

a combination of at least one felony offense and one misdemeanor offense performed on separate occasions within a five year period.

Section 2:

Repeals and reenacts KRS Chapter 506.140.

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.

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criminal gang or intimidates or threatens another person because the other person refuses to join a criminal gang, has withdrawn or attempted to withdraw from a criminal gang, or refuses to submit to a demand made by a criminal gang.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.

Any person **under the age of 18** 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.

It shall be no defense to prosecution that the person being recruited never intended to or did not commit the crime.

Section 3:

Amends the number of persons necessary to be defined as a “criminal gang syndicate” from five to three or more.

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 percent 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 self-proclamation can occur either at the time of arrest or any time before or thereafter. It also clarifies that if identification is to be used as evidence for the existence of a gang, such identification must be made by a **reliable** informant and participation in photos or on social media must include the promotion or furthering of criminal activity.

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:

Establishes a new Section of KRS Chapter 506 regarding determination by a court of gang membership.

If a defendant convicted of designated offenses is alleged to have been a member of a criminal gang, a separate proceeding shall be held to determine if the defendant was a member of a gang. The jury that found the defendant guilty may sit for the separate hearing and make the determination the defendant was a member of a gang.

If the defendant is found to be a gang member or acting to benefit, promote, or further the interest of a criminal gang or criminal gang member, and convicted of a Class B or Class A misdemeanor, he or she must serve 85 percent of the sentence imposed. These penalties will not apply to juveniles who have not been determined to be youthful offenders.

Section 6:

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 or where the defendant is found to be a persistent felony offender.

Section 7:

Establishes a new Section of KRS Chapter 506 providing that if a person alleges 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 169 HCS is supplemental to KRS 431.080 or any other statute which allows for a civil remedy after a felony conviction.

Section 8:

Establishes a new Section of Chapter 506 providing that all property used in connection with or acquired by a criminal gang in the commission of a criminal offense shall be subject to forfeiture as set out in KRS 218A.405 to 218A.460.

The fiscal impact of BR 227 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.

The Department of Corrections provided the sentencing guidelines and per diem expenses/reimbursements provided below. This information should be taken under consideration when determining the impact of the misdemeanor and felony offenses as provided in this bill. Further consideration should be taken for the section that requires 85 percent of the offender's sentence be served prior to eligibility for probation or parole.

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 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.

Class C felons: 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.

Part III: Differences to Local Government Mandate Statement from Prior Versions

HB 169 HCS 1 made the following changes to HB 169 as introduced:

- References 'criminal gang' as used throughout HB 169 HCS 1 to the definition found in Section 1 of the bill.

- Clarifies the following as evidence of the existence of a criminal gang:
 - o Identification as a gang member must be by a **reliable** source.
 - o Participation in photos or social media interaction with criminal gang members must be in the promotion or furthering of criminal activity.

Data Source(s): LRC Staff, Department of Corrections

Preparer: Wendell F. Butler **Reviewer:** KHC **Date:** 3/13/18