

HOUSE BILL No. 2448

By Committee on Judiciary

1-16

Proposed Amendments to HB 2448 - Jennings
House Judiciary
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1 AN ACT concerning motor vehicles; relating to fleeing or attempting to
2 elude a police officer; theft; evidence of intent to deprive an owner of
3 possession; amending K.S.A. 2019 Supp. 8-1568, 21-5801 and 21-5804
4 and repealing the existing sections.
5

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

7 Section 1. K.S.A. 2019 Supp. 8-1568 is hereby amended to read as
8 follows: 8-1568. (a) (1) (A) Any driver of a motor vehicle who willfully
9 fails or refuses to bring such driver's vehicle to a stop for a pursuing police
10 vehicle or police bicycle, when given visual or audible signal to bring the
11 vehicle to a stop, shall be guilty as provided by subsection (c)(1).

12 ~~(2)(B)~~ Any driver of a motor vehicle who willfully otherwise flees or
13 attempts to elude a pursuing police vehicle or police bicycle, when given
14 visual or audible signal to bring the vehicle to a stop, shall be guilty as
15 provided by subsection (c)(1).

16 ~~(3)(2)~~ It shall be an affirmative defense to any prosecution under
17 subsection (a)(1) that the driver's conduct in violation of such ~~paragraph~~
18 *subsection* was caused by such driver's reasonable belief that the vehicle or
19 bicycle pursuing such driver's vehicle is not a police vehicle or police
20 bicycle.

21 (b) Any driver of a motor vehicle who willfully fails or refuses to
22 bring such driver's vehicle to a stop, or who otherwise flees or attempts to
23 elude a pursuing police vehicle or police bicycle, when given visual or
24 audible signal to bring the vehicle to a stop, and who: (1) Commits any of
25 the following during a police pursuit: (A) Fails to stop for a police road
26 block; (B) drives around tire deflating devices placed by a police officer;
27 (C) engages in reckless driving as defined by K.S.A. 8-1566, and
28 amendments thereto; (D) is involved in any motor vehicle accident or
29 intentionally causes damage to property; ~~or~~ (E) commits five or more
30 moving violations; *or (F) is operating a stolen motor vehicle; or*

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

33 (c) (1) Violation of subsection (a), upon a:

34 (A) First conviction is a class B nonperson misdemeanor;

35 (B) second conviction is a class A nonperson misdemeanor; or

36 (C) third or subsequent conviction is a severity level 9, person felony.

1 (2) Violation of ~~subsection (b)~~ is a severity level 9, person felony.
2 (d) *Any term of confinement imposed for a violation of subsection (a)*
3 *(1)(B) or (b) shall be served consecutively to any other term of*
4 *confinement imposed for any other violation committed in whole or in part*
5 *during the act of violating subsection (a)(1)(B) or (b).*
6 (e) The signal given by the police officer may be by hand, voice,
7 emergency light or siren:
8 (1) If the officer giving such signal is within or upon an official police
9 vehicle or police bicycle at the time the signal is given, the vehicle or
10 bicycle shall be appropriately marked showing it to be an official police
11 vehicle or police bicycle; or
12 (2) if the officer giving such signal is not utilizing an official police
13 vehicle or police bicycle at the time the signal is given, the officer shall be
14 in uniform, prominently displaying such officer's badge of office at the
15 time the signal is given.
16 ~~(e)~~(f) For the purpose of this section:
17 (1) "Conviction" means a final conviction without regard to whether
18 sentence was suspended or probation granted after such conviction.
19 Forfeiture of bail, bond or collateral deposited to secure a defendant's
20 appearance in court, which forfeiture has not been vacated, shall be
21 equivalent to a conviction. For the purpose of determining whether a
22 conviction is a first, second, third or subsequent conviction in sentencing
23 under this section, it is irrelevant whether an offense occurred before or
24 after conviction for a previous offense.
25 (2) "Appropriately marked" official police vehicle or police bicycle
26 shall include, but not be limited to, any police vehicle or bicycle equipped
27 with functional emergency lights or siren or both and which the emergency
28 lights or siren or both have been activated for the purpose of signaling a
29 driver to stop a motor vehicle.
30 ~~(f)~~(g) The division of vehicles of the department of revenue shall
31 promote public awareness of the provisions of this section when persons
32 apply for or renew such person's driver's license.
33 Sec. 2. K.S.A. 2019 Supp. 21-5801 is hereby amended to read as
34 follows: 21-5801. (a) Theft is any of the following acts done with intent to
35 permanently deprive the owner of the possession, use or benefit of the
36 owner's property or services:
37 (1) Obtaining or exerting unauthorized control over property or
38 services;
39 (2) obtaining control over property or services; by deception;
40 (3) obtaining control over property or services; by threat;
41 (4) obtaining control over stolen property or services knowing the
42 property or services to have been stolen by another; or
43 (5) knowingly dispensing motor fuel into a storage container or the

(3) In addition to the penalty described in paragraph (2), the court shall impose a fine of not less than \$500 when the driver is operating a stolen motor vehicle during the commission of the offense.

