

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 HOUSE BILL 2568

By: Wesselhoft and Morrisette

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6 AS INTRODUCED

7 An Act relating to crimes and punishments; amending  
8 21 O.S. 2001, Section 856, which relates to  
9 contributing to the delinquency of minors; modifying  
10 scope of certain definition; amending 21 O.S. 2001,  
11 Section 1738, as last amended by Section 5, Chapter  
12 2, O.S.L. 2009 (21 O.S. Supp. 2009, Section 1738),  
13 which relates to seizure and forfeiture proceedings;  
14 updating statutory reference; making certain property  
15 subject to forfeiture under certain circumstances;  
16 and providing an effective date.

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

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

20 Section 856. A. 1. Except as otherwise specifically provided  
21 by law, every person who shall knowingly or willfully cause, aid,  
22 abet or encourage a minor to be, to remain, or to become a  
23 delinquent child or a runaway child shall, upon conviction, ~~shall~~,  
24 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

1 fine not to exceed One Thousand Dollars (\$1,000.00), or by both such  
2 fine and imprisonment.

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

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

22       C. Every person eighteen (18) years of age or older who shall  
23 knowingly or willfully cause, aid, abet, or encourage a minor to  
24 commit or participate in committing an act that would be a felony if

1 committed by an adult shall, upon conviction, be guilty of a felony  
2 punishable by the maximum penalty allowed for conviction of the  
3 offense or offenses which the person caused, aided, abetted, or  
4 encouraged the minor to commit or participate in committing.

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

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

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

- 1        1. Assault, battery, or assault and battery with a deadly  
2 weapon, as defined in Section 645 of this title;
- 3        2. Aggravated assault and battery as defined by Section 646 of  
4 this title;
- 5        3. Robbery by force or fear, as defined in Sections 791 through  
6 797 of this title;
- 7        4. Robbery or attempted robbery with a dangerous weapon or  
8 imitation firearm, as defined by Section 801 of this title;
- 9        5. Unlawful homicide or manslaughter, as defined in Sections  
10 691 through 722 of this title;
- 11       6. The sale, possession for sale, transportation, manufacture,  
12 offer for sale, or offer to manufacture controlled dangerous  
13 substances, as defined in Section 2-101 et seq. of Title 63 of the  
14 Oklahoma Statutes;
- 15       7. Trafficking in illegal drugs, as provided for in the  
16 Trafficking in Illegal Drugs Act, Section 2-414 of Title 63 of the  
17 Oklahoma Statutes;
- 18       8. Arson, as defined in Sections 1401 through 1403 of this  
19 title;
- 20       9. The influence or intimidation of witnesses and jurors, as  
21 defined in Sections 388, 455 and 545 of this title;
- 22       10. Theft of any vehicle, as described in Section 1720 of this  
23 title;
- 24       11. Rape, as defined in Section 1111 of this title;

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

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

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

6 ~~15.~~ Possession of a concealed weapon, as defined by Section  
7 1289.8 of this title; or

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

10 SECTION 2. AMENDATORY 21 O.S. 2001, Section 1738, as  
11 last amended by Section 5, Chapter 2, O.S.L. 2009 (21 O.S. Supp.  
12 2009, Section 1738), is amended to read as follows:

13 Section 1738. A. Any commissioned peace officer of this state  
14 is authorized to seize any vehicle owned by or registered to the  
15 defendant used in the commission of any armed robbery offense  
16 defined in Section 801 of this title, or any vehicle owned by or  
17 registered to the defendant when such vehicle is used to facilitate  
18 the intentional discharge of any kind of firearm in violation of  
19 Section 652 of this title, or any vehicle, airplane, vessel,  
20 vehicles or parts of vehicles whose numbers have been removed,  
21 altered or obliterated so as to prevent determination of the true  
22 identity or ownership of said property and parts of vehicles which  
23 probable cause indicates are stolen but whose true ownership cannot  
24 be determined, or any vehicle owned by or registered to the

1 defendant used in violation of the Trademark Anti-Counterfeiting  
2 Act, or any equipment owned by or registered to the defendant which  
3 is used in the attempt or commission of any act of burglary in the  
4 first or second degree, motor vehicle theft, unauthorized use of a  
5 vehicle, obliteration of distinguishing numbers on vehicles or  
6 criminal possession of vehicles with altered, removed or obliterated  
7 numbers as defined by Sections 1431, 1435, 1716, 1719 and 1720 of  
8 this title or Sections 4-104 and 4-107 of Title 47 of the Oklahoma  
9 Statutes, or any equipment owned by or registered to the defendant  
10 used in violation of the Trademark Anti-Counterfeiting Act, or any  
11 vehicle, airplane, vessel or equipment owned by or registered to the  
12 defendant used in the commission of any arson offense defined in  
13 Section 1401, 1402, 1403, 1404 or 1405 of this title. Said property  
14 may be held as evidence until a forfeiture has been declared or a  
15 release ordered. Forfeiture actions under this section may be  
16 brought by the district attorney in the proper county of venue as  
17 petitioner; provided, in the event the district attorney elects not  
18 to file such action, or fails to file such action within ninety (90)  
19 days of the date of the seizure of such equipment, the property  
20 shall be returned to the owner.

