

HOUSE BILL No. 2429

By Representative D. Williams

2-7

AN ACT concerning crimes and punishment; relating to fleeing and eluding a police officer; amending K.S.A. 2000 Supp. 8-1568 and 21-4704 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2000 Supp. 8-1568 is hereby amended to read as follows: 8-1568. (a) Any driver of a motor vehicle who willfully fails or refuses to bring such driver's vehicle to a stop, or who otherwise flees or attempts to elude a pursuing police vehicle or police bicycle, when given visual or audible signal to bring the vehicle to a stop, shall be guilty as provided by subsection (c)(1), (2) or (3). The signal given by the police officer may be by hand, voice, emergency light or siren. The officer giving such signal shall be in uniform, prominently displaying such officer's badge of office, and the officer's vehicle or bicycle shall be appropriately marked showing it to be an official police vehicle or police bicycle.

(b) Any driver who violates the provisions of subsection (a) and who: (1) Commits any of the following during a police pursuit: (A) Fails to stop for a police road block; (B) drives around tire deflating devices placed by a police officer; (C) engages in reckless driving as defined by K.S.A. 8-1566 and amendments thereto; (D) is involved in any motor vehicle accident or intentionally causes damage to property; or (E) commits five or more moving violations; or

(2) is attempting to elude capture for the commission of any felony, shall be guilty as provided in subsection (c)(4).

(c) (1) Every person convicted of violating subsection (a), upon a first conviction, shall be guilty of a class B nonperson misdemeanor.

(2) Every person convicted of violating subsection (a), upon a second conviction of such subsection, shall be guilty of a class A nonperson misdemeanor.

(3) Every person convicted of violating subsection (a), upon a third or subsequent conviction of such subsection, shall be guilty of a severity level 9, person felony.

(4) Every person convicted of violating subsection (b) shall be guilty of a severity level 9, person felony. *On a conviction of a violation of subsection (b), a person shall be sentenced to not less than one year's*

1 *imprisonment and fined not less than \$2,500. The person convicted must*
2 *serve at least one year's imprisonment before the person is granted pro-*
3 *bation, suspension or reduction of sentence or parole or is otherwise*
4 *released.*

5 (d) For the purpose of this section "conviction" means a final con-
6 viction without regard whether sentence was suspended or probation
7 granted after such conviction. Forfeiture of bail, bond or collateral de-
8 posited to secure a defendant's appearance in court, which forfeiture has
9 not been vacated, shall be equivalent to a conviction.

10 (e) The division of vehicles of the department of revenue shall pro-
11 mote public awareness of the provisions of this section when persons
12 apply for or renew such person's driver's license.

13 Sec. 2. K.S.A. 2000 Supp. 21-4704 is hereby amended to read as
14 follows: 21-4704. (a) For purposes of sentencing, the following sentencing
15 guidelines grid for nondrug crimes shall be applied in felony cases for
16 crimes committed on or after July 1, 1993:

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1 (b) The provisions of this section shall be applicable to the sentencing
2 guidelines grid for nondrug crimes. Sentences expressed in such grid
3 represent months of imprisonment.

4 (c) The sentencing guidelines grid is a two-dimensional crime severity
5 and criminal history classification tool. The grid's vertical axis is the crime
6 severity scale which classifies current crimes of conviction. The grid's
7 horizontal axis is the criminal history scale which classifies criminal
8 histories.

9 (d) The sentencing guidelines grid for nondrug crimes as provided in
10 this section defines presumptive punishments for felony convictions, sub-
11 ject to judicial discretion to deviate for substantial and compelling reasons
12 and impose a different sentence in recognition of aggravating and miti-
13 gating factors as provided in this act. The appropriate punishment for a
14 felony conviction should depend on the severity of the crime of conviction
15 when compared to all other crimes and the offender's criminal history.

16 (e) (1) The sentencing court has discretion to sentence at any place
17 within the sentencing range. The sentencing judge shall select the center
18 of the range in the usual case and reserve the upper and lower limits for
19 aggravating and mitigating factors insufficient to warrant a departure.

20 (2) In presumptive imprisonment cases, the sentencing court shall
21 pronounce the complete sentence which shall include the prison sen-
22 tence, the maximum potential reduction to such sentence as a result of
23 good time and the period of postrelease supervision at the sentencing
24 hearing. Failure to pronounce the period of postrelease supervision shall
25 not negate the existence of such period of postrelease supervision.

26 (3) In presumptive nonprison cases, the sentencing court shall pro-
27 nounce the prison sentence as well as the duration of the nonprison sanc-
28 tion at the sentencing hearing.

