

**Local Mandate Fiscal Impact Estimate
Kentucky Legislative Research Commission
2017 Regular Session**

Part I: Measure Information

Bill Request #: 1037

Bill #: HB 315 GA

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 315 GA establishes a new Section of KRS Chapter 506 regarding definitions relating to criminal gangs.

- Criminal gang – is 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 as a gang within or outside of the Commonwealth; and has at least two members who have engaged in a pattern of criminal activity. Does not include fraternal organizations, unions, corporations, associations, or similar entities, unless organized for the primary purpose of engaging in criminal activity.
- Pattern of criminal gang activity – is the act of committing two or more felonies, three or more misdemeanor offenses as enumerated in Section 5; or a combination of at least one felony offense and one misdemeanor offense within a five year period.

Section 2:

HB 315 GA establishes a new Section of KRS Chapter 506 regarding criminal gang recruitment and sets penalty offenses.

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.

Provides that any person over the age of 18 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criminal gang or intimidates or threatens another person because the other person refuses to join a criminal gang, has withdrawn or attempted to withdraw from a criminal gang, or refuses to submit to a demand made by a criminal gang.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.

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.

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:

Defines “criminal gang syndicate” as three or more persons, acting as members of a criminal gang collaborating to promote or engage in specified activities:

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: amends KRS 506.150 to expand the types of competent evidence that shall be admissible to establish the existence of a criminal gang and to clarify that it is either at the time of arrest or any time before or thereafter. Once the gang is formed with three or more persons, the number of persons excluding the defendant required to constitute a violation of gang activity is reduced from four to two.

Section 5:

HB 315 GA establishes a new Section of KRS Chapter 506 regarding determination by a court of gang membership.

Allows for the court to hold hearings without a jury to determine if a defendant convicted of designated 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.

If the defendant 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** if the court fines the defendant was a criminal gang member or acting to benefit, promote, or further the interest of a criminal gang or criminal gang member. These penalties will not apply to juveniles who have not been determined to be youthful offenders.

Section 6:

HB 315 GA establishes a new Section of KRS Chapter 506 regarding punishment levels for gang members upon conviction.

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 6 will not apply to juveniles who have not been determined to be youthful offenders.

Section 7:

HB 315 GA establishes a new Section of KRS Chapter 506 regarding civil awards.

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, as well as punitive and compensatory damages.

HB 315 GA is supplemental to KRS 431.080 which allows for a civil remedy after a felony conviction.

Section 8:

HB 315 GA establishes a new Section of Chapter 506 regarding criminal gang forfeitures.

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 315 GA on local governments is indeterminable.

There may be cost in regards to the dissemination of the new and amended laws, as well as any training deemed necessary for local law enforcement agencies.

Sections 2:

Criminal gang recruitment in the first degree is a Class C felony for the first offense and Class B felony for subsequent offenses.

Criminal gang recruitment in the second degree is a Class D felony for the first offense and Class C felony for subsequent offenses.

Criminal gang recruitment in the third degree is a Class A misdemeanor for the first offense and Class D felony for subsequent offenses.

Sections 3, 5, and 6 have minimum imprisonment requirements that will also 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 76 full service jails or five life safety jails. While the expense of housing inmates varies by jail, this estimated impact will be based on \$31.34 per day, which equals the per diem and medical that Department of Corrections pays jails to house felony offenders. While the majority of misdemeanor defendants are granted bail, those who do not will also cost local jails an average of \$31.34 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 76 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 \$31.34 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 \$31.34 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 76 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 \$31.34 per day. Class C felons are ineligible for placement in local jails until

they are classified at the lowest custody level with 24 months or less to their minimum expiration date or parole eligibility date. The Department of Corrections pays local jails \$31.34 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:** KHC **Date:** 2/27/17