regulation | 281.600 | VIOL PART 393 FED SAFETY REG - PARTS NEED SAFE OPERATION | VIOLATION | \$25 | \$2 |
| Fed. Regulation | 281.600 | VIOL PART 394 FED SAFETY REG - NOTIFY/REPORT/RECORD ACIDNTS | VIOLATION | \$25 | \$2 |
| Fed. Regulation | 281.600 | VIOL PART 396 FED SAFETY REG - INSPECT/REPAIR/MAINTENANCE | VIOLATION | \$25 | \$2 |
| Fed. Regulation | 281.600 | VIOL PART 397 FED SAFETY REG - TRANSPORT HAZARD MATERIAL | VIOLATION | \$25 | \$2 |
| Fed. Regulation | 281.600 | VEH OPER ON HIGHWAY AFTER BEING PLACED OUT OF SERVICE | VIOLATION | \$25 | \$2 |
| Fed. Regulation | 281.600 | VIOL PART 395 FED SAFETY REG-HOURS OF SERVICE FOR DRIVERS | VIOLATION | \$25 | \$2 |
| Fed. Regulation | 281.600 | VIOL PART 391 FED SAFETY REG - QUALIFICATION OF DRIVERS | VIOLATION | \$25 | \$2 |
| Fed. Regulation | 281.600 | VIOL PART 383 FED SAFETY REG - COMMERCIAL DRIVER LICENSE | VIOLATION | \$25 | \$2 |
| Fed. Regulation | 281.615 | NO INTRASTATE AUTHORIZED AUTHORITY | VIOLATION | \$2000 | \$35 |
| Fed. Regulation | 281.615 | NO INTERSTATE EXEMPTED AUTHORITY | VIOLATION | \$2000 | \$35 |
| Fed. Regulation | 281.615 | NO INTERSTATE AUTHORIZED AUTHORITY | VIOLATION | \$2000 | \$35 |
| Fed. Regulation | 281.624 | NO HOUSEHOLD GOODS FOR HIRE CERTIFICATE - INTRASTATE | VIOLATION | \$25 | \$2 |
| Fed. Regulation | 281.655 | FAILURE TO MAINTAIN LIABILITY/CARGO INS. (FOR HIRE CARRIER) | VIOLATION | \$25 | \$2 |
| KIT/IFTA | 138.720 | OPER ON INACTIV/CANCEL/REVOK MTR FUEL TAX LIC (KIT OR IFTA) | MISDEMEANOR | -- | \$5 |
| KYU | 138.720 | OPER ON INACTIVE/CANCELLED/REVOKED WEIGHT DIST TAX LICENSE | MISDEMEANOR | -- | \$5 |
| KYU | 138.665(4) | OPERATING ON CANCEL KYU DUE TO BOND | MISDEMEANOR | -- | \$5 |
| KYU | 138.665(1) | NO WEIGHT DISTANCE TAX LICENSE (KYU) | MISDEMEANOR | -- | \$5 |
| KYU | 138.725(1) | FAILURE TO ADD TAXABLE UNIT TO TAXABLE INVENTORY | MISDEMEANOR | -- | \$5 |

Table 2. Chargeable Commercial Vehicle Offenses (OW/OD, UCR)

| Type | KRS | Description | Level | Min Fine ⁴ | Max I |
|-------|---------|---|-----------|-----------------------|-------|
| OW/OD | 189.060 | NO WARNING FLAG/SIGNAL (PROJECTING LOAD) | VIOLATION | \$20 | \$ |
| OW/OD | 189.221 | OVERWEIGHT | VIOLATION | \$0.02* | \$ |
| OW/OD | 189.221 | OVERHEIGHT | VIOLATION | \$10 | \$ |
| OW/OD | 189.221 | BASIC HEIGHT WIDTH LENGTH & WEIGHT LIMITS FOR TRUCKS-NOTE 1 | VIOLATION | \$10 | \$ |
| OW/OD | 189.222 | OVERWIDTH | VIOLATION | \$10 | \$ |
| OW/OD | 189.222 | INCREASED HGT LENGTH WEIGHT LMTS ON HWY-SEE NOTE 1 | VIOLATION | \$10 | \$ |
| OW/OD | 189.222 | OVERWEIGHT ON AAA HIGHWAY | VIOLATION | \$0.02* | \$ |
| OW/OD | 189.222 | OVERWEIGHT ON AA HIGHWAY | VIOLATION | \$0.02* | \$ |
| OW/OD | 189.222 | OVERWEIGHT ON A HIGHWAY | VIOLATION | \$0.02* | \$ |
| OW/OD | 189.222 | OVERWEIGHT ON BRIDGE | VIOLATION | \$0.02* | \$ |
| OW/OD | 189.222 | VIOLATION OF BRIDGE FORMULA | VIOLATION | \$10 | \$ |
| OW/OD | 189.222 | OVERWEIGHT ON SINGLE AXLE-FORMULA | VIOLATION | \$0.02* | \$ |
| OW/OD | 189.222 | OVERWEIGHT ON TANDEM AXLE-FORMULA | VIOLATION | \$0.02* | \$ |
| OW/OD | 189.222 | OVERWEIGHT ON TRI-AXLE -FORMULA | VIOLATION | \$0.02* | \$ |
| OW/OD | 189.222 | OVERLENGTH TRACTOR SEMI-TRAILER | VIOLATION | \$0.02* | \$ |
| OW/OD | 189.222 | COMB. UNITS UP TO 65 FT OVER DESIGNATED HIGHWAYS | VIOLATION | \$10 | \$ |
| OW/OD | 189.223 | REFUSING TO BE WEIGHED/FAILURE TO UNLOAD OVERWEIGHT TRUCK | VIOLATION | \$10 | \$ |
| OW/OD | 189.223 | REFUSING TO BE MEASURED | VIOLATION | \$10 | \$ |
| OW/OD | 189.270 | VIOLATING SPECIAL PERMIT | VIOLATION | \$10 | \$ |
| OW/OD | 189.270 | NO SPECIAL PERMIT TO EXCEED WT/HT/ WID/LGTH LIMITS | VIOLATION | \$10 | \$ |
| OW/OD | 189.270 | VIOL TIME RESTRICTIONS OF SPEC PERMIT O/DIMENSION LOADS | VIOLATION | \$10 | \$ |
| OW/OD | 189.270 | VIOL OF ESCORT/SAFETY REQ-MOVEMENT O/DIMENSION LOADS | VIOLATION | \$10 | \$ |
| OW/OD | 189.270 | VIOLATION OF ANNUAL PERMIT FOR MOVEMENT OF HOUSE TRAILER | VIOLATION | \$10 | \$ |
| OW/OD | 189.270 | VIOL OF ESCORT/SAFETY REQUIREMENTS MOVING HOUSE TRAILER | VIOLATION | \$10 | \$ |
| OW/OD | 189.270 | VIOL TIME RESTRICTIONS SPEC PERMIT MOVING HOUSE TRAILERS | VIOLATION | \$10 | \$ |
| OW/OD | 189.270 | VIOL ESCORT/LIGHTING/BRAKES-MOVEMENT 14 FT WIDE HOUSE TRLRs | VIOLATION | \$10 | \$ |
| OW/OD | 189.270 | NO PERMIT TO MOVE HOUSE TRAILER | VIOLATION | \$10 | \$ |
| UCR | 281.600 | UNIFIED CARRIER REGISTRATION ACT VIOLATION | VIOLATION | \$25 | \$ |

⁴ All fines marked with an asterisk (*) are assessed on a per pound basis.

Chapter 2. Literature Review

2.1 Background

Over the years, state courts, particularly supreme courts, have become targets of special interest groups because of their ability to set precedents through decisions that effectively create policy.⁵ At the same time, legal scholars have examined state courts for judicial bias while also studying judicial election reforms. They have found that local politics and elections have a profound effect on how a judge adjudicates cases, despite a common assumption that judges are impartial and only influenced by the law. There are also individuals who seek to reform the judicial election process in order to elect judges that are more objective, more qualified, and not as influenced by politics. Compared with appellate courts, there are significantly fewer studies of state trial courts or traffic courts, so it is less clear how causal factors drive institutional outcomes. However, Shomade and Hartley have found that county attorneys, defense attorneys and district judges are the most important players in trial courts, and that the social networking of these individuals, through their various organizational affiliations, plays a large role in shaping case dispositions (or outcomes).⁶

2.2 Judges and Impartiality

In most states, judges are chosen through popular elections, with the understanding that elections keep judges accountable to the voters and the needs of the community.⁷ Usually there are term limitations for elected judges. However, depending on the state, judges may be appointed by a governor or legislature. In such cases, appointments may be for life or for a limited term.⁸

Most people assume that judges are only influenced by the facts of the case and knowledge of the law. However, research indicates that judges and justices are also influenced by the legal and political context they serve in as well as their personal beliefs.⁹ For example, judges in more liberal locales are more likely to be liberal in their decision making, with the opposite being true in more conservative communities.¹⁰ The types of sentences that are handed down by the court are also influenced by local contingencies. Helms and Jacobs point to a previous study that demonstrated locales with more relaxed views about use of marijuana have shorter sentences for

⁵ Glick, Henry R. "Courts: Politics and the Judicial Process." In *Politics in the American States: A Comparative Analysis*, edited by Virginia Gray and Russell Hanson, 232-60. Washington DC CQ Press 2004.

⁶ Salmon A. Shomade and Roger E. Hartley. "The Application of Network Analysis to the Study of Trial Courts." *The Justice System Journal*, Vol. 31, No. 2 (2010), pp. 144-163.

⁷ Hall, M. G., & Bonneau, C. W. Does Quality Matter? Challengers in State Supreme Court Elections. *American Journal of Political Science*, 50(1), (2006) 20-33.

Huber, G. A., & Gordon, S. C. Accountability and coercion: Is justice blind when it runs for office? *American Journal of Political Science*, 48(2), (2004). 247-26.

⁸ Glick, H. R. Courts: Politics and the Judicial Process. In V. Gray & R. Hanson (Eds.), *Politics in the American States: A Comparative Analysis* (Eighth ed., pp. 232-260). Washington DC CQ Press (2004).

⁹ Brace, P. R., & Hall, M. G. The interplay of preferences, case facts, context, and rules in the politics of judicial choice. *Journal of Politics*, 59 (1997), 1206.

Hall, M. G. State Supreme Courts in American Democracy: Probing the Myths of Judicial Reform. *American Political Science Review*, 95 (2001), 315.

Smith, K. B. The Politics of Punishment: Evaluating Political Explanations of Incarceration Rates. *Journal of Politics*, 66(3), (2004). 925-938.

¹⁰ Ibid. Brace and Hall.

crimes involving the personal use of marijuana.¹¹ Increased incarceration numbers, lengthy sentences, and the expanding use of capital punishment are linked to a more conservative community orientation.¹² Furthermore, there is evidence that judges and justices may alter their sentencing habits to garner support for an upcoming election.¹³ Finally, scholars have highlighted a racial component of sentencing and incarceration practices.¹⁴ African American males endure much longer sentences than their white counterparts; they are overrepresented on death row as well.¹⁵ Helms and Jacobs link this to the local population and race relations.¹⁶

Although casual observers do not think of courts as policymakers, judges can make policies and influence policymaking. Annie Decker gives a lengthy account of how common law works at the local level.¹⁷ Common law develops over time and consists of previous decisions by local judges that are significantly influenced by the local social constraints and the embedded court system. Common law consists of a wide variety of cases that include landlord-tenant issues, fines, traffic violations, mental health, drug courts, and family courts. Local common law is circumscribed within jurisdictions, and is unlikely to come under review by an appeals court.¹⁸ State and federal laws and regulations specify what constitutes commercial vehicle violations; they are not set by common law. Nevertheless, based on previous scholarship, it is reasonable to anticipate these outcomes are influenced by local economic, political and social conditions. Outcomes may also be explained by a judge's knowledge of the various commercial vehicle laws and programs, as well as how frequently commercial-vehicle-related charges appear on district court dockets.

2.3 Conclusion

This study focuses on district-level courts that have jurisdiction over commercial vehicle laws in Kentucky. Even though local courts are citizens' main point of contact with the judicial system,¹⁹ research on them is lacking because of the difficulty in acquiring information on their proceedings.²⁰ Also, there are thousands of local courts in the United States, making them an unwieldy subject of study. In addition, there is great diversity within local courts, and many of them have developed legal practices particular to their local context. In the case of Kentucky, it is clear that the state's judicial system confronts many of the same issues that other state court systems do. Like scholars have demonstrated elsewhere, the state's district court system finds itself influenced by local contingencies, the electorate, and partisan politics, all of which may engender a disparity in the outcomes of commercial vehicle cases among the various counties in the state.

¹¹ Helms, R., & Jacobs, D. The Political Context of Sentencing: An Analysis of Community and Individual Determinants. *Social Forces*, 81 (2002), 577-604.

¹² Ibid. Brace and Hall.

¹³ Ibid. Brace and Hall; Hall and Bonneau; Huber and Gordon.

¹⁴ Ibid. Smith

Yates, J., & Fording, R. Politics and State Punitiveness in Black and White. *Journal of Politics*, 67 (2005), 1099-1121.

¹⁵ Mocan, H. N., & Gittings, R. K. Getting off death row: Commuted sentences and the deterrent effect of capital punishment. *Journal of Law & Economics*, 46 (2003), 453-478.

¹⁶ Ibid. Helms and Jacobs.

¹⁷ Decker, A. A theory of local common law. *Cardozo Law Review*, 35 (2014), 1939-1992.

¹⁸ Ibid. Decker.

¹⁹ Benesh, Sara C., and Susan B. Howell. "Confidence in the Courts: A Comparison of Users and Non-Users." *Behavioral Sciences & the Law* 19, no. 2 (2001): 199-214

²⁰ Ibid. Decker.

Chapter 3. Commercial Vehicle Enforcement and Adjudication Performance

This chapter analyzes commercial vehicle enforcement trends, case dispositions, conviction rates and dismissal rates for five categories of offenses: KIT/IFTA, KYU, UCR, OW/OD and federal regulations. All data analyzed in this chapter were obtained by querying the CourtNet database for FY 2003-FY 2014. This chapter reports on the number of charges issued by law enforcement in the five offense categories, the geographic distribution of those charges across Kentucky’s 120 counties, and temporal trends in enforcement. After reviewing enforcement data, the analysis turns to court outcomes of cases and charges for commercial vehicle offenses. Also included are conviction rates, dismissal rates, and the spatial and longitudinal trends in the handling of cases across the state. The chapter closes with some general conclusions about the state of commercial vehicle enforcement and adjudication.

3.1 Commercial Vehicle Enforcement Statistics

Data on commercial vehicle offenses often do not reflect all enforcement activity. Some offenses were not included in the study because KYTC and KSP-CVE officials believed they would be difficult to incorporate in any alternative system of commercial vehicle offense adjudication. Furthermore, officers often identify violations and enforce them informally, meaning they give drivers or carriers the opportunity to contact officials at KYTC and get their credentials or taxes in order, and then let the driver go with a warning. These discretionary acts are absent from the data. Those caveats aside, the data provides fairly robust insights into the prevalence of particular offenses, along with temporal and spatial trends.

Table 3. Number of Commercial Vehicle Charges by Offense Category (2004-2013)

| Violation | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 |
|-----------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|
| Federal | 16,787 | 16,857 | 16,237 | 18,273 | 28,046 | 25,373 | 20,362 | 16,797 | 20,979 | 20,942 |
| IFTA/KIT | 338 | 272 | 275 | 153 | 214 | 366 | 471 | 431 | 414 | 407 |
| KYU | 6,914 | 7,068 | 6,412 | 5,379 | 7,547 | 6,712 | 5,898 | 5,627 | 5,590 | 6,796 |
| OW/OD | 3,256 | 2,420 | 3,347 | 3,054 | 2,999 | 3,237 | 2,524 | 2,081 | 3,042 | 1,554 |
| UCR | -- | -- | -- | -- | -- | 1,609 | 843 | 1,086 | 874 | 916 |
| Total | 27,295 | 26,617 | 26,271 | 26,859 | 38,806 | 37,297 | 30,098 | 26,022 | 30,899 | 30,615 |

Table 3 lists the number of charges issued by state law enforcement officials for violations of federal regulations, IFTA/KIT, KYU, OW/OD, and UCR from 2004 to 2013. The numbers are reported for fiscal years, not calendar years. The bottom row includes the total number of charges filed in Kentucky courts for each fiscal year. Violations of federal safety regulations are by far the most common, numbering 200,653 charges. Approximately two-thirds (66.7 percent) of all charges stemmed from violations of federal laws and regulations. There are at least three possible explanations for the prevalence of these violations. First, safety is the main priority of FMCSA – the federal agency that develops regulations, provides grants to law enforcement agencies engaged in this activity, and works with state DOTs to deploy technology to screen trucks. Second, there are 25 discrete violation codes related to violations of federal regulations, so there is a broad range of actions that qualify, and these violations can concern drivers, vehicles, or the carrier itself. Third, multiple violations of safety regulations are relatively common, so citations often contain several charges. The yearly totals for federal violations reveal a spike between 2007 and 2008, before dropping precipitously from 2009-2011. Since 2011, the number of charges has trended upward, but they have yet to return to pre-recession levels.

The second most common violation category concerns KYU. For the 10-year study period, there were 63,943 charges issued for violations of the weigh-distance tax laws, which amount to nearly 21.3 percent of all charges in the study's dataset. These charges are relatively common because KYU is a credential specific to Kentucky, and carriers are either unaware of it or unwilling to comply with requirements — that is, obtain the necessary license number, display it on the truck, file quarterly returns and pay taxes in return for operating in the state. These requirements apply mainly at the carrier level, but failure to add all vehicles to the carrier's vehicle inventory means that a specific vehicle can result in a KYU violation. This charge is separate from driver-related compliance or activities; even though drivers are the ones charged with misdemeanors. The citation data for KYU is somewhat uneven, but the 2013 figure approaches the 10-year high of 7,547, achieved in FY 2008.

Charges related to OW/OD offenses are the third most common commercial vehicle offense in Kentucky. Between FY 2004 and FY 2013, law enforcement officers issued 27,514 charges for 27 distinct offenses. These offenses account for about 9.2 percent of all charges. Size and weight violations pertain to the dimensions and measurements of the vehicle, so the violations do not apply to the carrier and driver *per se*, however, the carrier and driver are both held responsible, as the citation goes to the driver and the safety score of the carrier will suffer as a result of the offense. The annual number of offenses varies greatly as well, with total citations taking a steep dive in 2013. In three of the last four years, the total number of citations was below the 10-year average. This does not quite signify a robust trend, but provides evidence that such citations have been declining over the last decade. Overweight (but not overdimensional) offenses are difficult to cite because officers must have access to a highly accurate static scale to issue a citation. Weigh-in-motion (WIM) scales can be used for screening purposes, but officers cannot issue citations based on a WIM scale reading.

UCR and IFTA/KIT offenses constitute a small percentage of the overall number of citations. The UCR totals, which start in 2009 following the implementation of UCR, totaled 5,328 over five years, while there were 3,341 IFTA/KIT charges over ten years. Taken together, these categories account for 2.9 percent of all charges. There is only one type of violation code associated with each of these two offenses. When UCR credentials are obtained, the fees cover every vehicle in the fleet, though the carrier must correctly specify the number of vehicles. IFTA/KIT specifies that carriers must also report all eligible vehicles on a fuel tax return, which applies to all vehicles weighing more than 26,000 pounds. However, these reports may not align perfectly with those documented for KYU, which only applies to vehicles weighing more than 59,999 pounds. What distinguishes these two violations is that screening for UCR violations is much easier than screening for IFTA violations due to data quality issues with the IFTA screening data. However, officials in Kentucky are working to clean up that data and upload it to the scales so that officers can confidently screen for IFTA violations in the future. IFTA/KIT violations are misdemeanors assessed to the truck driver, even though the carrier is supposed to be responsible for such compliance.

Given year-to-year variability, it is instructive to look at the first five years (2004-2008) and the second five years (2009-2013) to determine if the five-year enforcement numbers show increases or decreases. These numbers are reported in Table 4. For the total of all offenses listed, there was a 6.2 percent increase in the number of charges issued during the second five-year period. The

primary drivers of this uptick were an 8.6 percent increase in federal regulatory offenses, a 66.9 percent increase in KIT/IFTA-related offenses, and the beginning of UCR enforcement in 2009. Over this same period, KYU and OW/OD enforcement numbers fell. KYU charges decreased 8.1 percent, and OW/OD charges dropped by 17.5 percent. This suggests that enforcement has been more active over the last five years, even though there is a noticeable dip in two of the offense categories.

