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Testimony to the House Judiciary Committee In Support of HB2093 January 27, 2021

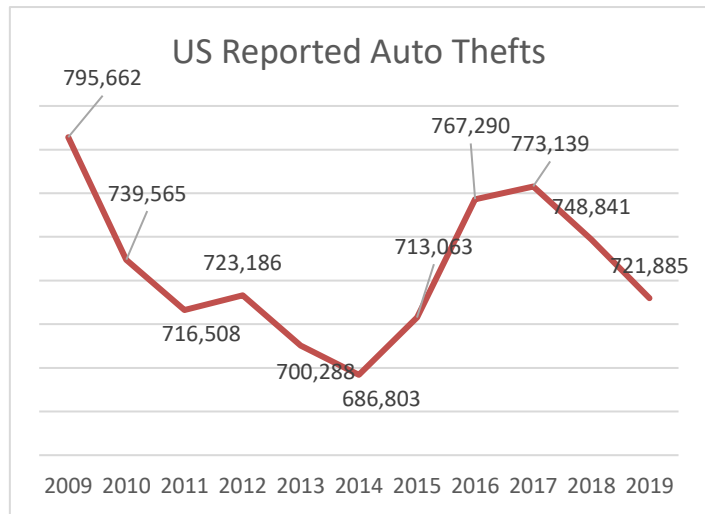
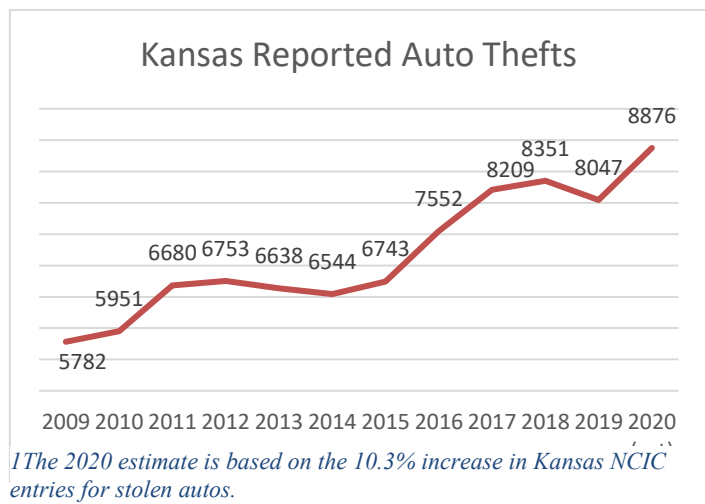
Chairman Patton and Committee members:

The number of auto thefts continue to rise in Kansas, increasing every year since 2014 with the exception of a drop in 2019.¹ The 2020 increase will be around 10.3% from 2019 and up 6.3% compared to 2018. The 2020 numbers are 19.3% higher than the 10-year average for Kansas.²

This is a statewide issue. In 2019 only seven Kansas Counties reported no auto thefts.³

Auto thefts in the US have decreased each year from 2017 to 2019, down 6.6%⁴ compared to a 6.3% increase in Kansas. The per capita auto theft rate in Kansas is now about 38% higher than that of the US. In 2019 Kansas had the 17th highest auto theft rate.⁵ There is a good chance the 2020 ranking will be worse. The Topeka MSA was the 9th highest per capita rate in the US.⁶

Nationally, the average loss in each auto theft case was \$8,886 in 2019.⁷ Using those rates, Kansans suffered an estimated cumulative loss of about \$78.9 million in 2019. Those losses only include the motor vehicle and do not include lost wages, lost productivity, replacement costs, etc.



¹ KBI 2019 Kansas Crime Index Report <http://www.accesskansas.org/kbi/stats/docs/pdf/CrimeIndex2019.pdf>

² Based in the increase in 2020 Kansas NCIC entries from 2019. Source: KBI

³ KBI 2019 Kansas Crime Index Reports <http://www.accesskansas.org/kbi/stats/docs/pdf/CrimeIndex2019.pdf>

⁴ FBI 2019 Crime in the United States Report <https://ucr.fbi.gov/crime-in-the-u.s./2019/crime-in-the-u.s.-2019/topic-pages/tables/table-1>

⁵ Statista, <https://www.statista.com/statistics/232588/motor-vehicle-theft-rate-in-the-us-by-state/>

⁶ Insurance Information Institute, <https://www.iii.org/fact-statistic/facts-statistics-auto-theft>

⁷ Same

A January 15 news article reported Overland Park with a 42% increase in auto thefts for 2020; Lenexa an 87% increase, and Shawnee a 39% increase.⁸ Other cities in Kansas I was able to check with also saw increased, but not to the levels as seen in the Kansas City area.