21 B. In addition to the property described in subsection A of  
22 this section, the following property is also subject to forfeiture  
23 pursuant to this section:

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- 1        1. Property used in the commission of theft of livestock or in  
2 any manner to facilitate the theft of livestock;
- 3        2. The proceeds gained from the commission of theft of  
4 livestock;
- 5        3. Personal property acquired with proceeds gained from the  
6 commission of theft of livestock;
- 7        4. All conveyances, including aircraft, vehicles or vessels,  
8 and horses or dogs which are used to transport or in any manner to  
9 facilitate the transportation for the purpose of the commission of  
10 theft of livestock;
- 11       5. Any items having a counterfeit mark and all property that is  
12 owned by or registered to the defendant that is employed or used in  
13 connection with any violation of the Trademark Anti-Counterfeiting  
14 Act;
- 15       6. Any weapon possessed, used or available for use in any  
16 manner during the commission of a felony within the State of  
17 Oklahoma, or any firearm that is possessed by a convicted felon;
- 18       7. Any police scanner used in violation of Section 1214 of this  
19 title;
- 20       8. Any computer and its components and peripherals, including  
21 but not limited to the central processing unit, monitor, keyboard,  
22 printers, scanners, software, and hardware, when it is used in the  
23 commission of any crime in this state;

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1 9. All property used in the commission of, or in any manner to  
2 facilitate, a violation of Section ~~2~~ 1040.12a of this ~~act~~ title;

3 10. All conveyances, including aircraft, vehicles or vessels,  
4 monies, coins and currency, or other instrumentality used or  
5 intended to be used, in any manner or part, to commit a violation of  
6 paragraph 1 of subsection A of Section 1021 of this title, where the  
7 victim of the crime is a minor child, subsection B of Section 1021  
8 of this title, Section 1021.2 of this title, paragraph 1 of  
9 subsection A of Section 1111 of this title, or paragraphs 2 and 3 of  
10 subsection A of Section 1123 of this title; ~~and~~

11 11. All conveyances, including aircraft, vehicles or vessels,  
12 monies, coins and currency, or other instrumentality used in any  
13 manner or part, to commit any violation of the provisions set forth  
14 in Section 748 of this title; and

15 12. All conveyances, including vehicles or vessels, weapons,  
16 monies, coins and currency, or other instrumentality used in or  
17 obtained through an offense that was committed for the benefit of,  
18 at the direction of, or in association with any criminal street  
19 gang, as defined in Section 856 of this title.

20 C. Notice of seizure and intended forfeiture proceeding shall  
21 be filed in the office of the clerk of the district court for the  
22 county wherein such property is seized and shall be given all owners  
23 and parties in interest.

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1 D. Notice shall be given according to one of the following  
2 methods:

3 1. Upon each owner or party in interest whose right, title, or  
4 interest is of record in the Oklahoma Tax Commission or with the  
5 county clerk for filings under the Uniform Commercial Code, served  
6 in the manner of service of process in civil cases prescribed by  
7 Section 2004 of Title 12 of the Oklahoma Statutes;

8 2. Upon each owner or party in interest whose name and address  
9 is known, served in the manner of service of process in civil cases  
10 prescribed by Section 2004 of Title 12 of the Oklahoma Statutes; or

11 3. Upon all other owners, whose addresses are unknown, but who  
12 are believed to have an interest in the property by one publication  
13 in a newspaper of general circulation in the county where the  
14 seizure was made.

15 E. Within sixty (60) days after the mailing or publication of  
16 the notice, the owner of the property and any other party in  
17 interest or claimant may file a verified answer and claim to the  
18 property described in the notice of seizure and of the intended  
19 forfeiture proceeding.

20 F. If at the end of sixty (60) days after the notice has been  
21 mailed or published there is no verified answer on file, the court  
22 shall hear evidence upon the fact of the unlawful use and may order  
23 the property forfeited to the state, if such fact is proven.

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1 G. If a verified answer is filed, the forfeiture proceeding  
2 shall be set for hearing.

3 H. At the hearing the petitioner shall prove by clear and  
4 convincing evidence that property was used in the attempt or  
5 commission of an act specified in subsection A of this section or is  
6 property described in subsection B of this section with knowledge by  
7 the owner of the property.

8 I. The claimant of any right, title, or interest in the  
9 property may prove the lien, mortgage, or conditional sales contract  
10 to be bona fide and that the right, title, or interest created by  
11 the document was created without any knowledge or reason to believe  
12 that the property was being, or was to be, used for the purpose  
13 charged.

14 J. In the event of such proof, the court may order the property  
15 released to the bona fide or innocent owner, lien holder, mortgagee,  
16 or vendor if the amount due such person is equal to, or in excess  
17 of, the value of the property as of the date of the seizure, it  
18 being the intention of this section to forfeit only the right,  
19 title, or interest of the purchaser, except for items bearing a  
20 counterfeit mark or used exclusively to manufacture a counterfeit  
21 mark.