Table 4. Five-Year Enforcement Charges for Select Offenses

| Violation | 2004-2008 | 2009-2013 | % Change |
|------------------|------------------|------------------|-----------------|
| Federal | 96,200 | 104,453 | 8.6% |
| IFTA/KIT | 1,252 | 2,089 | 66.9% |
| KYU | 33,320 | 30,623 | -8.1% |
| OW/OD | 15,076 | 12,438 | -17.5% |
| UCR | -- | 5,328 | -- |
| Total | 145,848 | 154,931 | 6.2% |

The Kentucky Justice and Public Safety Cabinet took over CVE from KYTC in 2008 and placed it in the hands of KSP. Table 5 reports the allocated budget and actual spending for Commercial Vehicle Enforcement, as well as the number of officers assigned to this task, between FY 2008 and FY 2013. Actual spending is typically lower than the initial enacted amount. Note that not all commercial vehicle citations are issued by CVE — that number includes all law enforcement personnel around the state. However, CVE officers cite a large percentage of these offenses. In spite of budgetary constraints and sizeable workforce turnover, the economic downturn lasting from 2008 to 2011 appears to have had the most significant effect on citation issuance. The number of charged dropped in FY 2010 and again in FY 2011, possibly owing to some lag in how recessions affect public sector organizations, and because data are reported by fiscal year, which begins in July of the preceding calendar year.

Table 5. Commercial Vehicle Enforcement Budget, Number of Officers, Total Charges

| FY | Enacted Budget | Actual Budget | Officers | Charges |
|-------------|-----------------------|----------------------|-----------------|----------------|
| 2008 | \$20,087,200 | -- | 138 | 38,806 |
| 2009 | \$21,414,100 | \$18,408,359 | 131 | 37,297 |
| 2010 | \$21,397,300 | \$19,395,842 | 121 | 30,098 |
| 2011 | \$22,817,600 | \$19,894,712 | 131 | 26,022 |
| 2012 | \$23,259,500 | \$17,205,728 | 135 | 30,899 |
| 2013 | \$21,258,100 | \$16,215,500 | 117 | 30,615 |

Assigning more officer personnel may take some time to translate into performance because the training for inspectors and officers is quite complex – the inspection tasks are technically challenging and take time to master. Another significant challenge faced by CVE is that it routinely loses new officers to other law enforcement agencies that provide better pay and

benefits. Technology enhancements such as the KATS, inSPECT and improved CVIEW may help officers screen trucks more efficiently; however, there are limitations on the number of inspections one officer can complete during a shift. During the past year, the number of sworn officers has decreased significantly, from 117 in FY 2013 to 68 as of October 2014. Moving forward, funding for this agency will likely suffer even deeper cuts. The revised budget for FY 2014 declined to \$16.2 million, and enactments for FY 2015 and 2016 are \$16.2 million and \$16.4 million, respectively. It is difficult to foresee how the fall in CVE officer numbers would not have a negative impact on safety and credentials issues, levels of compliance, and, potentially, commercial-vehicle-related crashes.

As noted, enforcement efforts are spread throughout the state, and the county-level data reflect the commercial vehicle and enforcement dynamics in play. Figure 2 illustrates the performance of each county over the 10-year study period. Darker shades of blue correspond to higher levels of enforcement activity. With the exception of Fayette County, every county with more than 10,000 commercial vehicle violations during this period – Henderson, Kenton, Shelby, Simpson, Hardin, Scott, Rowan, Lyon and Laurel – contains a weigh station. In the next tier of counties there are the remaining counties with weigh stations – Ballard, Fulton, Boone, and Floyd²¹ – and mostly counties located along key highway corridors, specifically I-65, I-75, I-64 and I-24. Interstate corridors have more truck traffic than any other class of highway in the state. Population, which drives a county’s commercial activity, also appears to have an effect, as nine of the 10 most populous counties reported more than 3,000 offenses during this time. Perhaps most surprising is the performance of several counties in southeastern Kentucky, where there is significant enforcement in 10 contiguous counties. One explanation for this is that enforcement has targeted coal trucks in this region, given the mining industry’s strong presence. Another potential explanation is the higher concentration of CVE officers in this part of the state. With respect to total citations issued, Laurel and Lyon Counties lead the way; they are the only two counties in the state operating weigh stations on both sides of the Interstate.

Counties with weigh stations are typically outliers in terms of enforcement numbers. Each of the top performing counties in each category is home to a weigh station. During the study period, these 13 counties produced more citations than the 107 other counties combined (165,112 in counties with a weigh station, and 113,555 for counties without a weigh station). There is an interesting contrast in the types of citations issued in counties that have a weigh station versus those that do not. As shown in Figure 3, federal charges constitute a slight majority (52.7 percent) of all charges in counties at weigh stations. Federal charges make up a supermajority (83.7 percent) of offenses in counties without a weigh station. The other primary distinction is KYU offenses, which constitute 33.7 percent of all charges issued in counties with weigh stations, but only 6.3 percent of all charges in counties without weigh stations. Not all charges in counties with a weigh station are necessarily issued at the weigh station, but it is safe to assume that most enforcement activity in the county occurs at that facility. Officers in counties with weigh stations have access to tax databases and screening technology that is unavailable or inaccessible to officers in other parts of the state. Officers without access to this technology and data also have less training than CVE officers, particularly concerning credentials and licensing issues. These factors may explain why KYU offenders are cited at a much higher rate in those

²¹ The Ballard County weigh station in Wycliffe, KY closed in 2011.

counties with weigh stations. Other charge categories (OW/OD, IFTA/KIT and UCR) encompass a similar percentage of total charges in all counties.

Figure 2. Offense Totals for Commercial Vehicle Violations, by County (2004-2013)

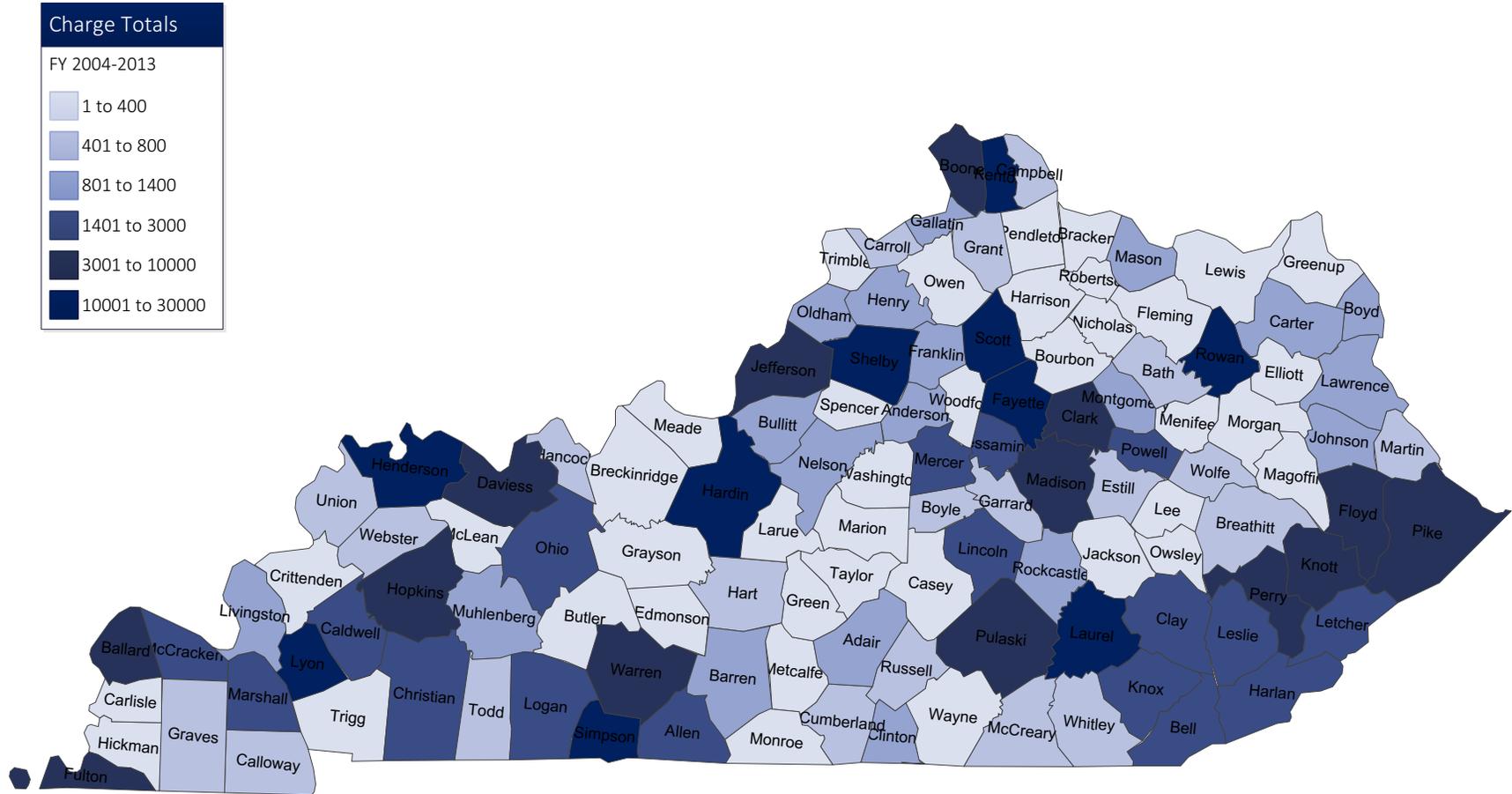


Figure 3. Charge Distribution in Counties Based on Weigh Station Location

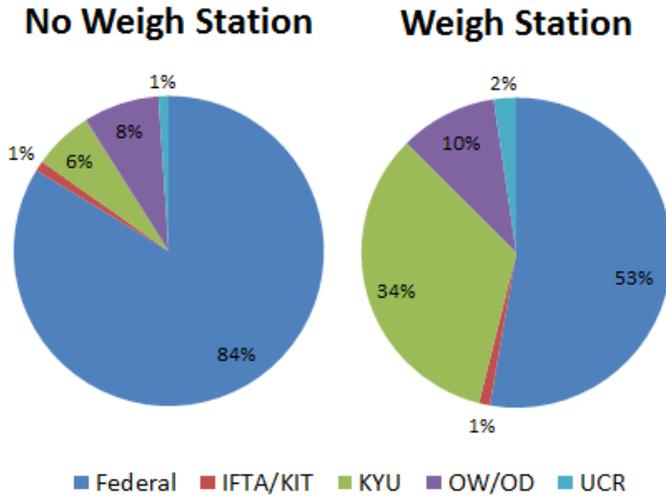


Table 6 lists the correlation coefficients between each of the five charge categories. A correlation coefficient is a measure of association between two variables, in this case the categorical charge totals by each county. The measure runs between 0 and 1, with “0” indicating no association and “1” indicating perfect covariance of the measures. The associations can also be signed negatively or positively to indicate a positive or negative relationship. All of the correlations are very strong, with the lowest coefficient at .499 and the highest coefficient at .905. All of these data suggest that counties with a higher number of citations are more likely to have a higher number of charges in another category. The table suggests that enforcement efforts are basically concentrated in a small cluster counties, and that all charges are more common in these high-performance counties (i.e. counties with weigh stations or large municipal police forces). The finding is also reinforced by Figures 23-27, which are located in the appendix. In summary, enforcement resources, access to KYTC databases, training, and weigh station location are the likeliest enforcement-related causes of variation. Potential non-enforcement differences in charges levied may include Interstate mileage and truck traffic volume, but these factors need more exploration before any definitive conclusions can be offered.

Table 6. Correlation of Enforcement Charge Totals by Category

| | Federal | KIT/IFTA | KYU | OW/OD | UCR |
|----------|---------|----------|-------|-------|-------|
| Federal | 1.000 | -- | -- | -- | -- |
| KIT/IFTA | 0.675 | 1.000 | -- | -- | -- |
| KYU | 0.632 | 0.867 | 1.000 | -- | -- |
| OW/OD | 0.655 | 0.499 | 0.585 | 1.000 | -- |
| UCR | 0.692 | 0.829 | 0.905 | 0.653 | 1.000 |

3.2 Commercial Vehicle Adjudication Statistics

Case dispositions frequently, but not always, indicate the court’s findings regarding the innocence or guilt of the defendant. The Kentucky Court of Justice’s annual report, which provides summary statistics of felony cases, groups case dispositions into six broad categories:

convictions, diversions, administrative procedures, acquittals, dismissals, and a miscellaneous category for dispositions that do not fit into any of the other categories. Convictions are case dispositions that resulted in at least one of the charges being successfully prosecuted. In this study, only guilty findings and pre-payable citations are treated as convictions. Dismissals are cases where the

Table 7. Kentucky Commercial Vehicle Offenses by Case Dispositions (2004-2013)

| Disposition | Category | Cases | Charges |
|--|-----------------|----------------|----------------|
| Acquitted | Acquitted | 8 | 8 |
| Not Guilty | Acquitted | 25 | 25 |
| Administrative Procedure | Admin | 3 | 3 |
| Guilty | Convicted | 53,344 | 56,213 |
| Pre-payable Citation - Paid | Convicted | 99,241 | 105,051 |
| Dismiss After Present To Grand Jury | Dismissed | 5 | 5 |
| Dismissal By Motion Of Prosecutor | Dismissed | 11,411 | 14,790 |
| Dismissed | Dismissed | 74,685 | 87,514 |
| Dismissed - Diverted | Dismissed | 1,407 | 1,835 |
| Dismissed Deferred Prosecution | Dismissed | 1 | 1 |
| Withdrawn | Dismissed | 45 | 50 |
| Deferred Prosecution | Diverted | 5 | 9 |
| Diversion | Diverted | 776 | 1,190 |
| Pre-trial Diversion | Diverted | 45 | 45 |
| Failure To Appear | FTA/FTV | 22,215 | 23,368 |
| Fugitive | FTA/FTV | 5,652 | 6,378 |
| Affirmed | Other | 11 | 11 |
| Amended | Other | 1,587 | 1,602 |
| Amended Down | Other | 736 | 737 |
| Amended Up | Other | 43 | 43 |
| Deceased | Other | 2 | 2 |
| Grand Jury | Other | 1 | 1 |
| Granted | Other | 1 | 1 |
| Indictment By Grand Jury / Information | Other | 155 | 184 |
| Merged | Other | 1,295 | 1,574 |
| No Action Taken By Grand Jury | Other | 36 | 48 |
| No True Bill Returned By Grand Jury | Other | 15 | 17 |
| Other | Other | 12 | 12 |
| Remanded | Other | 1 | 1 |
| Set Aside/voided | Other | 19 | 20 |
| Transfer | Other | 25 | 43 |
| Total | | 271,213 | 300,779 |
| Adjusted Total | | 272,807 | 300,781 |

charges are dropped because the judge has thrown a particular action out of court. In these data, dismissals can occur as a result of several final dispositions: at the judge's discretion, by motion of the prosecutor, because of withdrawn charges, if the grand jury dismisses the charges, or in

cases that are dismissed after a deferred prosecution. Acquittals are rare in context of traffic citations because acquittals require the sanction of a jury or a judge, and unlike dismissals typically come later in the adjudication process. As previously explained, diversions are alternatives for non-violent offenders wishing to keep convictions off their criminal record. Examples of diversions include traffic school or drug and alcohol dependency treatment programs. Failure to appear (FTA) and fugitive dispositions (FTV) occur when defendants are unaware, unable, or unwilling to show up at their scheduled court hearing. Other dispositions cover a range of outcomes, including amended charges, merged cases, transfers, grand jury actions, and outcomes related to appellate cases. Administrative procedures are uncommon and only used if law enforcement cannot successfully issue a warrant or summons for an indictment within 60 days of the case filing date.

Table 7 displays case disposition statistics for all commercial vehicle cases and charges included in this study for FY 2004 through FY 2013. The case category relates to the total number of cases in which such dispositions occurred, whereas charges classification signifies how many charges are associated with those cases. There are always more charges than cases because some cases will have more than one charge. The total number of cases is actually overstated because of how CourtNet data are counted. Commercial vehicle offenses are frequently paired together, but when the charges are broken out individually, the case gets counted twice. There is also a difference of 1,594 cases between the total number of cases that were reported and the adjusted total number derived from tallying each disposition type. This happens because some cases are being counted twice when the charges are broken out individually. On the other hand, the charge total and adjusted total is only off by two charges, with both discrepancies involving violations of federal safety regulations. For this reason, the study employs the charge data instead of the case data. The charge numbers are more accurate and less subject to reporting discrepancies.

Figure 4. Charge Disposition Rates for all Commercial Vehicle Offenses

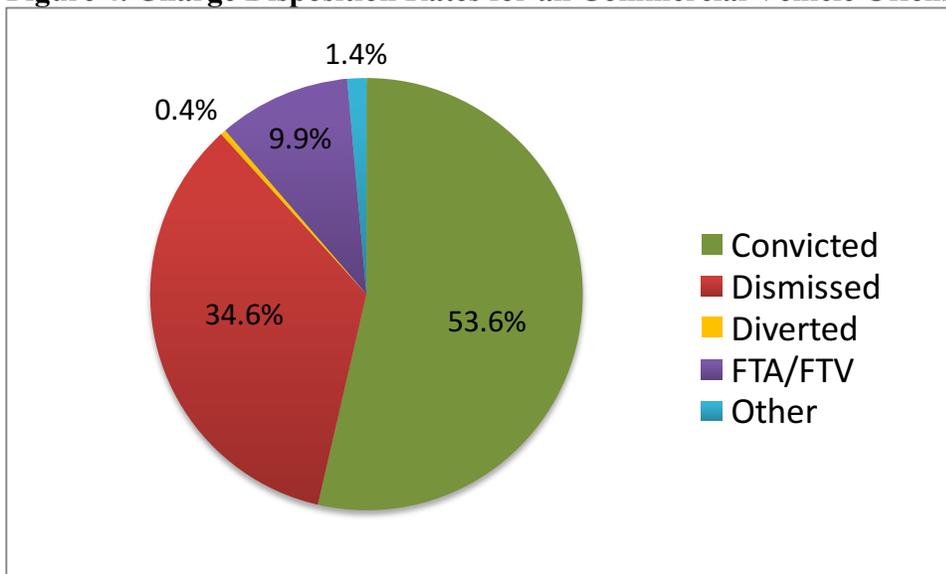


Figure 4 illustrates rates of case outcomes for all commercial vehicle offenses. Administrative procedures and acquittals are not included because of their rareness. Convictions are the modal outcome for commercial vehicle offenses, at 53.6 percent. The conviction rate for commercial-

vehicle-related charges is comparable to the statewide felony charge conviction rate, which in FY 2012 was 53.9 percent. The next most common outcome is dismissals, at 34.7 percent, followed by failure to appear or fugitive cases at 9.9 percent. Diversions and other dispositions make up 0.4 percent and 1.4 percent of all charges, respectively. Of these cases, convictions and dismissals represent a final ruling, meaning the court proceedings are complete and no further action must be taken. Other dispositions are temporary, which means the court will make a final determination at a later date. Charges with temporary dispositions are designated as: administrative procedures, deferred prosecutions, diversions, failure to appear, fugitive, pre-trial diversions, or set aside/voided. These charges will have a later, final disposition. The conviction rate, dismissal rate, diversions, and failure to appear/fugitive category for case charges are calculated the same way as they are in the Kentucky Court of Justice’s annual reports and in accordance with KRS 27A.460.²² There are a few miscellaneous dispositions added to the “Other” category for purposes of this study, but the method used here is not appreciably different from the Kentucky Court of Justice.

Figure 5. Charge Disposition Rates by Offense Category (2004-2013)

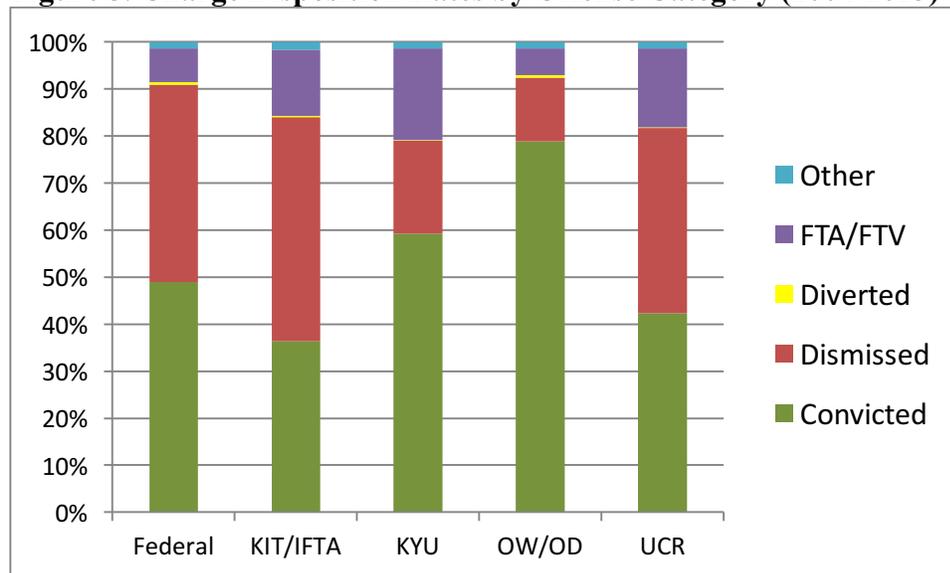


Figure 5 shows the charge disposition rates by offense category and case disposition category. Administrative procedures and acquittals are excluded due to their rarity. The horizontal axis contains each offense category, and the vertical axis reports on the percentage of charges that fall into a specific disposition category. Conviction rates vary quite significantly according to the offense category. The KIT/IFTA conviction rate is the lowest, with only 36.3 percent. The highest conviction rate is 78.8 percent for OW/OD — more than twice the KIT/IFTA rate. Occupying the middle ground are UCR (42.3 percent), federal commercial vehicle violations (49 percent), and KYU (59.2 percent). Weight and size violations are the most likely to yield a conviction, while federal safety and KYU violations are the next most likely to result in a conviction. Given that these two are the most common violations, this finding is to be expected. Kentucky district court judges appear more inclined to dismiss charges they have to deal with

²² Deferred prosecutions are considered diverted for purposes of this study, as there was no available classification available from the Kentucky Court of Justice or the AOC.

less frequently. It is unclear why this is the case, but one explanation for this variation is that judges are more comfortable upholding a citation when they have a solid understanding of the regulations and laws they are applying.

