

SB 826

Senate Bill No. 826
As Amended

SENATE BILL NO. 826 - By: Sykes of the Senate and Johnson of the House.

[gangs - delinquency of a minor - codification - effective date]

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

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

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

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

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

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

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

22 D. Every person who shall knowingly or willfully cause, aid,
23 abet, encourage, solicit, or recruit a minor to participate, join,

1 or associate with any criminal street gang, as defined by subsection
2 F of this section, or any gang member for the purpose of committing
3 any criminal act shall, upon conviction, be guilty of a felony
4 punishable by imprisonment in the custody of the Department of
5 Corrections for a term of not to exceed one (1) year more than five
6 (5) years, or a fine not to exceed ~~Three Thousand Dollars~~
7 ~~(\$3,000.00)~~ Five Thousand Dollars (\$5,000.00), or both such fine and
8 imprisonment.

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

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

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

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

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

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

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

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

9 SECTION 2. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 856.3 of Title 21, unless there
11 is created a duplication in numbering, reads as follows:

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

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

4 A. Any school employee, as defined by subsection A of Section
5 650.7 of Title 21 of the Oklahoma Statutes, who has reason to
6 believe that a child under the age of eighteen (18) years is
7 involved in gang activity shall notify the school superintendent of
8 the school district. Upon receiving such report, the school
9 superintendent may report the matter promptly to the nearest local
10 law enforcement agency. The report may be made by telephone, in
11 writing, personally or by any other method prescribed by the school
12 district.

13 B. A school employee or school superintendent who, in good
14 faith and exercising due care in the making of a report pursuant to
15 subsection A of this section, shall be granted immunity from all
16 civil or criminal liability which might be incurred or imposed by
17 making such report.

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

19 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 2-18-09 - DO
20 PASS, As Amended and Coauthored.