1 fuel tank of a motor vehicle at an establishment in which motor fuel is
2 offered for retail sale and leaving the premises of the establishment
3 without making payment for the motor fuel.

4 (b) Theft of:

5 (1) Property or services of the value of \$100,000 or more is a severity
6 level 5, nonperson felony;

7 (2) property or services of the value of at least \$25,000 but less than
8 \$100,000 is a severity level 7, nonperson felony;

9 (3) property or services of the value of at least \$1,500 but less than
10 \$25,000 is a severity level 9, nonperson felony, except as provided in
11 subsection (b)(7);

12 (4) property or services of the value of less than \$1,500 is a class A
13 nonperson misdemeanor, except as provided in subsection (b)(5), (b)(6)-~~or~~,
14 (b)(7) *or* (b)(8);

15 (5) property of the value of less than \$1,500 from three separate
16 mercantile establishments within a period of 72 hours as part of the same
17 act or transaction or in two or more acts or transactions connected together
18 or constituting parts of a common scheme or course of conduct is a
19 severity level 9, nonperson felony;

20 (6) property of the value of at least \$50 but less than \$1,500 is a
21 severity level 9, nonperson felony if committed by a person who has,
22 within five years immediately preceding commission of the crime,
23 excluding any period of imprisonment, been convicted of theft two or
24 more times; ~~and~~

25 (7) property ~~which~~ *that* is a firearm of the value of less than \$25,000
26 is a severity level 9, nonperson felony; *and*

27 (8) *property that is a motor vehicle as defined in K.S.A. 8-126, and*
28 *amendments thereto, of the value of less than \$1,500 is a severity level 10,*
29 *nonperson felony.*

30 (c) As used in this section:

31 (1) "Conviction" or "convicted" includes being convicted of a
32 violation of K.S.A. 21-3701, prior to its repeal, this section or a municipal
33 ordinance which prohibits the acts that this section prohibits;

34 (2) "regulated scrap metal" means the same as in K.S.A. 2019 Supp.
35 50-6,109, and amendments thereto; and

36 (3) "value" means the value of the property or, if the property is
37 regulated scrap metal, the cost to restore the site of the theft of such
38 regulated scrap metal to its condition at the time immediately prior to the
39 theft of such regulated scrap metal, whichever is greater.

40 Sec. 3. K.S.A. 2019 Supp. 21-5804 is hereby amended to read as
41 follows: 21-5804. (a) In any prosecution under K.S.A. 2019 Supp. 21-5801
42 through 21-5839, and amendments thereto, the following shall be prima
43 facie evidence of intent to permanently deprive the owner or lessor of

- 1 property of the possession, use or benefit thereof:
- 2 (1) The giving of a false identification or fictitious name, address or
3 place of employment at the time of buying, selling, leasing, trading,
4 gathering, collecting, soliciting, procuring, receiving, dealing or otherwise
5 obtaining or exerting control over the property;
- 6 (2) the failure of a person who leases or rents personal property to
7 return the same within 10 days after the date set forth in the lease or rental
8 agreement for the return of the property, if notice is given to the person
9 renting or leasing the property to return the property within seven days
10 after receipt of the notice, in which case the subsequent return of the
11 property within the seven-day period shall exempt such transaction from
12 consideration as prima facie evidence as provided in this section;
- 13 (3) destroying, breaking or opening a lock, chain, key switch,
14 enclosure or other device used to secure the property in order to obtain
15 control over the property;
- 16 (4) destruction of or substantially damaging or altering the property
17 so as to make the property unusable or unrecognizable in order to obtain
18 control over the property;
- 19 (5) the failure of a person who leases or rents from a commercial
20 renter a motor vehicle under a written agreement that provides for the
21 return of the motor vehicle to a particular place at a particular time, if
22 notice has been given to the person renting or leasing the motor vehicle to
23 return such vehicle within three calendar days from the date of the receipt
24 or refusal of the demand. In addition, if such vehicle has not been returned
25 after demand, the lessor may notify the local law enforcement agency of
26 the failure of the lessee to return such motor vehicle and the local law
27 enforcement agency shall cause such motor vehicle to be put into any
28 appropriate state and local computer system listing stolen motor vehicles;
- 29 (6) the failure of a person who is provided with a use of a vehicle by
30 the owner of the vehicle to return it to the owner pursuant to a written
31 instruction specifying: (A) The time and place to return the vehicle; and
32 (B) that failure to comply may be prosecuted as theft, and such instructions
33 are delivered to the person by the owner at the time the person is provided
34 with possession of the vehicle. In addition, if such vehicle has not been
35 returned pursuant to the specifications in such instructions, the owner may
36 notify the local law enforcement agency of the failure of the person to
37 return such motor vehicle and the local law enforcement agency shall
38 cause such motor vehicle to be put into any appropriate state and local
39 computer system listing stolen motor vehicles;
- 40 (7) removing a theft detection device, without authority, from
41 merchandise or disabling such device prior to purchase; or
- 42 (8) under the provisions of K.S.A. 2019 Supp. 21-5801(a)(5), and
43 amendments thereto, the failure to replace or reattach the nozzle and hose

