

THE HOUSE OF REPRESENTATIVES

Wednesday, March 31, 2010

Committee Substitute for

ENGROSSED

Senate Bill No. 2018

COMMITTEE SUBSTITUTE FOR ENGROSSED SENATE BILL NO. 2018 - By: SYKES, GARRISON AND ELLIS of the Senate and JOHNSON of the House.

[ gangs - minimum sentencing - providing penalty - authorizing report - providing immunity - codification - effective date ]

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

1 SECTION 1. AMENDATORY 21 O.S. 2001, Section 13.1, as last amended by  
2 Section 117, Chapter 234, O.S.L. 2009 (21 O.S. Supp. 2009, Section 13.1), is amended to  
3 read as follows:

4 Section 13.1 Persons convicted of:

- 5 1. First degree murder as defined in Section 701.7 of this title;
- 6 2. Second degree murder as defined by Section 701.8 of this title;
- 7 3. Manslaughter in the first degree as defined by Section 711 of this title;
- 8 4. Poisoning with intent to kill as defined by Section 651 of this title;
- 9 5. Shooting with intent to kill, use of a vehicle to facilitate use of a firearm,
- 10 crossbow or other weapon, assault, battery, or assault and battery with a deadly weapon
- 11 or by other means likely to produce death or great bodily harm, as provided for in Section
- 12 652 of this title;

- 1           6. Assault with intent to kill as provided for in Section 653 of this title;
- 2           7. Conjoint robbery as defined by Section 800 of this title;
- 3           8. Robbery with a dangerous weapon as defined in Section 801 of this title;
- 4           9. First degree robbery as defined in Section 797 of this title;
- 5           10. First degree rape as provided for in Section 1115 of this title;
- 6           11. First degree arson as defined in Section 1401 of this title;
- 7           12. First degree burglary as provided for in Section 1436 of this title;
- 8           13. Bombing as defined in Section 1767.1 of this title;
- 9           14. Any crime against a child provided for in Section 843.5 of this title;
- 10          15. Forcible sodomy as defined in Section 888 of this title;
- 11          16. Child pornography as defined in Section 1021.2, 1021.3 or 1024.1 of this title;
- 12          17. Child prostitution as defined in Section 1030 of this title;
- 13          18. Lewd molestation of a child as defined in Section 1123 of this title;
- 14          19. Abuse of a vulnerable adult as defined in Section 10-103 of Title 43A of the
- 15 Oklahoma Statutes who is a resident of a nursing facility; ~~or~~
- 16          20. Aggravated trafficking as provided for in subsection C of Section 2-415 of Title
- 17 63 of the Oklahoma Statutes; or
- 18          21. Aggravated assault and battery upon a peace officer as provided in Section 650
- 19 of this title,
- 20 shall be required to serve not less than eighty-five percent (85%) of any sentence of
- 21 imprisonment imposed by the judicial system prior to becoming eligible for consideration
- 22 for parole. Persons convicted of these offenses shall not be eligible for earned credits or

1 any other type of credits which have the effect of reducing the length of the sentence to  
2 less than eighty-five percent (85%) of the sentence imposed.

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

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

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

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

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

11 D. Every person who shall knowingly or willfully cause, aid, abet, encourage,  
12 solicit, or recruit a minor to participate, join, or associate with any criminal street gang,  
13 as defined by subsection F of this section, or any gang member for the purpose of  
14 committing any criminal act shall, upon conviction, be guilty of a felony punishable by  
15 imprisonment in the custody of the Department of Corrections for a term of not to exceed  
16 ~~one (1) year~~ more than five (5) years, or a fine not to exceed ~~Three Thousand Dollars~~  
17 ~~(\$3,000.00)~~ Five Thousand Dollars (\$5,000.00), or both such fine and imprisonment.

18 E. Every person convicted of a second or subsequent violation of subsection D of  
19 this section shall be guilty of a felony punishable by imprisonment in the ~~State~~  
20 Penitentiary custody of the Department of Corrections for a term ~~not to exceed~~ less than  
21 five (5) years nor more than ten (10) years, or by a fine not exceeding Five Thousand  
22 Dollars (\$5,000.00), or by both such fine and imprisonment.

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

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

7 2. Aggravated assault and battery as defined by Section 646 of this title;

8 3. Robbery by force or fear, as defined in Sections 791 through 797 of this title;

9 4. Robbery or attempted robbery with a dangerous weapon or imitation firearm, as  
10 defined by Section 801 of this title;

11 5. Unlawful homicide or manslaughter, as defined in Sections 691 through 722 of  
12 this title;

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

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

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

19 9. The influence or intimidation of witnesses and jurors, as defined in Sections 388,  
20 455 and 545 of this title;

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

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

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

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

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

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

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

8 SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma  
9 Statutes as Section 856.3 of Title 21, unless there is created a duplication in numbering,  
10 reads as follows:

11 Any person who attempts or commits a gang-related offense as a condition of  
12 membership in a criminal street gang or while in association with any criminal street  
13 gang or gang member shall be guilty of a felony offense. Upon conviction, the violator  
14 shall be punished by incarceration in the custody of the Department of Corrections for a  
15 term of five (5) years, which shall be in addition to any other penalty imposed. For  
16 purposes of this section, “criminal street gang” is defined by subsection F of Section 856  
17 of Title 21 of the Oklahoma Statutes and “gang-related offense” means those offenses  
18 enumerated in paragraphs 1 through 15 of subsection F of Section 856 of Title 21 of the  
19 Oklahoma Statutes.

20 SECTION 4. This act shall become effective November 1, 2010.

21 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 03-30-10 - DO PASS,  
22 As Amended.