29 (f) Each grid block states the presumptive sentencing range for an
30 offender whose crime of conviction and criminal history place such of-
31 fender in that grid block. If an offense is classified in a grid block below
32 the dispositional line, the presumptive disposition shall be nonimprison-
33 ment. If an offense is classified in a grid block above the dispositional
34 line, the presumptive disposition shall be imprisonment. If an offense is
35 classified in grid blocks 5-H, 5-I or 6-G, the court may impose an optional
36 nonprison sentence upon making the following findings on the record:

37 (1) An appropriate treatment program exists which is likely to be
38 more effective than the presumptive prison term in reducing the risk of
39 offender recidivism; and

40 (2) the recommended treatment program is available and the of-
41 fender can be admitted to such program within a reasonable period of
42 time; or

43 (3) the nonprison sanction will serve community safety interests by

1 promoting offender reformation.

2 Any decision made by the court regarding the imposition of an optional
3 nonprison sentence if the offense is classified in grid blocks 5-H, 5-I or
4 6-G shall not be considered a departure and shall not be subject to appeal.

5 (g) The sentence for the violation of K.S.A. 21-3411, aggravated as-
6 sult against a law enforcement officer or K.S.A. 21-3415, aggravated
7 battery against a law enforcement officer and amendments thereto which
8 places the defendant's sentence in grid block 6-H or 6-I shall be pre-
9 sumed imprisonment. The court may impose an optional nonprison sen-
10 tence upon making a finding on the record that the nonprison sanction
11 will serve community safety interests by promoting offender reformation.
12 Any decision made by the court regarding the imposition of the optional
13 nonprison sentence, if the offense is classified in grid block 6-H or 6-I,
14 shall not be considered departure and shall not be subject to appeal.

15 (h) When a firearm is used to commit any person felony, the of-
16 fender's sentence shall be presumed imprisonment. The court may im-
17 pose an optional nonprison sentence upon making a finding on the record
18 that the nonprison sanction will serve community safety interests by pro-
19 moting offender reformation. Any decision made by the court regarding
20 the imposition of the optional nonprison sentence shall not be considered
21 a departure and shall not be subject to appeal.

22 (i) The sentence for the violation of the felony provision of K.S.A. 8-
23 1567, *subsection (b) of K.S.A. 8-1568* and subsection (c)(3) of K.S.A. 21-
24 3412 and amendments thereto shall be as provided by the specific man-
25 datory sentencing requirements of that section and shall not be subject
26 to the provisions of this section or K.S.A. 21-4707 and amendments
27 thereto. Notwithstanding the provisions of any other section, the term of
28 imprisonment imposed for the violation of the felony provision of K.S.A.
29 8-1567, *subsection (b) of K.S.A. 8-1568* and subsection (c)(3) of K.S.A.
30 21-3412 and amendments thereto shall not be served in a state facility in
31 the custody of the secretary of corrections.

32 (j) The sentence for any persistent sex offender whose current con-
33 victed crime carries a presumptive term of imprisonment shall be double
34 the maximum duration of the presumptive imprisonment term. The sen-
35 tence for any persistent sex offender whose current conviction carries a
36 presumptive nonprison term shall be presumed imprisonment and shall
37 be double the maximum duration of the presumptive imprisonment term.
38 Except as otherwise provided in this subsection, as used in this subsection,
39 "persistent sex offender" means a person who: (1) Has been convicted in
40 this state of a sexually violent crime, as defined in K.S.A. 22-3717 and
41 amendments thereto; and (2) at the time of the conviction under subsec-
42 tion (1) has at least one conviction for a sexually violent crime, as defined
43 in K.S.A. 22-3717 and amendments thereto in this state or comparable

1 felony under the laws of another state, the federal government or a for-
2 eign government. The provisions of this subsection shall not apply to any
3 person whose current convicted crime is a severity level 1 or 2 felony.

4 (k) If it is shown at sentencing that the offender committed any felony
5 violation for the benefit of, at the direction of, or in association with any
6 criminal street gang, with the specific intent to promote, further or assist
7 in any criminal conduct by gang members, the offender's sentence shall
8 be presumed imprisonment. Any decision made by the court regarding
9 the imposition of the optional nonprison sentence shall not be considered
10 a departure and shall not be subject to appeal. As used in this subsection,
11 "criminal street gang" means any organization, association or group of
12 three or more persons, whether formal or informal, having as one of its
13 primary activities the commission of one or more person felonies or felony
14 violations of the uniform controlled substances act, K.S.A. 65-4101 *et seq.*,
15 and amendments thereto, which has a common name or common iden-
16 tifying sign or symbol, whose members, individually or collectively engage
17 in or have engaged in the commission, attempted commission, conspiracy
18 to commit or solicitation of two or more person felonies or felony viola-
19 tions of the uniform controlled substances act, K.S.A. 65-4101 *et seq.*, and
20 amendments thereto, or any substantially similar offense from another
21 jurisdiction.

22 (l) The sentence for a violation of subsection (a) of K.S.A. 21-3715
23 and amendments thereto when such person being sentenced has a prior
24 conviction for a violation of subsection (a) or (b) of K.S.A. 21-3715 or 21-
25 3716 and amendments thereto shall be presumed imprisonment.

26 Sec. 3. K.S.A. 2000 Supp. 8-1568 and 21-4704 are hereby repealed.

27 Sec. 4. This act shall take effect and be in force from and after its
28 publication in the statute book.

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