

**COMMONWEALTH OF KENTUCKY STATE FISCAL NOTE STATEMENT
LEGISLATIVE RESEARCH COMMISSION
2018 REGULAR SESSION**

MEASURE

2018 BR NUMBER 0227

HOUSE BILL NUMBER 169

RESOLUTION NUMBER _____

AMENDMENT NUMBER _____

SUBJECT/TITLE An ACT relating to gang violence prevention and declaring an emergency.

SPONSOR Representative Benvenuti

NOTE SUMMARY

FISCAL ANALYSIS: IMPACT NO IMPACT INDETERMINABLE IMPACT

LEVEL(S) OF IMPACT: STATE LOCAL FEDERAL

BUDGET UNIT(S) IMPACT: Department of Corrections

FUND(S) IMPACT: GENERAL ROAD FEDERAL RESTRICTED AGENCY _____ OTHER

FISCAL SUMMARY

FISCAL ESTIMATES	2017-2018	2018-2019	2019-2020	ANNUAL IMPACT AT FULL IMPLEMENTATION
REVENUES				
EXPENDITURES	Indeterminable	Indeterminable	Indeterminable	Indeterminable
NET EFFECT	(Indeterminable)	(Indeterminable)	(Indeterminable)	(Indeterminable)

() indicates a decrease/negative

MEASURE'S PURPOSE: This measure creates new crimes and penalties associated with criminal gang activity.

PROVISIONS/MECHANICS: Section 1 creates a new section of KRS Chapter 506 to define "criminal gang" and "pattern of criminal gang activity."

Section 2 repeals and reenacts KRS 506.140 to provide what constitutes criminal gang recruitment in the first degree and establishes the punishment as a Class C felony for the first offense and a Class B felony for the second and subsequent offense. It defines what constitutes criminal gang recruitment in the second degree and provides a Class D felony for the first offense and a Class C felony for the second and subsequent offense. It defines what constitutes criminal gang recruitment in the third degree and establishes a Class A misdemeanor for the first offense and a Class D felony for the second and subsequent offense. In all instances, it shall be no defense to prosecution that the other person never intended to or did not commit the crime.

Section 3 amends KRS 506.120 to redefine a "criminal syndicate" to include fewer people and broadens the scope of its usage. It creates a definition of "criminal gang syndicate." It mandates that persons guilty of these provisions shall serve a minimum of 85 percent of their sentence before being released on probation or parole.

Section 4 amends KRS 506.150 to expand the criteria used to establish the existence of or membership in a criminal gang that is admissible as evidence in court. It makes conforming changes and limits defense to prosecution for violations of Sections 2 through 6.

Section 5 creates a new Section of KRS Chapter 506 to establish a separate court proceeding to determine if an offender committed offenses as a member of a criminal gang. It establishes a minimum number of days offenders are incarcerated for misdemeanor offenses in which they were determined to be members of a criminal gang. It exempts juveniles who have not been determined to be youthful offenders from these provisions.

Section 6 creates a new Section of KRS Chapter 506 to increase penalties by one class, unless the reclassification would move the offense to a capital offense, in certain instances and mandates that offenders serve 85 percent of their sentence before being released on parole. It exempts juveniles who have not been determined to be youthful offenders from these provisions. It excludes persistent felony offenders from these provisions.

Section 7 creates a new Section of KRS Chapter 506 to establish a process by which victims of criminal gang activity can recover compensatory damages. Punitive damages are also added.

Section 8 creates a new Section of KRS Chapter 506 to apply asset forfeiture laws prescribed in KRS Chapter 218A to property used in connection with or acquired by criminal gang activity.

Section 9 encourages state and local law enforcement agencies to develop a comprehensive statewide gang database to facilitate the exchange of criminal gang-related information.

Section 10 provides that this Act shall be known as the Gang Violence Prevention Act.

Section 11 declares an emergency.

FISCAL EXPLANATION: The impact is indeterminable, but significant expenditures to the Department of Corrections (DOC) are anticipated.

Department of Corrections: Criminal Gang Recruitment

HB 169 creates new crimes and penalties:

- Criminal gang recruitment 1st degree: Class C felony for the first offense, and a Class B felony for a second or subsequent offense.
- Criminal gang recruitment 2nd degree: Class D felony for the first offense, and a Class C felony for a second or subsequent offense.
- Criminal gang recruitment 3rd degree: Class A misdemeanor for the first offense, and a Class D felony for a second or subsequent offense.