Dismissal rates generally run counter to the conviction rates, although the relationship is not perfectly inverted. The KIT/IFTA dismissal rate (47.7 percent) is significantly higher than the conviction rate for the same offense, and is also significantly higher than the dismissal rate (31.8 percent) for felony criminal cases reported in circuit courts in FY 2012. The dismissal rates for federal safety offenses and UCR charges are also above the state circuit court average, with dismissal rates of 41.9 and 39.3 percent, respectively. On the other end of the continuum, KYU (19.6 percent) and OW/OD (13.6 percent) dismissal rates are significantly lower. Both of these are related to vehicle weight, and one possibility is that district courts are less lenient on motor carriers that do not follow size, weight, and credentialing protocols. Transportation engineers and law enforcement officials both acknowledge that overweight trucks inflict significant damage to pavement on public highways²³. Awareness of this fact could make prosecutors and judges more likely to uphold charges. Another factor is that officers must present accurate scale measurements or length measurements as evidence, which is difficult for a defendant to factually contest.

Failure to appear and fugitive dispositions (FTA/FTV) are the other statistically significant outcomes for each of the five offense categories. As Figure 5 shows, the frequency of such outcomes varies from category to category. KIT/IFTA, KYU and UCR charges that end up FTA/FTV constitute 14.1, 19.6 and 16.8 percent of all charges, respectively. By comparison, the FTA/FTV rates for federal charges and OW/OD are only 7.1 and 5.7 percent. Why is the FTA/FTV rate nearly double for credentials violations as compared to safety-related or size and weight issues? KYTC officials would answer that drivers and company owners/management are often confused by what transpires at the weigh station. Some offenders believe they have successfully addressed all outstanding problems once they contact KYTC and obtain the necessary credentials, pay back taxes or reinstate a license. Afterwards, they do not show up for court. Federal safety violations include driver charges that may cause the individual receiving the citation to pay more detailed attention. Diversions and other dispositions do not account for a large percentage of the charges in any of the offense categories.

Ten-year averages provide good surface-level information about commercial vehicle offense adjudication, but they also leave out crucial information. Analysis of trends over time and across Kentucky's 120 counties reveals significant variation and is potentially a cause for concern for the administration and prosecution of offenses. Figure 6 shows the conviction rates by year for each offense category, as well as a combined conviction rate for all offenses included in the study, from 2004-2013. The first most striking aspect of the graph is the general downward trend in conviction rates for all types of offenses since 2006.

The overall conviction rate for all offenses has steadily declined from a peak of 61.1 percent in 2006 to 45.9 percent in 2013. OW/OD violations, which have the highest conviction rate, peaked at 83.2 percent in 2006 before gradually falling to 71.2 percent in 2013. By far the steepest drop

²³ Oh, Jeongho, E.G. Fernando and R.L. Lytton. 2007. "Evaluation of Damage Potential for Pavements due to Overweight Truck Traffic." *Journal of Transportation Engineering* 133(5): 308-317.

in conviction rate for any of the offense categories is KYU, which dropped from its 2006 peak of 70.9 percent to 41.2 percent in 2013 — a drop of almost 30 percentage points. Federal safety violation conviction rates have fluctuated less over this period, with the conviction rates falling from 53 percent to 44.2 percent from 2006 to 2012 before rebounding slightly to 46.1 percent in 2013.

Figure 6. Conviction Rates by Offense Category (2004-2013)

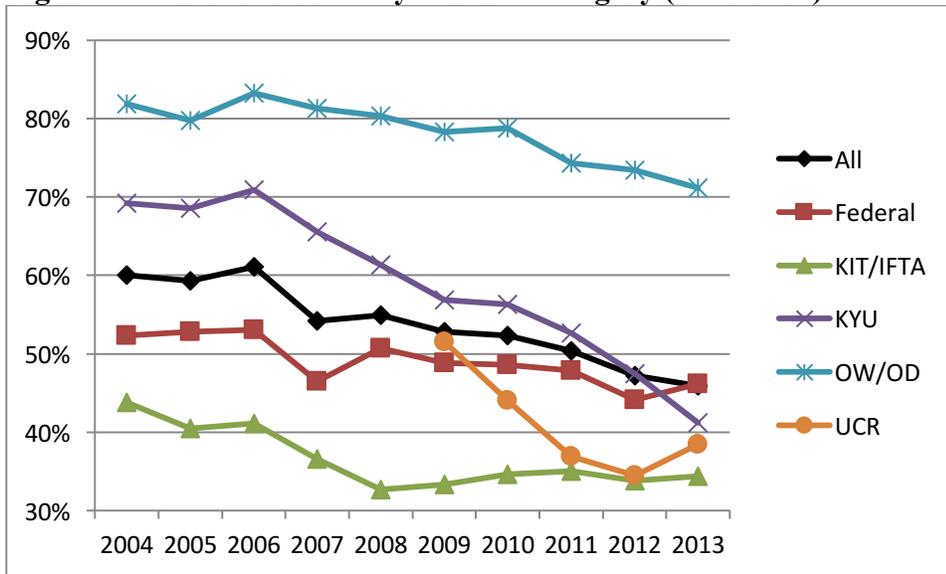
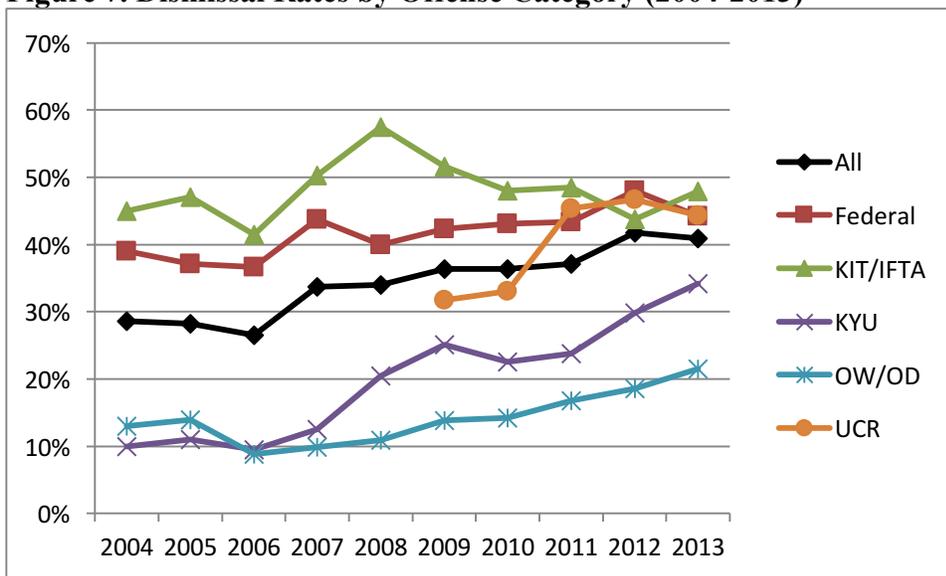


Figure 7. Dismissal Rates by Offense Category (2004-2013)



When the UCR program was rolled out in 2009, the initial conviction rate was 51.5 percent, but it declined sharply to a low of 34.4 percent in 2012 before ticking up to 38.4 percent in 2013. KIT/IFTA conviction rates declined steadily from 2004 to 2008, and have held steady near the

35 percent mark ever since. These trends are consistent with the overall pattern of conviction rates, which have steadily declined in recent years.

Some researchers have argued that using conviction rates as a performance metric is potentially problematic, because prosecutors could obtain a higher conviction rate by merely choosing to prosecute only the strongest cases. This means they would be less inclined to prosecute cases they did not believe would result in convictions. Statistical breakdowns of raw conviction and dismissal counts were created to uncover any noteworthy insights that had been missed previously (see Figure 28 in appendix). In general, the counts reveal the same patterns – a trend toward fewer convictions and more dismissals. Raw data indicate the total conviction number peaked in FY 2008, while conviction rates topped out in FY 2006. This highlights a limitation with using raw statistics – they do not reflect changes in the level of enforcement effort. The charts supply more evidence that non-state programs are the most likely to face adjudication problems. IFTA and UCR dismissals are more numerous than convictions. In FY 2012, federal safety charges were more likely to yield dismissals than convictions. OW/OD convictions dropped sharply, as did KYU convictions, even as the raw number of dismissals for both offense categories rose.

One apparent cause for the decline is that district court judges, either due to prompting by county attorneys or through their own discretion, have become increasingly inclined to dismiss charges issued for commercial vehicle offenses. Figure 7, which shows dismissal rates using the same categories as Figure 6, demonstrates that dismissal rates are negatively correlated with conviction rates over the same period of time. Overall, dismissal rates have climbed from 28.6 percent in 2004 to 40.9 percent in 2013. Dismissal rates for federal charges jumped from a 10-year low of 36.6 percent in 2006 to 48.1 percent in 2012, before coming down to 44.3 percent in 2013. Still, the change is significant considering the number of federal charges that move through the system. The most jarring change is the dismissal rate for KYU violations, which skyrocketed from 9.5 percent in 2006 to 34.2 percent in 2013. The dismissal rate for UCR offenses saw a swift increase from 31.7 percent to 46.7 percent from 2009 to 2012, declining only slightly to 44.3 percent in 2013. Even OW/OD dismissal rates went from 13 percent to 21.5 percent over the 10-year period. KIT/IFTA dismissal rates are easily the most pronounced, never dipping below 41.5 percent (in 2006) and reaching 57.5 percent in 2008 before receding to 43.7 percent in 2012. As of 2013, the dismissal rate for these violations stands at 47.9 percent.

Variability in dismissal rates between offense categories may be best explained based on whether they are related primarily to obligations set forth by state law or federal law. Lack of familiarity with federal motor carrier laws and regulations may be a factor. For example, few district court judges see IFTA/KIT violations on a consistent basis, and a lack of familiarity with the laws and regulations could explain why, as IFTA/KIT enforcement has increased, dismissal rates have also risen. KIT is based on state laws, but the majority of the offenses are IFTA violations, and IFTA is a program administered by an interjurisdictional body outside Kentucky. Although Kentucky law authorizes federal safety violations and regulations, most of the relevant details are found in federal regulations. This is true of UCR, which is a federal agreement between U.S. states (excepting Oregon, Nevada, Arizona, Wyoming, Florida, Maryland, New Jersey and Vermont). On the other hand, KYU and OW/OD laws and regulations are primarily governed by Kentucky state law, with which a district court judge would be expected to have greater

familiarity. Dismissal rates for those cases are significantly lower. As enforcement numbers in Table 4 reveal, there has been a decline in the state-level charges for KYU and OW/OD and an increase in the enforcement of federal and interjurisdictional offenses. Given that courts are more likely to dismiss federal charges than state-level offenses, this enforcement shift partially explains the drop in aggregate conviction rates.

The reasons for this general trend are not entirely clear, but there are some factors that explain this trajectory. The increase in dismissal rates does not appear related to increased caseloads on district court dockets. According to the AOC, annual, statewide district court case filings declined 17.3 percent between calendar years 2007 and 2013, while state district court cases concerning traffic charges declined 18.2 percent during the same period.²⁴ As noted, enforcement numbers related to commercial vehicle offenses increase slightly toward the end of the study period. But that would not explain the increasing rate of dismissals, either, as a dismissal can only be applied if charges are filed. One possible explanation is a fairly significant increase in court costs during the mid-2000s, which might have provided incentive to dismiss more cases given that the same amount of revenue could be collected with fewer convictions.

Another theory is that district court judges are more likely to dismiss traffic charges in their re-election years. Given that fiscal years run from July to June, it is difficult to parse this directly, but one would expect judges to modify conviction or dismissal rates depending on whether they believe being more or less punitive than usual is politically advantageous. This explanation does not appear to have much empirical backing for a couple of reasons. First, the data reflect a rather consistent fall in conviction rates and increase in dismissal rates rather than a cyclical pattern of increases or decreases in election years. Second, district judges are not especially competitive elected posts. Only 25 of 60 district court judges had opponents in 2006, although this number jumped a little in 2010, to 36 of 60 district court positions. Assessing this claim would require more study, but the initial evidence appears to be lacking.

Some qualitative explanations can be offered using discussions with law enforcement officials and court observations as a basis. Economic struggle during the late 2000s may have prompted some judges to be more lenient; economic stress impacts revenue flows, lowers compliance rates and subsequently influences the ability of the trucking industry to pay fines and court costs. For pragmatic reasons related to economic factors, and in order to avoid repeat hearings, some judges may have dismissed a greater number of charges. In many cases, charges are dismissed if the defendant obtains an attorney and has no record of prior violations. Sometimes, defendants lacking particular credentials, or who are charged with tax compliance issues have the charges dismissed if they obtain them by their court date. Compliant carriers object to this practice, as they maintain there is little incentive for competitors to comply with laws and regulations if the only punitive action is forcing them to purchase permits, pay taxes or address the very safety issues for which they were responsible in the first place. Additional fines and court costs should act as deterrents because they give carriers a financial incentive to comply. There is great uncertainty about the relative impacts of each of these factors on court outcomes, but the patterns

²⁴ KyCourts Case Management System (CourtNet database). 2014. "District Court Caseload." Kentucky Administrative Office of the Courts, Research and Statistics Unit. Accessed 27 August 2014 at: http://courts.ky.gov/aoc/statisticalreports/Documents/StatewideCaseloadReport_District.pdf

suggest an environment that potentially encourages motor carrier non-compliance and diminishes the strength of state and federal trucking laws and regulations.

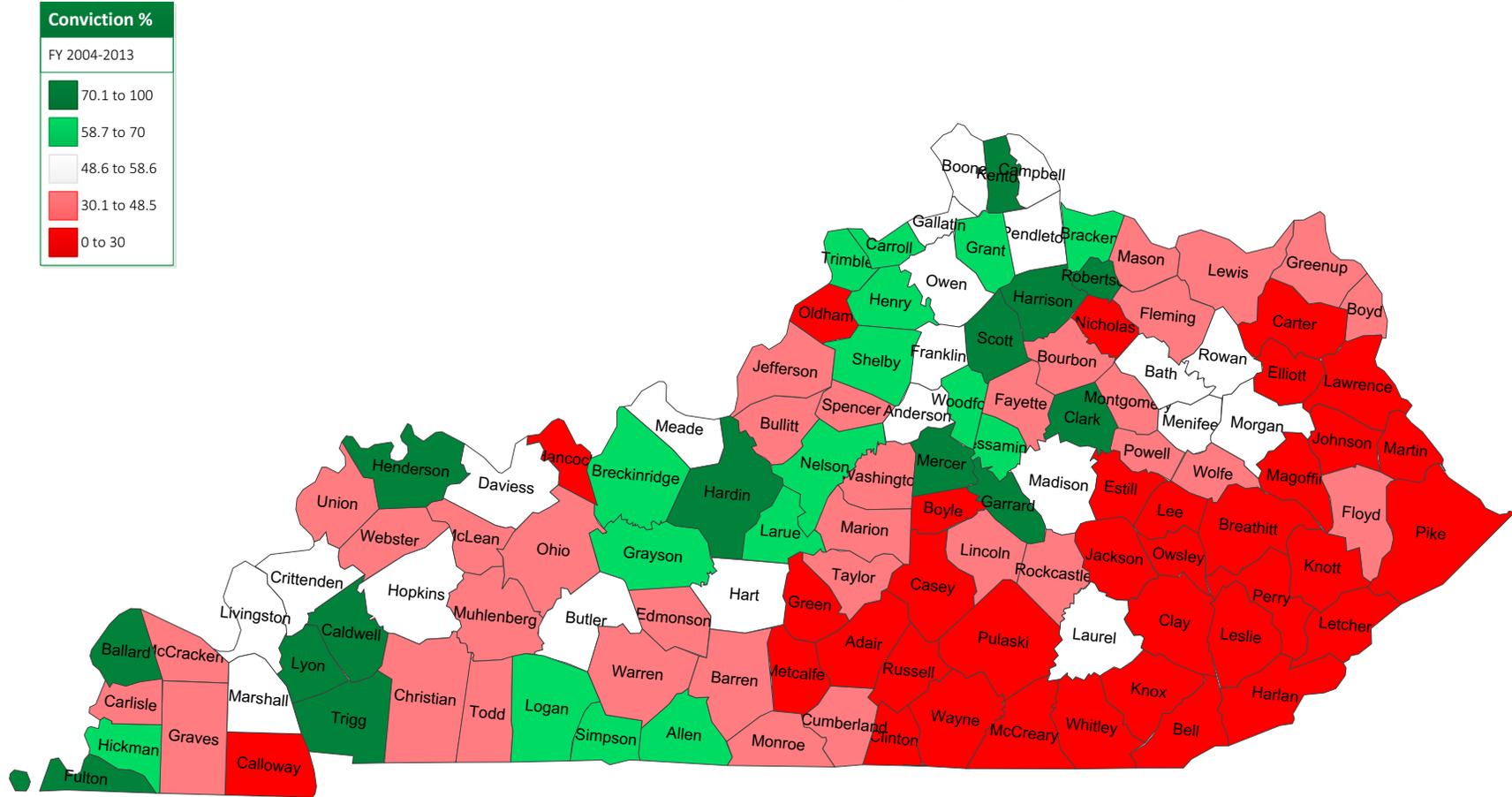
Another way to determine why variability arises in conviction and dismissal rates is to map the rates by county and identify spatial patterns. Figure 8 indicates stark contrasts among counties throughout the state. The map divides counties into one of five categories based on the 10-year conviction rate for all charges issued in a particular county. Those counties within five percentage points of the statewide conviction rate average (53.6 percent) are white. Counties more than five points above the state average but not more than 70 percent are light green. Counties with the highest rates – those with conviction rates above 70 percent – are indicated by dark green. Below average conviction rates are shown as light red (48.6 to 30.1 percent) or dark red (30 percent or less). The spatial variability is instructive. Counties in Northern Kentucky have conviction rates that are consistently near or above the state average. There is also a sprinkling of counties throughout Central Kentucky and in parts of Western Kentucky with conviction rates that are near or significantly above the state average. The other noticeable geographic trend is that the majority of the counties with the lowest conviction rates are in Eastern Kentucky.

Closer inspection of the data reveals that every county with a weigh station (save Floyd County) has average to above-average conviction rates. The average conviction rate in the counties operating weigh stations during the period of study is 66.6 percent, which is much higher than in other counties, where the conviction rate is 37.8 percent. Seven counties with weigh stations (Lyon, Fulton, Kenton, Henderson, Scott, Hardin, and Ballard) have conviction rates above 70 percent. Simpson comes pretty close to that mark, with a conviction rate of 69.7 percent. The next tier of counties includes Boone, Rowan and Laurel, where conviction rates are 57.8, 57.5 and 52.4 percent respectively. Floyd has the lowest conviction rate of any county with a weigh station, at 40.3 percent. Not only do these counties, because of their facilities and law enforcement presence, produce more citations than most other counties, the adjudication process is more likely to yield convictions. In fact, there is a positive correlation of .4052 of convictions with conviction rates, which shows that in locations where commercial vehicle offenses are more numerous, district judges are more likely to uphold them.

Dismissal data (shown in Figure 9) reveals a similar pattern to the conviction rates. Regionally, dismissal rates are lowest in Northern Kentucky, and highest in Eastern Kentucky. Counties with weigh stations tend to have lower dismissal rates –the average dismissal rate in those counties is 18.4 percent, which is significantly lower than the 34.6 percent statewide dismissal rate and substantially lower than the 54.4 percent dismissal rate in counties without weigh stations. In fact, counties with weigh stations have lower dismissal rates than the other counties for every offense category. Several other counties with low dismissal rates (Caldwell, Trigg, Livingston, Hickman, Allen, Woodford and Bath Counties) are in the same judicial district as those weigh station counties, meaning the same district judge hears those cases. The district courts in those counties, because of their large volume of cases and successful prosecutions of offenders relative to the rest of Kentucky, mask significant problems with enforcement elsewhere. Twenty-six counties have dismissal rates between 60.1 and 80 percent, and 13 counties have dismissal rates greater than 80 percent. Dismissal rates this high quite probably impact the charge totals, as enforcement will increasingly view such activities as a waste of time and resources. Some of

these counties have a small number of charges brought to court, which can make the dismissal rates volatile. But it is clear that these laws are being adjudicated quite differently in different parts of the Commonwealth.

