

As Amended by House Committee

Session of 2009

HOUSE BILL No. 2235

By Committee on Corrections and Juvenile Justice

2-3

10 AN ACT concerning motor vehicles, relating to fleeing or eluding a po-
11 lice officer, amending K.S.A. 8-1568 and repealing the existing section
12 **crimes, punishment and criminal procedure; relating to fleeing**
13 **or eluding a police officer; criminal threat; aggravated criminal**
14 **threat; presentence investigation report; criminal history;**
15 **amending K.S.A. 8-1568, 21-3419 and 21-4715 and K.S.A. 2008**
16 **Supp. 21-3419a and 21-4714 and repealing the existing sections.**
17

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

19 Section 1. K.S.A. 8-1568 is hereby amended to read as follows: 8-
20 1568. (a) **(1) Any driver of a motor vehicle who willfully fails or refuses**
21 **to bring such driver's vehicle to a stop, or who otherwise flees or attempts**
22 **to elude for a pursuing police vehicle or police bicycle, when given visual**
23 **or audible signal to bring the vehicle to a stop, shall be guilty as provided**
24 **by subsection (c)(1), (2) or (3). The signal given by the police officer may**
25 **be by hand, voice, emergency light or siren. The officer giving such signal**
26 **shall be in uniform, prominently displaying such officer's badge of office,**
27 **and the officer's vehicle or bicycle shall be appropriately marked showing**
28 **it to be an official police vehicle or police bicycle.**

29 **(2) Any driver of a motor vehicle who willfully otherwise flees**
30 **or attempts to elude a pursuing police vehicle or police bicycle,**
31 **when given visual or audible signal to bring the vehicle to a stop,**
32 **shall be guilty as provided by subsection (c)(1), (2) or (3).**

33 **(3) It shall be an affirmative defense to any prosecution under**
34 **paragraph (1) of this subsection that the driver's conduct in vio-**
35 **lation of such paragraph was caused by such driver's reasonable**
36 **belief that the vehicle or bicycle pursuing such driver's vehicle is**
37 **not a police vehicle or police bicycle.**

38 (b) Any driver who violates the provisions of subsection (a) of a mo-
39 tor vehicle who willfully fails or refuses to bring such driver's ve-
40 hicle to a stop, or who otherwise flees or attempts to elude a pur-
41 suing police vehicle or police bicycle, when given visual or audible
42 signal to bring the vehicle to a stop, and who: (1) Commits any of the
43 following during a police pursuit: (A) Fails to stop for a police road block;

1 (B) drives around tire deflating devices placed by a police officer; (C)
 2 engages in reckless driving as defined by K.S.A. 8-1566 and amendments
 3 thereto; (D) is involved in any motor vehicle accident or intentionally
 4 causes damage to property; or (E) commits five or more moving viola-
 5 tions; or

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

8 (c) (1) ~~Every person convicted of violating~~ *Violation of* subsection
 9 (a), upon a first conviction, ~~shall be guilty of~~ *is* a class B nonperson
 10 misdemeanor.

11 (2) ~~Every person convicted of violating~~ *Violation of* subsection (a),
 12 upon a second conviction of such subsection, ~~shall be guilty of~~ *is* a class
 13 A nonperson misdemeanor.

14 (3) ~~Every person convicted of violating~~ *Violation of* subsection (a),
 15 upon a third or subsequent conviction of such subsection, ~~shall be guilty~~
 16 ~~of~~ *is* a severity level 9, person felony.

17 (4) ~~Every person convicted of violating~~ *Violation of* subsection (b)
 18 ~~shall be guilty of~~ *is* a severity level 9, person felony.

19 (d) *The signal given by the police officer may be by hand, voice, emer-*
 20 *gency light or siren:*

21 (1) *If the officer giving such signal is within or upon an official police*
 22 *vehicle or police bicycle at the time the signal is given, the vehicle or*
 23 *bicycle shall be appropriately marked showing it to be an official police*
 24 *vehicle or police bicycle; or*

25 (2) *if the officer giving such signal is not utilizing an official police*
 26 *vehicle or police bicycle at the time the signal is given, the officer shall be*
 27 *in uniform, prominently displaying such officer's badge of office at the*
 28 *time the signal is given.*

29 ~~(d)~~ (e) For the purpose of this section:

30 (1) "Conviction" means a final conviction without regard whether
 31 sentence was suspended or probation granted after such conviction. For-
 32 feiture of bail, bond or collateral deposited to secure a defendant's ap-
 33 pearance in court, which forfeiture has not been vacated, shall be equiv-
 34 alent to a conviction.