Criminal gang recruitment is currently punishable by a Class A misdemeanor for the first offense and a Class D felony for a second or subsequent offense. Creating additional offenses and increasing penalties will increase the number of offenders incarcerated under the custody of DOC.

According to DOC, data from the Administrative Office of the Courts (AOC) indicates there have been 22 historical convictions for criminal gang recruitment first offense. Calendar Year (CY) 2015 was the most recent year in which there were any convictions of this crime, which amounted to six total convictions. The DOC is not currently housing any offenders serving time for criminal gang recruitment since these offenders would likely have received Class A misdemeanor convictions. HB 169 would create a greater probability for these offenders to receive felony convictions, which would shift costs to the DOC at an average daily rate ranging from \$31.45 to \$70.12 per inmate (\$11,500 to \$25,600 annually).

Department of Corrections: Criminal Syndicate and Criminal Gang Syndicate

"Criminal syndicate" is redefined to lower the number of persons collaborating to promote or engage in theft by extortion or coercion, human trafficking, bribery of a public servant, prostitution, theft, trafficking in controlled substances, gambling, and lending violations from five to three persons. Decreasing the threshold to be classified as a criminal syndicate will increase the number of convictions related to these crimes.

"Criminal gang syndicate" has the same definition as "criminal syndicate," with the difference being that any offenders convicted as a member of a criminal gang syndicate must serve 85 percent of their sentence prior to being released on probation or parole. This provision will increase the length of time offenders serve under incarceration, thereby increasing costs to the DOC.

Currently, the DOC is housing 149 offenders who are serving a sentence for engaging in organized crime - criminal syndicate and who also have a theft or drug offense. If HB 169 were in effect at the time of these offenders' convictions, they would be required to serve 85 percent of their sentence prior to achieving parole eligibility. The impact of this change is unknown, but DOC expenditures would increase.

Department of Corrections: Reclassification of Penalties

If a member of a criminal gang could or did place a member of the public at risk of physical injury, serious injury, or death and were acting to benefit, promote, or further the interest of a criminal gang or any individual of a criminal gang, the offender's conviction shall be increased by one class and shall serve 85 percent of their sentence prior to achieving parole eligibility. These provisions would apply to youthful offenders but would not apply to persistent felony offenders. It is impossible to know how many offenders would be realized as a result of these provisions, however, additional expenditures will be realized under HB 169.

Department of Corrections: Potential Impact

The DOC is currently housing 2,820 offenders that are validated gang members. Of these offenders, 421 must serve 85 percent of their sentence prior to parole eligibility, while 2,144 must serve 15 or 20 percent of their sentence prior to parole eligibility. It is impossible to know the number of these offenders, who at the time of their sentencing would have been convicted for benefiting, promoting, or furthering the interests of the gang, or have been convicted for potentially putting or putting the public at risk of injury.

To determine the potential cost of HB 169, the DOC took the difference in the average number of days offenders would be parole eligible. Below is a summary of this difference.

Number of Offenders	Parole Eligibility	Sentence Length (Days)*	Parole Eligibility (Days)
421	85%	4,001	3,401
2,144	20%	4,001	800
Difference			2,601

*Note: 4,001 days is the average number of days 15-20% offenders served before being granted parole.

Assuming that five percent of the 2,144 offenders were convicted of their crimes including putting the public at risk, then 107 offenders would be held at 85 percent parole eligibility, according to DOC. If these 107 offenders remain incarcerated for an additional 2,601 days, and using a \$70.12 average daily cost to incarcerate an offender in a prison institution, total costs would amount to an estimated \$19,514,900.

Department of Public Advocacy

Department of Public Advocacy (DPA) personnel may experience heightened workloads under the provisions of HB 169 as more serious offenses require further investigating and additional pretrial proceedings prior to when a plea deal may be accepted.

Additionally, increasing the minimum service requirement to 85 percent, as opposed to the current 15 to 20 percent, may mean that prosecutors propose a sentence length that exceeds plea agreements presently offered. The net effect is that defendants accused of applicable crimes may choose to take a plea deal whose total sentence length exceeds the sentence length offered in plea deals under current law, regardless of the defendant’s innocence or guilt. While the increased costs described here relate to the actions of prosecutors and defense attorneys, additional costs will be largely realized in the DOC.

DATA SOURCE(S): Department of Corrections
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