

1 AN ACT relating to gang violence.

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

3 ➔Section 1. KRS 506.120 is amended to read as follows:

- 4 (1) A person, with the purpose to establish or maintain a criminal syndicate or to  
5 facilitate any of its activities, shall not do any of the following:
- 6 (a) Organize or participate in organizing a criminal syndicate or any of its  
7 activities;
  - 8 (b) Provide material aid to a criminal syndicate or any of its activities, whether  
9 such aid is in the form of money or other property, or credit;
  - 10 (c) Manage, supervise, or direct any of the activities of a criminal syndicate, at  
11 any level of responsibility;
  - 12 (d) Knowingly furnish legal, accounting, or other managerial services to a  
13 criminal syndicate;
  - 14 (e) Commit, or conspire or attempt to commit, or act as an accomplice in the  
15 commission of, any offense of a type in which a criminal syndicate engages on  
16 a continuing basis;
  - 17 (f) Commit, or conspire or attempt to commit or act as an accomplice in the  
18 commission of, any offense of violence;
  - 19 (g) Commit, or conspire or attempt to commit, or act as an accomplice in the  
20 commission of bribery in violation of KRS Chapters 518 or 521, or KRS  
21 119.205, 121.025, 121.055, 524.070, 156.465, 45A.340, 63.090, 6.080,  
22 18A.145, or 244.600;
  - 23 (h) Commit, or conspire or attempt to commit, or act as an accomplice in the  
24 commission of more than one (1) theft of retail merchandise with the intent to  
25 resell the stolen merchandise; or
  - 26 (i) Acquire stolen retail merchandise for the purpose of reselling it where the  
27 person knew or should have known that the merchandise had been stolen.

1 (2) Whoever violates this section is guilty of engaging in organized crime, which shall  
2 be a Class B felony, unless the offense involves only the theft or acquisition of retail  
3 merchandise for the purpose of reselling it, in which case it shall be a Class C  
4 felony.

5 (3) As used in this section "criminal syndicate" means three (3) or more persons, or, in  
6 cases of merchandise theft from a retail store for the purpose of reselling the stolen  
7 merchandise, two (2) or more persons, collaborating to promote or engage in any of  
8 the following criminal acts~~[ provided in subsection (4)(a) to (f) of this section on a~~  
9 ~~continuing basis.]~~

10 ~~[(4) As used in this section, "criminal gang syndicate" means three (3) or more persons~~  
11 ~~acting as a part of or members of a criminal gang and collaborating to promote or~~  
12 ~~engage in any of the following]~~ on a continuing basis:

- 13 (a) Extortion or coercion in violation of KRS 514.080 or 521.020;
- 14 (b) Engaging in, promoting, or permitting prostitution or human trafficking in  
15 violation of KRS Chapter 529;
- 16 (c) Any theft offense as defined in KRS Chapter 514;
- 17 (d) Any gambling offense as defined in KRS 411.090, KRS Chapter 528, or  
18 Section 226 of the Constitution;
- 19 (e) Illegal trafficking in controlled substances as prohibited by KRS Chapter  
20 218A, in intoxicating or spirituous liquor as defined in KRS Chapters 242 or  
21 244, or in destructive devices or booby traps as defined in KRS Chapter 237;  
22 or
- 23 (f) Lending at usurious interest, and enforcing repayment by illegal means in  
24 violation of KRS Chapter 360.

25 ~~[(5) Any person found to have been a member of a criminal gang syndicate while~~  
26 ~~engaging in the criminal acts listed in subsection (4) of this section shall not be~~  
27 ~~released on probation or parole until he or she has served at least eighty five percent~~

1       ~~(85%) of the sentence imposed.]~~

2       ➔Section 2. KRS 532.080 is amended to read as follows:

3       (1) When a defendant is found to be a persistent felony offender, the jury, in lieu of the  
4       sentence of imprisonment assessed under KRS 532.060 for the crime of which such  
5       person presently stands convicted, shall fix a sentence of imprisonment as  
6       authorized by subsection (5) or (6) of this section. When a defendant is charged  
7       with being a persistent felony offender, the determination of whether or not he is  
8       such an offender and the punishment to be imposed pursuant to subsection (5) or (6)  
9       of this section shall be determined in a separate proceeding from that proceeding  
10      which resulted in his last conviction. Such proceeding shall be conducted before the  
11      court sitting with the jury that found the defendant guilty of his most recent offense  
12      unless the court for good cause discharges that jury and impanels a new jury for that  
13      purpose.