35 (2) "Appropriately marked" official police vehicle or police bicycle
 36 shall include, but not be limited to, any police vehicle or bicycle equipped
 37 with functional emergency lights or siren or both and which the emer-
 38 gency lights or siren or both have been activated for the purpose of sig-
 39 naling a driver to stop a motor vehicle.

40 ~~(e)~~ (f) The division of vehicles of the department of revenue shall
 41 promote public awareness of the provisions of this section when persons
 42 apply for or renew such person's driver's license.

43 **Sec. 2. K.S.A. 21-3419 is hereby amended to read as follows:**

1 **21-3419. (a) A criminal threat is any threat to:**

2 (1) **Commit violence communicated with intent to terrorize another,**
3 **or to cause the evacuation, *lock down or disruption in regular,***
4 ***ongoing activities* of any building, place of assembly or facility of**
5 **transportation, or in reckless disregard of the risk of causing such**
6 **terror or evacuation, *lock down or disruption in regular, ongoing***
7 ***activities*;**

8 (2) **adulterate or contaminate any food, raw agricultural com-**
9 **modity, beverage, drug, animal feed, plant or public water supply;**
10 **or**

11 (3) **expose any animal in this state to any contagious or infec-**
12 **tious disease.**

13 (b) **A criminal threat is a severity level 9, person felony.**

14 (c) **As used in this section, “threat” includes any statement that**
15 **one has committed any action described by subsection (a)(1) or (2).**

16 **Sec. 3. K.S.A. 2008 Supp. 21-3419a is hereby amended to read**
17 **as follows: 21-3419a. (a) Aggravated criminal threat is the com-**
18 **mission of one or more crimes of criminal threat, as defined in**
19 **K.S.A. 21-3419 and amendments thereto, when a public, commer-**
20 **cial or industrial building, place of assembly or facility of trans-**
21 **portation is evacuated *locked down or disrupted as to regular, ongoing***
22 ***activities* as a result of the threat or threats.**

23 (b) **Aggravated criminal threat is a severity level 5, person**
24 **felony.**

25 **Sec. 4. K.S.A. 2008 Supp. 21-4714 is hereby amended to read**
26 **as follows: 21-4714. (a) The court shall order the preparation of**
27 **the presentence investigation report by the court services officer**
28 **as soon as possible after conviction of the defendant.**

29 (b) **Each presentence report prepared for an offender to be**
30 **sentenced for one or more felonies committed on or after July 1,**
31 **1993, shall be limited to the following information:**

32 (1) **A summary of the factual circumstances of the crime or**
33 **crimes of conviction.**

34 (2) **If the defendant desires to do so, a summary of the defend-**
35 **ant’s version of the crime.**

36 (3) **When there is an identifiable victim, a victim report. The**
37 **person preparing the victim report shall submit the report to the**
38 **victim and request that the information be returned to be submit-**
39 **ted as a part of the presentence investigation. To the extent pos-**
40 **sible, the report shall include a complete listing of restitution for**
41 **damages suffered by the victim.**

42 (4) **An appropriate classification of each crime of conviction on**
43 **the crime severity scale.**

1 (5) A listing of prior adult convictions or juvenile adjudications
2 for felony or misdemeanor crimes or violations of county resolu-
3 tions or city ordinances comparable to any misdemeanor defined
4 by state law. Such listing shall include an assessment of the appro-
5 priate classification of the criminal history on the criminal history
6 scale and the source of information regarding each listed prior
7 conviction and any available source of journal entries or other doc-
8 uments through which the listed convictions may be verified. If
9 any such journal entries or other documents are obtained by the
10 court services officer, they shall be attached to the presentence
11 investigation report. Any prior criminal history worksheets of the
12 defendant shall also be attached.