Figure 8. Conviction Rates for All Commercial Vehicle Offenses, by County (2004-2013)



3.3 Discussion

Commercial vehicle offense enforcement and adjudication performance varies greatly by offense type; variability is also evident when looking at temporal and spatial factors. Federal safety regulations and other violations of federal code are the most frequent charges, followed by KYU, OW/OD, UCR and IFTA. Counties located along Interstate corridors, especially those with weigh stations, are home to the most active enforcement programs.

Virtually all offense categories are positively correlated with one another, which means that jurisdictions with greater enforcement of federal safety regulations can be expected to also issue more citations with charges related to KYU, UCR, OW/OD or KIT/IFTA. Enforcement numbers have undoubtedly been affected by economic conditions, which have made funding for CVE and other law enforcement agencies subject to significant flux. On a positive note, improvements in our technological capabilities have made commercial vehicle screening more efficient than it has been previously. Enforcement numbers have tracked upward as the economy rebounds from its recessionary period; enforcement numbers bottomed out in FY 2011 but have since improved. However, enforcement numbers have yet to return to the peak levels reported in FY 2008-2009.

Courts and enforcement officers typically have different priorities. The highest conviction rates are for OW/OD and KYU offenses, whereas KIT/IFTA and UCR offenses have conviction rates lower than their dismissal rates. Federal offenses fall between these two extremes. Counties with weigh stations process just over half of all charges, and those counties generally have much higher conviction rates because district judges and county attorneys are more familiar with those types of offenses. Since FY 2006, conviction rates have diminished substantially, and currently there are few indications that these trends have stabilized, let alone reversed. The decline in conviction rates may be related to economic pressures, the increasing amount of enforcement actions related to federal regulations and interjurisdictional agreements (which are more likely to be thrown out by courts), and the lack of knowledge about these charges in counties where commercial vehicle offenses do not routinely appear on district court dockets. However, it is unclear if these factors alone can explain the fall in conviction rates (and the corresponding increase in dismissal rates) for the offense types included in this study. What is evident is that these laws and regulations are not enforced consistently, and that despite the substantial efforts required to enforce, track, administer and rule on these offenses, the end result is often a dismissal, which does little to foster compliance or to generate revenue to be invested in administration, law enforcement, courts, or transportation infrastructure.

Chapter 4. Revenues from Commercial Vehicle Penalties

The court costs and fines associated with adjudicating each commercial vehicle offense generate money for the state and for local governments. Determining exactly how much revenue is generated is a challenging task, as the state does not currently have a system for tracking how much money was collected by offense type. The AOC is working to implement a system with such tracking capabilities. However, the AOC has not systematically tracked the likelihood that district and circuit courts collect fines and court costs for commercial vehicle offenses. This chapter details the allocation of district court revenues for commercial vehicle offenses, articulates a method for estimating those revenues, and provides estimates based on offense category, fiscal year, and county.

4.1 Court Costs and Estimation Assumptions

Court costs and fines are assessed to carriers convicted of specific commercial vehicle offenses. They are tacked on top of any outstanding fees, taxes, or late penalties that are due to KYTC as a result of a vehicle violating established state and federal commercial trucking laws. Court fines are typically standardized by county, and generally do not change. Currently, court costs range from \$130 to \$144. The base cost is \$130, which applies in all counties. Some counties also charge a traffic court fee (\$10), an attorney tax (\$2.50), a law library cost (\$.50 or \$1.50) and a crime stoppers fee (\$1). These fees are assessed on a case-by-case basis, so the fees are the same no matter how many charges are associated with a particular case. Figure 10 breaks down court costs by county. Most counties (84) assess a court cost of \$142.50. The next-most-common amount is \$133 (16 counties), followed by \$140 (7 counties), \$144 (6 counties), \$142.50 (3 counties), \$134 (2 counties), \$133 (2 counties) and \$130 (2 counties). These fines were assumed invariant over the study period. Although counties do change fee structures, introducing these fee changes to the analysis would add significant, intractable complexity, while only marginally improving estimates.

Although court costs are applied on a case-by-case basis, developing estimates for particular charges is fraught because, despite having the data breakdown, the true number of cases is unknown – when charges are broken up for reporting in CourtNet, it does not track what other charges are bundled with each case unless two identical charges are bundled together. As such, the dataset's reported case numbers are essentially useless for estimating revenue. An alternative approach was developed in order to address this problem. Non-random samples of 20 different district court dockets from 13 counties from June 2014 to September 2014 were taken to estimate the number of charges bundled in each case. The docket totals showed 382 charges on 193 cases, averaging out to 1.97 charges per case. To maintain simplicity, analysis assumed two charges per case.

This estimation technique has several potential sources of error. First, the sample was non-random. Due to time constraints, it was more efficient to review court dockets of counties with weigh stations because they have far more commercial vehicle cases on days when district courts hear traffic cases. Therefore, bias may be introduced to the data depending on the extent to which those jurisdictions have more or less charges associated with each case. Second, by assuming

each charge was bundled with one other charge (or that paid court fees were half of the total fee), the distribution of charges per case is also assumed to be identical regardless of charge type. For

example, suppose that KYU charges are slightly more likely to be standalone while federal safety violations are more likely to appear on cases with several charges. In this case, the operating assumption would understate court costs for KYU convictions and overstate court costs generated from convictions related to federal trucking regulations.

Estimating fine collections is an even stickier issue, because states explicitly permit the exercise of judicial discretion. The range of fines is quite large for some of the charges included in the study. After observing district court proceedings in Scott County and Laurel County, as well as having discussions with circuit court clerks, it appears that the fines tend toward the low end of the penalty scale. Pre-payable citations typically assess court costs plus the minimum fine allowable under the governing statute. Judges often use this logic when faced with commercial vehicle offenses as well. While this assumption may produce conservative revenue estimates, it is applied to all charges in this analysis to maintain simplicity and clarity.

Table 8. Minimum Fines by Offense Types

| Offense Category | No. of Charge Types | Minimum Fine |
|------------------|---------------------|--------------|
| KIT/IFTA | 1 | \$25 |
| KYU | 4 | \$25 |
| UCR | 1 | \$25 |
| OW/OD Type 1 | 26 | \$10 |
| OW/OD Type 2 | 1 | \$20 |
| Federal Type 1 | 5 | \$250 |
| Federal Type 2 | 17 | \$25 |
| Federal Type 3 | 3 | \$2,000 |

Table 8 lists the minimum fine assumed during analysis. The vast majority of OW/OD charges are assumed to have \$10 fines assessed – even those charges where fines could be determined by the amount overweight. During the observation period, those weight-specific fines were treated identically to other charges with respect to fine amounts. There is one type of OW/OD fine for having a projecting load that carries a \$20 minimum penalty. The KIT/IFTA, KYU, UCR and a large chunk of the federal violations all carry minimum fines of \$25. Two other federal fines are much higher. The first five under “Federal Type 1” refer to hazardous materials violations, which carry minimum fines of \$250. “Federal Type 3” violations have to do with operating authority violations, and carry minimum fines of \$2,000.

4.2 Revenue Estimates for Commercial Vehicle Offenses

Having established the court costs and fine assumptions, the next objective was to determine which charge dispositions would produce an increase in revenues, and which would not. For convictions and dismissals, it was straightforward to identify revenue-generating dispositions. All charges that are in the “convicted” disposition category – pre-payable citations or guilty – would result in court costs and fines being assessed. All charges that are in the “dismissed” category were assumed to be dismissals, resulting in collecting neither court costs nor fines. Other dispositions presented a more complex dynamic. Diversions and FTA/FTV are temporary dispositions, meaning the case has not been resolved yet. Once the case is resolved, the temporary disposition code will be replaced with a final disposition code. Acquittals are fairly straightforward, as no charges or court costs apply in those cases. But acquittals are rare in traffic cases (there were only eight in 10 years). Administrative procedures may require court fines but

are very rare. Other dispositions, such as amended and merged charges, indicate the original charge was changed to something else or multiple charges (or cases) were merged together. Without assessing the final outcomes of each amended and merged charge, it is impossible to know whether those cases yielded court costs or fines. Therefore, collection of revenue is assumed to be limited to instances where the charge resulted in a straightforward conviction.

Table 9 summarizes the estimated court costs, fines and total collections for all commercial vehicle offenses in Kentucky from FY 2004 through FY 2013. To account for the assumption of bundling two charges per case, court costs were calculated by multiplying the charge convictions by one-half of the county-specific court cost to account for the assumed bundling of two charges per case. The fines were appropriated based on the specific charge for which the citation was issued. The resulting total represents the combination of court costs and fines. Collections estimates indicate significant inter-annual variability in the totals, depending on the enforcement numbers, conviction rates, and the types of offenses. Total collections peaked in 2008 and have generally declined ever since. In 2013, the court costs and fines collected were only 65.9 percent and 67.4 percent of their 2008 totals, respectively. Over the 10-year period, court costs comprise 69.4 percent of all collections. This aligns with the distribution of costs and fines for traffic cases in general, for which, according to the Kentucky Court of Justice 2012 Annual Report, court costs were 66.1 percent of the combined costs and fine collections for that fiscal year. As a percentage of all traffic court costs and collections (court costs and fines) for that fiscal year, Commercial vehicle cases studied accounted for about 2.1 percent of all state traffic court collections in 2012.

Table 9. Estimated Statewide Commercial-Vehicle-Related Court Collections (2004-2013)

| Fiscal Year | Court Costs | Fines | Total |
|--------------------|---------------------|--------------------|---------------------|
| 2004 | \$1,162,854 | \$681,480 | \$1,844,334 |
| 2005 | \$1,119,438 | \$696,780 | \$1,816,218 |
| 2006 | \$1,135,594 | \$622,490 | \$1,758,084 |
| 2007 | \$1,030,561 | \$432,935 | \$1,463,496 |
| 2008 | \$1,511,246 | \$561,625 | \$2,072,871 |
| 2009 | \$1,394,522 | \$514,980 | \$1,909,502 |
| 2010 | \$1,114,897 | \$417,190 | \$1,532,087 |
| 2011 | \$930,023 | \$345,125 | \$1,275,148 |
| 2012 | \$1,035,422 | \$389,520 | \$1,424,942 |
| 2013 | \$995,236 | \$378,550 | \$1,373,786 |
| Total | \$11,429,793 | \$5,040,675 | \$16,470,468 |

These estimates may be conservative, as they assume two charges per case. If the true number of charges per case is lower, then the total collections would be higher due to the collection of more in court costs. Almost assuredly, higher-than-minimum fines have been assigned in some of the cases, but given that collections are not reported with the case disposition, it is not possible to know how widespread that practice is. Given that 65.1 percent of convictions were pre-paid (which means minimum fines were assessed), and the tendency of judges to assign minimum fines to guilty pleas during our observations, it is unlikely such a practice is common for routine traffic cases. On the other hand, the estimates may be artificially elevated in earlier years because

the court costs were assumed temporally constant, even though some counties have modified them.

Table 10. Convictions, Cases, Average Fines per Charge, and Average Revenue per Case

| Fiscal Year | Charges | Est. Cases | Avg. Fines Per Charge | Avg. Revenue Per Case |
|--------------------|----------------|-------------------|------------------------------|------------------------------|
| 2004 | 16,384 | 8,192 | \$41.59 | \$225.14 |
| 2005 | 15,784 | 7,892 | \$44.14 | \$230.13 |
| 2006 | 16,053 | 8,027 | \$38.78 | \$219.03 |
| 2007 | 14,556 | 7,278 | \$29.74 | \$201.08 |
| 2008 | 21,319 | 10,660 | \$26.34 | \$194.46 |
| 2009 | 19,681 | 9,841 | \$26.17 | \$194.05 |
| 2010 | 15,738 | 7,869 | \$26.51 | \$194.70 |
| 2011 | 13,103 | 6,552 | \$26.34 | \$194.63 |
| 2012 | 14,592 | 7,296 | \$26.69 | \$195.30 |
| 2013 | 14,054 | 7,027 | \$26.94 | \$195.50 |

Another way to think about the dynamics of the revenues is to average the revenue by charge and case. Table 10 shows the number of charges for which there are convictions, estimated cases (one for every two charges), the fine revenue per charge and total per case. For charges, it only makes sense to look at fines, and not total revenue, because the court costs are applied to single cases. At the case level, the total amount includes the court costs. For either indicator, it is clear that not only have total charge convictions declined from the peak in 2008, the average revenue collected from each has also fallen.

It appears that the preponderance of \$25 fines associated with various offenses, along with a decline in convictions related to offenses carrying higher minimum fines, has brought down the average revenue collected from each charge and case. The average fine, which was \$41.59 in 2004, dropped to \$26.94 as of 2013. The decrease is sizeable – 35.2 percent. As a result, case revenues have fallen from a high of \$230.13 in 2005 to \$195.50 in 2013. The downward trends appear to have stabilized after bottoming out in 2009, but there is little evidence that the averages are rising. As shown by the conviction and dismissal rates, district court judges have been more lenient when deciding commercial vehicle offenses.

Figure 11 charts the estimated revenue impacts of convictions and dismissals for commercial vehicle offenses from FY 2004 to FY 2013. The blue line for conviction revenue represents the actual amount of revenue collected (data from Table 9) during the 10-year study period. The red line represents the amount of revenue that theoretically could have been collected had all the dismissed cases been convictions. Clearly, a 100 percent conviction rate is not possible; even under the most ideal circumstances, not all of that revenue would have been collected. However, this number provides a benchmark against which to assess district court’s performance, equity and efficiency when enforcing commercial-vehicle-related offenses. While the conviction and dismissal data are subject to many of the same year-to-year pressures, the narrowing of this gap over time is quite striking. In 2013, estimates indicate the state lost more revenue due to dismissed charges than it collected in convictions. These dynamics have shifted swiftly. In 2006, the state collected \$2.25 in costs and fines for every \$1 dismissed. By 2013, that ratio had shrunk

to \$.99 for every \$1 dismissed. In part, changes in enforcement practices and structural constraints, as noted in Chapter 2, drove these revenue shifts. Decreased conviction rates, increased dismissal rates, and a shift in the composition of charges for which convictions are successful have altered the fiscal impact of the adjudication process for the commercial vehicle offenses.

Figure 11. Estimated Revenue Impact of Convictions and Dismissals (2004-2013)

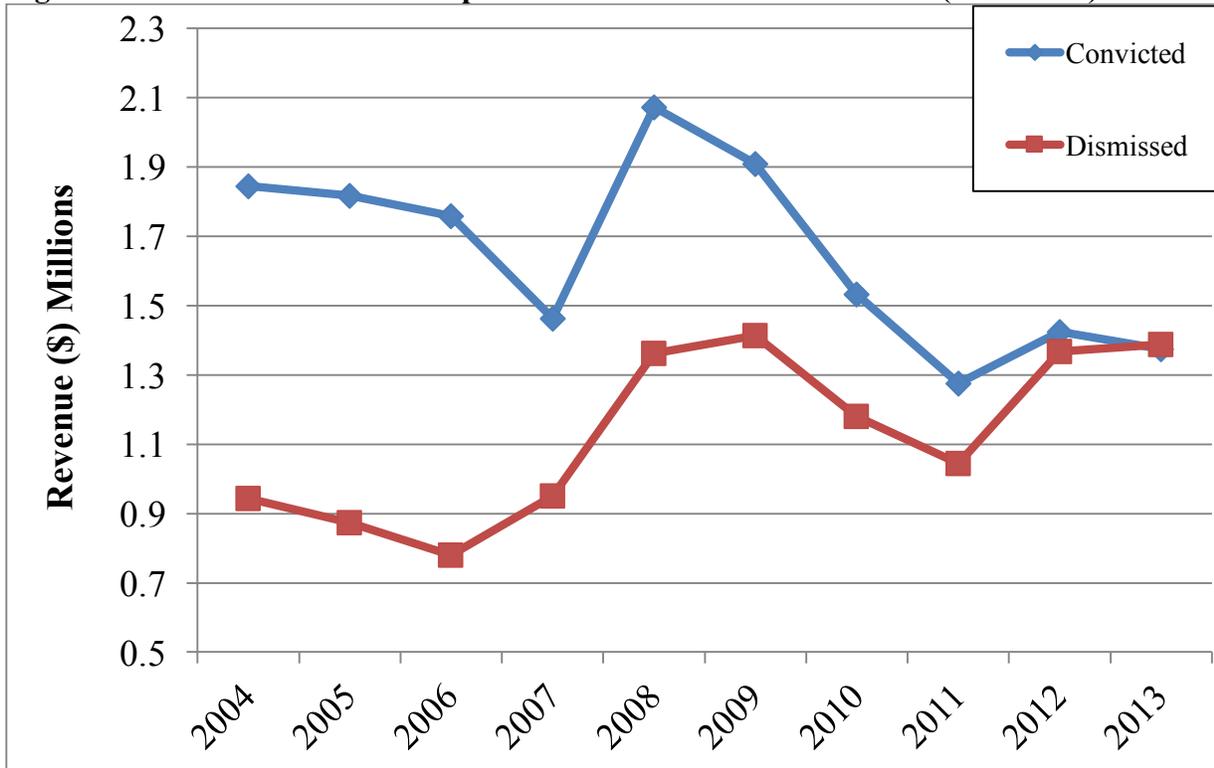
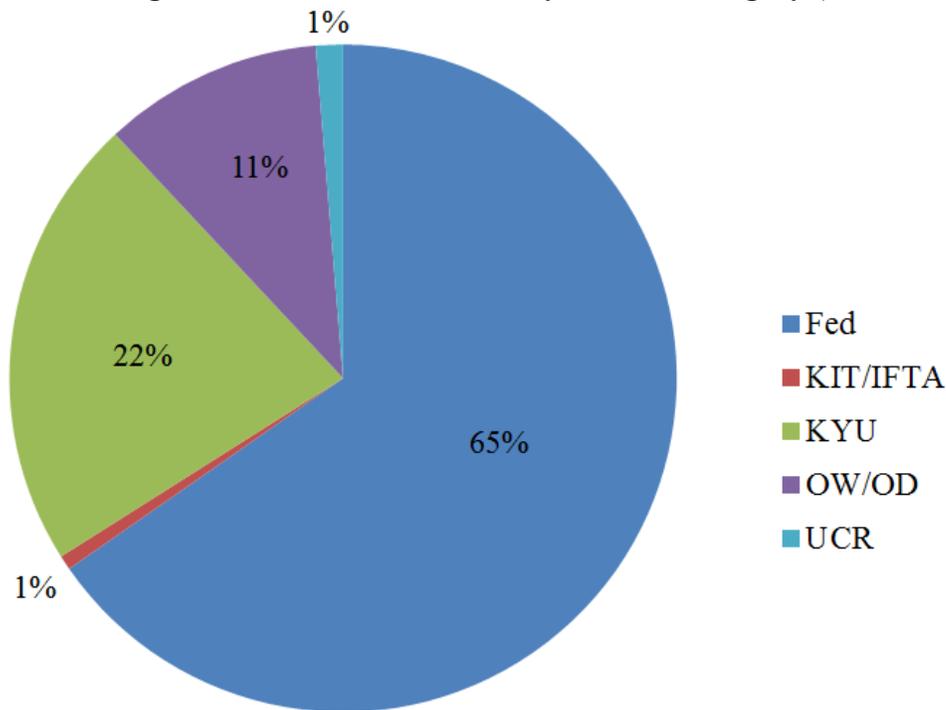


Figure 12 decomposes 10-year revenue totals according to the amount of revenue each violation generated over the 10-year study period.²⁵ Federal safety and regulatory violations comprised 65 percent (\$10.8 million) of all estimated revenues generated from court costs and fines. KYU was the second largest in terms of yielding income, with just over \$3.6 million (22 percent). Next is OW/OD, which was responsible for more than \$1.75 million over the same period of time, amounting to 11 percent of the estimated revenue. UCR and KIT/IFTA generated approximately one percent (each) of all revenue. Given that KIT/IFTA offenses are the least common, and that UCR offenses did not exist until 2009, this mirrors our expectations. Court costs constitute the majority of the collections. For simplicity, the number of charges per case is assumed to be distributed evenly. Variation in fines and conviction rates could have caused revenue share to differ from charge shares, but over the 10-year period there was no significant difference.

²⁵ Note that the category totals amount to \$16,470,470 due to rounding errors.

Figure 12. Percentage of Court Costs and Fees, by Offense Category (2004-2013)



| Federal | KIT/IFTA | KYU | OW/OD | UCR | Total |
|----------------|-----------------|------------|--------------|------------|--------------|
| 10,760,233 | 115,884 | 3,624,382 | 1,754,328 | 215,643 | 16,470,468 |

Figure 13 displays the total revenue collected in each county between 2004 and 2013. Darker shades of green indicate higher levels of revenue. Five counties — Lyon, Laurel, Scott, Rowan and Hardin — collected more than \$1 million apiece. Those five counties accounted for 40 percent of all revenue associated with commercial vehicle offenses. The next tier also includes counties with weigh stations (Henderson, Shelby, Kenton, Boone, and Fulton), all of which generated more than \$500,000. Approximately 74 percent of all collections were from counties with weigh stations, plus Jefferson and Fayette Counties. Fifteen counties had \$100,000-\$500,000 in collections, and another 15 contributed \$50,000-\$99,999 in collections. The modal category, \$10,000-\$49,999, encompasses 46 counties. Of the remaining 33, all but one falls into the \$1-\$9,999 category. Elliot County was an outlier, and had no collections at all during the study period. Median collections per county were \$29,193 – an average of \$2,919 per year.