14     (2) A persistent felony offender in the second degree is a person who is more than  
15     twenty-one (21) years of age and who stands convicted of a felony after having been  
16     convicted of one (1) previous felony. As used in this provision, a previous felony  
17     conviction is a conviction of a felony in this state or conviction of a crime in any  
18     other jurisdiction provided:

19     (a) That a sentence to a term of imprisonment of one (1) year or more or a  
20     sentence to death was imposed therefor; and

21     (b) That the offender was over the age of eighteen (18) years at the time the  
22     offense was committed; and

23     (c) That the offender:

24         1. Completed service of the sentence imposed on the previous felony  
25         conviction within five (5) years prior to the date of commission of the  
26         felony for which he now stands convicted; or

27         2. Was on probation, parole, postincarceration supervision, conditional

- 1 discharge, conditional release, furlough, appeal bond, or any other form  
2 of legal release from any of the previous felony convictions at the time  
3 of commission of the felony for which he now stands convicted; or
- 4 3. Was discharged from probation, parole, postincarceration supervision,  
5 conditional discharge, conditional release, or any other form of legal  
6 release on any of the previous felony convictions within five (5) years  
7 prior to the date of commission of the felony for which he now stands  
8 convicted; or
- 9 4. Was in custody from the previous felony conviction at the time of  
10 commission of the felony for which he now stands convicted; or
- 11 5. Had escaped from custody while serving any of the previous felony  
12 convictions at the time of commission of the felony for which he now  
13 stands convicted.
- 14 (3) A persistent felony offender in the first degree is a person who is more than twenty-  
15 one (21) years of age and who stands convicted of a felony after having been  
16 convicted of two (2) or more felonies, or one (1) or more felony sex crimes against  
17 a minor as defined in KRS 17.500, and now stands convicted of any one (1) or more  
18 felonies. As used in this provision, a previous felony conviction is a conviction of a  
19 felony in this state or conviction of a crime in any other jurisdiction provided:
- 20 (a) That a sentence to a term of imprisonment of one (1) year or more or a  
21 sentence to death was imposed therefor; and
- 22 (b) That the offender was over the age of eighteen (18) years at the time the  
23 offense was committed; and
- 24 (c) That the offender:
- 25 1. Completed service of the sentence imposed on any of the previous  
26 felony convictions within five (5) years prior to the date of the  
27 commission of the felony for which he now stands convicted; or

- 1           2. Was on probation, parole, postincarceration supervision, conditional  
2           discharge, conditional release, furlough, appeal bond, or any other form  
3           of legal release from any of the previous felony convictions at the time  
4           of commission of the felony for which he now stands convicted; or
- 5           3. Was discharged from probation, parole, postincarceration supervision,  
6           conditional discharge, conditional release, or any other form of legal  
7           release on any of the previous felony convictions within five (5) years  
8           prior to the date of commission of the felony for which he now stands  
9           convicted; or
- 10          4. Was in custody from the previous felony conviction at the time of  
11          commission of the felony for which he now stands convicted; or
- 12          5. Had escaped from custody while serving any of the previous felony  
13          convictions at the time of commission of the felony for which he now  
14          stands convicted.
- 15 (4) For the purpose of determining whether a person has two (2) or more previous  
16          felony convictions, two (2) or more convictions of crime for which that person  
17          served concurrent or uninterrupted consecutive terms of imprisonment shall be  
18          deemed to be only one (1) conviction, unless one (1) of the convictions was for an  
19          offense committed while that person was imprisoned.
- 20 (5) A person who is found to be a persistent felony offender in the second degree shall  
21          be sentenced to an indeterminate term of imprisonment pursuant to the sentencing  
22          provisions of KRS 532.060(2) for the next highest degree than the offense for which  
23          convicted. A person who is found to be a persistent felony offender in the second  
24          degree shall not be eligible for probation, shock probation, or conditional discharge,  
25          unless all offenses for which the person stands convicted are Class D felony  
26          offenses which do not involve a violent act against a person, in which case  
27          probation, shock probation, or conditional discharge may be granted. A violent

1 offender who is found to be a persistent felony offender in the second degree shall  
2 not be eligible for parole except as provided in KRS 439.3401.

