

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 CONFERENCE COMMITTEE
4 SUBSTITUTE
5 FOR ENGROSSED
6 HOUSE BILL NO. 2080

By: Wesselhoft, Reynolds,
Morrissette, Johnson,
Blackwell, Cox, Liebmann,
Pittman and Sears of the
House

7 and

8 Sykes of the Senate
9

10
11 CONFERENCE COMMITTEE SUBSTITUTE

12 An Act relating to gangs; amending 21 O.S. 2001,
13 Section 856, which relates to contributing to the
14 delinquency of minors; making certain acts unlawful;
15 providing penalties; defining terms; amending 21 O.S.
16 2001, Section 1738, as last amended by Section 5 of
17 Enrolled Senate Bill No. 764 of the 1st Session of
the 52nd Oklahoma Legislature, which relates to
seizure and forfeiture proceedings; authorizing
forfeiture of property under certain circumstances;
and providing an effective date.

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20 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

21 SECTION 1. AMENDATORY 21 O.S. 2001, Section 856, is
22 amended to read as follows:

23 Section 856. A. 1. Except as otherwise specifically provided
24 by law, every person who shall knowingly or willfully cause, aid,

1 abet or encourage a minor to be, to remain, or to become a
2 delinquent child or a runaway child shall, upon conviction, ~~shall~~,
3 for the first offense, be guilty of a misdemeanor punishable by
4 imprisonment in a county jail not to exceed one (1) year, or by a
5 fine not to exceed One Thousand Dollars (\$1,000.00), or by both such
6 fine and imprisonment.

7 2. For purposes of prosecution under this subsection, a
8 "runaway child" means an unemancipated minor who is voluntarily
9 absent from the home without a compelling reason, without the
10 consent of a custodial parent or other custodial adult and without
11 the parent or other custodial adult's knowledge as to the child's
12 whereabouts. "Compelling reason" means imminent danger from incest,
13 a life-threatening situation, or equally traumatizing circumstance.
14 A person aiding a runaway child pursuant to paragraph (4) of
15 subsection (a) of Section 5 of Title 76 of the Oklahoma Statutes or
16 aiding a child based upon a reasonable belief that the child is in
17 physical, mental or emotional danger and with notice to the
18 Department of Human Services or a local law enforcement agency of
19 the location of the child within twelve (12) hours of aiding the
20 child shall not be subject to prosecution under this section.

21 B. Every person convicted of a second or any subsequent
22 violation of this section shall be guilty of a felony punishable by
23 imprisonment in the custody of the Department of Corrections not to
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1 exceed three (3) years, or by a fine not exceeding Five Thousand
2 Dollars (\$5,000.00), or by both such fine and imprisonment.

3 C. Every person eighteen (18) years of age or older who shall
4 knowingly or willfully cause, aid, abet, or encourage a minor to
5 commit or participate in committing an act that would be a felony if
6 committed by an adult shall, upon conviction, be guilty of a felony
7 punishable by the maximum penalty allowed for conviction of the
8 offense or offenses which the person caused, aided, abetted, or
9 encouraged the minor to commit or participate in committing.

10 D. Every person who shall knowingly or willfully cause, aid,
11 abet, encourage, solicit, or recruit a minor to participate, join,
12 or associate with any criminal street gang, as defined by subsection
13 F of this section, or any gang member for the purpose of committing
14 any criminal act shall, upon conviction, be guilty of a felony
15 punishable by imprisonment in the custody of the Department of
16 Corrections for a term not to exceed one (1) year, or a fine not to
17 exceed Three Thousand Dollars (\$3,000.00), or both such fine and
18 imprisonment.

19 E. Every person convicted of a second or subsequent violation
20 of subsection D of this section shall be guilty of a felony
21 punishable by imprisonment in the ~~State Penitentiary~~ custody of the
22 Department of Corrections for a term not to exceed five (5) years or
23 by a fine not exceeding Five Thousand Dollars (\$5,000.00), or by
24 both such fine and imprisonment.

