



Sub. H.B. 29*

123rd General Assembly
(As Reported by S. Judiciary)

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

BILL 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 bill 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.

* *This analysis was prepared before the report of the Senate Judiciary Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

CONTENT AND OPERATION

Existing law

Existing law prohibits a person from failing to comply with any lawful order or direction of any "police officer" (see **COMMENT**) 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 (C).)

Existing 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." A violation of this prohibition, hereafter referred to as the "eluding and fleeing" prohibition, generally is a misdemeanor of the first degree but is a felony of the fourth degree if the jury or judge as trier of fact finds any one of the following by proof beyond a reasonable doubt (sec. 2921.331(B) and (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" (see **COMMENT**).
- (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 bill

Increase in penalty

The bill 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 bill, 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 bill 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" (see **COMMENT**) 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 bill 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)).

COMMENT

As used in the bill:

1. "Police officer" means every officer authorized to direct or regulate traffic, or to make arrests for violations of traffic regulations (sec. 2921.331(E)(2) by reference to sec. 4511.01(Z)--not in the bill).

2. "Serious physical harm to persons" means any of the following (sec. 2901.01(A)(5)--not in the bill):

(a) Any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment;

(b) Any physical harm that carries a substantial risk of death;

(c) Any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity;

(d) Any physical harm that involves some permanent disfigurement, or that involves some temporary, serious disfigurement;

(e) Any physical harm that involves acute pain of such duration as to result in substantial suffering, or that involves any degree of prolonged or intractable pain.

3. "Serious physical harm to property" means any physical harm to property that does either of the following (sec. 2901.01(A)(6)--not in the bill):

(a) Results in substantial loss to the value of the property, or requires a substantial amount of time, effort, or money to repair or replace;

(b) Temporarily prevents the use or enjoyment of the property, or substantially interferes with its use or enjoyment for an extended period of time.

4. "Physical harm to property" means any tangible or intangible damage to property that, in any degree, results in loss to its value or interferes with its use or enjoyment. "Physical harm to property" does not include wear and tear occasioned by normal use. (Sec. 2901.01(A)(4)--not in the bill.)

5. "Moving violation" means any violation of any statute or ordinance, other than the prohibition against failing to wear a seat belt or a substantially equivalent municipal ordinance, that regulates the operation of vehicles, streetcars, or trackless trolleys on highways or streets or that regulates size or load limitations or fitness requirements of vehicles. "Moving violation" does not include the

violation of any statute or ordinance that regulates pedestrians or the parking of vehicles. (Sec. 2921.331(E), by reference to sec. 2743.70(D)(1)--not in the bill.)

HISTORY

ACTION	DATE	JOURNAL ENTRY
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	---	---

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