

# CORRECTIONS IMPACT STATEMENT

SESSION: 17RS

BILL #: HB 315 SCS

BR #: 1037

DOC ID#: HB031540.100- 1037- 6623V

**BILL SPONSOR(S):** Rep. Benvenuti, Blanton, Lee, Morgan, Reed **AMENDMENT SPONSOR(S):** Rep. Benvenuti

**SUBJECT:** AN ACT relating to gang violence prevention and declaring an emergency.

## SUMMARY OF LEGISLATION:

HCS1 - Create new sections of KRS Chapter 506 to define "criminal gang" and " pattern of criminal gang activity"; enumerate what constitutes criminal gang recruitment in the first, second, and third degree; amend KRS 506.120 to define "criminal gang syndicate" and associated penalties for defendants convicted of certain offenses committed while acting as a criminal gang syndicate; amend KRS 506.150 to revise evidence that is corroborative of the existence of a gang or gang membership; create new sections of KRS Chapter 506 to require that anyone who is found to be a member of a criminal gang at the time of commission of a felony, and who is subsequently convicted of a felony that put the public at risk, be sentenced one class higher than the penalty provision pertaining to the felony offense he or she was convicted for; establish a cause of action for persons harmed by a criminal gang or criminal gang member; establish that any profits or proceeds forfeited or seized from a criminal gang are subject to forfeiture under KRS 218A.420; amend KRS 218A.420 to conform; provide that this bill will be known as the Gang Violence Prevention Act; encourage state and local law enforcement agencies to create a statewide gang violence prevention database; repeal KRS 506.140, relating to criminal gang recruitment; EMERGENCY.

HFA1 - Specify that upon the prosecutor's motion, a defendant convicted of a specific misdemeanor who is found beyond a reasonable doubt to have been a member of a gang at the time of the commission of the offense must serve at least 85% of the sentence imposed; state that juveniles who are not youthful offenders shall not be subject to any penalty enhancement provision..

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This  bill  amendment  committee substitute is expected to:

Have the following Corrections impact  Have no Corrections impact

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> Creates new crime(s)                              | <input type="checkbox"/> Repeals existing crime(s)               |
| <input checked="" type="checkbox"/> Increases penalty for existing crime(s)           | <input type="checkbox"/> Decreases penalty for existing crime(s) |
| <input checked="" type="checkbox"/> Increases incarceration                           | <input type="checkbox"/> Decreases incarceration                 |
| <input type="checkbox"/> Reduces inmate/offender services                             | <input type="checkbox"/> Increases inmate/offender services      |
| <input type="checkbox"/> Increases staff time or positions                            | <input type="checkbox"/> Reduces staff time or positions         |
| <input checked="" type="checkbox"/> Changes elements of offense for existing crime(s) |  |
| <input type="checkbox"/> Otherwise impacts incarceration (Explain) .                  |  |

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**STATE IMPACT:** Class A, B & C felonies are based on an average daily prison rate of \$66.82. Most Class D felons are housed in one of 76 full service jails for up to 5 years. DOC's cost to incarcerate a felony inmate in a jail is \$31.41 per day (includes jail per diem, medical & central office costs), not including substance abuse treatment. Projections are based on the daily rate x 365 x number of years.

**Projected Impact:**  NONE  MINIMAL  MODERATE  SIGNIFICANT

Potential Impact:

This legislation creates a definition of criminal gang and pattern of criminal gang activity. The legislation creates a new crime of Criminal Gang Recruitment 1<sup>st</sup> Degree, which would be a Class C felony for the 1<sup>st</sup> Offense and Class B felony for a 2<sup>nd</sup> or Subsequent Offense. Criminal Gang Recruitment 2<sup>nd</sup> Degree would be a Class D felony for the 1<sup>st</sup> Offense and a Class C felony for the 2<sup>nd</sup> or Subsequent Offenses. Criminal Gang Recruitment 3<sup>rd</sup> Degree would be a Class A misdemeanor for the 1<sup>st</sup> Offense and a Class D felony for a 2<sup>nd</sup> or Subsequent Offense. These offenses have specified age requirements, as well as specific elements for soliciting a person to join a criminal gang.

AOC data reports 0 convictions in CY 2016 and 6 convictions in CY 2015 for Criminal Gang Recruitment 1<sup>st</sup> offense. Records show a total 22 historical convictions for this offense.

The legislation also creates a definition of criminal gang syndicate. A member of a criminal gang syndicate convicted of theft by extortion, bribery of public servant, prostitution, human trafficking, theft, gambling, trafficking in controlled substances, or lending violations shall be subject to service of 85% of their sentence prior to parole eligibility.