Commercial vehicle offenses ending with convictions produced an estimated \$1.65 million in revenue, annually, over the last decade. However, revenues have declined in recent years due to falling conviction rates. Other factors that played into the drop-off are the economic recession, variability in year-to-year enforcement, and our methodological assumption of assigning the minimum fine when calculating the total collection for a case. Declining conviction rates have been accompanied by an escalating number of dismissals as well as a growing backlog of cases that have not achieved resolution.

Unresolved cases have a significant footprint. Table 11 summarizes the number of charges, and estimated revenue losses, for cases in which the defendant never showed up in court — i.e. where the final outcome was a “failure to appear” (FTA) or “fugitive” (FTV). When a defendant fails to appear in court, a judge may issue a summons or a warrant, depending on the severity of the charges. Most violations only result in a summons, whereas misdemeanors and felonies are more likely to result in a bench warrant, but exceptions can be made in either case. The table shows the 10-year cumulative charges that resulted in unresolved dispositions. In most cases, courts will refuse to issue warrants for these offenses because the majority of them are violations, and the rest are low-priority misdemeanors. This potentially translates into significant revenue losses. Table 11 itemizes court costs, fees and total revenue lost from FTA/FTV cases during the study period. The adjusted total accounts for dismissals by multiplying the revenue by the 10-year conviction rate for each offense category. This estimate excludes additional fines that might be imposed as a result of failure to appear. Over the last decade, district courts lost an estimated \$175,000 a year in court costs and fees due to FTA/FTV cases.

Table 11. FTA/FTV Cases and Estimated Revenue Losses (2004-2013)

| Violation | Charges | Costs | Fees | Total | Adj. Total |
|------------------|----------------|--------------|-------------|--------------|-------------------|
| Fed | 14,295 | \$1,021,474 | \$791,600 | \$1,813,074 | \$888,406 |
| OW/OD | 1,579 | \$111,758 | \$15,890 | \$127,648 | \$100,586 |
| KIT/IFTA | 470 | \$33,351 | \$11,750 | \$45,101 | \$16,372 |
| KYU | 12,508 | \$887,679 | \$312,700 | \$1,200,379 | \$710,624 |
| UCR | 894 | \$63,573 | \$22,350 | \$85,923 | \$36,345 |
| Total | 29,746 | \$2,117,835 | \$1,154,290 | \$3,272,125 | \$1,752,334 |

Chapter 5. Commercial Vehicles and Civil Penalties in Other States

5.1 Introduction

KTC sent a survey on penalties and commercial vehicle enforcement to officials in Florida, Mississippi, Missouri, Alabama, and Georgia. These states were chosen because they classify some commercial vehicle violations as civil penalties rather than misdemeanor criminal penalties. The survey contained 11 open-ended questions that focused on penalties for weight, credential, and safety violations by commercial vehicles, the judicial process for dealing with commercial vehicle violations, collecting fines, and distributing the fines to state agencies (survey is in Appendix B). Only representatives from Florida, Mississippi, and Georgia completed and returned the survey. The following section summarizes the responses.

5.2 Background

Mississippi and Georgia treat overweight violations as civil penalties. Florida handles overweight, safety, fuel tax, and IRP violations through a civil penalties system. In Mississippi, drivers have the opportunity to appeal an overweight assessment through an appeals board that has the power to dismiss, modify, or uphold the assessment. However, oversize violations are considered misdemeanor violations and are adjudicated by the Justice Court, where judges have the same powers as the appeals board. Credentials and safety violations are handled by the Justice Court or administratively through FMCSA inspection protocols. FMCSA violations are leveled against carriers and/or drivers, but they are not treated as misdemeanor violations.

All survey respondents noted that their states impose fines based on the number of pounds a vehicle is overweight. Mississippi charges one cent per pound, up to 10,000 pounds. For each pound over 10,000 pounds, the fine is 11 cents per pound. Georgia fines five cents per pound once a truck's weight surpasses the maximum allowable weight. Florida's fine assessments are slightly different. If a truck is overweight by 200 pounds or less, the maximum fine is \$10, but if a truck is overweight by more than 200 pounds the fine is five cents per pound overweight.

Survey respondents were asked why their state chose to treat commercial vehicle violations as civil penalties. The respondent from Mississippi mentioned that overweight violations are the equivalent of a delinquent privilege or license tax, and the legislature did not want to treat tax violations as a criminal matter. The survey also inquired about the pros and cons of the civil penalty system. Mississippi found that companies and drivers were less argumentative since the violation does not leave a mark on the driver's record. On the other hand, the respondent from Mississippi said that the civil penalty system made it more likely that some drivers would be repeat offenders.

5.3 Jurisdiction and Processes

Respondents also provided information about jurisdictional authority. In Mississippi, jurisdiction for commercial vehicle violations rests with the Department of Transportation's Transportation Commission. Georgia uses the Office of State Administrative Hearings to handle violations. Of the states that responded, Florida provided the most detail about its system. Weight, safety, fuel tax, and registration violations in Florida are overseen by the Commercial Vehicle Review Board; traffic violations are handled in local courts. The Commercial Vehicle Review Board is housed in the Department of Transportation; it is a three-member council that meets monthly in

different regions of the state to adjudicate commercial vehicle violations. The council members include the Secretary of the Department of Transportation, the Executive Director of the Department of Highway Safety and Motor Vehicles, and the Commissioner of Agriculture.

Researchers asked respondents to describe the process of issuing a ticket and the ensuing court process. In Mississippi, the commercial vehicle officer selects the court date for Justice Court. When the driver appears in court, they may ask for a court date or plead guilty. The court then determines a fine and due date for the violation. If a driver fails to pay the fine, their license is revoked and a warrant issued. For credential and safety issues in Mississippi, appeals go through the Justice Court and are eventually sent to a Circuit or County court. In the case assessments that deem a vehicle overweight, carriers may appeal decisions from the Appeals Board through the Chancery Court. Similarly, Georgia gives defendants the option to either pay a fine or request a hearing with the Department of Public Safety for an appeal. In Georgia, appeal cases are sent to the appropriate state court. In Florida, defendants can appeal to the Commercial Vehicle Review Board; however, they must pay assessed fines before the review board will hear their appeal.

The Mississippi Department of Transportation collects fines from overweight violations and then sends them to the county the violation occurred in. Fines from misdemeanors are collected by and retained by the county in which the violation occurred. Georgia collects fines and allocates them to the state general fund. Agents may place a lien on the vehicle until fines are paid.

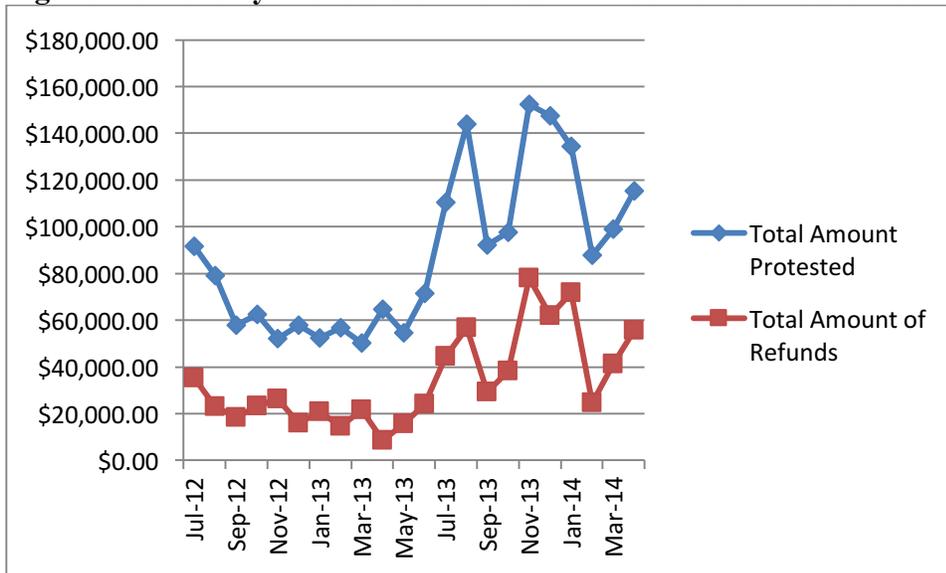
In Florida, the Chief Financial Officer collects fines; they are put into to the State Transportation Trust Fund for road maintenance. If payment is not made within 35 days of the citation issuance, the owner or carrier is mailed a notification. If no payment is received within 50 days, a second letter is sent advising the carrier they will have their vehicle impounded as a result of their failure to pay. At this point, Florida Highway Patrol adds the carrier or owner to a “hotlist” of delinquent drivers and carriers that owe fines to the state. When trucks incur roadside stops or pull into weigh stations, officers check this list to see if the driver or carrier owes money to the state of Florida. Carriers and drivers that owe fines may have their equipment impounded until the fine is paid. Florida-based carriers that owe fines to the state will not be able to register their vehicles until the fines are paid.

5.4 Florida Commercial Motor Vehicle Review Board

The Florida Highway Patrol (FHP) provided monthly breakdowns from FY 2013 to FY 2014 of their appeals numbers, although data were not available for the final two months of FY 2014. FHP provided the number of citations appealed, the amount of revenue appealed, the number of citations for which full or partial refunds were issued, and the total amount of refunds. The violation categories are similar, but not identical, to those included for the Kentucky portion of this study. Appeals and refunds were categorized based on whether they were for weight, safety, or fuel tax/IRP fines. Figure 14 displays those monthly breakdowns of the amount of fines protested as well as the total refund amount. The Commercial Motor Vehicle Review Board heard 1,772 appeals during this period, for fines exceeding \$1.93 million. In 696 of these cases, the board granted relief, which totaled \$749,145, meaning appeals were successful for 39.9 percent of citations issued. The amount of relief granted also amounted to 39 percent of the revenue that would have otherwise been obtained. The remaining \$1.18 million was not refunded. Protests and refunds ticked up significantly beginning in July 2013, and there was also

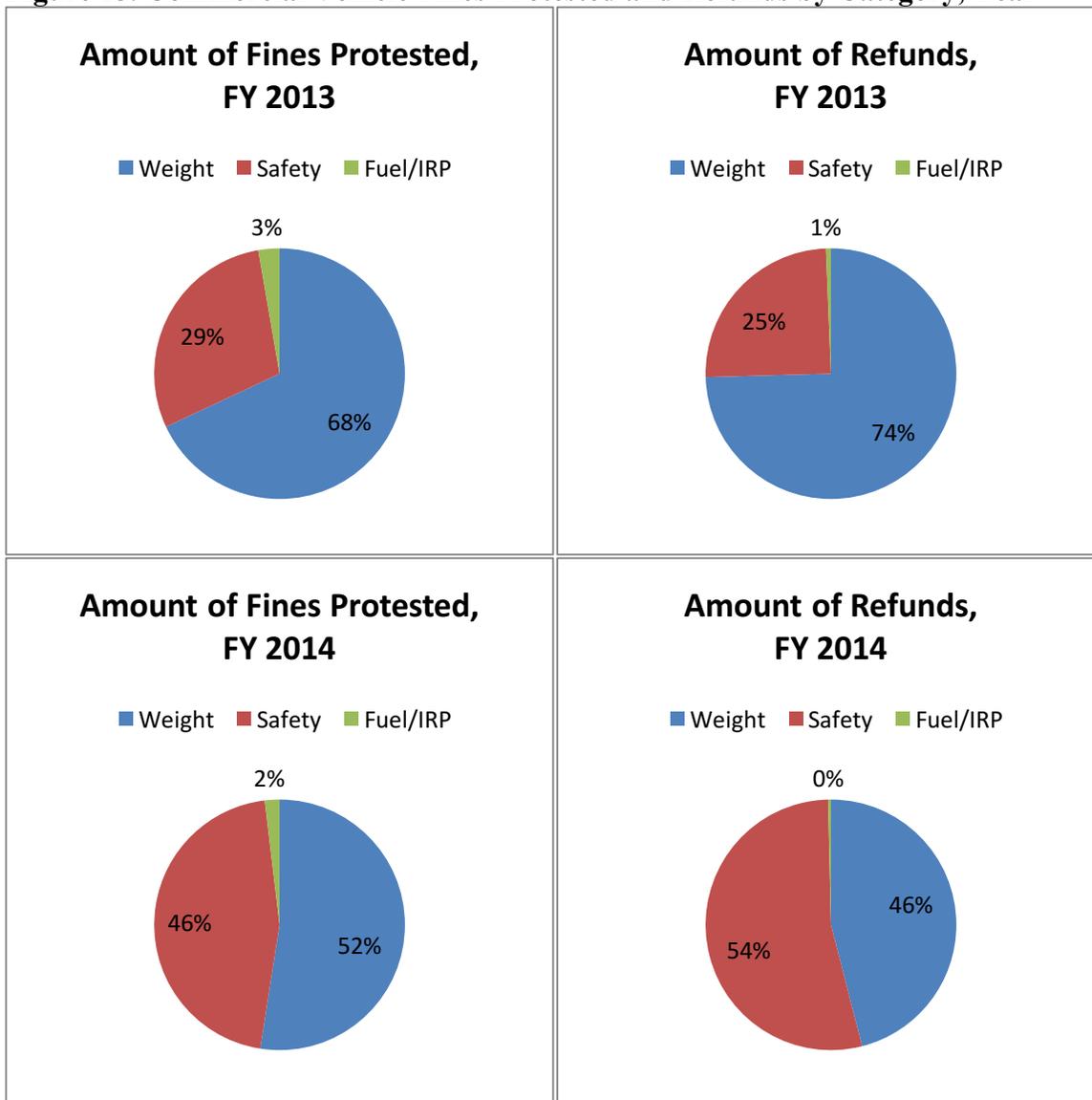
a trend toward a larger number of these citations being appealed. FY 2013 appeals averaged nearly 68 cases per month, while in the first 10 months of FY 2014 the average was roughly 96 per month. Average refunds per month increased from \$20,615 in FY 2013 to \$50,795 in FY 2014. Interestingly, refunds as a percentage of protests increased from 33 percent to 42 percent.

Figure 14. Monthly Florida Commercial Vehicle Review Board Activity (2013-2014)



To understand why protests and refunds shot up in FY 2014, we looked at the breakdown of fine protests by violation category for both years (see Figure 15). Although the data are missing for May 2014 and June 2014, it is clear that the types of protests and refunds underwent change from FY 2013 to FY 2014. In FY 2014, 52 percent of protests were for weight, 46 percent were safety citations, and only two percent of protests involved fuel/IRP. Similar to the previous year, the majority of protests in 2014 remained tied to weight-related assessments. But there were significantly more protested fines and refunds for violations involving safety. During 2014 only 46 percent of refunds were for weight-related offenses while 54 percent of refunds were for protests involving safety. Breaking down the percentage of protested fines refunded by the appellate process over the 22-month period reveals that the refund rates for weight, safety and fuel tax/IRP are 36.7 percent, 43.6 percent, and 8 percent, respectively. Safety citations are the most likely to result in a successful challenge, followed by weigh violations. Fuel tax and IRP challenges were by far the least common and least successful challenges. The advantage of challenging safety-related citations became even more pronounced in FY 2014, as the refund rate for those challenges was 51 percent of revenue. As such, the increase in safety-related challenges and the increased success rate explain much of the increase in refunds during FY 2014, as the year-to-year refund rates for weight and fuel/IRP challenges were fairly stable.

Figure 15. Commercial Vehicle Fines Protested and Refunds by Category, Year



Focusing just on the challenges and refunds without contextualizing the total number of citations and revenue collections can be misleading. FHP was able to provide the annual statistics for FY 2013, but not for FY 2014. Table 12 displays total revenues, challenges and refunds, partitioned by category. Challenges and refunds are reported in dollar amounts and as a percentage of total revenue. Most of the revenue (68.3 percent) was from weight citations; in contrast with Kentucky where weight citations are a relatively small percentage of total citations. Much of the remainder (28.4 percent) stems from safety-related citations. Only 3.2 percent comes from fuel tax/IRP citations.

There are two striking findings evident from the data in Table 12. First, Florida issued more than twice as many citations as Kentucky in FY 2013, which is unsurprising given the disparity in population, truck traffic, and trucking-related economic activity. But with just over twice as many citations, Florida collected 8.5 times more revenue than Kentucky. To some degree, it is

difficult to compare the two, given that each state has different laws, offenses, penalties, and enforcement regimes. Furthermore, although there is overlap, the types of citations contained in the Kentucky and Florida data are not entirely the same. The citations included in the Kentucky data constitute a greater number and variety of offenses than Florida, as the latter state does not have certain credentialing requirements (e.g. a weight-distance tax, UCR fees).

Table 12. Total Revenues, Challenges and Refunds (Florida, FY 2013)

| Category | Citations | Revenue | Challenged | Refunded | % Challenged | % Refunded |
|---------------|-----------|--------------|------------|-----------|--------------|------------|
| FT/IRP | 4,148 | \$375,640 | \$20,500 | \$1,590 | 5.5 | 0.4 |
| Weight | 43,247 | \$8,055,039 | \$219,620 | \$184,446 | 2.7 | 2.3 |
| Safety | 17,650 | \$3,358,840 | \$511,065 | \$61,355 | 15.2 | 1.8 |
| Total | 65,045 | \$11,789,519 | \$751,185 | \$247,391 | 6.4 | 2.1 |

The other interesting finding is that the percentage of convictions in Florida is very high. Only 813 of 65,045 citations were challenged, which means that 99 percent of citations were paid. This is substantially different than the court-based process in Kentucky, which results in a conviction rate about half of Florida's. Even taken as a percentage of revenue, the challenges only constitute 6.4 percent of total collections. In the end, only 2.1 percent was refunded, meaning that 97.9 percent of citation fines were paid. The year-end figures also report only 28 outstanding citations – about \$30,000 in fines went unpaid. It is beyond dispute that Florida's civil penalties system is significantly more efficient in collecting fines from violators than Kentucky's system.

5.5 Conclusion

Some generalizations can be drawn from the survey responses. Each state treats some violations as civil penalties rather than misdemeanor crimes. Mississippi and Georgia treat overweight assessments as civil penalties, whereas Florida treats both safety and overweight violations as civil penalties. These states have taken this approach for decades, which means that there is little information on why these states originally classified these violations as civil penalties. However, the survey respondent from Mississippi explained that the legislature did not want to treat a privilege tax violation as a criminal matter. Mississippi also found that drivers and motor carriers were much easier to work with since they knew that the penalties would not go on the driver's record. But the respondent also cautioned that there may be an unintended consequence of hiding repeat offenders. There are many agencies responsible for collecting and dispersing the fines resulting from violations. Sometimes these funds go to the county the offense occurred in. Other times, they are directed into a general fund or, in the case of Florida, to a road maintenance fund. Florida is the most relevant state for this study because it has a successful civil penalties system for commercial vehicle enforcement that extends beyond weight assessments. The data show that protests and refunds vary over time. For FY 2012-2013 the majority of complaints and refunds were for weight violations; in FY 2013-2014, the majority of protests focused on weight violations, but the majority of refunds went to protests related to safety citations. A key finding

from the Florida data is that very few defendants protest citations, and that very few protests yield a refund. As a result, this system produces a higher conviction rate *and* increased revenue.

Chapter 6. Challenges to Enforcement and Adjudication

Commercial vehicle enforcement and adjudication in Kentucky faces several challenges. Among these are sagging conviction rates, inequitable adjudication, unresolved cases, declining revenue, revenue allocation, and systematic inefficiencies. This chapter explores these issues.

6.1 Conviction Rates

Conviction rates decreased significantly from 2004 to 2013. As noted, the overall conviction rate for all offenses steadily declined from a peak of 61.1 percent in 2006 to 45.9 percent in 2013. This creates a problem for several reasons. It sends a message to non-compliant motor carriers that violations are not taken less seriously by the court system, and that the odds of getting charges dismissed are quite high. At the same time, it places compliant carriers at a disadvantage, leaving them wondering why they bother following existing rules and regulations, with the extra time and expense they entail, if they will suffer from a competitive disadvantage as a result. It also creates a morale problem for CVE enforcement officers, who are frustrated that so many of the citations they write are discarded. Perhaps most importantly, it makes defending the legitimacy of laws difficult for the Commonwealth.

There appears to be some disconnect between the KYTC, enforcement officials and adjudication officials about the importance of these violations, the manner in which they need to be enforced and their relation to state and federal programs important to transportation policy. When citations are issued, it is of course possible that they are issued in error (e.g. if an enforcement officer does not correctly apply a statute, or if the citation is based on incorrect data). According to KYTC transportation engineers, Division of Motor Carriers officials and enforcement officers, such errors are less common than dismissals. This raises a critical question: Why is this practice becoming increasingly prevalent? Economic factors and lack of familiarity with such charges are supposedly part of the answer, but even those factors do not explain why conviction rates have tumbled, even in counties where such matters are adjudicated frequently, long after the recession ended.