1 F. Any person who actively participates in or is a member of a
2 criminal street gang with knowledge that the criminal street gang
3 engages in or has engaged in a pattern of criminal gang activity,
4 and who knowingly and willfully participates in any predicate
5 criminal act committed for the benefit of, at the direction of, or
6 in association with any criminal street gang shall, upon conviction,
7 be guilty of a misdemeanor punishable by imprisonment in the county
8 jail for a term of not less than ninety (90) days, or by a fine not
9 to exceed One Thousand Dollars (\$1,000.00), or by both such fine and
10 imprisonment. Any participant or member of a criminal street gang
11 who is eighteen (18) years of age or older and who knows or has
12 reason to know that such criminal street gang also includes a
13 juvenile member or juvenile participant shall, upon conviction, be
14 guilty of a misdemeanor punishable by imprisonment in the county
15 jail for a term of not less than one hundred eighty (180) days, or
16 by a fine not to exceed Two Thousand Dollars (\$2,000.00), or by both
17 such fine and imprisonment.

18 G. "Criminal street gang" means any ongoing organization,
19 association, or group of five or more persons that specifically
20 either promotes, sponsors, or assists in, or participates in, and
21 requires as a condition of membership or continued membership, the
22 commission of one or more of the following criminal acts:

23 1. Assault, battery, or assault and battery with a deadly
24 weapon, as defined in Section 645 of this title;

- 1 2. Aggravated assault and battery as defined by Section 646 of
2 this title;
- 3 3. Robbery by force or fear, as defined in Sections 791 through
4 797 of this title;
- 5 4. Robbery or attempted robbery with a dangerous weapon or
6 imitation firearm, as defined by Section 801 of this title;
- 7 5. Unlawful homicide or manslaughter, as defined in Sections
8 691 through 722 of this title;
- 9 6. The sale, possession for sale, transportation, manufacture,
10 offer for sale, or offer to manufacture controlled dangerous
11 substances, as defined in Section 2-101 et seq. of Title 63 of the
12 Oklahoma Statutes;
- 13 7. Trafficking in illegal drugs, as provided for in the
14 Trafficking in Illegal Drugs Act, Section 2-414 of Title 63 of the
15 Oklahoma Statutes;
- 16 8. Arson, as defined in Sections 1401 through 1403 of this
17 title;
- 18 9. The influence or intimidation of witnesses and jurors, as
19 defined in Sections 388, 455 and 545 of this title;
- 20 10. Theft of any vehicle, as described in Section 1720 of this
21 title;
- 22 11. Rape, as defined in Section 1111 of this title;
- 23 12. Extortion, as defined in Section 1481 of this title;
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1 13. Transporting a loaded firearm in a motor vehicle, in
2 violation of Section 1289.13 of this title;

3 ~~14. Transporting a weapon in, or discharging a weapon from, a~~
4 ~~boat, in violation of Section 1289.14 of this title;~~

5 ~~15.~~ Possession of a concealed weapon, as defined by Section
6 1289.8 of this title; or

7 ~~16.~~ 15. Shooting or discharging a firearm, as defined by
8 Section 652 of this title.

9 H. "Pattern of criminal gang activity" means a prior conviction
10 for the commission, attempted commission, solicitation or conspiracy
11 to commit two or more of the criminal acts enumerated in subsection
12 G of this section within a five-year period and the criminal acts
13 were committed on separate occasions.

14 I. "Actively participates" means that the person has a current
15 relationship with the criminal street gang that is more than in name
16 only, passive, inactive or purely technical and who devotes all or a
17 substantial part of time or efforts of the person to the criminal
18 street gang.