22 K. If the amount due to such person is less than the value of  
23 the property, or if no bona fide claim is established, the property  
24 may be forfeited to the state and may be sold pursuant to judgment

1 of the court, as on sale upon execution, and as provided in Section  
2 2-508 of Title 63 of the Oklahoma Statutes, except as otherwise  
3 provided for by law and for property bearing a counterfeit mark  
4 which shall be destroyed.

5 L. Property taken or detained pursuant to this section shall  
6 not be repleviable, but shall be deemed to be in the custody of the  
7 petitioner or in the custody of the law enforcement agency as  
8 provided in the Trademark Anti-Counterfeiting Act. Except for  
9 property required to be destroyed pursuant to the Trademark Anti-  
10 Counterfeiting Act, the petitioner shall release said property to  
11 the owner of the property if it is determined that the owner had no  
12 knowledge of the illegal use of the property or if there is  
13 insufficient evidence to sustain the burden of showing illegal use  
14 of such property. If the owner of the property stipulates to the  
15 forfeiture and waives the hearing, the petitioner may determine if  
16 the value of the property is equal to or less than the outstanding  
17 lien. If such lien exceeds the value of the property, the property  
18 may be released to the lien holder. Property which has not been  
19 released by the petitioner shall be subject to the orders and  
20 decrees of the court or the official having jurisdiction thereof.

21 M. The petitioner, or the law enforcement agency holding  
22 property pursuant to the Trademark Anti-Counterfeiting Act, shall  
23 not be held civilly liable for having custody of the seized property  
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1 or proceeding with a forfeiture action as provided for in this  
2 section.

3 N. Attorney fees shall not be assessed against the state or the  
4 petitioner for any actions or proceeding pursuant to Section 1701 et  
5 seq. of this title.

6 O. The proceeds of the sale of any property shall be  
7 distributed as follows, in the order indicated:

8 1. To the bona fide or innocent purchaser, conditional sales  
9 vendor, or mortgagee of the property, if any, up to the amount of  
10 such person's interest in the property, when the court declaring the  
11 forfeiture orders a distribution to such person;

12 2. To the payment of the actual reasonable expenses of  
13 preserving the property;

14 3. To the victim of the crime to compensate said victim for any  
15 loss incurred as a result of the act for which such property was  
16 forfeited; and

17 4. The balance to a revolving fund in the office of the county  
18 treasurer of the county wherein the property was seized, to be  
19 distributed as follows: one-third (1/3) to the investigating law  
20 enforcement agency; one-third (1/3) of said fund to be used and  
21 maintained as a revolving fund by the district attorney for the  
22 victim-witness fund, a reward fund or the evidence fund; and one-  
23 third (1/3) to go to the jail maintenance fund, with a yearly  
24 accounting to the board of county commissioners in whose county the

1 fund is established. If the petitioner is not the district  
2 attorney, then the one-third (1/3) which would have been designated  
3 to that office shall be distributed to the petitioner. Monies  
4 distributed to the jail maintenance fund shall be used to pay costs  
5 for the storage of such property if such property is ordered  
6 released to a bona fide or innocent owner, lien holder, mortgagee,  
7 or vendor and if such funds are available in said fund.

8 P. Monies distributed into the revolving fund in the office of  
9 the county treasurer from forfeitures initiated under this section  
10 by the district attorney shall be limited to One Hundred Thousand  
11 Dollars (\$100,000.00) at any one time in counties with population in  
12 excess of three hundred thousand (300,000) and Twenty-five Thousand  
13 Dollars (\$25,000.00) at any one time in counties with population  
14 less than three hundred thousand (300,000). Any amount in excess of  
15 these figures shall be placed in the general fund of the county.

16 Q. If the court finds that the property was not used in the  
17 attempt or commission of an act specified in subsection A of this  
18 section and was not property subject to forfeiture pursuant to  
19 subsection B of this section and is not property bearing a  
20 counterfeit mark, the court shall order the property released to the  
21 owner as the right, title, or interest appears on record in the Tax  
22 Commission as of the seizure.

23 R. No vehicle, airplane, or vessel used by a person as a common  
24 carrier in the transaction of business as a common carrier shall be

1 forfeited pursuant to the provisions of this section unless it shall  
2 be proven that the owner or other person in charge of such  
3 conveyance was a consenting party or privy to the attempt or  
4 commission of an act specified in subsection A or B of this section.  
5 No property shall be forfeited pursuant to the provisions of this  
6 section by reason of any act or omission established by the owner  
7 thereof to have been committed or omitted without the knowledge or  
8 consent of such owner, and by any person other than such owner while  
9 such property was unlawfully in the possession of a person other  
10 than the owner in violation of the criminal laws of the United  
11 States or of any state.

12 S. Whenever any property is forfeited pursuant to this section,  
13 the district court having jurisdiction of the proceeding may order  
14 that the forfeited property may be retained for its official use by  
15 the state, county, or municipal law enforcement agency which seized  
16 the property.

17 SECTION 3. This act shall become effective November 1, 2010.

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19 52-2-8430 GRS 12/15/09

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