Stolen vehicles also play a major role in attempt to elude cases. In preparing for this testimony, we were able to determine that at a minimum 1 of every 5 of the attempt to elude cases in Kansas during 2019 involved stolen motor vehicles. The real total is substantially higher than that because of the large number of pursuits we terminate without identification of the vehicle or driver.

The public safety risk does not stop with the theft of the vehicle or resulting attempt to elude cases. Many of these vehicles are used in other crimes as disposable getaway vehicles, methods to haul away other stolen property, black-market drug sales and illegal drug transportation just to name a few. One large metro Kansas City agency was able to identify 30% of their stolen vehicles were involved in other crimes during the first ten months of 2018.

In 2016, the legislature raised the floor of felony theft from \$1,000 to \$1,500, a move to save prison beds. One of the consequences of this change is that under current law 30.8% of the 2017 stolen motor vehicle cases in Kansas were valued less than \$1,500.⁹ Our original bill in 2019, and the bill that moved out of the Senate Judiciary Committee in 2018 requested an amendment making theft of motor vehicles valued under \$1500 a SL10 nonperson felony. We still believe this change is justified.

Many auto thefts with a value higher than \$1500 get charged as a misdemeanor “Criminal Deprivation of Property” because of the difficulty in proving the intent to permanently deprive. Criminal Deprivation of Property, KSA 21-5803, is a class A misdemeanor. It has sentencing enhancements for the first two convictions, which are misdemeanors, and the crime becomes a felony upon the third conviction relating to a motor vehicle.

Proposed Statute Amendments Contained in the Bill

HB2093 is presented as it passed the House last year and includes the amendments made in the House Judiciary Committee. As written, the bill proposes three amendments to address the problems presented above.

- In section 1 of the bill we request two changes to the attempt to elude statute, KSA 8-1568.
 - On page 1, line 34, the bill adds “operating a stolen motor vehicle” as an additional condition which makes attempting to elude a felony.
 - On page 2, lines 6-8, the bill imposes a minimum fine of \$500 when operating a stolen vehicle while committing the violation of attempting to elude. This is to address the reality of most sentencing we see in these cases today where the sentence for attempt to elude are made concurrent with the sentence for other crimes of conviction. This results in effectively no additional penalty for the attempt to elude. From the perspective of the criminal mind they might as well give it a try to flee.
- In section 2 we are asking to amend KSA 21-5804, the statute on prima facie evidence of intent to permanently deprive by adding attempting to elude law enforcement in a stolen motor vehicle. You will find that amendment on page 4, lines 30-36.

⁸ <https://www.kcur.org/news/2021-01-15/car-thefts-skyrocket-in-johnson-county-in-2020-setting-a-record-in-overland-park>

⁹ Data from the KBI

Amendment Requests

As we addressed above, we believe the sentencing provision for theft of a motor vehicle valued at less than \$1500 should be a SL10 nonperson felony, not a misdemeanor. This is due to the additional financial harm to many victims who only own one vehicle resulting from effects to their ability to get to work or other critical traveling needs. Remember, in 2017 this comprised about 30% of the stolen motor vehicles. Most of these offenders would be in a presumptive probation area of the sentencing grid and should have minimal effect on bed space while providing more justice for the victims. This would require amending KSA 21-5801 subsection (b) by adding another exception to the three already listed for losses less than \$1500.

We are also requesting consideration of two additional amendments to the attempting to elude statute which are attached. Although we worked with attorneys in developing our drafts, we have not consulted a revisor other than alerting them to the attached proposals.

The first one came to us during discussion with the KHP. It would address the problem with the very high risk maneuvers we are seeing more frequently during the acts of attempting to elude. Those acts include going to the wrong side of a divided highway; going into oncoming traffic on other roadways or through an intersection causing another driver to take evasive action; and when the attempt to elude causes a collision with another motorist. It would enhance the penalty in those cases to a SL7 person felony.

The second one came to us during discussion with a prosecutor. It is intended to correct a problem in subsection (a). Apparently the sentencing provisions for subsection (a) are being interpreted by some as applying the sentencing enhancement only for prior convictions of subsection (a), excluding prior convictions for subsection (b). The proposal clarifies it would include prior convictions of either.

