

**Local Mandate Fiscal Impact Estimate
Kentucky Legislative Research Commission
2016 Regular Session**

Part I: Measure Information

Bill Request #: 1059

Bill #: HB 552

Bill Subject/Title: AN ACT relating to gang violence prevention and declaring an emergency.

Sponsor: Representative Robert J. Benvenuti

Unit of Government: City County Urban-County
 Charter County Consolidated Local Unified Local
Government

Office(s) Impacted: _____

Requirement: Mandatory Optional

Effect on Powers & Duties: Modifies Existing Adds New Eliminates Existing

Part II: Purpose and Mechanics

SECTION 1:

HB 552 establishes a new section of KRS Chapter 506 regarding definitions.

HB 552 defines “*criminal gang*” as a group consisting of three or more who share a name, hand signals or other signs, colors, symbols, geographical location, or leader; had been identified or prosecuted as a gang within or outside the Commonwealth; and has at least two members who have engaged in a pattern of criminal activity. HB 552 clarifies “criminal gang” does not include fraternal organizations, unions, corporations, associations, or similar entities, unless organized for the primary purpose of engaging in criminal activity.

HB 552 defines “*pattern of criminal gang activity*” to mean the act of committing two or more felonies, three or more misdemeanor offenses as enumerated in Section 5 of this proposal; or one felony offense and one enumerated misdemeanor offense. For purposes of this definition, these offense must occur on separate occasions within a five year period.

HB 552 defines “*juvenile pattern of criminal gang activity*” to mean any offenses reflective of a “pattern of criminal gang activity” for which, if committed by an adult, would be a crime, whether the same is a felony, misdemeanor, or violation, other than an action alleging that a child sixteen (16) years of age or older has committed a motor vehicle offense (KRS 600.020(49)).

HB 552 defines “*gang-related incident*” as an incident involving criminal gang members acting individually or collectively to:

- Further any criminal purpose of the gang or gang member,
- Intimidate and control any geographical area, political environment, or financial market through a criminal act or acts,
- Target a rival criminal gang or gang member through a criminal act or acts.

SECTION 2:

HB 552 establishes of new section of KRS Chapter 506 regarding criminal gang recruitment.

HB 552 provides that any person age 18 or over is guilty of **criminal gang recruitment in the first degree** if he or she solicits or entices any person under the age of 15 to join a criminal gang and requires as a condition of membership the commission of a crime. 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.

HB 552 provides that any person over the age of 21 is guilty of **criminal gang recruitment in the second degree** if he or she solicits another person to join a criminal gang or intimidates or threatens another person because the other person refuses to join a criminal gang, has withdrawn or attempted to withdraw from a criminal gang, or refuses to submit to a demand made by a criminal gang. 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.

HB 552 provides that any person is guilty of **criminal gang recruitment in the third degree** who intentionally encourages or solicits another person to join a criminal gang. 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.

HB 552 provides that it shall be no defense to prosecution that the person being recruited never intended to or did not commit the crime.

SECTION 3:

HB 552 defines “criminal gang syndicate” as three or more persons, acting as members of a criminal gang collaborating to promote or engage in the follow activities:

- Extortion or coercion (KRS 514.080) (KRS 521.020)
- Prostitution or human trafficking (KRS Chapter 529)
- Theft (KRS Chapter 514)
- Gambling (KRS 411.090, KRS Chapter 528, Section 226 of the Kentucky Constitution.
- Illegal trafficking in control substances (KRS Chapter 218A)

- Illegal trafficking in intoxicating or spirituous liquor (KRS Chapter 242 or 244)
- Illegal trafficking in destructive devices or booby traps (KRS Chapter 237)
- Lending at usurious interest, and enforcing repayment by illegal means (KRS Chapter 360)

HB 552 provides that any person found to have been a member of a criminal gang syndicate while engaging in the criminal acts definitive of a criminal gang syndicate shall not be released on probation or parole until **at least 85% of the sentence imposed has been served.**

SECTION 4:

HB 552 retains self-proclamation as admissible evidence to establish the existence of a “criminal gang”, but clarifies it may occur either at the time of arrest or any time before or thereafter.

HB 552 retains that an initiation ritual is admissible evidence to establish the existence of a “criminal gang”, but clarifies that participation in such a ritual includes being present or under direction.

HB 552 further expands the field of admissible evidence needed to establish the existence of a “criminal gang” to include:

- Graffiti
- Directing or ordering participation in an initiation ritual
- Identification of a gang member by an informant
- Identification of a criminal gang member by the alleged gang member’s parent or guardian
- Self-proclamation of association, whether for business or enjoyment, with criminal gang members
- Identification through criminal gang publications, rosters, or bylaws
- Participation in some form of verbal or written communication indicating the commission of a crime by the criminal gang
- Participation in photos or social media interaction with criminal gang members
- Having committed or planning to commit a criminal activity to target a rival criminal gang

SECTION 5:

HB 552 establishes a new section of KRS Chapter 506 regarding determination by a court of gang membership.

