

CORRECTIONS IMPACT STATEMENT

SESSION: 18RS

BILL #: HB 169 SCS 1

BR #: 227

DOC ID#: HB016940.100 - 227 - XXXX

BILL SPONSOR(S): Rep. R. Benvenuti III, J. Blanton, K. King, S. Lee, J. Miller, R. Mills, C. Morgan

AMENDMENT SPONSOR(S):

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

SUMMARY OF LEGISLATION: Create a new section of KRS Chapter 506 to define "criminal gang" and "pattern of criminal gang activity"; repeal and reenact KRS 506.140 to 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 puts the public at risk, shall be sentenced to a penalty that is one class higher than the penalty provision pertaining to the felony offense he or she was convicted of, unless the person is determined to be a persistent felony offender; establish a cause of action for a person harmed by a criminal gang or criminal gang member; create a new section of KRS Chapter 506 to state that property used by a gang or gang member in the commission of the crime shall be forfeited and disposed of in accordance with KRS 218A.405 to 218A.460; provide that this Act shall be known as the Gang Violence Prevention Act; encourage state and local law enforcement agencies to create a statewide gang violence prevention database; EMERGENCY.

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) _____ | |

STATE IMPACT: Class A, B & C felonies are based on an average daily prison rate of \$70.12. 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 \$31.45 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 MODERATE (< \$1 million) SIGNIFICANT (> \$1 million)

This legislation creates a definition of criminal gang and pattern of criminal gang activity. The legislation creates a new crime of Criminal Gang Recruitment 1st Degree, which would be a Class C felony for the 1st Offense and Class B felony for a 2nd or Subsequent Offense. Criminal Gang Recruitment 2nd Degree would be a Class D felony for the 1st Offense and a Class C felony for 2nd or Subsequent Offenses. Criminal Gang Recruitment 3rd Degree would be a Class A misdemeanor for the 1st Offense and a Class D felony for a 2nd 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 FY 2017 and CY 2016 for Criminal Gang Recruitment. There were 6 convictions in CY 2015 for Criminal Gang Recruitment 1st Offense. Records show a total of 22 historical convictions for this offense. The Department currently does not have any offenders serving on Criminal Gang Recruitment (KRS 506.140).

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.

The Department currently has 149 offenders incarcerated on Engaging in Organized Crime - Criminal Syndicate under KRS 506.120 who also has theft or drug offenses. Note: only indicates offenders with these criminal offenses, does not denote an offender was identified as a member of a criminal gang syndicate while incurring the theft or drug charge.

If a defendant is a gang member acting for the benefit or furtherance of the gang 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). The offender shall not be eligible for parole until having served 85% of the sentence. This shall not apply to persistent felony offenders. Youthful offenders would qualify for the penalties set by the legislation.

It is not known how many offenders would be subject to increased penalties under this legislation. The Department has identified 2,820 inmates with a security threat group association.

It is unknown how many of these offenders, if HB 169 would have been in effect at the time of their sentencing, would have 1) committed their crime for the purpose of benefiting, promoting, or furthering the interests of the gang, or 2) been convicted of a felony offense which did or could have placed the public at risk of injury. Of the 2,820 offenders that are validated gang members, 421 offenders are currently serving a sentence requiring 85% parole eligibility and 2,144 are serving on sentences currently at 15% or 20% parole eligibility. Security threat group offenders (with 15 or 20% parole eligibility) whose first release from prison was to parole show an average sentence length of 4,001 days.

If they were held to 85% parole eligibility, they would serve an average of 3,401 days in custody prior to parole eligibility. The difference from 20% to 85% would be 2,601 additional days in custody.

If HB 169 was in effect at the time of their sentencing, and if we estimate from the 2,144 offenders that 5% were convicted of an offense putting the public at risk, 107 estimated offenders would be held until 85% parole eligibility. At \$70.12 per day, for an additional 2,601 days in custody, the estimated cost would be \$19,514,886.84.

Note: This calculation assumes that all offenders would parole at 85%. Also note that not all offenders would parole at the first parole eligibility under the current 15% or 20% statutory requirement. 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, 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.

