

THE HOUSE OF REPRESENTATIVES
Wednesday, April 8, 2009

Committee Substitute for
ENGROSSED
Senate Bill No. 826

COMMITTEE SUBSTITUTE FOR ENGROSSED SENATE BILL NO. 826 - By: SYKES,
LEFTWICH, BROGDON AND IVESTER of the Senate and JOHNSON of the House.

An Act relating to gangs; amending 21 O.S. 2001, Section 856, which relates to contributing to the delinquency of a minor; modifying penalties; deleting certain offense; making certain gang-related acts unlawful; providing penalty; defining terms; requiring school employees to report certain gang activities; authorizing certain report be made to local law enforcement; providing immunity for civil or criminal liability; providing for codification; and providing an effective date.

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, 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

1 reason, without the consent of a custodial parent or other custodial adult and without the
2 parent or other custodial adult's knowledge as to the child's whereabouts. "Compelling
3 reason" means imminent danger from incest, a life-threatening situation, or equally
4 traumatizing circumstance. A person aiding a runaway child pursuant to paragraph (4)
5 of subsection (a) of Section 5 of Title 76 of the Oklahoma Statutes or aiding a child based
6 upon a reasonable belief that the child is in physical, mental or emotional danger and
7 with notice to the Department of Human Services or a local law enforcement agency of
8 the location of the child within twelve (12) hours of aiding the child shall not be subject to
9 prosecution under this section.

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

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

20 D. Every person who shall knowingly or willfully cause, aid, abet, encourage,
21 solicit, or recruit a minor to participate, join, or associate with any criminal street gang,
22 as defined by subsection F of this section, or any gang member for the purpose of

1 committing any criminal act shall, upon conviction, be guilty of a felony punishable by
2 imprisonment in the custody of the Department of Corrections for a term of not to exceed
3 ~~one (1) year~~ more than five (5) years, or a fine not to exceed ~~Three Thousand Dollars~~
4 ~~(\$3,000.00)~~ Five Thousand Dollars (\$5,000.00), or both such fine and imprisonment.

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

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

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

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

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

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

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

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

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

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

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

14 14. ~~Transporting a weapon in, or discharging a weapon from, a boat, in violation of~~
15 ~~Section 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 SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma
19 Statutes as Section 856.3 of Title 21, unless there is created a duplication in numbering,
20 reads as follows:

21 Any person who attempts or commits a gang-related offense as a condition of
22 membership in a criminal street gang or while in association with any criminal street

1 gang or gang member shall be guilty of a felony offense. Upon conviction, the violator
2 shall be punished by incarceration in the custody of the Department of Corrections for a
3 term of five (5) years, which shall be in addition to any other penalty imposed. For
4 purposes of this section, “criminal street gang” is defined by subsection F of Section 856
5 of Title 21 of the Oklahoma Statutes and “gang-related offense” means those offenses
6 enumerated in paragraphs 1 through 15 of subsection F of Section 856 of Title 21 of the
7 Oklahoma Statutes.

8 SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma
9 Statutes as Section 5-146.1 of Title 70, unless there is created a duplication in
10 numbering, reads as follows:

11 A. Any school employee, as defined by subsection A of Section 650.7 of Title 21 of
12 the Oklahoma Statutes, who has reason to believe that a child under the age of eighteen
13 (18) years is involved in gang activity shall notify the superintendent of the school
14 district or a designated school employee as prescribed in a policy adopted by the board of
15 education of the school district pursuant to this section. The designated school employee
16 shall report the information to the superintendent. Upon receiving a report, the
17 superintendent may report the matter promptly to the nearest local law enforcement
18 agency. The report may be made by telephone, in writing, personally or by any other
19 method prescribed by the board of education of the school district.

20 B. A school employee or school superintendent who, in good faith and exercising
21 due care, makes a report pursuant to subsection A of this section, shall be granted

1 immunity from all civil or criminal liability which might be incurred or imposed by
2 making the report.

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

4 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 04-07-09 - DO PASS,
5 As Amended and Coauthored.