19 SECTION 2. AMENDATORY 21 O.S. 2001, Section 1738, as
20 last amended by Section 5 of Enrolled Senate Bill No. 764 of the 1st
21 Session of the 52nd Oklahoma Legislature, is amended to read as
22 follows:

23 Section 1738. A. Any commissioned peace officer of this state
24 is authorized to seize any vehicle owned by or registered to the

1 defendant used in the commission of any armed robbery offense
2 defined in Section 801 of this title, or any vehicle owned by or
3 registered to the defendant when such vehicle is used to facilitate
4 the intentional discharge of any kind of firearm in violation of
5 Section 652 of this title, or any vehicle, airplane, vessel,
6 vehicles or parts of vehicles whose numbers have been removed,
7 altered or obliterated so as to prevent determination of the true
8 identity or ownership of said property and parts of vehicles which
9 probable cause indicates are stolen but whose true ownership cannot
10 be determined, or any vehicle owned by or registered to the
11 defendant used in violation of the Trademark Anti-Counterfeiting
12 Act, or any equipment owned by or registered to the defendant which
13 is used in the attempt or commission of any act of burglary in the
14 first or second degree, motor vehicle theft, unauthorized use of a
15 vehicle, obliteration of distinguishing numbers on vehicles or
16 criminal possession of vehicles with altered, removed or obliterated
17 numbers as defined by Sections 1431, 1435, 1716, 1719 and 1720 of
18 this title or Sections 4-104 and 4-107 of Title 47 of the Oklahoma
19 Statutes, or any equipment owned by or registered to the defendant
20 used in violation of the Trademark Anti-Counterfeiting Act, or any
21 vehicle, airplane, vessel or equipment owned by or registered to the
22 defendant used in the commission of any arson offense defined in
23 Section 1401, 1402, 1403, 1404 or 1405 of this title. Said property
24 may be held as evidence until a forfeiture has been declared or a

1 release ordered. Forfeiture actions under this section may be
2 brought by the district attorney in the proper county of venue as
3 petitioner; provided, in the event the district attorney elects not
4 to file such action, or fails to file such action within ninety (90)
5 days of the date of the seizure of such equipment, the property
6 shall be returned to the owner.

7 B. In addition to the property described in subsection A of
8 this section, the following property is also subject to forfeiture
9 pursuant to this section:

10 1. Property used in the commission of theft of livestock or in
11 any manner to facilitate the theft of livestock;

12 2. The proceeds gained from the commission of theft of
13 livestock;

14 3. Personal property acquired with proceeds gained from the
15 commission of theft of livestock;

16 4. All conveyances, including aircraft, vehicles or vessels,
17 and horses or dogs which are used to transport or in any manner to
18 facilitate the transportation for the purpose of the commission of
19 theft of livestock;

20 5. Any items having a counterfeit mark and all property that is
21 owned by or registered to the defendant that is employed or used in
22 connection with any violation of the Trademark Anti-Counterfeiting
23 Act;

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- 1 6. Any weapon possessed, used or available for use in any
2 manner during the commission of a felony within the State of
3 Oklahoma, or any firearm that is possessed by a convicted felon;
- 4 7. Any police scanner used in violation of Section 1214 of this
5 title;
- 6 8. Any computer and its components and peripherals, including
7 but not limited to the central processing unit, monitor, keyboard,
8 printers, scanners, software, and hardware, when it is used in the
9 commission of any crime in this state;
- 10 9. All property used in the commission of, or in any manner to
11 facilitate, a violation of Section ~~2~~ 1040.12a of this ~~act~~ title;
- 12 10. All conveyances, including aircraft, vehicles or vessels,
13 monies, coins and currency, or other instrumentality used or
14 intended to be used, in any manner or part, to commit a violation of
15 paragraph 1 of subsection A of Section 1021 of this title, where the
16 victim of the crime is a minor child, subsection B of Section 1021
17 of this title, Section 1021.2 of this title, paragraph 1 of
18 subsection A of Section 1111 of this title, or paragraphs 2 and 3 of
19 subsection A of Section 1123 of this title; ~~and~~
- 20 11. All conveyances, including aircraft, vehicles or vessels,
21 monies, coins and currency, or other instrumentality used in any
22 manner or part, to commit any violation of the provisions set forth
23 in Section 748 of this title; and
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1 12. All conveyances, including vehicles or vessels, weapons,
2 monies, coins and currency, or other instrumentality used in or
3 obtained through an offense that was committed for the benefit of,
4 at the direction of, or in association with any criminal street
5 gang, as defined in Section 856 of this title.

