

SESSION OF 2009

**SUPPLEMENTAL NOTE ON  
SUBSTITUTE FOR SENATE BILL NO. 28**

As Amended by House Committee of the Whole

**Brief\***

Sub. for SB 28, as amended, would amend the statutes on authorized disposition for crimes committed on or after the adoption of the Kansas Sentencing Guidelines Act to add an administrative driver's license suspension for transporting a controlled substance or controlled substance analog in a vehicle; fleeing or eluding a law enforcement officer; criminal threat and aggravated criminal threat; and the burden of proof on a subsequent challenge to the defendant's previously established prior criminal history.

Administrative Driver's License Suspension

The bill would add an administrative driver's license suspension or restriction to the penalty or disposition already imposed by law for a conviction of unlawful possession of a controlled substance or controlled substance analog if the trier of fact makes a finding that the unlawful possession occurred while transporting the controlled substance or controlled substance analog in any vehicle on a highway or street.

Fleeing or Eluding a Law Enforcement Officer

The bill would amend the current law on fleeing or eluding a law enforcement officer by clarifying that the law enforcement officer must be either in an appropriately marked vehicle or bicycle or in uniform prominently displaying the law enforcement officer's badge of office when giving a signal to a driver of a motor vehicle to stop his or her vehicle.

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

The bill would define appropriately marked vehicle or bicycle to include, but not be limited to, any police vehicle or bicycle equipped with functional emergency lights or siren, or both.

The bill would provide an affirmative defense to any prosecution if the driver has a reasonable belief that the vehicle or bicycle pursuing the driver is not a police vehicle or police bicycle.

#### Criminal Threat and Aggravated Criminal Threat

The bill would amend current law on criminal threat and aggravated criminal threat to expand the crimes to include the intent to cause, or recklessly cause, the lock down or disruption in regular, ongoing activities of any building, place of assembly, or facility of transportation.

#### Prior Criminal History

The bill would amend current law in the specific situation where an offender's prior criminal history was either admitted by the offender or judicially determined by a preponderance of the evidence but the offender subsequently challenges his or her criminal history. The burden of proof would be on the offender to prove his or her criminal history by a preponderance of the evidence.

#### **Background**

Sub. for SB 28 was amended by the House Committee of the Whole to insert the provisions of HB 2235, as amended by the House Committee on Corrections and Juvenile Justice. The background of each bill is included below.

Administrative Driver's License (formerly Sub. for SB 28 as it passed the House Committee on Corrections and Juvenile Justice)

The proponents of the bill's provision on the administrative driver's license suspension, as introduced, who presented testimony in the Senate Committee hearing were Senator Derek Schmidt; Danny Thayer, Neodesha Chief of Police; and Kyle Smith, Kansas Association of Chiefs of Police.

There was no testimony in opposition to the bill in the Senate Committee hearing.

The proponents of the bill, as amended by the Senate, who presented testimony in the House Committee on Corrections and Juvenile Justice were Ed Klumpp, Kansas Association of Chiefs of Police and the Kansas Peace Officers Association; and Danny Thayer, Neodesha Chief of Police.

The House Committee amended the bill to clarify that the trier of fact would be required to make a finding that the unlawful possession occurred while transporting the controlled substance or controlled substance analog in any vehicle on a highway or street in order to impose an administrative driver's license suspension or restriction.

In the fiscal note, the Kansas Sentencing Commission indicates SB 28, as introduced, would have no effect on prison beds. SB 28 has the potential for increasing litigation in the courts because of the new crime created by the bill. (KLRD Staff Note: The bill, as amended by the Senate Committee, does not create a new crime but adds an administrative driver's license suspension or restriction on an existing crime). If it does, the Office of Judicial Administration indicates that there would be a fiscal effect on the operations of the court system. However, it is not possible to predict the number of additional court cases that would arise or how complex and time-consuming they would be. Therefore, a precise fiscal effect cannot be determined. In any case, the fiscal effect would most

likely be accommodated within the existing schedule of court cases and would not require additional resources.

The Kansas Association of Counties indicates that the bill, as introduced, would require additional investigation by local law enforcement, but does not have enough information to provide a cost estimate at this time. Any fiscal effect resulting from this bill has not been included in *The FY 2010 Governor's Budget Report*.

Fleeing or Eluding; Criminal Threat and Aggravated Criminal Threat; and Prior Criminal History (formerly HB 2235, as amended, by the House Committee on Corrections and Juvenile Justice)

The proponent that testified in the House Committee hearing was Kevin Graham, Assistant Attorney General. Written testimony in support of the bill was received from Representative Paul Davis, 46<sup>th</sup> District.

There were no opponents that testified in the House Committee hearing.

HB 2235 was passed out of the House Committee on Corrections and Juvenile Justice as it was introduced. There was a concern in the House Committee of the Whole that a person may be charged with the crime of fleeing or eluding even when the person had a reasonable belief the pursuing vehicle or bicycle may not be a law enforcement vehicle or bicycle. The bill was referred to Appropriations and then re-referred to the House Committee on Corrections and Juvenile Justice for possible amendment to address this concern.

The House Committee on Corrections and Juvenile Justice amended the bill to:

- Add an affirmative defense to any prosecution of fleeing or eluding if the driver has a reasonable belief that the vehicle or bicycle pursuing the driver is not a police vehicle or police bicycle;

- Expand the crimes of criminal threat and aggravated criminal threat to include the intent to cause, or recklessly cause, the lock down or disruption in regular, ongoing activities of any building, place of assembly, or facility of transportation; and
- Require the offender, on a subsequent challenge, to prove his or her criminal history by a preponderance of the evidence where an offender's prior criminal history was already either admitted by the offender or judicially determined by a preponderance of the evidence in a prior court proceeding.

In the fiscal note on the bill's provision on fleeing and eluding, the League of Kansas Municipalities states that any fiscal effect resulting from the passage of the bill would be negligible to cities.