

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 HOUSE BILL 2080

By: Wesselhoft

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5  
6 AS INTRODUCED

7 An Act relating to gangs; amending 21 O.S. 2001,  
8 Section 856, which relates to contributing to the  
9 delinquency of minors; making certain acts unlawful;  
providing penalties; defining terms; and providing an  
effective date.

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

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

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

23 2. For purposes of prosecution under this subsection, a  
24 "runaway child" means an unemancipated minor who is voluntarily

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

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

18 C. Every person eighteen (18) years of age or older who shall  
19 knowingly or willfully cause, aid, abet, or encourage a minor to  
20 commit or participate in committing an act that would be a felony if  
21 committed by an adult shall, upon conviction, be guilty of a felony  
22 punishable by the maximum penalty allowed for conviction of the  
23 offense or offenses which the person caused, aided, abetted, or  
24 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 any criminal street  
17 gang with knowledge that its members engage in or have engaged in a  
18 pattern of criminal gang activity shall, upon conviction, be guilty  
19 of a misdemeanor punishable by imprisonment in the county jail for a  
20 term not to exceed one (1) year, or by a fine not to exceed One  
21 Thousand Dollars (\$1,000.00), or by both such fine and imprisonment.

22 G. "Criminal street gang" means any ongoing organization,  
23 association, or group of five or more persons that specifically  
24 either promotes, sponsors, or assists in, or participates in, and

1 requires as a condition of membership or continued membership, the  
2 commission of one or more of the following criminal acts:

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

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

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

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

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

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

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

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

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

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- 1        10. Theft of any vehicle, as described in Section 1720 of this  
2 title;
- 3        11. Rape, as defined in Section 1111 of this title;
- 4        12. Extortion, as defined in Section 1481 of this title;
- 5        13. Transporting a loaded firearm in a motor vehicle, in  
6 violation of Section 1289.13 of this title;
- 7        ~~14. Transporting a weapon in, or discharging a weapon from, a~~  
8 ~~boat, in violation of Section 1289.14 of this title;~~
- 9        ~~15.~~ Possession of a concealed weapon, as defined by Section  
10 1289.8 of this title; or
- 11        ~~16.~~ 15. Shooting or discharging a firearm, as defined by  
12 Section 652 of this title.

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

18        I. "Actively participates" means that the person has a current  
19 relationship with the criminal street gang that is more than in name  
20 only, passive, inactive or purely technical and who devotes all or a  
21 substantial part of time or efforts of the person to the criminal  
22 street gang.

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

52-1-5053            GRS            12/05/08