

CHAPTER 202**(HB 169)**

AN ACT relating to gang violence prevention and declaring an emergency.

WHEREAS, it is the right of every person, regardless of race, color, creed, religion, national origin, sex, age, sexual orientation, or handicap, to be secure and protected from fear, intimidation, or harm, caused by the criminal activities of gangs and their members; and

WHEREAS, in 2015, the Federal Bureau of Investigation's National Gang Center estimated that over 33,000 violent gangs with over 1.4 million members throughout the United States have continued to "proliferate, evolve, and develop criminal tradecrafts"; and

WHEREAS, the General Assembly finds that the citizens of Kentucky face a mounting crisis of gang-related violence perpetrated by gang members who threaten and terrorize peaceful citizens and children; and

WHEREAS, the General Assembly both recognizes and defends the right of Kentucky citizens to exercise the rights to freedom of speech and freedom of association as protected by the First Amendment of the United States Constitution; and

WHEREAS, strengthening law enforcement's ability to prevent and end the increasing gang-related violence in Kentucky will not infringe on the constitutional rights of the citizens of Kentucky and instead will facilitate an end to the increasing gang-related violence that present a clear and present danger to the Commonwealth;

NOW, THEREFORE,

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 506 IS CREATED TO READ AS FOLLOWS:

As used in this chapter:

(1) *"Criminal gang" means any alliance, network, conspiracy, or group that:*

(a) *Consists of three (3) or more persons who have any of the following in common:*

1. *Name;*
2. *Identifying hand signal or sign;*
3. *Colors;*
4. *Symbols;*
5. *Geographical location; or*
6. *Leader;*

(b) *Has been identified or prosecuted as a gang by the Commonwealth, or another state or any federal law enforcement agency; and*

(c) *Has two (2) or more members who, individually or collectively, through its members or actions of its members engage in or have engaged in a pattern of criminal activity.*

"Criminal gang" does not include fraternal organizations, unions, corporations, associations, or similar entities, unless organized for the primary purpose of engaging in criminal activity; and

(2) *"Pattern of criminal gang activity" means acts performed on separate occasions within a five (5) year period by any member or members of a criminal gang for the commission, attempt, or solicitation of, or conspiracy to commit:*

(a) *Two (2) or more felony offenses;*

(b) *Three (3) or more of the misdemeanor offenses enumerated in Section 5 of this Act; or*

(c) *A combination of at least:*

1. *One (1) felony offense; and*

2. *One (1) of the misdemeanor offenses enumerated in Section 5 of this Act.*

➔SECTION 2. KRS 506.140 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) (a) *Any person who is age eighteen (18) or older is guilty of criminal gang recruitment in the first degree if he or she:*
1. *Solicits or entices any person under the age of fifteen (15) to join a criminal gang; and*
 2. *Requires as a condition of membership the commission of a crime.*
- (b) *Criminal gang recruitment in the first degree is a Class C felony for the first offense and a Class B felony for a second or subsequent offense.*
- (2) (a) *Any person over the age of eighteen (18) is guilty of criminal gang recruitment in the second degree if he or she entices or solicits another person to join a criminal gang or intimidates or threatens another person because the other person:*
1. *Refuses to join a criminal gang;*
 2. *Has withdrawn or is attempting to withdraw from a criminal gang; or*
 3. *Refuses to submit to a demand made by a criminal gang.*
- (b) *Criminal gang recruitment in the second degree is a Class D felony for the first offense and a Class C felony for a second or subsequent offense.*
- (3) (a) *Any person under the age of eighteen (18) is guilty of criminal gang recruitment in the third degree when he or she intentionally encourages or solicits another person to join a criminal gang.*
- (b) *Criminal gang recruitment in the third degree is a Class A misdemeanor for the first offense and a Class D felony for a second or subsequent offense.*
- (4) *It shall be no defense to prosecution under this section that the other person never intended to or did not commit the crime.*

➔Section 3. KRS 506.120 is amended to read as follows:

- (1) A person, with the purpose to establish or maintain a criminal syndicate or to facilitate any of its activities, shall not do any of the following:
- (a) Organize or participate in organizing a criminal syndicate or any of its activities;
 - (b) Provide material aid to a criminal syndicate or any of its activities, whether such aid is in the form of money or other property, or credit;
 - (c) Manage, supervise, or direct any of the activities of a criminal syndicate, at any level of responsibility;
 - (d) Knowingly furnish legal, accounting, or other managerial services to a criminal syndicate;
 - (e) Commit, or conspire or attempt to commit, or act as an accomplice in the commission of, any offense of a type in which a criminal syndicate engages on a continuing basis;
 - (f) Commit, or conspire or attempt to commit or act as an accomplice in the commission of, any offense of violence;
 - (g) Commit, or conspire or attempt to commit, or act as an accomplice in the commission of bribery in violation of KRS Chapters 518 or 521, or KRS 119.205, 121.025, 121.055, 524.070, 156.465, 45A.340, 63.090, 6.080, 18A.145, or 244.600;
 - (h) Commit, or conspire or attempt to commit, or act as an accomplice in the commission of more than one (1) theft of retail merchandise with the intent to resell the stolen merchandise; or
 - (i) Acquire stolen retail merchandise for the purpose of reselling it where the person knew or should have known that the merchandise had been stolen.
- (2) Whoever violates this section is guilty of engaging in organized crime, which shall be a Class B felony, unless the offense involves only the theft or acquisition of retail merchandise for the purpose of reselling it, in which case it shall be a Class C felony.
- (3) As used in this section "criminal syndicate" means *three (3)*~~five (5)~~ or more persons, or, in cases of merchandise theft from a retail store for the purpose of reselling the stolen merchandise, two (2) or more