In particular, inter-jurisdictional programs appear to be the most susceptible to dismissals. Those laws and regulations have a basis in Kentucky statute but are typically authorized for Kentucky's participation in IFTA, a fuel tax apportionment program; UCR, a multi-jurisdictional registration program; and federal safety regulations established by FMCSA. These programs have much lower conviction rates than KYU or weight violations, which are state-specific in nature. Problem carriers lacking credentials are treated innocuously – no different than if someone failed to produce an insurance card or driver's license because they were left at home. But this is distinct from not having credentials that were properly maintained. Carriers that are cited were attempting to travel through Kentucky without the needed credentials – they did not forget to have them on-board. Again, this tempts compliant carriers aware of these issues to avoid paying taxes and fees and to dare law enforcement to catch them committing these offenses.

6.2 Inequitable Adjudication

Another dynamic at play is the unevenness in conviction rates in counties around the state. As shown in Figure 8, 10-year conviction rates show significant spatial variation. In counties with weigh stations, there are much higher conviction rates. However, even in counties with weigh stations, the conviction rates vary significantly, from 82.8 percent in Lyon County to 40 percent in Floyd County. Areas with larger populations do not always sport higher conviction rates either. Jefferson and Fayette Counties – the state’s most populous counties, both with substantial thru Interstate traffic – have conviction rates of just 40.3 percent and 42.3 percent, respectively. Those numbers are well below the 10-year statewide conviction rate, which is 53.6 percent. As such, violators operating in different parts of the state may have significantly different experiences depending on the county in which a citation is issued.

Another issue related to equity focuses on the headquarters of tucking firms. In-state carriers would argue that, because they typically go through the scales more frequently than out-of-state carriers, and because law enforcement officials typically have better, more comprehensive data on their vehicles, they are more likely to be the target of an inspection and cited for violations than out-of-state carriers. On the other hand, out-of-state carriers are much less likely to go to court due to the logistical challenges and costs associated with making the appearance. The only lawful alternative is a pre-payable citation. Even though it always results in a conviction and a fine, firms do not have to commit the time and financial resources associated with appearing in court. But on the other hand, appearing in district court significantly increases the odds of getting a dismissal. The dismissal rate for cases would be even greater than reported if the effects of pre-payable convictions were discounted.

The takeaway message is that the likelihood of obtaining a dismissal is contingent upon where the citation was issued and the company’s location. Companies in Kentucky that are cited in counties with few commercial vehicle cases, and which have the resources to retain legal counsel, enjoy an advantage over out-of-state companies that lack the financial resources to contest the charges. It is unknown how these inequities manifest within the system, or which have the most significant impact. Based on conversations with industry stakeholders, they are real. Previous research suggests parties with more resources tend to achieve more favorable outcomes, all else equal.²⁶

In one observation of Scott County District Court proceedings, a cited driver drove across the state to address KYU violations that were technically the responsibility of the carrier that employed him. In this instance, the driver worked for a sister company owned by an absentee ownership partner, in his regular place of employment. Unaware of the sister company’s weight-distance tax issues, he was cited at the weigh station while hauling a load in that motor carrier’s truck. Since the citation issuance, the man had been unable to contact the owner. He drove three hours from his home that morning just to be in the courthouse, only to request more time to find the owner and resolve the citation with the owner. This anecdotal account highlights one problem with the current practice of charging drivers with misdemeanors for tax violations – it can place a disproportionate burden on the drivers, forcing them to resolve an issue when it is not their legal responsibility to do so.

²⁶ Wheeler, Stanton, Bliss Cartwright, Robert Kagan, and Lawrence Friedman. 1987. “Do the ‘Haves’ Come out Ahead? Winning and Losing in State Supreme Courts, 1870-1970.” *Law and Society Review* 21: 403-45.

KYU, KIT and IFTA taxes should be the legal responsibility of the owner, not the employee. With these laws, the state creates a situation where drivers have to pay fines, fees and accumulate criminal charges on their own record because of employer negligence, whether this resulted from not filing a tax return, not paying taxes owed or failing to obtain a temporary permit. Most judges recognize this problem, and often dismiss the charges if the driver can show the proper credentials have been obtained. But this approach is unfair to compliant motor carriers that took the time to ensure they complied with applicable laws and regulations.

The district court process is onerous and cumbersome. After being cited, drivers and owners often mistakenly believe they have satisfied all requirements once KYTC and CVE officials are satisfied that everything is in order and give the go-ahead to resume operations. Failure to appear is a common outcome for these cases, and it contributes to the frustration of industry with the current system of adjudication. It also clogs Kentucky's district court dockets, which are already laden with moving violations committed by motorists and various other misdemeanor offenses.

6.3 Unresolved Cases

Cases with outstanding dispositions continue to pose problems for commercial vehicle enforcement and adjudication. The percentage of commercial vehicle offenses left unresolved with "failure to appear" or "fugitive" designations ranged between 8 percent and 11.6 percent during the study period, with the 10-year average at 9.9 percent. As such, one out of every 10 charges issued went unresolved in the court system because offenders did not appear in court. For the 10-year study period the breakdown of unresolved cases was 79 percent "failure to appear" and 21 percent "fugitive." Individuals charged with "failure to appear" receive a court summons, whereas those cases assigned a "fugitive" disposition may result in the issuance of a bench warrant. Usually individuals who fail to appear on charges receive a court summons, if it is for minor offenses such as a violation.

The existing backlog of cases is problematic. It congests court dockets with cases that can often be resolved through less procedurally complex means – e.g. using pre-payable citations. Even if the citation or accompanying charges are not pre-payable, there are significant costs associated with compliance. Some companies or drivers may decide it is worth the risk to continue operating without addressing the charges in the county of issuance. According to documents obtained from the AOC, district courts are supposed to report "failure to appear" to KYTC. Currently, enforcement and the courts are not focused on clearing these unresolved cases from district court dockets.

6.4 Declining Revenue and Revenue Reporting

Declining revenues are primarily the result of declining conviction rates, and to a lesser degree the changing prevalence of various offenses (e.g. fewer OW/OD offenses as a percentage of total offenses). Revenues were in part driven by the economic constraints and enforcement efforts, but those changes were temporary and have returned to something approximating pre-recession levels. Revenues bottomed out in 2011 before increasing again in 2011-2012. The overall trend is one of clear decline, however.

The challenges falling revenue introduce are obvious: the cost of enforcing commercial vehicles is substantial, and can only be done at a net cost to the state. Declining revenues increase that net cost, and make it more difficult for Kentucky, given budget restrictions resulting from stagnating or dwindling tax revenues, and that these revenues at least partially fund essential personnel, equipment, facilities, information technology, and activities related to enforcing and adjudicating these offenses. As revenues decline, it becomes increasingly likely that fewer resources will be allocated to these activities. This could create a positive feedback loop, resulting in a continuous downward spiral of revenue generation and funding. With fewer resources available to enforce them, current laws will have less and less of a deterrent effect.

A related issue concerns the Kentucky Court of Justice's revenue reporting. Annual reports tally all of the receipts from court fee and fine collections. More detailed information can be gathered from the AOC; until recently the state court system did not track receipts on a county-by-county basis or according to a specific charge. AOC Executive Officer Scott Brown noted that, as of early 2014, there was movement to begin tracking these data with an electronic accounting application; pilot studies were underway in five counties. As a result, it will be possible to track what revenues were collected as a percentage of fees and fines that were theoretically possible to collect. It will also let the Division of Auditing Services track state court performance.

6.5 Revenue Allocation

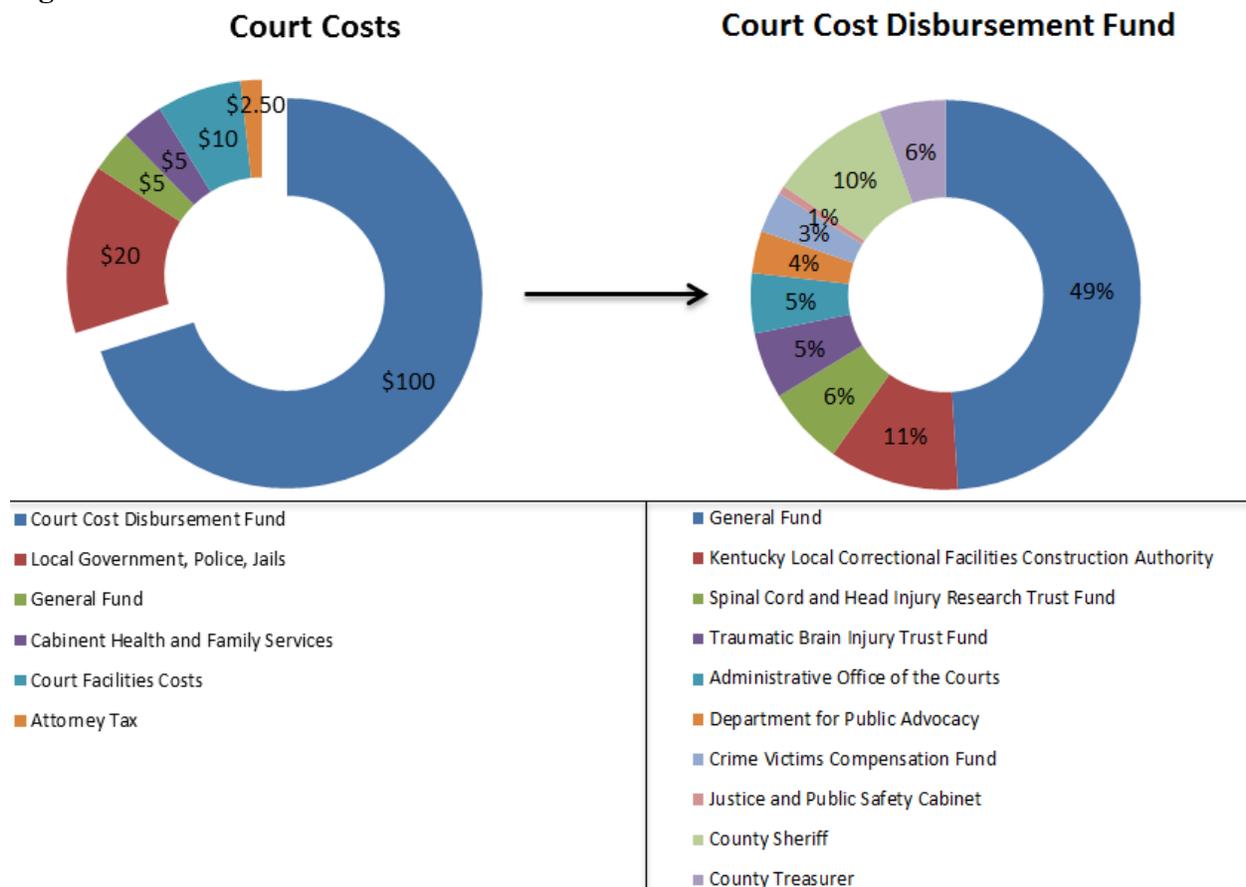
Revenue allocation for commercial vehicle violations is surprisingly complicated. Court costs and fines are not allocated in the same manner, with a particular formula or sets of formulas used to determine court costs allocation. Specific statutes sometimes determine the allocation of revenue generated from fines, but in some cases the law is quite ambiguous. Figure 16 details the distribution of court costs by county. The donut graph on the left shows the breakdown of each court cost by dollars. The largest slice (\$100) goes to the Court Cost Distribution Fund, which consists of several smaller funds, which are elaborated in the right donut graph. Included are the General Fund, Kentucky Local Correctional Facilities Construction Authority, Spinal Cord and Head Injury Research Trust Fund, AOC, Department for Public Advocacy, Crime Victims' Compensation Fund, Justice and Public Safety Cabinet, the County Sheriff and County Treasurer. Allocations are reported as a percentage, though given the fee is \$100 they could be thought of in dollar amounts as well. The remaining facets of court costs depicted in the left donut graph include: \$20 to local governments to cover police department and jail-related costs associated with keeping order and carrying out official duties for various district courts.²⁷ Five dollars goes to the general fund and to the Cabinet for Health and Family Services to implement and operate its telephonic behavioral health jail triage system. Another \$10 goes to the traffic court facilities cost to cover court facilities construction and maintenance. The remaining \$2.50 goes toward an attorney tax fee, which varies by county. Some counties do not assess all of those fees. Others may add a court library fee (\$.50) or a "crime stoppers fee."

The allocation of fines is much more complex than for court costs. Fines are not paid directly to KYTC, but are transferred from the Association of Circuit Court Clerks to the Finance and Administration Cabinet, which redistributes funds into several different accounts associated with governmental cabinets, departments and agencies. For example, KRS 189.990(29) stipulates size

²⁷ KRS 24A.176 and 200 KAR 38:030 specify exactly how the Finance and Administration Cabinet is to disburse the \$20 fee.

and weight violations be allocated as follows: 90 percent goes to the personal care assistance program and 10 percent goes back to the county where the violation occurred. This money is distributed to law enforcement agencies in that county. According to officials at the Legislative Research Council, fines for other offenses (KIT/IFTA, KYU, UCR, federal safety regulations) go to the General Fund. The Road Fund includes a line item for nontax receipts in lieu of traffic fines. This line item is an allocation that goes to the Road Fund for all traffic fines, not just those related to commercial vehicle violations.

Figure 16. Court Costs Distribution



It is not clear which fines get allocated (or for how much), but KYTC revenue from FY 2004-2014 is listed in Table 13. Total revenues from fines are a fraction of the total traffic fines collected by the district and circuit courts, typically between 3.5 and four percent. Presumably some traffic fine revenues come from commercial vehicle offenses, but their share of the total is unknown. Note that as with every other indicator analyzed in the study, Road

Table 13. Nontax Road Fund Receipts in Lieu of Traffic Fine (2004-2014)

| FY | Total |
|-----------|--------------|
| 2004 | \$1,521,583 |
| 2005 | \$1,326,645 |
| 2006 | \$1,269,800 |
| 2007 | \$1,174,453 |
| 2008 | \$1,112,801 |
| 2009 | \$958,790 |

| | |
|------|-----------|
| 2010 | \$779,495 |
| 2011 | \$779,828 |
| 2012 | \$769,405 |
| 2013 | \$702,451 |
| 2014 | \$544,637 |

Fund revenues have dropped worryingly, such that FY 2014 revenues were about one-third of the revenues collected a decade earlier.

Money from the Road Fund goes toward the construction and maintenance of state highways and certain tributary routes, KSP and CVE enforcement activities, and miscellaneous other functions. KYTC and KSP-CVE, whose operations are also partly if not entirely supported through road fund revenue, spend millions on personnel, facilities, equipment, information technology development and strategic planning. The trucking industry would prefer that more of these funds go into the Road Fund, so that violators are helping pay their fair share of maintenance for roads that benefit the entire industry and other motorists. Given stagnating revenues and insufficient funding for future transportation needs, the lack of funding for this function – which provides greater safety for motorists and protects public roads from excessive wear – is troubling.

6.6 Systematic Inefficiencies

The issue of systematic efficiency should be a matter of concern for any public policy and the administration of those policies. The cost of enforcing commercial vehicle laws, currently far exceeds the revenue generated by citations. Rather than providing revenue per conviction, Table 14 shows the amount of revenue generated from each charge issued when dismissals are taken into account as well as FTA/FTV cases and other dispositions that do not result in the payment of court costs and fines. On average, the state can expect \$54.76 per citation issued, although this varies depending on the charge in question. OW/OD has the highest yield, with \$63.76 per citation, while KIT/IFTA is the lowest at \$34.69. When the vast costs accrued throughout the enforcement and adjudication process to KYTC, KSP and the Kentucky Court of Justice are considered, it is little wonder that these revenues only cover a small percentage of the costs needed to address non-compliance in the motor carrier industry. Part of the inefficiency could be solved through procedural changes, which are cumbersome for state and industry alike. On the other hand, the state needs additional revenue to cover the costs of the negative externalities associated with illegal practices. These include the cost of enforcement, increased safety risks, revenue losses on tax programs and credentials programs, and increased wear due to overloaded trucks traveling on Kentucky highways.

Table 14. Average Revenue Per Charge Issued (2004-2013)

| Violation | Est. Revenue | Total Charges | Per Charge |
|-----------------|--------------|---------------|------------|
| Federal | \$10,760,233 | \$200,653 | \$53.63 |
| KIT/IFTA | \$115,884 | \$3,341 | \$34.69 |
| KYU | \$3,624,382 | \$63,943 | \$56.68 |
| OW/OD | \$1,754,328 | \$27,514 | \$63.76 |

| | | | |
|--------------|--------------|-----------|---------|
| UCR | \$215,643 | \$5,328 | \$40.47 |
| Total | \$16,470,468 | \$300,779 | \$54.76 |

Chapter 7. Policy Solutions

This section describes two policy solutions designed to help KYTC recover additional revenue from commercial vehicle enforcement. The first policy recommendation is to keep jurisdiction over commercial vehicle offenses situated within the state court system. Alongside this, it will be necessary to introduce mechanisms that will improve enforcement numbers, bump up conviction rates, and generate more revenue. The second suggestion is to invest in an administrative panel, housed at KYTC that has jurisdictional authority over commercial vehicle enforcement. This panel would operate like the Florida Commercial Motor Vehicle Review Board. Installing a review panel will improve enforcement, increase conviction rates, and therefore provide higher revenue yields. It will also streamline the adjudication process and restore equity to the system by having the panel hear all cases related to select commercial motor vehicle charges.

7.1 Piecemeal Reform 1: Extend Weigh Station Hours of Operation

Current enforcement and adjudication practices cause significant loss of potential revenue, but some changes could yield somewhat more beneficial results. This section highlights some of the possible steps KYTC, KSP and the state court system could take to improve the current system. One step, which has already been taken, is implementing new web-based software applications developed by Kentucky’s Commercial Vehicle Information Systems and Networks (CVISN) team in conjunction with Iteris, a private software vendor. The enhanced Commercial Vehicle Information Exchange Window (CVIEW) software enables CVE officers and inspectors to look up carriers by license plate number, USDOT number, KYU number or various other identifiers. inSPECT software allows officers to record manual observations of vehicles using CVIEW data at roadside stops from their police cruisers; it also lets them import that data to their inspection forms. Automated screening systems – Kentucky Automated Truck Screening Systems (KATS) – have been installed at weigh stations across the state. KYTC’s Office of Information Technology is developing a database with all of the observations generated from inSPECT screening queries, KATS observations and data from PrePass, a private-sector weigh station bypass system. All of this money and time invested has greatly improved the capabilities of enforcement officers. Unfortunately, at a time when screening technology has augmented enforcement capabilities to new heights, the resources needed to operate the state’s weigh stations are lacking.

Figure 17 displays the proportion of PrePass trucks passing through Kentucky weigh stations while they are open. This dataset includes all of the weigh stations except for Fulton County and Floyd County. Every month, PrePass generates a report based on the number of its members that have been bypassed, pulled in, and whether the station is open or closed when they pass through. When a PrePass truck passes the weigh station and transmits a signal via an onboard transponder, the system generates counts. PrePass is available at 310 weigh stations or screening facilities in 31 states, and has a large customer base of 461,206 trucks, as of 2013. In September 2014, PrePass trucks passed Kentucky weigh stations 557,904 times. This large volume, combined

with the accuracy of transponder technology (roughly 99 percent) offers an accurate gauge of weigh station operations. Weigh station activity has remained at low levels since PrePass began collecting data in May 2012. Since then, only 30.3 percent of PrePass trucks passed through a weigh station while it was open. This number varied over time, however, it never exceeded 35.4 percent (October 2013), nor was it ever lower than 24.5 percent (May 2013). The fact that the vast majority of PrePass trucks encountered a closed weigh station means that the same is likely true of the trucks not registered with PrePass. In fact, given that PrePass trucks readily identify themselves, they are probably more likely to go through weigh stations during their hours of operation than vehicles that are not registered with the system. Unregistered carriers are possibly anxious to avoid pull-ins or inspections.

