

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

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

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

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

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

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

20 NOW, THEREFORE,

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

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

24 *As used in this chapter:*

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

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

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

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

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

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

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

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

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

21 (c) A combination of at least:

22 1. One (1) felony offense; and

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

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

27 (1) (a) Any person who is age eighteen (18) or older is guilty of criminal gang

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

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

- 24 (1) A person, with the purpose to establish or maintain a criminal syndicate or to
- 25 facilitate any of its activities, shall not do any of the following:
- 26 (a) Organize or participate in organizing a criminal syndicate or any of its
- 27 activities;

- 1 (b) Provide material aid to a criminal syndicate or any of its activities, whether
2 such aid is in the form of money or other property, or credit;
- 3 (c) Manage, supervise, or direct any of the activities of a criminal syndicate, at any
4 level of responsibility;
- 5 (d) Knowingly furnish legal, accounting, or other managerial services to a criminal
6 syndicate;
- 7 (e) Commit, or conspire or attempt to commit, or act as an accomplice in the
8 commission of, any offense of a type in which a criminal syndicate engages on
9 a continuing basis;
- 10 (f) Commit, or conspire or attempt to commit or act as an accomplice in the
11 commission of, any offense of violence;
- 12 (g) Commit, or conspire or attempt to commit, or act as an accomplice in the
13 commission of bribery in violation of KRS Chapters 518 or 521, or KRS
14 119.205, 121.025, 121.055, 524.070, 156.465, 45A.340, 63.090, 6.080,
15 18A.145, or 244.600;
- 16 (h) Commit, or conspire or attempt to commit, or act as an accomplice in the
17 commission of more than one (1) theft of retail merchandise with the intent to
18 resell the stolen merchandise; or
- 19 (i) Acquire stolen retail merchandise for the purpose of reselling it where the
20 person knew or should have known that the merchandise had been stolen.
- 21 (2) Whoever violates this section is guilty of engaging in organized crime, which shall be
22 a Class B felony, unless the offense involves only the theft or acquisition of retail
23 merchandise for the purpose of reselling it, in which case it shall be a Class C felony.
- 24 (3) As used in this section "criminal syndicate" means ***three (3)***~~five (5)~~ or more
25 persons, or, in cases of merchandise theft from a retail store for the purpose of
26 reselling the stolen merchandise, two (2) or more persons, collaborating to promote
27 or engage in ***any of the criminal acts provided in subsection (4)(a) to (f) of this***

1 section on a continuing basis.

- 2 **(4) As used in this section, "criminal gang syndicate" means three (3) or more**
 3 **persons acting as a part of or members of a criminal gang and collaborating to**
 4 **promote or engage in** any of the following on a continuing basis:
 5 (a) Extortion or coercion in violation of KRS 514.080 or 521.020;
 6 (b) Engaging in, promoting, or permitting prostitution or human trafficking in
 7 violation of KRS Chapter 529;
 8 (c) Any theft offense as defined in KRS Chapter 514;
 9 (d) Any gambling offense as defined in KRS 411.090, KRS Chapter 528, or
 10 Section 226 of the Constitution;
 11 (e) Illegal trafficking in controlled substances as prohibited by KRS Chapter 218A,
 12 in intoxicating or spirituous liquor as defined in KRS Chapters 242 or 244, or
 13 in destructive devices or booby traps as defined in KRS Chapter 237; or
 14 (f) Lending at usurious interest, and enforcing repayment by illegal means in
 15 violation of KRS Chapter 360.

16 **(5) Any person found to have been a member of a criminal gang syndicate while**
 17 **engaging in the criminal acts listed in subsection (4) of this section shall not be**
 18 **released on probation or parole until he or she has served at least eighty-five**
 19 **percent (85%) of the sentence imposed.**

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

- 21 (1) To establish the existence of a "criminal gang"~~[as defined in KRS 506.140]~~, any
 22 competent evidence that is probative of the existence of or membership in a criminal
 23 gang shall be admissible, including the following:
 24 (a) Self-proclamation, **either at the time of arrest or any time before or**
 25 **thereafter;**
 26 (b) A common name, insignia, flag, or means of recognition;
 27 (c) Common identifying hand or body signs, signals, **graffiti**, or code;

- 1 (d) A common identifying mode, style, or color of dress;
- 2 (e) An identifying tattoo or body marking;
- 3 (f) Membership, age, or other qualifications;
- 4 (g) Creed of belief;
- 5 (h) An organizational or command structure, overt or covert;
- 6 (i) A de facto claim of territory or jurisdiction;
- 7 (j) **Participation, whether present or under direction, in** an initiation ritual;
- 8 (k) **Directing or ordering participation in an initiation ritual;**
- 9 **(l)** A concentration or specialty;~~[-or-]~~
- 10 **(m)**~~[-(1)]~~ A method of operation or criminal enterprise;
- 11 **(n) Identification as a gang member by an informant;**
- 12 **(o) Identification as a criminal gang member by the alleged gang member's**
- 13 **parent or guardian;**
- 14 **(p) Self-proclamation of association, whether for business or enjoyment, with**
- 15 **criminal gang members;**
- 16 **(q) Identification through criminal gang publications, rosters, or bylaws;**
- 17 **(r) Participation in some form of verbal or written communication indicating**
- 18 **the commission of a crime by the criminal gang;**
- 19 **(s) Participation in photos or social media interaction with criminal gang**
- 20 **members; or**
- 21 **(t) Having committed or planning to commit crime or a criminal activity to**
- 22 **target a rival criminal gang.**
- 23 (2) It is no defense to prosecution under **Section 2, 3, 5, or 6 of this Act**~~[KRS 506.140]~~
- 24 that:
- 25 (a) One (1) or more members of the gang are not criminally responsible for the
- 26 offense;
- 27 (b) One (1) or more members of the gang have been acquitted, have not been

1 prosecuted or convicted, have been convicted of a different offense, or are
2 under prosecution;

3 (c) A person has been charged with, acquitted, or convicted of any offense under
4 Section 2, 3, 5, or 6 of this Act~~[KRS 506.140]~~;

5 (d) The participants may not know each other's identity;

6 (e) The membership in the criminal gang may change from time to time; or

7 (f) The participants may stand in a wholesaler-retailer or other arm's length
8 arrangement in the conduct of illicit distribution or other operations.

