

SB 2018

THE STATE SENATE
Tuesday, February 16, 2010

Senate Bill No. 2018
As Amended

SENATE BILL NO. 2018 - By: Sykes 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:

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

Section 13.1 Persons convicted of:

- 1. First degree murder as defined in Section 701.7 of this title;
- 2. Second degree murder as defined by Section 701.8 of this title;
- 3. Manslaughter in the first degree as defined by Section 711 of this title;
- 4. Poisoning with intent to kill as defined by Section 651 of this title;
- 5. Shooting with intent to kill, use of a vehicle to facilitate use of a firearm, crossbow or other weapon, assault, battery, or assault and battery with a deadly weapon or by other means likely to

1 produce death or great bodily harm, as provided for in Section 652
2 of this title;

3 6. Assault with intent to kill as provided for in Section 653
4 of this title;

5 7. Conjoint robbery as defined by Section 800 of this title;

6 8. Robbery with a dangerous weapon as defined in Section 801 of
7 this title;

8 9. First degree robbery as defined in Section 797 of this
9 title;

10 10. First degree rape as provided for in Section 1115 of this
11 title;

12 11. First degree arson as defined in Section 1401 of this
13 title;

14 12. First degree burglary as provided for in Section 1436 of
15 this title;

16 13. Bombing as defined in Section 1767.1 of this title;

17 14. Any crime against a child provided for in Section 843.5 of
18 this title;

19 15. Forcible sodomy as defined in Section 888 of this title;

20 16. Child pornography as defined in Section 1021.2, 1021.3 or
21 1024.1 of this title;

22 17. Child prostitution as defined in Section 1030 of this
23 title;

1 18. Lewd molestation of a child as defined in Section 1123 of
2 this title;

3 19. Abuse of a vulnerable adult as defined in Section 10-103 of
4 Title 43A of the Oklahoma Statutes who is a resident of a nursing
5 facility; ~~or~~

6 20. Aggravated trafficking as provided for in subsection C of
7 Section 2-415 of Title 63 of the Oklahoma Statutes; or

8 21. Aggravated assault and battery upon a peace officer as
9 provided in Section 650 of this title,
10 shall be required to serve not less than eighty-five percent (85%)
11 of any sentence of imprisonment imposed by the judicial system prior
12 to becoming eligible for consideration for parole. Persons
13 convicted of these offenses shall not be eligible for earned credits
14 or any other type of credits which have the effect of reducing the
15 length of the sentence to less than eighty-five percent (85%) of the
16 sentence imposed.

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

19 Section 856. A. 1. Except as otherwise specifically provided
20 by law, every person who shall knowingly or willfully cause, aid,
21 abet or encourage a minor to be, to remain, or to become a
22 delinquent child or a runaway child, upon conviction, shall, for the
23 first offense, be guilty of a misdemeanor punishable by imprisonment

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

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

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

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

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

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

1 Five Thousand Dollars (\$5,000.00), or by both such fine and
2 imprisonment.

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

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

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

12 3. Robbery by force or fear, as defined in Sections 791 through
13 797 of this title;

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

16 5. Unlawful homicide or manslaughter, as defined in Sections
17 691 through 722 of this title;

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

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

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

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

8 10. Theft of any vehicle, as described in Section 1720 of this
9 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
13 violation of Section 1289.13 of this title;

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

16 ~~15.~~ Possession of a concealed weapon, as defined by Section
17 1289.8 of this title; or

18 ~~16.~~ 15. Shooting or discharging a firearm, as defined by
19 Section 652 of this title.

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

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

12 SECTION 4. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 5-146.1 of Title 70, unless
14 there is created a duplication in numbering, reads as follows:

15 A. Any school employee, as defined by subsection A of Section
16 650.7 of Title 21 of the Oklahoma Statutes, who has reason to
17 believe that a child under the age of eighteen (18) years is
18 involved in gang activity shall notify the superintendent of the
19 school district or a designated school employee as prescribed in a
20 policy adopted by the board of education of the school district
21 pursuant to this section. The designated school employee shall
22 report the information to the superintendent. Upon receiving a
23 report, the superintendent may report the matter promptly to the

1 nearest local law enforcement agency. The report may be made by
2 telephone, in writing, personally or by any other method prescribed
3 by the board of education of the school district.

4 B. A school employee or school superintendent who, in good
5 faith and exercising due care, makes a report pursuant to subsection
6 A of this section, shall be granted immunity from all civil or
7 criminal liability which might be incurred or imposed by making the
8 report.

9 SECTION 5. This act shall become effective November 1, 2010.

10 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 2-10-10 - DO
11 PASS, As Amended and Coauthored.