Figure 17. Percent of PrePass Trucks Passing Weigh Stations When Open

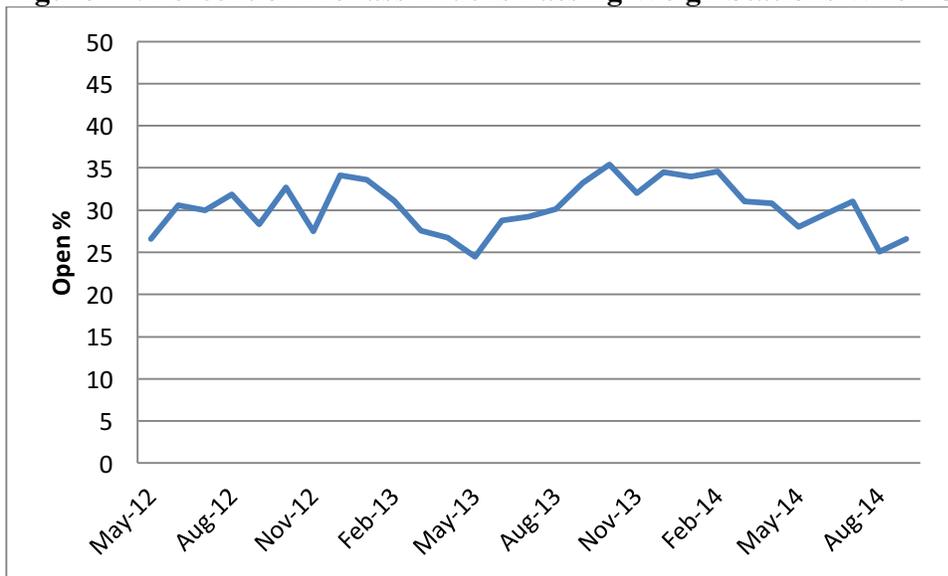
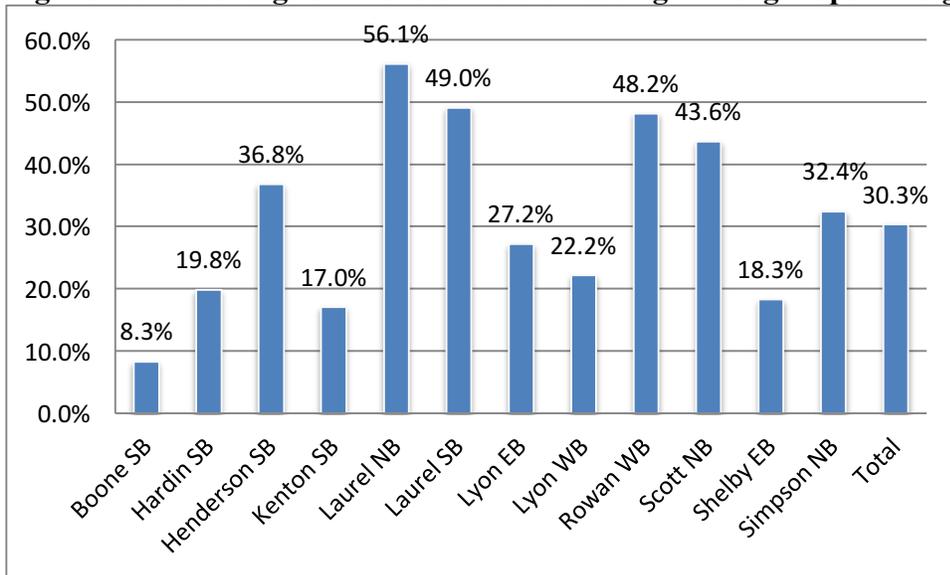


Figure 18 displays the percentage of PrePass trucks that moved through each of the 12 weigh stations where PrePass metrics were recorded over the last 29 months. As the figure shows, the percentages vary greatly by weigh station. The weigh stations in Laurel County were open most frequently, followed by the stations in Rowan County and Scott County. Each of those stations has a significantly higher number of operating hours than other stations in the state. In particular, that means coverage is best on the I-75 corridor in Southern and Central Kentucky (although the Rowan County station is on I-64). However, southbound traffic is less closely monitored along the corridor, as the Kenton County station was open to screen just 17 percent of PrePass trucks during that period. From there it gets worse, as every other station except for Henderson County and Simpson County screened less than 30 percent of its PrePass truck traffic. During this period, there were 14.5 million cases of a PrePass truck passing through or by Kentucky weigh stations – but the stations were only open to capture 4.4 million of those instances. The percentage of PrePass trucks bypassing an open weigh station (30.3 percent) is very low by national standards, which according to PrePass data averaged 54.3 percent in 2013. The implication is clear: Kentucky needs to extend the operating hours of its weigh stations, especially along the I-65, I-24, and I-64 corridors. Stations in Northern Kentucky along I-75 southbound and I-71 also need to be open more frequently, as they have the lowest open/total ratio of any stations where PrePass monitors activity.

In order to provide better coverage at state weigh stations, KSP will have to invest more resources in its commercial vehicle enforcement division. Although \$95.7 million of KSP's \$204.3 million FY 2015 budget originates with the state's Road Fund, only a small percentage of that (\$13-15 million) goes toward commercial vehicle enforcement. CVE's budget has been cut from \$19.9 million in FY 2012 to \$16.2 million in FY 2015. As noted in Chapter 3, the fact that CVE budgets were cut when resources were already insufficient is alarming, especially given that Road Fund allocations to KSP have trended upward. In the absence of a stronger agency commitment to commercial vehicle enforcement, improving performance will be very difficult.

Figure 18. Percentage of PrePass Trucks Passing Through Open Weigh Station



7.2 Piecemeal Reform 2: Establish Task Force to Address Issues

Given the complexity involved in enforcement, adjudication, the collection of fees and fines, and disbursing revenue, the level of communication between the agencies involved must increase. KYTC, KSP-CVE, the Kentucky Transportation Center, the Kentucky Court of Justice/AOC, Kentucky circuit court clerks, the Finance and Administration Cabinet, representatives from the governor's office, district judges and trucking industry representatives should sit down and sort through the problems associated with commercial vehicle offenses, and create standards that will improve the performance of state agencies. In particular, the task force should:

- Establish general evidence standards necessary to issue a citation
- Clarify criteria as to when commercial vehicle offenses should be dismissed
- Address the equity problems and uneven enforcement around the state
- Discuss whether more citations should be made pre-payable, and if so, which ones
- Exchange information about inter-jurisdictional programs like IFTA, UCR, and federal safety regulations promulgated by FMCSA
- Set targets for enforcement performance
- Set targets for conviction rates related to commercial vehicle offenses.
- Attempt to address FTA cases that go unresolved

- Discuss the best methods of tracking commercial vehicle cases, charges, fines and fee collections in each county
- Discuss the best methods of tracking revenue disbursements generated by offenses
- Discuss strategies to optimize revenue allocation
- Discuss how information technology can be better utilized by KYTC, KSP-CVE, AOC/KCOJ, circuit court clerks, and the trucking industry to increase compliance and make violations easier to detect.
- Discuss if it is appropriate to reclassify KIT/IFTA and KYU violations as criminal violations instead of criminal misdemeanors.
- Discuss strategies to hold the company accountable for credentials, taxes and safety issues – not just the driver.

The task force would deliver its findings to the governor’s office and Kentucky General Assembly, along with recommendations to address these issues. If these issues were resolved, sagging conviction rates, inequitable adjudication, unresolved cases, declining revenue, revenue allocation, and systematic inefficiencies would become less problematic.

7.3 Piecemeal Reform 3: Increasing Conviction Rate and/or Fine Amounts

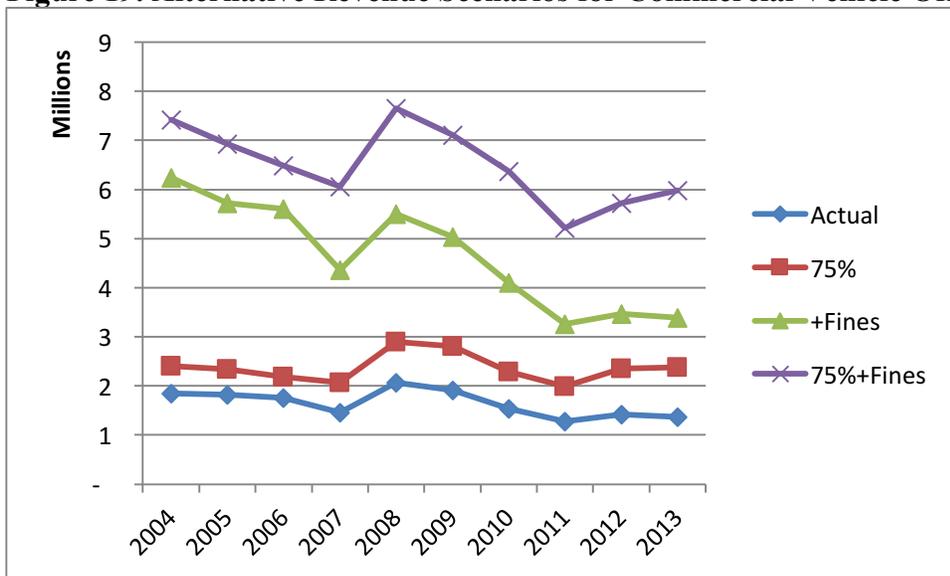
The Kentucky Court of Justice and its district judges could unilaterally increase the conviction rates and the fine amounts without input from other stakeholders, as they have sole adjudication authority over more than 99 percent of cases containing at least one of the commercial vehicle offenses reviewed in this study. It would require changing current practices and standardizing criteria for district judges, but there are only 96 individuals (192 if county attorneys are counted as well) who will have to change standard operating procedures – even fewer when accounting for counties with conviction rates that currently approach the ideal level. Increasing conviction rates and/or fine amounts can help solve the problems related to sagging conviction rates, inequitable adjudication, and declining revenue from those cases.

To extend this discussion and explore the possible consequences of instituting reforms, three alternative scenarios were developed based on data from 2004 to 2013. In the first scenario, conviction rates were adjusted upward to 75 percent for all commercial vehicle offenses. As the actual conviction rate was 53.6 percent, this marks a significant improvement for all enforcement categories, although OW/OD convictions were reduced slightly from their observed levels. For the second scenario, the practice of charging minimum fines for pre-payable offenses or routine commercial vehicle offenses was studied. Here, we assumed that current practices could be amended such that judges charge half the statutorily allowable maximum (as reported on Table 1 and Table 2 in Chapter 1) instead of the minimum. For this scenario, the observed conviction rates for the study period are maintained. The third scenario adjusts the conviction rates for actual commercial vehicle offenses to 75 percent and assumes fines levied were half the statutory maximum.

Figure 19 displays projected revenues for each scenario, assuming that such practices had been in place. The blue line represents the revenue estimates described in Chapter 4. The red line corresponds to Scenario 1; the green line represents Scenario 2; and the purple line corresponds to Scenario 3. Increased conviction rates alone would provide a significant increase in revenues. The 10-year projected total shows collections increased by 43 percent, to \$23.7 million from

roughly \$16.5 million. The increase is more pronounced if fines are increased instead of conviction rates. The 10-year projection for Scenario 2 has collections going up nearly three-fold, to \$46.7 million. The results for Scenario 3 are even starker, with projected revenues of \$64.9 million during this period. Now, it is difficult to imagine that more stringent penalties will not encourage either a greater level of compliance or a produce a higher rate of FTA/FTV cases, which means these revenues projections are probably overly optimistic, particularly for Scenarios 2 and 3. Even if those projections are reduced 25 percent, the projections still amount to \$35 million and \$48.7 million for Scenarios 2 and 3, respectively. The prospect of generating significantly greater collections from non-compliant carriers are good as the state attempts a systematic overhaul of its commercial vehicle enforcement. This incentivizes compliance and reestablishes an even playing field for all carriers wishing to do business in Kentucky. Reform can solve the problems of falling conviction rates, inequitable adjudication, unresolved cases, and declining revenue.

Figure 19. Alternative Revenue Scenarios for Commercial Vehicle Offenses (2004-2013)



7.4 Piecemeal Reform 4: Focus on Getting Final Dispositions on FTA/FTV Cases

According to the Division of Driver’s Licensing, 35,848 failures to appear have resulted in notices being sent to KYTC from January 1 to September 31, 2014. Of those, 24,006 resulted in a license suspension. What is unknown is the breakdown of those suspensions for individual motorists versus CDLs for truck drivers. Some district court judges are hesitant to suspend a license for a driver in this case, because they realize it is the carrier’s responsibility to meet safety, tax, and credentialing requirements. More than 2,000 commercial vehicle safety, tax, and credentialing charges go unresolved each year, which accounts for nearly 7 percent of all charges issued by law enforcement throughout the state. The difficulty of resolving such charges, both practically and ethically, suggests the status quo has substantial limitations in terms of efficacy and fairness. Current practices should be reappraised in light of this ongoing problem.

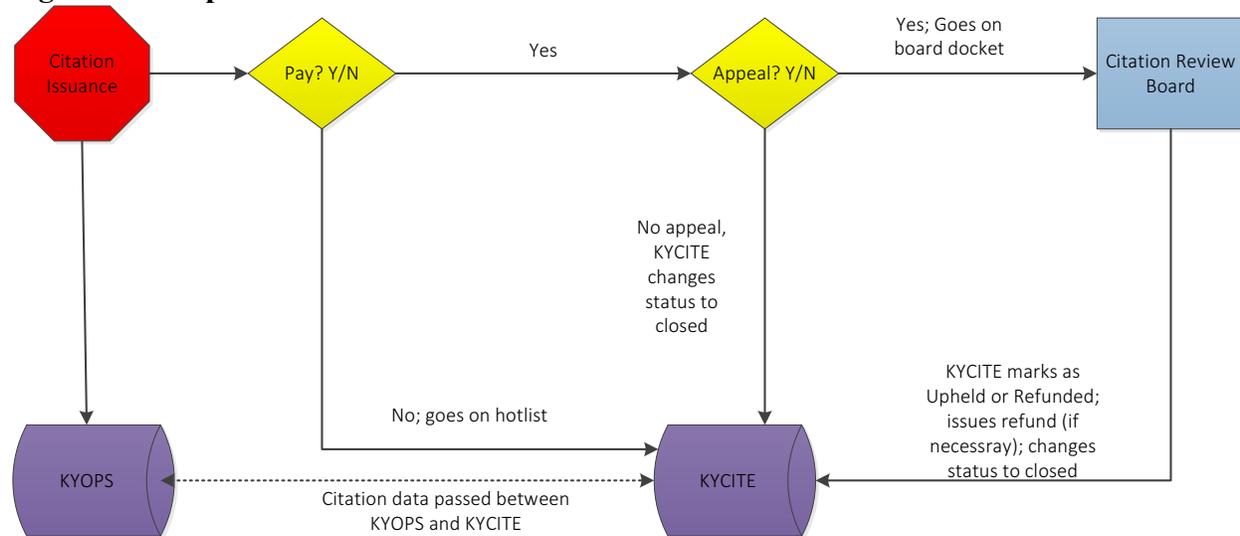
7.5 Implement Civil Penalties System

Given that none of the other piecemeal reforms address the challenges identified in Chapter 5, and that even cumulatively none addressed the systematic inefficiencies that are a byproduct of

using a traditional court process for commercial vehicle offenses, the best approach may be to implement a different system to adjudicate offenses and collect revenue. One alternative to piecemeal reforms is a complete revision of current laws, processes and norms to create a civil penalties system that resolves commercial vehicle offenses more equitably, improves conviction rates, leaves fewer outstanding cases on the record, increases revenue, establishes purpose-based revenue allocation, and leads to a more efficient system overall. This system would be modeled on the Florida Commercial Motor Vehicle Review Board, albeit with some differences. This section lays out the processes, policies, legal framework, implementation costs, revenue estimates, revenue allocation protocols, and assesses the pros and cons of the change for Kentucky.

Figure 20 offers a proposed alternative to the current court-based process. Instead of adjudicating commercial vehicle offenses in district courts, individuals receiving a citation would be required to pay a fee and fine via an electronic online payment system, much like the ones used to collect money from parking citations in many municipalities. KSP-CVE would still enforce laws in the same manner as they have previously, and retain the right to put drivers, vehicles, and carriers out of service for safety violations. The citations examined as part of this study would be candidates to include in this system, along with any other non-moving offenses that might be better handled in this manner. Moving violations and other criminal activities would remain under the jurisdiction of district or circuit courts. All statutes addressing commercial vehicle offenses would retain their present form except for KYU and KIT/IFTA offenses, which would need to be reclassified as violations instead of misdemeanors.

Figure 20. Proposed Civil Penalties Process for Commercial Vehicle Offenses



Procedurally, the offending carrier (not the driver) would be issued a citation upon the officer completing the inspection or traffic enforcement. The officer would enter the citation into KYOPS, the KYOPS system would need to be configured to interact with KYCITE, and the payment engine processes payments and generates summary reports on carriers that have not paid. If a carrier has not paid after 30 days, they will receive a notice via mail or email, which reminds them to pay the citation. After 60 days, the carrier will be added to a hotlist and KSP-CVE officers will be authorized to stop any vehicle owned by the offending carrier and impound

it until outstanding bills are paid. The carrier will be able to pay bills by logging into the Motor Carrier Portal, which is KYTC's integrated web application used for all trucking firms that operate in Kentucky. After paying the citation, the carrier will be given the option to appeal the decision if they feel it unjust. If an appeal is made, it will be heard before the KYTC Motor Carrier Citation Board when it next convenes in the region where citation was issued. The board will be comprised of two KYTC hearing officers and a hearing officer from KSP. The board will travel to each of the six CVE regions every two months. At hearings, officers will decide to uphold or refund the citation. KYCITE will be automatically updated at each stage of the process so the Division of Motor Carriers and KSP-CVE can keep tabs on violators. Support staff may also be needed on a part-time basis to manage the docket and answer questions from the carriers.

Violations will be assessed in addition to any back taxes, permits, and interest owed to KYTC. In order for the board to be endowed with such authority, the Kentucky General Assembly would probably need to modify KRS 189 to establish the KYTC Motor Carrier Citation Board's authority to adjudicate the civil penalties or violations, set fees associated with the penalties, redefine IFTA/KIT statutes as criminal violations instead of misdemeanors, redefine any statutorily authorized fines for commercial vehicle offenses, allocate revenue specifically earmarked to fund the board and enhance funding for CVE, and empower both KYTC and KSP-CVE to implement and enforce the new civil penalties system.

7.5.1 Implementation Costs

Establishing the KYTC Motor Carrier Citation Board and setting up the necessary information technology components would take some front-end investment. In thinking through the process, the starting assumption is that the KYTC Office of Legal Services would handle this task given the quasi-judicial nature of the board's functions. This section discusses the assumptions used to calculate the implementation costs and first-year program costs for the board.

The board would consist of three members; two members would come from Legal Services and one from KSP. These individuals would likely be staff attorneys. The estimate assumes three administrative individuals are needed to manage the court docket and handle any phone calls related to outstanding cases. The activities of the board would be assumed to constitute a partial workload of about 40 percent of time for five individuals and 100 percent of time for a single individual. Hearings would take place once per week, and staff attorneys would have an additional day per week to review pending cases. Administrative assistants would devote about 40 percent of their time to administrative tasks related to the board. These tasks may include: working with KSP to handle incoming cases, rescheduling appeals hearings, tracking payments, helping carriers pay penalties, answering general questions over the phone, and providing board members with assistance as needed. Supervisory oversight would ultimately fall to the Office of Legal Services, but one board member would make a natural choice for that job, and therefore would devote 100 percent of his or her time to those tasks.

Table 15 provides the estimated implementation costs for the KYTC Motor Carrier Citation Board and the KYCITE payment and accounting system. The personnel costs were estimated using an average loaded cost rate for personnel in the Office of Legal Services, which was provided by KYTC's Office of Budgets and Fiscal Management. The average loaded cost rate is \$41.58. Without knowledge of the specific benefit costs for individual employees, this estimate was used for all employees, even though it probably underestimates the compensation of staff

attorneys reviewing the cases. Likewise, this number significantly inflates that cost of administrative assistants. One employee would come from KSP-CVE, but they are assumed to have a loaded cost rate within this general area.

Table 15. Estimated Implementation and First-Year Cost of Operations

| Cost | Subtotal | Overhead | Total |
|---------------------------|-----------------|-----------------|--------------|
| Personnel | \$243,243 | \$38,286 | \$281,529 |
| Computer/Equipment | \$6,000 | \$945 | \$6,945 |
| Travel | \$6,397 | \$1,008 | \$7,405 |
| Mailing | \$1,470 | \$232 | \$1,702 |
| KYCITE Database | \$640,000 | \$0 | \$640,000 |
| Server Maintenance | \$15,000 | \$0 | \$15,000 |
| Total | \$912,110 | \$40,469 | \$952,581 |

Computer and equipment costs were budgeted at \$1,000 per individual per year, which should be adequate given that all of the people involved will also be using the computers and other equipment such as phones. The board will likely consist of some people who already work at KYTC, which will also offset some of the start-up costs for this category.

Travel was calculated by assuming that the appeals hearings would occur in every KSP district once every two months. Specifically, the mileage was calculated by figuring the travel from Frankfort to the following cities:

- Henderson (Region 1)
- Louisville (Region 2)
- Frankfort (Region 3)
- London (Region 4)
- Morehead (Region 5)
- Pikeville (Region 6)

In reality, these cities may lack the facilities needed to host hearings, but they serve as robust proxies for the amount of travel required (even if the hearings take place elsewhere). The docket schedules may also require tweaking, as some regions will have larger caseloads than others. Travel costs include two cars per trip. This was based on the assumption that KYTC attorneys traveled in one vehicle, while the KSP-CVE board member went separately if they come from a different area of the state. A mileage rate of 56 cents was used, with miles per vehicle assumed to total 5,712 per year.

Formal notices that contain information about the pending fines and fees that had not been paid would be sent out to the carriers (via U.S. Mail). It was assumed that 3,000 notices would be mailed out each year, or 10 percent of the approximately 30,000 commercial-vehicle-related charges issued between 2004 and 2013. The postage is assessed at 49 cents per letter.

