

THE HOUSE OF REPRESENTATIVES  
Monday, February 16, 2009

Committee Substitute for  
House Bill No. 2080

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 2080 - By: WESSELHOFT of the House.

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

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

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

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

9 2. For purposes of prosecution under this subsection, a “runaway child” means an  
10 unemancipated minor who is voluntarily absent from the home without a compelling  
11 reason, without the consent of a custodial parent or other custodial adult and without the  
12 parent or other custodial adult's knowledge as to the child's whereabouts. “Compelling

1 reason” means imminent danger from incest, a life-threatening situation, or equally  
2 traumatizing circumstance. A person aiding a runaway child pursuant to paragraph (4)  
3 of subsection (a) of Section 5 of Title 76 of the Oklahoma Statutes or aiding a child based  
4 upon a reasonable belief that the child is in physical, mental or emotional danger and  
5 with notice to the Department of Human Services or a local law enforcement agency of  
6 the location of the child within twelve (12) hours of aiding the child shall not be subject to  
7 prosecution under this section.

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

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

18 D. Every person who shall knowingly or willfully cause, aid, abet, encourage,  
19 solicit, or recruit a minor to participate, join, or associate with any criminal street gang,  
20 as defined by subsection F of this section, or any gang member for the purpose of  
21 committing any criminal act shall, upon conviction, be guilty of a felony punishable by  
22 imprisonment in the custody of the Department of Corrections for a term not to exceed

1 one (1) year, or a fine not to exceed Three Thousand Dollars (\$3,000.00), or both such fine  
2 and imprisonment.

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

8 F. Any person who actively participates in or is a member of a criminal street gang  
9 with knowledge that the criminal street gang engages in or has engaged in a pattern of  
10 criminal gang activity, and who knowingly and willfully participates in any predicate  
11 criminal act committed for the benefit of, at the direction of, or in association with any  
12 criminal street gang shall, upon conviction, be guilty of a misdemeanor punishable by  
13 imprisonment in the county jail for a term of not less than ninety (90) days, or by a fine  
14 not to exceed One Thousand Dollars (\$1,000.00), or by both such fine and imprisonment.  
15 Any participant or member of a criminal street gang who is eighteen (18) years of age or  
16 older and who knows or has reason to know that such criminal street gang also includes  
17 a juvenile member or juvenile participant shall, upon conviction, be guilty of a  
18 misdemeanor punishable by imprisonment in the county jail for a term of not less than  
19 one hundred eighty (180) days, or by a fine not to exceed Two Thousand Dollars  
20 (\$2,000.00), or by both such fine and imprisonment.

21 G. “Criminal street gang” means any ongoing organization, association, or group of  
22 five or more persons that specifically either promotes, sponsors, or assists in, or

UNDERLINED language denotes Amendments to present Statutes.  
**BOLD FACE CAPITALIZED** language denotes Committee Amendments.  
~~Strike thru~~ language denotes deletion from present Statutes.

- 1 participates in, and requires as a condition of membership or continued membership, the  
2 commission of one or more of the following criminal acts:
- 3 1. Assault, battery, or assault and battery with a deadly weapon, as defined in  
4 Section 645 of this title;
  - 5 2. Aggravated assault and battery as defined by Section 646 of this title;
  - 6 3. Robbery by force or fear, as defined in Sections 791 through 797 of this title;
  - 7 4. Robbery or attempted robbery with a dangerous weapon or imitation firearm, as  
8 defined by Section 801 of this title;
  - 9 5. Unlawful homicide or manslaughter, as defined in Sections 691 through 722 of  
10 this title;
  - 11 6. The sale, possession for sale, transportation, manufacture, offer for sale, or offer  
12 to manufacture controlled dangerous substances, as defined in Section 2-101 et seq. of  
13 Title 63 of the Oklahoma Statutes;
  - 14 7. Trafficking in illegal drugs, as provided for in the Trafficking in Illegal Drugs  
15 Act, Section 2-414 of Title 63 of the Oklahoma Statutes;
  - 16 8. Arson, as defined in Sections 1401 through 1403 of this title;
  - 17 9. The influence or intimidation of witnesses and jurors, as defined in Sections 388,  
18 455 and 545 of this title;
  - 19 10. Theft of any vehicle, as described in Section 1720 of this title;
  - 20 11. Rape, as defined in Section 1111 of this title;
  - 21 12. Extortion, as defined in Section 1481 of this title;

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

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

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

6 ~~16.~~ 15. Shooting or discharging a firearm, as defined by Section 652 of this title.

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

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

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

16 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02-12-09 - DO PASS,  
17 As Amended.