

KENTUCKY GENERAL ASSEMBLY AMENDMENT FORM  
2018 REGULAR SESSION  
**Unofficial Document**

Amend printed copy of **HB 169/HCS 1**

Beginning on page 1, line 22, and continuing through page 11, line 2, delete Sections 1 through 11 in their entirety and insert the following in lieu thereof:

"➔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 five (5) or more persons who have at least three (3) of the following in common:**

**1. Name;**

**2. Identifying hand signal or sign;**

**3. Colors;**

**4. Symbols;**

**5. Geographical proximity to other members of the gang;**

**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 three (3) or more members who, individually or collectively, through its members or actions of its members engage in or have engaged in a pattern of**

Amendment No. HFA 3

Rep. Rep. Jason Nemes

Committee Amendment \_\_\_\_\_

Signed: \_\_\_\_\_

Floor Amendment \_\_\_\_\_

LRC Drafter: Kemper, Chandani

Adopted: \_\_\_\_\_

Date: \_\_\_\_\_

Rejected: \_\_\_\_\_

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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 acting for the purpose of benefiting, promoting, or furthering the interest of a criminal gang through the commission, attempt, or solicitation of, or conspiracy to commit:

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

(b) Three (3) or more 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 KRS 506.140 IS REPEALED AND REENACTED TO READ AS FOLLOWS: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.

(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.

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- (b) Criminal gang recruitment in the second degree is a Class D felony.**
- (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.**
- (4) It shall be no defense to prosecution under this section that the other person who was recruited or was the intended recipient of recruitment efforts by the defendant 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;

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- (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 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 following criminal acts**~~[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;
- (g) Intimidating a participant in a legal process in violation of KRS 524.040;**
- (h) Tampering with physical evidence in violation of KRS 524.100;**

- (i) A sex crime as defined in KRS 17.500; or
- (j) A criminal offense against a victim who is a minor as defined in KRS 17.500, including any crime under KRS Chapter 507, 507A, 508, 509, or 530, excluding 530.050, and any crime listed in KRS 510.140, 510.148, 510.150, or 529.110.

➔Section 4. KRS 506.150 is amended to read as follows:

- (1) To establish the existence of a "criminal gang," ~~as defined in KRS 506.140, any~~ competent evidence that is probative of the existence of or membership in a criminal gang includes ~~shall be admissible, including 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)~~(l)~~ A method of operation or criminal enterprise;
  - (n) Identification as a gang member by an 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

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**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; or**

**(s) 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 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 **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 at the time of the commission of the offense, upon conviction of the**

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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) The misdemeanor offense of carrying a concealed deadly weapon in violation of KRS 527.020; or
- (p) 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:

- (a) The defendant is or was a member of a criminal gang; and
- (b) The defendant was acting for the purpose of benefitting, promoting, or furthering

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*the interest of a criminal gang at the time he or she committed the offense;*  
*by agreement of the Commonwealth and the defendant, the defendant shall not be released for a minimum of thirty (30) days 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 one hundred and twenty (120) days if the offense he or she is convicted of is classified as a Class A misdemeanor.*

*(3) This section shall not apply to juveniles who have been determined to be youthful offenders pursuant to KRS 635.020 and 640.010.*

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

*(1) Other provisions of law notwithstanding and at the sole discretion of the Commonwealth, a person may 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, if he or she:*

*(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 did place a member of the public at risk of 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 and acting for the purpose of benefiting, promoting, or furthering the interests of a criminal gang.*

*(2) This section shall not apply to juveniles who have been determined to be youthful offenders pursuant to KRS 635.020 and 640.010.*

*(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



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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; or
  - (b) A person, who at time the incident or incidents were alleged to take place was a member of a criminal gang acting in furtherance of or to directly benefit the criminal gang;

then that person may bring a cause of action against the defendant or defendants for damages, including the criminal gang.
- (2) In an action brought under this section, if the plaintiff prevails, he or she shall be entitled to reasonable costs and attorney's fees and punitive damages as well as compensatory damages may be awarded.
- (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 in furtherance of the gang or to directly benefit the gang 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

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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."