



Sub. H.B. 29

123rd General Assembly
(As Passed by the General Assembly)

Reps. Grendell, Pringle, Clancy, Schuler, Jerse, Taylor, Mottley, Willamowski, Womer Benjamin, Damschroder, Terwilleger, Padgett, Austria, Allen, Distel, Krupinski, DePiero, Hoops, Metelsky, Evans, Flannery, Hartnett, Maier, Salerno, Ford, Thomas, Bender, Buehrer

Sens. Blessing, Latta, Spada, Watts, Schafrath, Latell, Mumper

Effective date: October 29, 1999

ACT SUMMARY

- Increases to a felony of the third degree the penalty for the offense of "failure to comply with an order or signal of a police officer" when that offense is committed by operating a motor vehicle so as willfully to elude or flee a police officer and the operation of the motor vehicle by the offender caused a substantial risk of serious physical harm to persons or property or was a proximate cause of serious physical harm to persons or property.
- Specifies factors a sentencing court must consider when determining the seriousness of the offender's conduct for purposes of sentencing an offender for committing the offense of "failure to comply with an order or signal of a police officer" when the offender commits it under circumstances for which the act increases the penalty for the offense and a police officer pursues the offender during the commission of the offense.
- Requires that the offender serve a prison term imposed for a felony violation of the offense of "failure to comply with an order or signal of a police officer" consecutively to any other prison term or mandatory prison term imposed upon the offender.

CONTENT AND OPERATION

Prior and continuing law

Continuing law prohibits a person from failing to comply with any lawful order or direction of any police officer invested with authority to direct, control, or regulate traffic. Whoever violates this prohibition is guilty of "failure to comply with an order or signal of a police officer," and a violation of this prohibition is a misdemeanor of the first degree. (Sec. 2921.331(A) and new (C)(1) and (2).)

Continuing law also prohibits a person from operating a motor vehicle so as willfully to elude or flee a police officer after receiving a visible or audible signal from a police officer to bring the person's motor vehicle to a stop. Whoever violates this prohibition also is guilty of "failure to comply with an order or signal of a police officer." Under prior law, a violation of this prohibition, hereafter referred to as the "eluding and fleeing" prohibition, generally was a misdemeanor of the first degree but was a felony of the fourth degree if the jury or judge as trier of fact found any one of the following by proof beyond a reasonable doubt (sec. 2921.331(B) and prior (C)):

(1) In committing the offense, the offender was fleeing immediately after the commission of a felony.

(2) The operation of the motor vehicle by the offender was a proximate cause of serious physical harm to persons or property.

(3) The operation of the motor vehicle by the offender caused a substantial risk of serious physical harm to persons or property.

Operation of the act

Increase in penalty

The act increases the penalty for violating *under certain circumstances* the prohibition against operating a motor vehicle so as willfully to elude or flee a police officer after receiving a visible or audible signal from a police officer to bring the person's motor vehicle to a stop (the eluding or fleeing prohibition). Under the act, a violation of the "eluding or fleeing" prohibition is a felony of the third degree if the jury or judge as trier of fact finds by proof beyond a reasonable doubt that the operation of the motor vehicle by the offender either was a proximate cause of serious physical harm to persons or property or caused a substantial risk of serious physical harm to persons or property (sec. 2921.331(C)(5)(a)). The act does not modify the penalty for a violation of this prohibition under any other circumstances.

Special sentencing factors

If a police officer pursues an offender who is violating the "eluding or fleeing" prohibition and if the jury or judge as trier of fact finds by proof beyond a reasonable doubt that the offender's operation of the motor vehicle was a proximate cause of serious physical harm to persons or property or caused a substantial risk of that type of harm, the sentencing court, in determining the seriousness of an offender's conduct for purposes of sentencing the offender for the violation, must consider, along with the sentencing factors that the court must consider under the existing Felony Sentencing Laws, all of the following (sec. 2921.331(C)(5)(b)):

- (1) The duration and distance of the pursuit;
- (2) The rate of speed at which the offender operated the motor vehicle during the pursuit;
- (3) Whether the offender failed to stop for traffic lights or stop signs during the pursuit and the number for which the offender failed to stop;
- (4) Whether the offender operated the motor vehicle during the pursuit without lighted lights during a time when lighted lights are required;
- (5) Whether the offender committed a moving violation during the pursuit and the number committed;
- (6) Any other relevant factors indicating that the offender's conduct is more serious than conduct normally constituting the offense.

Consecutive service of prison term

If the offender is sentenced to a prison term for a felony violation of the "eluding or fleeing" prohibition (i.e., in circumstances in which in committing the offense, the offender was fleeing immediately after the commission of a felony or the operation of the motor vehicle by the offender was a proximate cause of serious physical harm to persons or property or caused a substantial risk of that type of harm), the act requires the offender to serve the prison term consecutively to any other prison term or mandatory prison term imposed upon the offender (secs. 2921.331(D) and 2929.14(E)(3)).

HISTORY

ACTION	DATE	JOURNAL ENTRY
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Introduced	01-20-99	p.	89
Reported, H. Criminal Justice	03-10-99	p.	283
Passed House (90-4)	03-17-99	pp.	308-309
Reported, S. Judiciary	05-19-99	p.	457
Passed Senate (33-0)	05-19-99	p.	458
House concurred in Senate amendments (93-1)	05-20-99	pp.	693-694

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