Summary

The bill will target auto thefts including the growing losses our citizens and businesses are suffering from thefts of their motor vehicles. It will also address the increased risk posed by offenders in stolen vehicles attempting to elude police.

We ask you to consider our additional amendment requests and to recommend this bill favorably for passage.

Ed Klumpp
Legislative Liaison

PROPOSED AMENDMENT 1 (In addition to the amendments currently in the bill)

KSA 8-1568. Fleeing or attempting to elude a police officer; penalties.

(a) (1) Any driver of a motor vehicle who willfully fails or refuses to bring such driver's vehicle to a stop for a pursuing police vehicle or police bicycle, when given visual or audible signal to bring the vehicle to a stop, shall be guilty as provided by subsection (c)(1).

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

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

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

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

(3) willfully drives the wrong way into an opposing lane of travel on a divided highway, as defined in K.S.A.8-1414; willfully departs the appropriate lane of travel into an opposing lane of travel on any roadway causing an evasive maneuver by any other motorist; willfully drives through any intersection causing an evasive maneuver by any other motorist; or causes a collision involving any other motorist, shall be guilty as provided in subsection (c)(3).

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

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

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

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

(2) ~~Except as provided in subsection (c)(3), a violation~~ of subsection (b) is a severity level 9, person felony.

(3) ~~Violation of subsection (b)(3) is a severity level 7, person felony.~~

(d) The signal given by the police officer may be by hand, voice, emergency light or siren:

(1) If the officer giving such signal is within or upon an official police vehicle or police bicycle at the time the signal is given, the vehicle or bicycle shall be appropriately marked showing it to be an official police vehicle or police bicycle; or

(2) if the officer giving such signal is not utilizing an official police vehicle or police bicycle at the time the signal is given, the officer shall be in uniform, prominently displaying such officer's badge of office at the time the signal is given.

(e) For the purpose of this section:

(1) "Conviction" means a final conviction without regard to whether sentence was suspended or probation granted after such conviction. Forfeiture of bail, bond or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated, shall be equivalent to a conviction. For the purpose of determining whether a conviction is a first, second, third or subsequent conviction in sentencing under this section it is irrelevant whether an offense occurred before or after conviction for a previous offense.

(2) "Appropriately marked" official police vehicle or police bicycle shall include, but not be limited to, any police vehicle or bicycle equipped with functional emergency lights or siren or both and which the emergency lights or siren or both have been activated for the purpose of signaling a driver to stop a motor vehicle.

(f) The division of vehicles of the department of revenue shall promote public awareness of the provisions of this section when persons apply for or renew such person's driver's license.

PROPOSED AMENDMENT 2 (In addition to the amendments currently in the bill)

8-1568. Fleeing or attempting to elude a police officer; penalties.

(a) (1) Any driver of a motor vehicle who willfully fails or refuses to bring such driver's vehicle to a stop for a pursuing police vehicle or police bicycle, when given visual or audible signal to bring the vehicle to a stop, shall be guilty as provided by subsection (c)(1).

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

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

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

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

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

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

(B) ~~second~~ conviction **with one prior conviction of subsection (a) or (b)** is a class A nonperson misdemeanor; or

(C) ~~third or subsequent~~ conviction **with two or more prior convictions of subsection (a) or (b)** is a severity level 9, person felony.

(2) Violation of subsection (b) is a severity level 9, person felony.

(d) The signal given by the police officer may be by hand, voice, emergency light or siren:

(1) If the officer giving such signal is within or upon an official police vehicle or police bicycle at the time the signal is given, the vehicle or bicycle shall be appropriately marked showing it to be an official police vehicle or police bicycle; or

(2) if the officer giving such signal is not utilizing an official police vehicle or police bicycle at the time the signal is given, the officer shall be in uniform, prominently displaying such officer's badge of office at the time the signal is given.

(e) For the purpose of this section:

(1) "Conviction" means a final conviction without regard to whether sentence was suspended or probation granted after such conviction. Forfeiture of bail, bond or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated, shall be equivalent to a conviction. For the purpose of determining whether a conviction is a first, second, third or subsequent conviction in sentencing under this section it is irrelevant whether an offense occurred before or after conviction for a previous offense.

(2) "Appropriately marked" official police vehicle or police bicycle shall include, but not be limited to, any police vehicle or bicycle equipped with functional emergency lights or siren or both and which the emergency lights or siren or both have been activated for the purpose of signaling a driver to stop a motor vehicle.

(f) The division of vehicles of the department of revenue shall promote public awareness of the provisions of this section when persons apply for or renew such person's driver's license.