For certain misdemeanor charges, a court hearing will be conducted to determine if the defendant is a member of a criminal gang. If the defendant is determined to be a gang member and is sentenced to a term of imprisonment, the defendant shall not be released for a minimum of 76-90 days of the Class B misdemeanor sentence or a minimum of 311-365 days of the Class A misdemeanor sentence.

If a defendant is a gang member and convicted of a felony offense which could or did place a member of the public at risk of physical injury, serious physical injury, or death, the offense shall be raised one class in penalty (exception for capital offense) and the offender shall not be eligible for parole until having served 85% of the sentence.

It is not known how many offenders would be subject to increased penalties under this legislation. The Department currently does not have any offenders serving on Criminal Gang Recruitment (KRS 506.140). The Department tracks over 636 security threat groups and has identified 2,899 inmates with a security threat group association.

It is unknown how many of these offenders, if HB 315 would have been in effect at the time of their sentencing, would have been convicted of a felony offense which did or could have placed the public at risk of injury. Of the 2,899 offenders that are validated gang members, 666 offenders are currently serving a sentence requiring 85% parole eligibility and 2,233 are serving on sentences currently at 15% or 20% parole eligibility. If they were held to 85% parole eligibility, they would serve an average of 6,448 days in custody prior to parole eligibility. The difference would be 5110 additional days in custody.

If HB 315 was in effect at the time of their sentencing, and if we estimate from the 2,233 offenders that 5% were convicted of an offense putting the public at risk, 112 estimated offenders would be held until 85% parole eligibility. At \$66.82 per day, for an additional 5110 days in custody, the estimated cost would be \$38,242,422.40. Note: This calculation assumes that all offenders would parole at 85%.

Note: This calculation is based on total sentence length. Offenders may be serving on multiple convictions. It is not possible to determine which offenses for which offenders would incur enhancements under this legislation.

The number of offenders subject to this legislation will vary greatly due to prosecutorial discretion, plea agreements offenders may take to avoid enhanced penalties, and cases subject to federal prosecution. Costs under this legislation would be dispersed over several years (feasibly 5-10 years), with initial costs likely to incur some years in the future. Although not explored for the purposes of this impact statement, there may be a deterrence effect which cannot be calculated.

Under this legislation, the increase in penalty classes and increased periods of incarceration to 85% parole eligibility would have significantly higher incarceration costs for the Department.

#### House Committee Substitute:

The House Committee Substitute does not provide any additional impact for the Department.

#### House Floor Amendment:

The House Floor Amendment excludes juvenile convictions not determined to be youthful offenders from the misdemeanor minimum sentence requirements and enhanced felony penalties for gang offenders. Youthful offenders would qualify for the penalties set by the legislation. The Department may receive into custody youthful offenders subject to penalties under this bill, however, the expected impact to the Department remains the same.

#### Senate Committee Substitute:

Under the Senate Committee Substitute, language for identification or prosecution as a gang by a federal law enforcement agency is inserted and identification or prosecution as a gang by a foreign country is removed. Under the age of 18 is added as an element to Criminal Gang Recruitment 3<sup>rd</sup> Degree. Criminal Gang Recruitment 3<sup>rd</sup> Degree is a Class A Misdemeanor for a first offense and a Class D Felony for a second or subsequent offense.

The Senate Committee Substitute also establishes a separate proceeding from the court proceeding that resulted in the defendant's misdemeanor conviction to establish an offender as a gang member at the time of the commission of the offense. The proceeding shall be conducted by a jury. This provision applies to youthful offenders. The penalty enhancements for felony offenses under this legislation also apply to youthful offenders. Under the Senate Committee Substitute, the penalty enhancements do not apply for persistent felony offenders pursuant to KRS 532.080.

**LOCAL IMPACT:** Local governments are responsible for the cost of incarcerating individuals charged with Class A or B misdemeanors and felony defendants until disposition of the case. While the expense varies by jail, this estimated impact will be based on \$31.34 per day, which equals the per diem and medical that DOC pays jails to house felony offenders.

**Projected Impact:**  NONE       MINIMAL       MODERATE       SIGNIFICANT

Potential Impact:

Under this legislation, misdemeanor gang members sentenced to a term of imprisonment would be subject to specific sentence lengths before release. This could increase the days in custody for misdemeanor offenders.

In addition, offenders subject to increased penalties would no longer be eligible for community custody as Class D inmates. This would result in a decreased number of state inmates eligible for placement at a county jail.

**The following offices contributed to this Corrections Impact Statement:**

Dept. of Corrections     Dept. of Kentucky State Police     Administrative Office of the Courts     Parole Board     Other

**NOTE: Consideration should be given to the cumulative impact of all bills that increase the felon population or that impose new obligations on state or local governments.**

**APPROVED BY:**

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 Commissioner, Kentucky Department of Corrections

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 Date