Overall, the increase in penalty classes and increased periods of incarceration to 85% parole eligibility would have significantly higher incarceration costs for the Department, depending on how many individuals are prosecuted under this legislation.

House Committee Substitute:

The House Committee Substitute adds in several places throughout the bill "as defined in Section 1 of this Act" in referencing a member of a criminal gang. Additionally, Section 3 is amended to include "reliable" informant as one of the factors admissible to determine membership in a criminal gang. Additionally, participation in photos or social media interaction with criminal gang members is expanded to "promoting or furthering criminal activity" when determining whether someone is a member of a criminal gang member.

The clarification of these factors tighten who may be designated as a gang member. It is not known how many individuals could possibly be included or excluded from identification of a gang membership based on the amendment. The amendments would decrease the number of offenders who may be identified as a gang member. Though the extent of the impact is not known it would not be expected to be significant.

Overall, the House Committee Substitute would not be expected to have a significant additional impact on incarceration.

Senate Committee Substitute:

The Senate Committee Substitute requires, in Section 4, two (2) factors instead of one (1) to establish the existence of a criminal gang as described within the bill. Factors include items such as self-proclamation; identifying tattoos, gang signs, or graffiti; identification by documented evidence, reliable informant or parent, etc. Under Section 5, the requirement for mandatory incarceration for certain misdemeanors if determined to be a gang member acting in furtherance of the gang is amended. The mandatory incarceration shall not apply to juveniles unless the offender is a youthful offender in Circuit Court and has at least one (1) prior adjudication as a public offender for a felony offense. Likewise, the felony enhancements under Section 6 (85% parole eligibility and increased offense level) shall not apply to juveniles unless the offender is a youthful offender in Circuit Court and has had at least one (1) prior adjudication as a public offender for a felony offense or is a violent offender as defined in KRS 439.3401. Additionally, under the Committee Substitute in Section 7, there is a clarification regarding plaintiff fees under civil actions.

Overall, fewer offenders will qualify as a gang member under the Senate Committee Substitute, though the extent of the reduction is indeterminate. The additional specifications will reduce the number of offenders receiving mandatory minimum jail sentences or felony enhancements as established in the legislation.

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 MODERATE (< \$1 million) SIGNIFICANT (> \$1 million)

Under this legislation, misdemeanor gang members sentenced to a term of imprisonment would be subject to specific sentence lengths before release. For certain misdemeanor charges, a hearing shall determine if the defendant is a member of a criminal gang and acting for the benefit or furthering of the gang at the time the offense was committed. If sentenced, 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. The statute provides criteria which may be used to establish membership in a criminal gang.

Creation of the offense of Criminal Gang Recruitment 2nd Degree will add additional Class D felons housed in county jails for which the jails receive a per diem for housing these individuals. The increase to the local jail population under Criminal Gang Recruitment is not expected to be significant. For 2nd and subsequent offenses, these individuals likely will not qualify to be housed in a local jail. Criminal Gang Recruitment 3rd Degree would impact the local jails by creating a new class of misdemeanants which fall under local jurisdiction for the cost of housing. The number of potential individuals sentenced as Criminal Gang Recruitment 3rd Degree 1st Offense is unknown, but the number is not expected to be significant.

Felony offenders subject to increased penalties under this legislation might not be eligible for service of their state sentence at a Class D jail facility. This would result in a decreased number of state inmates eligible for placement at a county jail, which would be a loss of revenue for the local jails.

House Committee Substitute:

From the additional language used to determine gang membership, there is no significant additional impact expected for local corrections under the House Committee Substitute.

Senate Committee Substitute:


Under the Senate Committee Substitute, fewer offenders will qualify as a gang member and therefore would be subject to the mandatory minimum jail terms or less likely to receive the felony enhancements established in the bill. Felony enhancements would reduce the number of offenders eligible to serve their sentence in a Class D jail facility.

While the amount of reduction cannot be estimated, it will reduce to some extent the bill's overall impact on state and local incarceration.

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. The Department of Corrections and local jails continue to operate over capacity. Without steps to reduce the population, any legislation that increases population or lengthens the term of incarceration will have a significant impact on correctional operations.

APPROVED BY: 
Deputy Commissioner, Kentucky Department of Corrections

3/28/2019
Date