persons, collaborating to promote or engage in *any of the criminal acts provided in subsection (4)(a) to (f) of this section on a continuing basis.*

- (4) ***As used in this section, "criminal gang syndicate" means three (3) or more persons acting as a part of or members of a criminal gang and collaborating to promote or engage in any of the following on a continuing basis:***
- (a) Extortion or coercion in violation of KRS 514.080 or 521.020;
 - (b) Engaging in, promoting, or permitting prostitution or human trafficking in violation of KRS Chapter 529;
 - (c) Any theft offense as defined in KRS Chapter 514;
 - (d) Any gambling offense as defined in KRS 411.090, KRS Chapter 528, or Section 226 of the Constitution;
 - (e) Illegal trafficking in controlled substances as prohibited by KRS Chapter 218A, in intoxicating or spirituous liquor as defined in KRS Chapters 242 or 244, or in destructive devices or booby traps as defined in KRS Chapter 237; or
 - (f) Lending at usurious interest, and enforcing repayment by illegal means in violation of KRS Chapter 360.
- (5) ***Any person found to have been a member of a criminal gang syndicate while engaging in the criminal acts listed in subsection (4) of this section shall not be released on probation or parole until he or she has served at least eighty-five percent (85%) of the sentence imposed.***

➔Section 4. 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, [as defined in KRS 506.140, any]*** competent evidence that is probative of the existence of or membership in a criminal gang shall be admissible, including ***two (2) or more of*** the following:
- (a) Self-proclamation, ***either at the time of arrest or any time before or thereafter;***
 - (b) A common name, insignia, flag, or means of recognition;
 - (c) Common identifying hand or body signs, signals, ***graffiti,*** 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) ***Participation, whether present or under direction, in*** an initiation ritual;
 - (k) ***Directing or ordering participation in an initiation ritual;***
 - (l) A concentration or specialty;~~[-or]~~
 - (m)~~(h)~~ A method of operation or criminal enterprise;
 - (n) ***Identification as a gang member by a reliable informant;***
 - (o) ***Identification as a criminal gang member by the alleged gang member's parent or guardian;***
 - (p) ***Self-proclamation of association, whether for business or enjoyment, with criminal gang members;***
 - (q) ***Identification through criminal gang publications, rosters, or bylaws;***
 - (r) ***Participation in some form of verbal or written communication indicating the commission of a crime by the criminal gang;***

- (s) *Participation in photos or social media interaction with criminal gang members promoting or furthering criminal activity; or*
 - (t) *Having committed or planning to commit crime or a criminal activity to target a rival criminal gang.*
- (2) It is no defense to prosecution under *Section 2, 3, 5, or 6 of this Act* ~~[KRS 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 *Section 2, 3, 5, or 6 of this Act* ~~[KRS 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) Once the initial combination of *three (3)* ~~[five (5)]~~ or more persons is formed, the number or identity of persons remaining in the gang is immaterial as long as *two (2)* ~~[four (4)]~~ or more persons in the gang, excluding the defendant, are involved in a continuing pattern of criminal *gang* activity ~~[as defined in KRS 506.140]~~ constituting a violation of *Section 2, 3, 5, or 6 of this Act* ~~[KRS 506.140]~~.

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 506 IS CREATED TO READ AS FOLLOWS:

- (1) *If a defendant is alleged by the prosecuting attorney to have been a member of a criminal gang as defined in Section 1 of this Act, at the time of the commission of the offense, upon conviction of the offense there shall be a separate proceeding from that proceeding which resulted in the defendant's conviction if the defendant was convicted of:*
- (a) *Assault in the fourth degree under KRS 508.030;*
 - (b) *Menacing under KRS 508.050;*
 - (c) *Wanton endangerment in the second degree under KRS 508.070;*
 - (d) *Terroristic threatening in the third degree under KRS 508.080;*
 - (e) *Stalking in the second degree under KRS 508.150;*
 - (f) *Unlawful imprisonment in the second degree under KRS 509.030;*
 - (g) *Criminal coercion under KRS 509.080;*
 - (h) *Criminal mischief in the second degree under KRS 512.030;*
 - (i) *Criminal mischief in the third degree under KRS 512.040;*
 - (j) *Obstructing governmental operations under KRS 519.020;*
 - (k) *Resisting arrest under KRS 520.090;*
 - (l) *Riot in the second degree under KRS 525.030;*
 - (m) *Inciting to riot under KRS 525.040;*
 - (n) *Harassment under KRS 525.070;*
 - (o) *Harassing communications under KRS 525.080;*
 - (p) *The misdemeanor offense of carrying a concealed deadly weapon in violation of KRS 527.020; or*
 - (q) *Possession of a handgun by a minor as a first offense under KRS 527.100.*
- (2) *The proceeding described in subsection (1) of this section shall be conducted before the court sitting with the jury that found the defendant guilty of the offense unless the court for good cause discharges that jury and impanels a new jury for that purpose. If the jury determines beyond a reasonable doubt that the defendant is or was a member of a criminal gang, acting for the purpose of benefitting, promoting, or furthering the interest of a criminal gang at the time he or she committed the offense, he or she shall not be*

released for a minimum of seventy-six (76) to ninety (90) days of the sentence imposed if the offense he or she is convicted of is classified as a Class B misdemeanor, or for a minimum of three hundred eleven (311) to three hundred sixty-five (365) days if the offense he or she is convicted of is classified as a Class A misdemeanor.

- (3) *This section shall not apply to a juvenile unless he or she has been transferred to Circuit Court as a youthful offender pursuant to KRS 640.010 and has on at least one (1) prior separate occasion been adjudicated a public offender for a felony offense.*

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 506 IS CREATED TO READ AS FOLLOWS:

- (1) *Other provisions of law notwithstanding, a person shall be penalized one (1) class more severely than provided in the penalty provision pertaining to that felony offense, unless the reclassification would move the offense to a capital offense, and shall not be released on parole until he or she has served at least eighty-five percent (85%) of the sentence imposed, if that person:*
- (a) *Is convicted of an offense classified as a felony under any provision of the Kentucky Revised Statutes and for which the commission of the felony or felonies could or did place a member of the public at risk of physical injury, serious physical injury, or death; and*
- (b) *At the time of the commission of the offense or offenses was a member of a criminal gang as defined in Section 1 of this Act and acting for the purpose of benefitting, promoting, or furthering the interests of a criminal gang or any individual member of a criminal gang.*
- (2) *This section shall not apply to a juvenile unless:*
- (a) *He or she has been transferred to Circuit Court as a youthful offender pursuant to KRS 640.010 and has on at least one (1) prior separate occasion been adjudicated a public offender for a felony offense; or*
- (b) *He or she is a violent offender, as defined in KRS 439.3401.*
- (3) *This section shall not apply in cases where the defendant is found to be a persistent felony offender under KRS 532.080.*

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 506 IS CREATED TO READ AS FOLLOWS:

- (1) *If a person alleges that he or she was a victim of a criminal act by:*
- (a) *An organization, which at the time the incident or incidents were alleged to take place was a criminal gang as defined in Section 1 of this Act; or*
- (b) *A person, who at time the incident or incidents were alleged to take place was a member of a criminal gang as defined in Section 1 of this Act;*
- that person may bring a cause of action against the defendant or defendants for damages.*
- (2) *In an action brought under this section:*
- (a) *If the plaintiff prevails, he or she shall be entitled to reasonable costs and attorney's fees;*
- (b) *Any award of nominal damages to the plaintiff shall support an award of attorney's fees and costs; and*
- (c) *Punitive damages as well as compensatory damages shall be awardable.*
- (3) *This section shall not be construed as repealing any provision of KRS 431.080 or any other applicable statute or any statutory or common law right of action, but shall be construed as ancillary and supplemental thereto.*

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 506 IS CREATED TO READ AS FOLLOWS:

All property used in connection with or acquired by a criminal gang as defined in Section 1 of this Act or any of its members in committing, attempting to commit, or facilitating the commission of a criminal offense shall be subject to forfeiture under the same terms, conditions, and defenses and using the same process as set out in KRS 218A.405 to 218A.460.

➔Section 9. State and local law enforcement agencies throughout Kentucky are encouraged to develop a comprehensive statewide gang database to facilitate the exchange of criminal gang-related information between law

enforcement agencies within and without the state, including information related to suspected criminal gang members, gang-related incidents, and other facts pertinent to the lawful investigation and prevention of gang-related violence within the state of Kentucky.

➔Section 10. This Act shall be known as the Gang Violence Prevention Act.

➔Section 11. Whereas criminal gangs are a pervasive and growing problem nationwide and are an emerging crisis within the state of Kentucky, and a delay in the implementation of this Act would severely hinder the safety of the citizens of Kentucky, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

Signed by Governor April 26, 2018.