6 C. Notice of seizure and intended forfeiture proceeding shall
7 be filed in the office of the clerk of the district court for the
8 county wherein such property is seized and shall be given all owners
9 and parties in interest.

10 D. Notice shall be given according to one of the following
11 methods:

12 1. Upon each owner or party in interest whose right, title, or
13 interest is of record in the Oklahoma Tax Commission or with the
14 county clerk for filings under the Uniform Commercial Code, served
15 in the manner of service of process in civil cases prescribed by
16 Section 2004 of Title 12 of the Oklahoma Statutes;

17 2. Upon each owner or party in interest whose name and address
18 is known, served in the manner of service of process in civil cases
19 prescribed by Section 2004 of Title 12 of the Oklahoma Statutes; or

20 3. Upon all other owners, whose addresses are unknown, but who
21 are believed to have an interest in the property by one publication
22 in a newspaper of general circulation in the county where the
23 seizure was made.

1 E. Within sixty (60) days after the mailing or publication of
2 the notice, the owner of the property and any other party in
3 interest or claimant may file a verified answer and claim to the
4 property described in the notice of seizure and of the intended
5 forfeiture proceeding.

6 F. If at the end of sixty (60) days after the notice has been
7 mailed or published there is no verified answer on file, the court
8 shall hear evidence upon the fact of the unlawful use and may order
9 the property forfeited to the state, if such fact is proven.

10 G. If a verified answer is filed, the forfeiture proceeding
11 shall be set for hearing.

12 H. At the hearing the petitioner shall prove by clear and
13 convincing evidence that property was used in the attempt or
14 commission of an act specified in subsection A of this section or is
15 property described in subsection B of this section with knowledge by
16 the owner of the property.

17 I. The claimant of any right, title, or interest in the
18 property may prove the lien, mortgage, or conditional sales contract
19 to be bona fide and that the right, title, or interest created by
20 the document was created without any knowledge or reason to believe
21 that the property was being, or was to be, used for the purpose
22 charged.

23 J. In the event of such proof, the court may order the property
24 released to the bona fide or innocent owner, lien holder, mortgagee,

1 or vendor if the amount due such person is equal to, or in excess
2 of, the value of the property as of the date of the seizure, it
3 being the intention of this section to forfeit only the right,
4 title, or interest of the purchaser, except for items bearing a
5 counterfeit mark or used exclusively to manufacture a counterfeit
6 mark.

7 K. If the amount due to such person is less than the value of
8 the property, or if no bona fide claim is established, the property
9 may be forfeited to the state and may be sold pursuant to judgment
10 of the court, as on sale upon execution, and as provided in Section
11 2-508 of Title 63 of the Oklahoma Statutes, except as otherwise
12 provided for by law and for property bearing a counterfeit mark
13 which shall be destroyed.

14 L. Property taken or detained pursuant to this section shall
15 not be repleviable, but shall be deemed to be in the custody of the
16 petitioner or in the custody of the law enforcement agency as
17 provided in the Trademark Anti-Counterfeiting Act. Except for
18 property required to be destroyed pursuant to the Trademark Anti-
19 Counterfeiting Act, the petitioner shall release said property to
20 the owner of the property if it is determined that the owner had no
21 knowledge of the illegal use of the property or if there is
22 insufficient evidence to sustain the burden of showing illegal use
23 of such property. If the owner of the property stipulates to the
24 forfeiture and waives the hearing, the petitioner may determine if

1 the value of the property is equal to or less than the outstanding
2 lien. If such lien exceeds the value of the property, the property
3 may be released to the lien holder. Property which has not been
4 released by the petitioner shall be subject to the orders and
5 decrees of the court or the official having jurisdiction thereof.

