

SESSION OF 2009

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2235

As Amended by House Committee on
Corrections and Juvenile Justice

Brief*

HB 2235, as amended, would amend the current law on 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.

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.

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

*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>

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

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, 46th 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 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.