

1 THE STATE SENATE
2 Tuesday, March 31, 2009

3 ENGROSSED

4 House Bill No. 2080

5 As Amended

6 ENGROSSED HOUSE BILL NO. 2080 - By: Wesselhoft, Reynolds,
7 Morrissette, Johnson, Blackwell, Cox, Liebmann, Pittman and Sears of
8 the House and Sykes of the Senate.

9 [gangs - contributing to the delinquency of minors -
10 penalties - effective date]

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

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

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

22 2. For purposes of prosecution under this subsection, a
23 "runaway child" means an unemancipated minor who is voluntarily
24 absent from the home without a compelling reason, without the
25 consent of a custodial parent or other custodial adult and without

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

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

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

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

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

16 F. Any person who actively participates in or is a member of a
17 criminal street gang with knowledge that the criminal street gang
18 engages in or has engaged in a pattern of criminal gang activity,
19 and who knowingly and willfully participates in any predicate
20 criminal act committed for the benefit of, at the direction of, or
21 in association with any criminal street gang shall, upon conviction,
22 be guilty of a misdemeanor punishable by imprisonment in the county
23 jail for a term of not less than ninety (90) days, or by a fine not

1 to exceed One Thousand Dollars (\$1,000.00), or by both such fine and
2 imprisonment. Any participant or member of a criminal street gang
3 who is eighteen (18) years of age or older and who knows or has
4 reason to know that such criminal street gang also includes a
5 juvenile member or juvenile participant shall, upon conviction, be
6 guilty of a misdemeanor punishable by imprisonment in the county
7 jail for a term of not less than one hundred eighty (180) days, or
8 by a fine not to exceed Two Thousand Dollars (\$2,000.00), or by both
9 such fine and imprisonment.

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

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

1 5. Unlawful homicide or manslaughter, as defined in Sections
2 691 through 722 of this title;

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

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

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

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

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

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

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

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

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

22 15. Possession of a concealed weapon, as defined by Section
23 1289.8 of this title; or

1 ~~16.~~ 15. Shooting or discharging a firearm, as defined by
2 Section 652 of this title.

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

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

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

14 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 3-25-09 - DO
15 PASS, As Amended and Coauthored.