HB 552 allows for the court to hold hearings without a jury to determine if a defendant charged with any of the following offenses is or was a member of a criminal gang, acting for the purpose of benefitting, promoting, or furthering the interest of a criminal gang, or an individual gang member at the time he or she was alleged to have committed the offense:

- Menacing (KRS 508.050) Class B misdemeanor.
- Wanton endangerment –second degree (KRS 508.070) Class A misdemeanor.
- Terroristic threatening – third degree (KRS 508.080) Class A misdemeanor.
- Stalking – second degree (KRS 508.150) Class A misdemeanor.
- Unlawful imprisonment – second degree (KRS 509.030) Class A misdemeanor.

- Criminal coercion (KRS 509.080) Class A misdemeanor.
- Criminal mischief – second degree (KRS 512.030) Class A misdemeanor.
- Criminal mischief – third degree (KRS 512.040) Class B misdemeanor.
- Resisting arrest (KRS 520.090) Class A misdemeanor.
- Harassment (KRS 525.070) Violation, except Class B misdemeanor if physical contact is involved.
- Harassing communications (KRS 525.080) Class B misdemeanor.
- Possession of a handgun by a minor, first offense (KRS 527.100) Class A misdemeanor for a first offense and a Class D felony for each subsequent offense.
- Misdemeanor offense of carrying a concealed deadly weapon (KRS 527.020) Class A misdemeanor unless the defendant has been convicted for a felony offense in which a deadly weapon was possessed, used, or displayed, in which case it is a Class D felony.

HB 552 provides that if the court finds beyond a reasonable doubt that the defendant was a criminal gang member at the time the offense was committed and is subsequently found convicted of the offense and sentenced to a term of imprisonment, he or she must serve a **minimum of 76 to 90 days of the sentence imposed** if the offense he or she is convicted of is a Class B misdemeanor. If classified as a Class A misdemeanor, then a **minimum of 311 to 365 days must be served**.

SECTION 6:

HB 552 establishes a new section of KRS Chapter 506 regarding punishment levels for gang members upon conviction.

HB 552 provides that any person convicted of a felony under any provision of the KRS which placed a member of the public at risk of physical injury, serious physical injury, or death and was a member of a criminal gang at the time the offense was committed shall be penalized one class more severely than provided for in the penalty provision pertaining to the felony offense unless the reclassification would move the offense to a capital offense, and shall **serve at least 85% of the sentence imposed**.

SECTION 7:

HB 552 establishes a new section of KRS Chapter 506 regarding civil awards.

HB 552 provides that if a person alleges that he or she was a victim of a criminal act by a criminal gang or a member of a criminal gang, that person may bring a cause of action against the defendant(s) for damages. If the plaintiff prevails, he or she shall be entitled to reasonable cost and attorney's fees (regardless how nominal the damages), as well as punitive and compensatory damages.

HB 552 is supplemental to KRS 431.080 which allows for a civil remedy after a felony conviction.

SECTION 8:

HB 552 establishes a new section of Chapter 506 regarding criminal gang forfeitures.

HB 552 provides that all profits, proceeds, and instrumentalities forfeited or seized from, or intended to be used by a criminal gang shall be subject to forfeiture (KRS 218A.420).

Part III: Fiscal Explanation, Bill Provisions, and Estimated Cost

The fiscal impact of HB 552 on local governments is indeterminable.

Sections 3, 5, and 6 have minimum imprisonment requirements that will affect the per diems below.

Class B and Class A misdemeanors:

A person convicted of a Class B misdemeanor may be incarcerated for up to 90 days. A person convicted of a Class A misdemeanor may be incarcerated for up to one year. Misdemeanants are housed in one of Kentucky's 78 full service jails or five life safety jails. While the expense of housing inmates varies by jail, each additional inmate increases facility costs by an estimated average of \$31.92 per day. While the majority of misdemeanor defendants are granted bail, those who do not will also cost local jails an average of \$31.92 per day.

Class D and Class C felons:

When a court denies bail to a Class D felony defendant, the local government is responsible for incarcerating the defendant until disposition of the case in one of Kentucky's 78 full service jails or five life safety jails. While the expense of housing inmates varies by jail, each additional inmate increases facility costs by an estimated average of \$31.92 per day. Upon sentencing, a Class D felon is housed in one of Kentucky's full service jails for the duration of his or her sentence. The Department of Corrections pays a jail \$31.92 per day to house a D felon. Since the per diem pays for the estimated average cost of housing a Class D felon, the per diem may be less than, equal to, or greater than the actual housing cost.

When a court denies bail to a Class C felony defendant, the local government is responsible for incarcerating the defendant until disposition of the case in one of Kentucky's 78 full service jails or five life safety jails. While the expense of housing inmates varies by jail, each additional inmate increases facility costs by an estimated average of \$31.92 per day. Class C felons are ineligible for placement in local jails until they are classified at the lowest custody level with 18 months or less to their minimum expiration date or parole eligibility date. The Department of Corrections pays local jails \$31.92 per day to house these Class C felons. Since the per diem pays for the estimated average cost of housing a Class C felon, the per diem may be less than, equal to, or greater than the actual housing cost.

Data Source(s): LRC Staff, Department of Corrections.

Preparer: Wendell F. Butler **Reviewer:** JWN **Date:** 3/2/16