3 (6) A person who is found to be a persistent felony offender in the first degree shall be  
4 sentenced to imprisonment as follows:

5 (a) If the offense for which he presently stands convicted is a Class A or Class B  
6 felony, or if the person was previously convicted of one (1) or more sex  
7 crimes committed against a minor as defined in KRS 17.500 and presently  
8 stands convicted of a subsequent sex crime, a persistent felony offender in the  
9 first degree shall be sentenced to an indeterminate term of imprisonment, the  
10 maximum of which shall not be less than twenty (20) years nor more than fifty  
11 (50) years, or life imprisonment, or life imprisonment without parole for  
12 twenty-five (25) years for a sex crime committed against a minor;

13 (b) If the offense for which he presently stands convicted is a Class C or Class D  
14 felony, a persistent felony offender in the first degree shall be sentenced to an  
15 indeterminate term of imprisonment, the maximum of which shall not be less  
16 than ten (10) years nor more than twenty (20) years.

17 (7) A person who is found to be a persistent felony offender in the first degree shall not  
18 be eligible for probation, shock probation, or conditional discharge, unless all  
19 offenses for which the person stands convicted are Class D felony offenses which  
20 do not involve a violent act against a person or a sex crime as that term is defined in  
21 KRS 17.500, in which case, probation, shock probation, or conditional discharge  
22 may be granted. If the offense the person presently stands convicted of is a Class A,  
23 B, or C felony, the person shall not be eligible for parole until the person has served  
24 a minimum term of incarceration of not less than ten (10) years, unless another  
25 sentencing scheme applies. A violent offender who is found to be a persistent felony  
26 offender in the first degree shall not be eligible for parole except as provided in  
27 KRS 439.3401.

1 (8) A conviction, plea of guilty, or Alford plea under KRS 218A.1415 shall not trigger  
2 the application of this section, regardless of the number or type of prior felony  
3 convictions that may have been entered against the defendant. A conviction, plea of  
4 guilty, or Alford plea under KRS 218A.1415 may be used as a prior felony offense  
5 allowing this section to be applied if he or she is subsequently convicted of a  
6 different felony offense.

7 (9) The provisions of this section amended by 1994 Ky. Acts ch. 396, sec. 11, shall be  
8 retroactive.

9 (10) (a) Except as provided in paragraph (b) of this subsection, this section shall not  
10 apply to a person convicted of a criminal offense if the penalty for that offense  
11 was increased from a misdemeanor to a felony, or from a lower felony  
12 classification to a higher felony classification, because the conviction  
13 constituted a second or subsequent violation of that offense.

14 (b) This subsection shall not prohibit the application of this section to a person  
15 convicted of:

- 16 1. A felony offense arising out of KRS 189A.010, 189A.090, ~~506.140,~~  
17 508.032, 508.140, or 510.015; or
- 18 2. Any other felony offense if the penalty was not enhanced to a higher  
19 level because the Commonwealth elected to prosecute the person as a  
20 first-time violator of that offense.

21 ➔Section 3. The following KRS sections are repealed:

22 506.135 Definitions for chapter.

23 506.140 Criminal gang recruitment.

24 506.150 Criminal gang activity or recruitment -- Actions not constituting defenses.

25 506.160 Minimum service of sentence required if convicted defendant was member of  
26 criminal gang acting for the purpose of benefitting, promoting, or furthering the  
27 interest of criminal gang.

- 1 506.170 Enhancement of penalty and minimum service of sentence for conviction of  
2 criminal gang-related felonies resulting in risk of physical injury, serious physical  
3 injury, or death -- Application to juveniles and persistent felony offenders.
- 4 506.180 Cause of action by victim of criminal gang incident against defendant for  
5 damages.
- 6 506.190 Criminal gang-related property subject to forfeiture under same criteria and  
7 process as set out in KRS 218A.405 to 218A.460.