6 M. The petitioner, or the law enforcement agency holding
7 property pursuant to the Trademark Anti-Counterfeiting Act, shall
8 not be held civilly liable for having custody of the seized property
9 or proceeding with a forfeiture action as provided for in this
10 section.

11 N. Attorney fees shall not be assessed against the state or the
12 petitioner for any actions or proceeding pursuant to Section 1701 et
13 seq. of this title.

14 O. The proceeds of the sale of any property shall be
15 distributed as follows, in the order indicated:

16 1. To the bona fide or innocent purchaser, conditional sales
17 vendor, or mortgagee of the property, if any, up to the amount of
18 such person's interest in the property, when the court declaring the
19 forfeiture orders a distribution to such person;

20 2. To the payment of the actual reasonable expenses of
21 preserving the property;

22 3. To the victim of the crime to compensate said victim for any
23 loss incurred as a result of the act for which such property was
24 forfeited; and

1 4. The balance to a revolving fund in the office of the county
2 treasurer of the county wherein the property was seized, to be
3 distributed as follows: one-third (1/3) to the investigating law
4 enforcement agency; one-third (1/3) of said fund to be used and
5 maintained as a revolving fund by the district attorney for the
6 victim-witness fund, a reward fund or the evidence fund; and one-
7 third (1/3) to go to the jail maintenance fund, with a yearly
8 accounting to the board of county commissioners in whose county the
9 fund is established. If the petitioner is not the district
10 attorney, then the one-third (1/3) which would have been designated
11 to that office shall be distributed to the petitioner. Monies
12 distributed to the jail maintenance fund shall be used to pay costs
13 for the storage of such property if such property is ordered
14 released to a bona fide or innocent owner, lien holder, mortgagee,
15 or vendor and if such funds are available in said fund.

16 P. Monies distributed into the revolving fund in the office of
17 the county treasurer from forfeitures initiated under this section
18 by the district attorney shall be limited to One Hundred Thousand
19 Dollars (\$100,000.00) at any one time in counties with population in
20 excess of three hundred thousand (300,000) and Twenty-five Thousand
21 Dollars (\$25,000.00) at any one time in counties with population
22 less than three hundred thousand (300,000). Any amount in excess of
23 these figures shall be placed in the general fund of the county.

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1 Q. If the court finds that the property was not used in the
2 attempt or commission of an act specified in subsection A of this
3 section and was not property subject to forfeiture pursuant to
4 subsection B of this section and is not property bearing a
5 counterfeit mark, the court shall order the property released to the
6 owner as the right, title, or interest appears on record in the Tax
7 Commission as of the seizure.

8 R. No vehicle, airplane, or vessel used by a person as a common
9 carrier in the transaction of business as a common carrier shall be
10 forfeited pursuant to the provisions of this section unless it shall
11 be proven that the owner or other person in charge of such
12 conveyance was a consenting party or privy to the attempt or
13 commission of an act specified in subsection A or B of this section.
14 No property shall be forfeited pursuant to the provisions of this
15 section by reason of any act or omission established by the owner
16 thereof to have been committed or omitted without the knowledge or
17 consent of such owner, and by any person other than such owner while
18 such property was unlawfully in the possession of a person other
19 than the owner in violation of the criminal laws of the United
20 States or of any state.

21 S. Whenever any property is forfeited pursuant to this section,
22 the district court having jurisdiction of the proceeding may order
23 that the forfeited property may be retained for its official use by
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1 the state, county, or municipal law enforcement agency which seized
2 the property.

3 SECTION 3. This act shall become effective November 1, 2009.

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5 52-1-7874 GRS 04/29/09

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