9 (3) Once the initial combination of three (3)~~[five (5)]~~ or more persons is formed, the
10 number or identity of persons remaining in the gang is immaterial as long as two
11 (2)~~[four (4)]~~ or more persons in the gang, excluding the defendant, are involved in a
12 continuing pattern of criminal gang activity~~[as defined in KRS 506.140]~~
13 constituting a violation of Section 2, 3, 5, or 6 of this Act~~[KRS 506.140]~~.

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

16 *(1) If a defendant is alleged by the prosecuting attorney to have been a member of a*
17 *criminal gang at the time of the commission of the offense, upon conviction of*
18 *the offense there shall be a separate proceeding from that proceeding which*
19 *resulted in the defendant's conviction if the defendant was convicted of:*

20 *(a) Assault in the fourth degree under KRS 508.030;*

21 *(b) Menacing under KRS 508.050;*

22 *(c) Wanton endangerment in the second degree under KRS 508.070;*

23 *(d) Terroristic threatening in the third degree under KRS 508.080;*

24 *(e) Stalking in the second degree under KRS 508.150;*

25 *(f) Unlawful imprisonment in the second degree under KRS 509.030;*

26 *(g) Criminal coercion under KRS 509.080;*

27 *(h) Criminal mischief in the second degree under KRS 512.030;*

- 1 (i) Criminal mischief in the third degree under KRS 512.040;
 2 (j) Obstructing governmental operations under KRS 519.020;
 3 (k) Resisting arrest under KRS 520.090;
 4 (l) Riot in the second degree under KRS 525.030;
 5 (m) Inciting to riot under KRS 525.040;
 6 (n) Harassment under KRS 525.070;
 7 (o) Harassing communications under KRS 525.080;
 8 (p) The misdemeanor offense of carrying a concealed deadly weapon in
 9 violation of KRS 527.020; or
 10 (q) Possession of a handgun by a minor as a first offense under KRS 527.100.
 11 (2) The proceeding described in subsection (1) of this section shall be conducted
 12 before the court sitting with the jury that found the defendant guilty of the
 13 offense unless the court for good cause discharges that jury and impanels a new
 14 jury for that purpose. If the jury determines beyond a reasonable doubt that the
 15 defendant is or was a member of a criminal gang, acting for the purpose of
 16 benefitting, promoting, or furthering the interest of a criminal gang at the time
 17 he or she committed the offense, he or she shall not be released for a minimum
 18 of seventy-six (76) to ninety (90) days of the sentence imposed if the offense he or
 19 she is convicted of is classified as a Class B misdemeanor, or for a minimum of
 20 three hundred eleven (311) to three hundred sixty-five (365) days if the offense
 21 he or she is convicted of is classified as a Class A misdemeanor.
 22 (3) This section shall not apply to juveniles who have not been determined to be
 23 youthful offenders pursuant to KRS 635.020 and 640.010.

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

- 26 (1) Other provisions of law notwithstanding, a person shall be penalized one (1) class
 27 more severely than provided in the penalty provision pertaining to that felony

1 offense, unless the reclassification would move the offense to a capital offense,
 2 and shall not be released on parole until he or she has served at least eighty-five
 3 percent (85%) of the sentence imposed, if that person:

4 (a) Is convicted of an offense classified as a felony under any provision of the
 5 Kentucky Revised Statutes and for which the commission of the felony or
 6 felonies could or did place a member of the public at risk of physical injury,
 7 serious physical injury, or death; and

8 (b) At the time of the commission of the offense or offenses was a member of a
 9 criminal gang and acting for the purpose of benefiting, promoting, or
 10 furthering the interests of a criminal gang or any individual member of a
 11 criminal gang.

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

14 (3) This section shall not apply in cases where the defendant is found to be a
 15 persistent felony offender under KRS 532.080.

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

18 (1) If a person alleges that he or she was a victim of a criminal act by:

19 (a) An organization, which at the time the incident or incidents were alleged to
 20 take place was a criminal gang; or

21 (b) A person, who at time the incident or incidents were alleged to take place
 22 was a member of a criminal gang;

23 that person may bring a cause of action against the defendant or defendants for
 24 damages.

25 (2) In an action brought under this section:

26 (a) If the plaintiff prevails, he or she shall be entitled to reasonable costs and
 27 attorney's fees;

1 **(b) Any award of nominal damages shall support an award of attorney's fees**
2 **and costs to the prevailing party; and**

3 **(c) Punitive damages as well as compensatory damages shall be awardable.**

4 **(3) This section shall not be construed as repealing any provision of KRS 431.080 or**
5 **any other applicable statute or any statutory or common law right of action, but**
6 **shall be construed as ancillary and supplemental thereto.**

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

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

13 ➔Section 9. State and local law enforcement agencies throughout Kentucky are
14 encouraged to develop a comprehensive statewide gang database to facilitate the exchange
15 of criminal gang-related information between law enforcement agencies within and
16 without the state, including information related to suspected criminal gang members,
17 gang-related incidents, and other facts pertinent to the lawful investigation and prevention
18 of gang-related violence within the state of Kentucky.

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

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