The most significant costs would be associated with the development of the KYCITE system, which would include an electronic database, web services, accounting engine, payment engine, interoperability with KYOPS and various other Motor Carrier Portal applications, and the ability for users to generate canned reports about the payments that have been made. The cost of building this system would vary greatly depending on the functionality parameters given to developers, unforeseen development costs, and beta testing. Significantly, these costs are estimated using the assumption that cash and check payments will not be accepted. If the system were designed with the ability to process those payments, development costs would significantly increase. An estimate by the Office of Information Technology (OIT) suggests the costs would range from \$320,000 to \$640,000, depending on these factors. Higher estimates are included as a precautionary measure. OIT builds overhead into its cost estimates, so none is charged for this particular cost category.

Server maintenance refers to the general upkeep of data and the data backup related to KYCITE cases, violator information, payment information, and dockets. This type of maintenance can vary, but routine maintenance on similar information systems in the Motor Carrier Portal runs from \$10,000 to \$15,000 per year, so again the high-end figure is included to forecast all possible outcomes. This cost category also excludes overhead, as OIT would maintain the server and the data. The Office of Legal Services has an overhead rate of 15.75 percent for the current fiscal year, and that rate was applied to all of the cost areas except those provided by OIT. The total overhead for the implementation comes to \$40,471.

After taking all expenses into account, estimates suggest that implementation would cost between \$620,581 and \$952,581, with most of the start-up costs related to information technology and software development. Moving forward, the annual cost of running the KYTC Motor Carrier Citation Board would be approximately \$312,581 before taking inflation into account. Given the revenues generated by this process will far exceed any reasonable expected costs, there is a sound business case for making this change.

7.5.2 Revenue Estimates

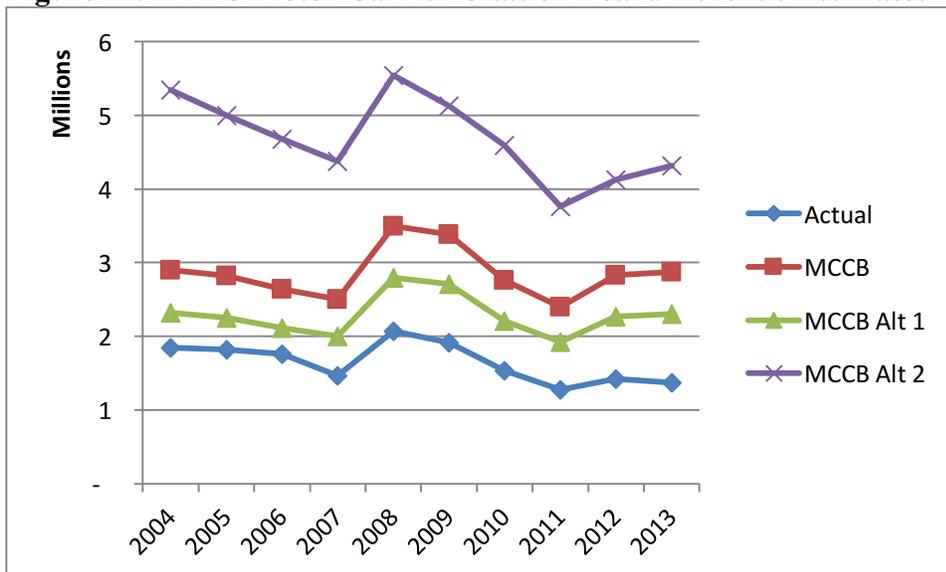
Revenue projections vary greatly depending on the assumptions made about the fines, fees and conviction rates. For the sake of simplicity, revenue estimates are generated for the KYTC Motor Carrier Citation Board by using past data. The basic question concerns the board's performance had it hypothetically existed from 2004 to 2013. To better compare it to the actual performance of the court system, the fines were kept the same. One obvious difference concerning court costs (or in this case, board costs) is that state rates would be standardized regardless of location. To make approximately the equivalent rate, the board fees in lieu of court costs were standardized at \$71.50 per charge – effectively the same as using \$142.50 per two charges (i.e. assuming two charges per case). Given that 84 of 120 counties use this court cost, this was the logical starting point for comparison. It is assumed a citation board would have a higher conviction rate than district courts for several reasons. Board members hear every appeal concerning violations and therefore have greater familiarity with the offenses in question than the average district judge would. A default payment requirement and stronger enforcement mechanism for non-payment increases the ease of collecting fines and fees. This system will allow these offenses to receive more attention than they currently do in district court, where dockets are cluttered with other criminal offenses, probate cases and other issues. In this case, the benchmark conviction rate is

90 percent – slightly below Florida’s but significantly better than the current conviction rate in district court cases or alternatives that keep these offenses in the court system.

Figure 21 displays estimates for the KYTC Motor Carrier Citation Board Revenue. The graph contains three estimates. The blue line is based on taking all of the assumptions discussed in the previous paragraph and forecasting what revenues would have been if this system been in place from 2004 to 2013. The 10-year total is nearly \$28.6 million, or \$2.86 million per year. A system like this might encourage greater levels of compliance given the higher likelihood of convictions. As a result, total citations might decrease. The red line plots collections based on the assumption that compliance increases by 20 percent as a result of stricter enforcement and adjudication. The true impact the system would have on compliance is unknown, however this demonstrates that even under a more conservative scenario fine and fee collections would be significantly higher than the current revenues. Over 10 years the total comes to \$22.8 million – at least \$640,000 more per year than was collected over the 10-year study period. The gap between both estimations for an MCCB Alt 1 and the MCCB original estimation is the potential impact of greater compliance – about \$5.8 million over 10 years. The MCCB Alt 2 plot, which is represented by purple Xs, takes another scenario into account where the board did in fact exist and the same charges were brought before it as were in fact brought before the district court, except that fines are now set at half of the statutory maximum. To offset this large impact on payment, it is also assumed that compliance increased by 40 percent in order to guard against overestimating the collection impact. The difference is substantial (nearly \$47 million over 10 years) – about three times what was actually collected.

Projecting collections under this new system is challenging without knowing what enforcement regimes will look like, and whether changes to existing safety, tax, and credentialing programs will alter the compliance landscape. However, each of these scenarios provides evidence that an administrative board enforcing the policies laid out, and coming close to meeting the performance benchmarks specified, would in all likelihood outperform the current court-based system barring substantial changes to current enforcement practices.

Figure 21. KYTC Motor Carrier Citation Board Revenue Estimates



7.5.3 Revenue Allocation

Another advantage of implementing a civil penalties system for commercial vehicles is that it would establish a dedicated revenue allocation structure where resources flow back into the activity that generates the collections. This approach is more functionally viable because it uses revenues to fund commercial enforcement and adjudication activities required by federal and state laws and regulation. Here the allocation proposal is simple: collections from commercial vehicle offenses will fund the activities of the Kentucky Motor Carrier Citation Board; the remaining collections will be deposited into the Road Fund and earmarked for the use of the primary law enforcement agency in charge of commercial vehicle enforcement (which is currently CVE).

Figure 22. Revenue Allocation for MCCB

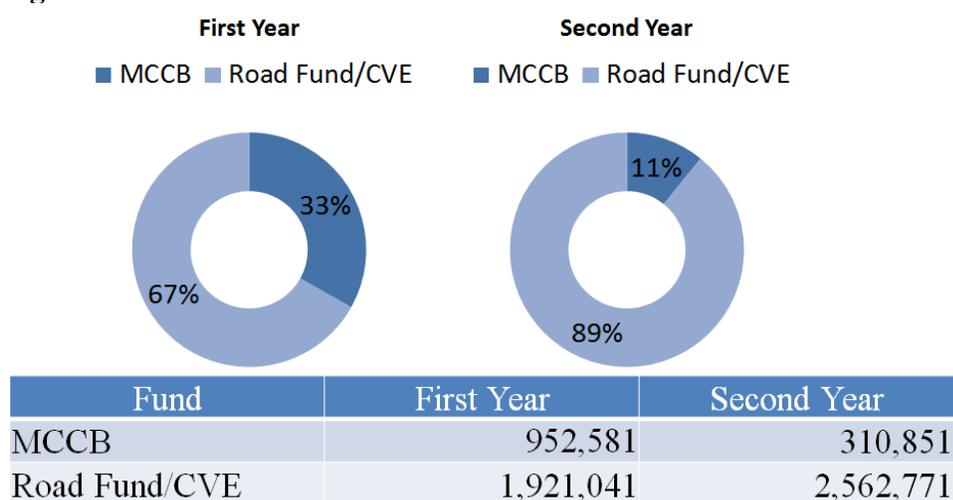


Figure 22 indicates the consequences of revenue allocation. The figure denotes the first year allocation for the MCCB as a percentage of all Road Fund collections if the revenue collected were equal to that collected under the MCCB scenario (i.e. the red square plot in Figure 21) in FY 2013. The projected implementation costs of the MCCB were calculated using FY 2015 estimates, meaning the costs and revenues are not estimated using data from the same year. Nevertheless, the estimates are based on the most current data available for both. In the first year, the implementation would be significantly pricier because of KYCITE database development costs. In the second year, assuming the steady-state revenues, the costs would be much lower, although these costs do not account for pay raises or other potential sources of cost increase. Still, the MCCB’s share of the collections drops from 33 percent in the first year to 11 percent in the second year. The projections show this approach is economically feasible if the assumed projections do materialize. Even if the conviction rates or citation numbers are much lower than anticipated, or labor costs increase, it is very unlikely the state would sacrifice revenue as a result of this policy change. The Road Fund would receive meaningful disbursements from collections as opposed to the meager amount of traffic fine revenue currently trickling into the Road Fund.

7.5.4 Pros and Cons of the MCCB Approach

There are several valid arguments that can be made in favor of implementing the MCCB and the related policies needed to make it work. If the model developed approximates the effectiveness

of the Florida system, the MCCB should significantly raise conviction rates above current levels, which by the end of the 10-year study period fell under 50 percent. Having a board that adjudicates every case would make the application of laws and regulations more consistent. The enforcement mechanism included in the approach, which confers impound authority to enforcement officers and implements hotlists to identify non-payers, offers a better way of resolving the problems that arise due to no-shows that beleaguer the current FTA/FTV process, which jeopardizes the livelihood of CDL holders who, often, bear no responsibility for their employer's compliance issues. The estimates indicate revenues would have been higher had such a system been in place, and it is plausible future projections would render the same result. The revenue allocation formula preserves revenue allocations for administrative cost recovery and uses the remaining resources to strengthen commercial vehicle enforcement around Kentucky. The proposed system is much more streamlined and efficient than the current system, or even a refined system that gradually implements piecemeal reforms. The proposed system here is much more likely to improve the enforcement and adjudication climate because it will receive greater attention if it is under the jurisdiction of a dedicated body rather than being relegated to a district court, where cases are set adrift in the sea of issues they must daily negotiate. This is not an indictment of the court system itself, but instead recognizes the importance trucking issues have to KYTC, KSP-CVE, and the industry. The MCCB policy will empower those with much stronger incentives to improve adjudication and enforcement of commercial vehicle offenses.

As with virtually any policy change, there are some potential drawbacks. The policy would require some significant legislative overhaul, which in turn would require the Kentucky General Assembly to reach a consensus on the specifics of a new system. It would add to the oversight responsibilities of KYTC and CVE, and require time and effort to implement new policies and processes. Maybe the most significant potential negative is related to federal safety violations, which constitute the majority of the cases studied here. The deterrent value of most federal regulations is mostly the product of the FMCSA safety rating system, which is based on violations. Including such penalties in a civil penalties system could encourage more challenges – challenges that may be overturned in many cases. If these charges were overturned, it could have a negative impact on safety because those carriers with dismissals would end up getting points restored to their safety record despite being violators. Currently, large numbers of safety violations are issued without any corresponding citation. This precludes the opportunity for a dismissal and makes it harder for non-compliant carriers to erase these blemishes from their safety record, as KSP-CVE reviews requests if a citation is never issued. Without including the federal safety citations, the financing options for this approach are much less viable. Lastly, drivers issued citations for moving violations or offenses unrelated to the tax, weight, credential and safety issues studied here would still have to go to court. In this sense, the efficiency of the system is still limited, although routine moving violations are often pre-payable as well, and an offender may be able to quickly pay through two simple (though separate) online processes.

Figure 24. IFTA Charges by County (2004-2013)

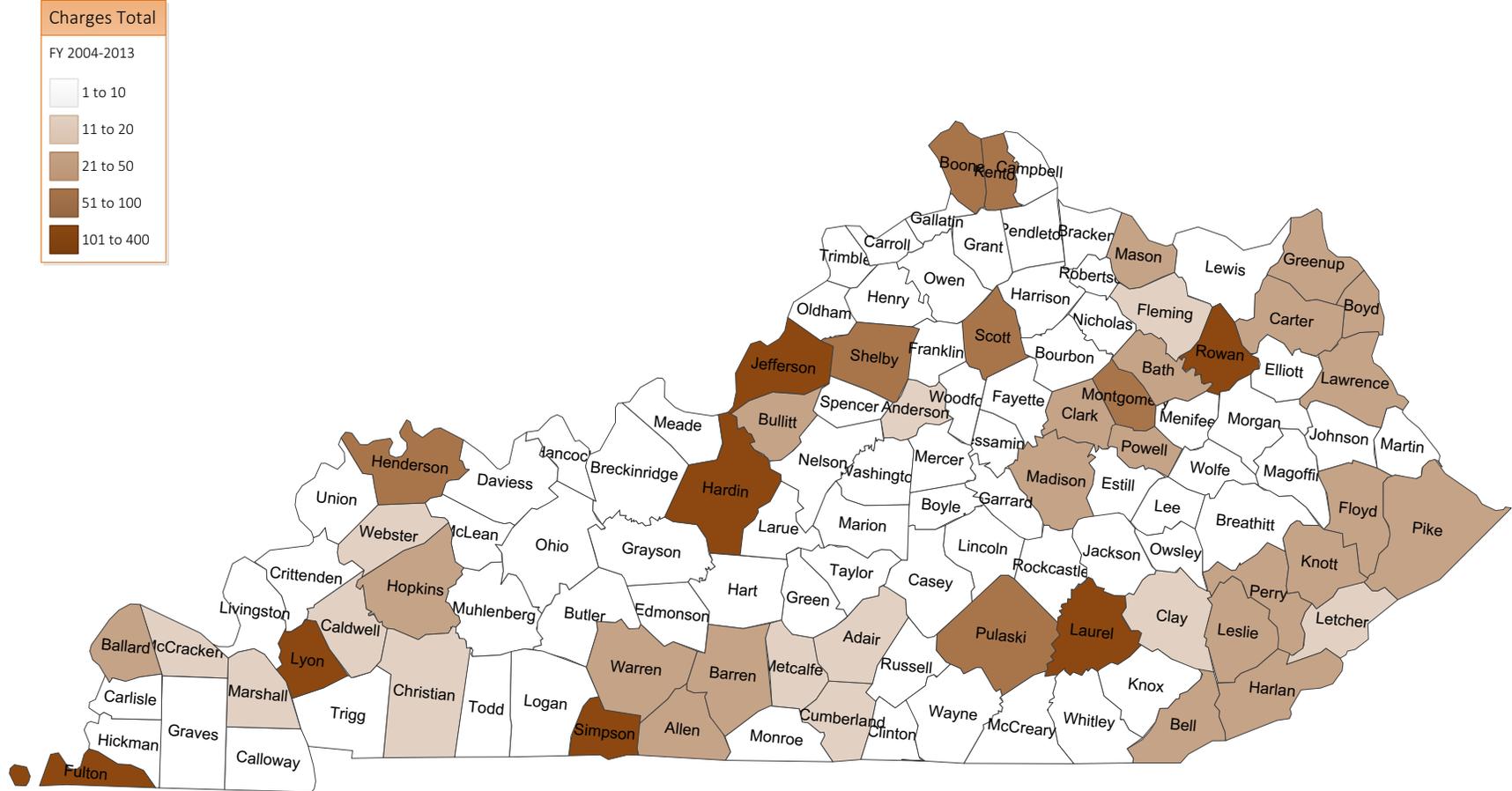
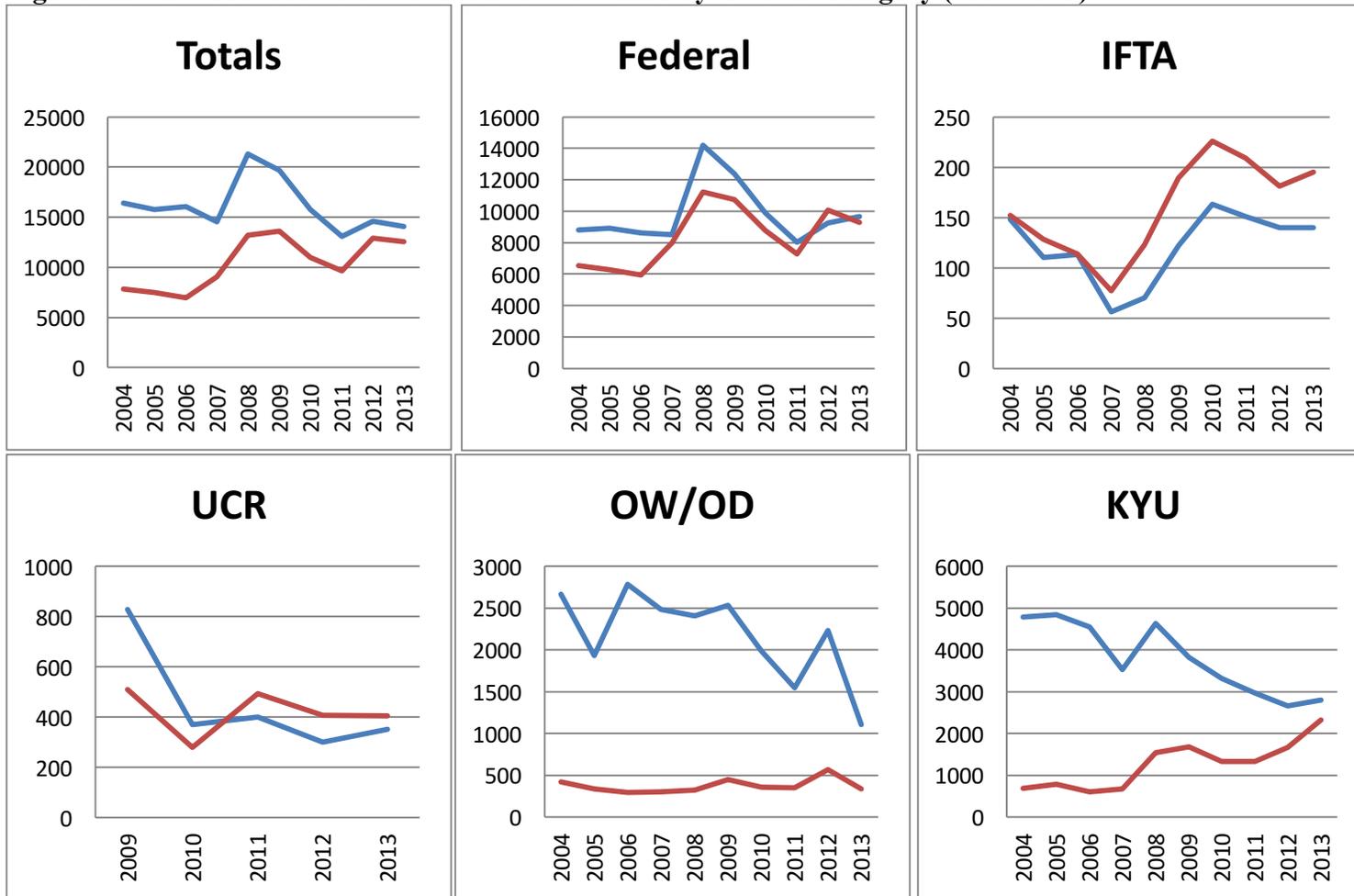


Figure 28. Raw Counts of Convictions and Dismissals by Offense Category (2004-2013)



Note: Total convictions are blue; total dismissals are red.

Appendix B. Commercial Vehicle Enforcement Survey

1. Are any of your state's commercial vehicle violations (OS/OW, registration, credentialing, safety) considered violations of the civil code rather than the criminal code?
2. If the answer to No. 1 is "Yes" Can you provide those charges, along with the corresponding state code?
3. If there are commercial vehicle violations that are civil penalties, why did your state decide to implement this policy?
4. Does jurisdiction for commercial vehicle violations that are civil penalties (if any) reside in the state courts?
5. If you have a special traffic court/civil penalties for commercial vehicle violations, what department or agency administers it?
6. What is the process like, from issuance of a ticket through the court process (and any post case/charge disposition)?
7. What type of appeals process is there for individuals or businesses once a decision is rendered?
8. How is the fine structure for your penalties established, and what are the fines for applicable violations?
9. How are the fines distributed in your state once they are received?
10. What are the pros and cons of classifying commercial vehicle violations as civil penalties instead of criminal penalties?
11. Do you have data available about the number of citations, number of cases, conviction rates for these types of cases? If not, where might I get the data?