1 of the pump used for the dispensing of motor fuels or placing such nozzle
2 and hose on the ground or pavement.

3 (b) In any prosecution for a misdemeanor under K.S.A. 2019 Supp.
4 21-5801, and amendments thereto, in which the object of the alleged theft
5 is a book or other material borrowed from a library, it shall be prima facie
6 evidence of intent to permanently deprive the owner of the possession, use
7 or benefit thereof if the defendant failed to return such book or material
8 within 30 days after receiving notice from the library requesting its return,
9 in which case the subsequent return of the book or material within the 30-
10 day period shall exempt such transaction from consideration as prima facie
11 evidence as provided in this section.

12 (c) In a prosecution for theft as defined in K.S.A. 2019 Supp. 21-
13 5801, and amendments thereto, and such theft is of services, the existence
14 of any of the connections of meters, alterations or use of unauthorized or
15 unmeasured electricity, natural gas, water, telephone service or cable
16 television service, caused by tampering, shall be prima facie evidence of
17 intent to commit theft of services by the person or persons using or
18 receiving the direct benefits from the use of the electricity, natural gas,
19 water, telephone service or cable television service passing through such
20 connections or meters, or using the electricity, natural gas, water,
21 telephone service or cable television service which has not been authorized
22 or measured.

23 (d) In a prosecution for theft as defined in K.S.A. 2019 Supp. 21-
24 5801, and amendments thereto, and such theft is of regulated scrap metal
25 as defined in K.S.A. 2019 Supp. 50-6,109, and amendments thereto, either
26 in whole or in part, the failure to give information or the giving of false
27 information to a scrap metal dealer pursuant to the requirements of the
28 scrap metal theft reduction act, the transportation of regulated scrap metal
29 outside the county from where it was obtained, the transportation of
30 regulated scrap metal across state lines or the alteration of any regulated
31 scrap metal prior to any transaction with a scrap metal dealer shall be
32 prima facie evidence of intent to permanently deprive the owner of the
33 regulated scrap metal of the possession, use or benefit thereof.

34 (e) *In a prosecution for theft as defined in K.S.A. 2019 Supp. 21-*
35 *5801, and amendments thereto, and such theft is of a motor vehicle as*
36 *defined in K.S.A. 8-126, and amendments thereto, fleeing or attempting to*
37 *elude a police officer as defined in K.S.A. 8-1568(a)(1)(B) or (b), and*
38 *amendments thereto, shall be prima facie evidence of intent to*
39 *permanently deprive the owner of the motor vehicle of the possession, use*
40 *or benefit thereof.*

41 (f) As used in this section:

42 (1) "Notice" means notice in writing and such notice in writing will
43 be presumed to have been given three days following deposit of the notice

1 as registered or certified matter in the United States mail, addressed to
2 such person who has leased or rented the personal property or borrowed
3 the library material at the address as it appears in the information supplied
4 by such person at the time of such leasing, renting or borrowing, or to such
5 person's last known address; and

6 (2) "tampering" includes, but is not limited to:

7 (A) Making a connection of any wire, conduit or device, to any
8 service or transmission line owned by a public or municipal utility, or by a
9 cable television service provider;

10 (B) defacing, puncturing, removing, reversing or altering any meter
11 or any connections, for the purpose of securing unauthorized or
12 unmeasured electricity, natural gas, water, telephone service or cable
13 television service;

14 (C) preventing any such meters from properly measuring or
15 registering;

16 (D) knowingly taking, receiving, using or converting to such person's
17 own use, or the use of another, any electricity, water or natural gas ~~which~~
18 *that* has not been measured; or any telephone or cable television service
19 ~~which~~ *that* has not been authorized; or

20 (E) causing, procuring, permitting, aiding or abetting any person to
21 do any of the preceding acts.

22 Sec. 4. K.S.A. 2019 Supp. 8-1568, 21-5801 and 21-5804 are hereby
23 repealed.

24 Sec. 5. This act shall take effect and be in force from and after its
25 publication in the statute book.