

1 STATE OF OKLAHOMA

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

3 COMMITTEE SUBSTITUTE
4 FOR
5 HOUSE BILL NO. 2080

By: Wesselhoft

6
7 COMMITTEE SUBSTITUTE

8 An Act relating to gangs; amending 21 O.S. 2001, Section 856, which relates to
9 contributing to the delinquency of minors; making certain acts unlawful;
10 providing penalties; defining terms; and providing an effective date.

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

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

14 Section 856. A. 1. Except as otherwise specifically provided by law, every person who shall
15 knowingly or willfully cause, aid, abet or encourage a minor to be, to remain, or to become a
16 delinquent child or a runaway child shall, upon conviction, ~~shall~~, for the first offense, be guilty of a
17 misdemeanor punishable by imprisonment in a county jail not to exceed one (1) year, or by a fine not
18 to exceed One Thousand Dollars (\$1,000.00), or by both such fine and imprisonment.

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

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

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

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

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

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

14 G. “Criminal street gang” means any ongoing organization, association, or group of five or more
15 persons that specifically either promotes, sponsors, or assists in, or participates in, and requires as a
16 condition of membership or continued membership, the commission of one or more of the following
17 criminal acts:

- 18 1. Assault, battery, or assault and battery with a deadly weapon, as defined in Section 645 of this
19 title;
 - 20 2. Aggravated assault and battery as defined by Section 646 of this title;
 - 21 3. Robbery by force or fear, as defined in Sections 791 through 797 of this title;
 - 22 4. Robbery or attempted robbery with a dangerous weapon or imitation firearm, as defined by
23 Section 801 of this title;
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1 5. Unlawful homicide or manslaughter, as defined in Sections 691 through 722 of this title;

2 6. The sale, possession for sale, transportation, manufacture, offer for sale, or offer to
3 manufacture controlled dangerous substances, as defined in Section 2-101 et seq. of Title 63 of the
4 Oklahoma Statutes;

5 7. Trafficking in illegal drugs, as provided for in the Trafficking in Illegal Drugs Act, Section 2-
6 414 of Title 63 of the Oklahoma Statutes;

7 8. Arson, as defined in Sections 1401 through 1403 of this title;

8 9. The influence or intimidation of witnesses and jurors, as defined in Sections 388, 455 and 545
9 of this title;

10 10. Theft of any vehicle, as described in Section 1720 of this title;

11 11. Rape, as defined in Section 1111 of this title;

12 12. Extortion, as defined in Section 1481 of this title;

13 13. Transporting a loaded firearm in a motor vehicle, in violation of Section 1289.13 of this title;

14 14. ~~Transporting a weapon in, or discharging a weapon from, a boat, in violation of Section~~
15 ~~1289.14 of this title;~~

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

17 ~~16.~~ 15. Shooting or discharging a firearm, as defined by Section 652 of this title.

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

1 I. “Actively participates” means that the person has a current relationship with the criminal
2 street gang that is more than in name only, passive, inactive or purely technical and who devotes all or
3 a substantial part of time or efforts of the person to the criminal street gang.

4 SECTION 2. This act shall become effective November 1, 2009.

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