13 (6) A proposed grid block classification for each crime, or
14 crimes of conviction and the presumptive sentence for each crime,
15 or crimes of conviction.

16 (7) If the proposed grid block classification is a grid block
17 which presumes imprisonment, the presumptive prison term
18 range and the presumptive duration of postprison supervision as
19 it relates to the crime severity scale.

20 (8) If the proposed grid block classification does not presume
21 prison, the presumptive prison term range and the presumptive
22 duration of the nonprison sanction as it relates to the crime sever-
23 ity scale and the court services officer's professional assessment as
24 to recommendations for conditions to be mandated as part of the
25 nonprison sanction.

26 (9) For defendants who are being sentenced for a conviction
27 of a felony violation of K.S.A. 65-4160 or 65-4162, and amend-
28 ments thereto, and meet the requirements of K.S.A. 21-4729, and
29 amendments thereto, the drug abuse assessment as provided in
30 K.S.A. 21-4729, and amendments thereto.

31 (10) For defendants who are being sentenced for a third or
32 subsequent felony conviction of a violation of K.S.A. 65-4160 or
33 65-4162, and amendments thereto, the drug abuse assessment as
34 provided in K.S.A. 21-4729, and amendments thereto.

35 (c) The presentence report will become part of the court rec-
36 ord and shall be accessible to the public, except that the official
37 version, defendant's version and the victim's statement, any psy-
38 chological reports, risk and needs assessments and drug and al-
39 cohol reports and assessments shall be accessible only to the par-
40 ties, the sentencing judge, the department of corrections, and if
41 requested, the Kansas sentencing commission. If the offender is
42 committed to the custody of the secretary of corrections, the re-
43 port shall be sent to the secretary and, in accordance with K.S.A.

1 **75-5220** and amendments thereto to the warden of the state cor-
2 **rectional institution to which the defendant is conveyed.**

3 **(d) The criminal history worksheet will not substitute as a pre-**
4 **sentence report.**

5 **(e) The presentence report will not include optional report**
6 **components, which would be subject to the discretion of the sen-**
7 **tencing court in each district except for psychological reports and**
8 **drug and alcohol reports.**

9 **(f) Except as provided in K.S.A. 21-4715, and amendments thereto,**
10 **the court can take judicial notice in a subsequent felony proceed-**
11 **ing of an earlier presentence report criminal history worksheet**
12 **prepared for a prior sentencing of the defendant for a felony com-**
13 **mitted on or after July 1, 1993.**

14 **(g) All presentence reports in any case in which the defendant**
15 **has been convicted of a felony shall be on a form approved by the**
16 **Kansas sentencing commission.**

17 **Sec. 5. K.S.A. 21-4715 is hereby amended to read as follows:**
18 **21-4715. (a) The offender's criminal history shall be admitted in**
19 **open court by the offender or determined by a preponderance of**
20 **the evidence at the sentencing hearing by the sentencing judge.**

21 **(b) Except to the extent disputed in accordance with subsection**
22 **(c), the summary of the offender's criminal history prepared for**
23 **the court by the state shall satisfy the state's burden of proof re-**
24 **garding an offender's criminal history.**

25 **(c) Upon receipt of the criminal history worksheet prepared**
26 **for the court, the offender shall immediately notify the district**
27 **attorney and the court with written notice of any error in the pro-**
28 **posed criminal history worksheet. Such notice shall specify the ex-**
29 **act nature of the alleged error. The state shall have the burden of**
30 **producing further evidence to satisfy its burden of proof regarding**
31 **any disputed part, or parts, of the criminal history and the sen-**
32 **tencing judge shall allow the state reasonable time to produce such**
33 **evidence to establish the disputed portion of the criminal history**
34 **by a preponderance of the evidence. If the offender later challenges**
35 **such offender's criminal history, which has been previously established,**
36 **the burden of proof shall shift to the offender to prove such offender's**
37 **criminal history by a preponderance of the evidence.**

38 **Sec. ~~2~~ 6. K.S.A. 8-1568 is, 21-3419 and 21-4715 and K.S.A. 2008**
39 **Supp. 21-3419a and 21-4714 are hereby repealed.**

40 **Sec. ~~3~~ 7. This act shall take effect and be in force from and after its**
41 **publication in the statute book.**