

CHAPTER 431

(SB 223)

AN ACT relating to crimes and punishments.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 506.140 is amended to read as follows:

- (1) A person is guilty of criminal gang recruitment when he solicits or entices another person to join a ***criminal*** gang, or intimidates or threatens another person because the other person:
 - (a) Refuses to join a criminal gang;
 - (b) Has withdrawn or is attempting to withdraw from a criminal gang; or (c) Refuses to submit to a demand made by a criminal gang.
- (2) *As used in this chapter:*
 - (a) ***"Criminal gang" means any alliance, network, or conspiracy, in law or in fact, of five (5) or more persons with an established hierarchy that, through its membership or through the action of any member, engages in a continuing pattern of criminal activity. "Criminal gang" shall not include fraternal organizations, unions, corporations, associations, or similar entities, unless organized for the primary purpose of engaging in criminal activity.***
 - (b) ***"Continuing pattern of criminal activity" means a conviction by any member or members of a criminal gang for the commission, attempt, or solicitation of two (2) or more felony offenses, the commission of two (2) or more violent misdemeanor offenses, or a combination of at least one (1) of these felony offenses and one (1) of these violent misdemeanor offenses, on separate occasions within a two (2) year period for the purpose of furthering gang activity.***
 - (c) ***"Violent misdemeanor offense" means KRS 508.030, 508.050, 508.070, 508.080, 508.120, 508.150, 509.030, and 509.080.***
- (3) Criminal gang recruitment is a Class A misdemeanor for the first offense and a Class D felony for a second or subsequent offense.

Section 2. KRS 506.150 is amended to read as follows:

- (1) ***To establish the existence of a "criminal gang" as defined in Section 1 of this Act, any competent evidence that is probative of the existence of or membership in a criminal gang shall be admissible, including the following:***
 - (a) ***Self-proclamation;***
 - (b) ***A common name, insignia, flag, or means of recognition;***
 - (c) ***Common identifying hand or body signs, signals, or code;***
 - (d) ***A common identifying mode, style, or color of dress;***
 - (e) ***An identifying tattoo or body marking;***
 - (f) ***Membership, age, or other qualifications;***
 - (g) ***Creed of belief;***
 - (h) ***An organizational or command structure, overt or covert;***

- (i) *A de facto claim of territory or jurisdiction;*
 - (j) *An initiation ritual;*
 - (k) *A concentration or specialty; or*
 - (l) *A method of operation or criminal enterprise.*
- (2) It is no defense to prosecution under KRS~~[506.130 or]~~ 506.140 that:
- (a) One (1) or more members of the gang are not criminally responsible for the offense;
 - (b) One (1) or more members of the gang have been acquitted, have not been prosecuted or convicted, have been convicted of a different offense, or are under prosecution;
 - (c) A person has been charged with, acquitted, or convicted of any offense under KRS~~[506.130 or]~~ 506.140;
 - (d) The participants may not know each other's identity;
 - (e) The membership in the criminal gang may change from time to time; or
 - (f) The participants may stand in a wholesaler-retailer or other arm's length arrangement in the conduct of illicit distribution or other operations.
- (3)~~(2)~~ Once the initial combination of five (5) or more persons is formed, the number or identity of persons remaining in the gang is immaterial as long as four (4) or more persons in the gang, excluding the defendant, are involved in a continuing *pattern of criminal activity as defined in Section 1 of this Act*~~[course of conduct]~~ constituting a violation of KRS~~[506.130 or]~~ 506.140.

Section 3. The following KRS section is repealed:

506.130 Engaging in furtherance of criminal gang activity -- Enhancement of penalty. **Approved**

April 21, 2000

