

HOUSE BILL REPORT

ESHB 1076

As Passed House:

February 26, 2003

Title: An act relating to attempting to elude a pursuing police vehicle.

Brief Description: Revising provisions relating to attempting to elude a pursuing police vehicle.

Sponsors: By House Committee on Criminal Justice & Corrections (originally sponsored by Representatives Lovick, McDonald, O'Brien, Moeller, Chase, Haigh, Carrell, Simpson and Kagi).

Brief History:

Committee Activity:

Criminal Justice & Corrections: 1/29/03, 2/7/03 [DPS].

Floor Activity:

Passed House: 2/26/03, 97-0.

Brief Summary of Engrossed Substitute Bill

- Amends the definition of attempting to elude a pursuing police vehicle by: (1) replacing the requirement that a pursuing vehicle be appropriately marked with the requirement that the vehicle's license plate be appropriately marked, (2) modifying the language describing a driver's conduct, and (3) creating an affirmative defense for reasonably believing the pursuit was not by a police officer.

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives O'Brien, Chair; Darneille, Vice Chair; Mielke, Ranking Minority Member; Ahern, Assistant Ranking Minority Member; Kagi, Lovick and Pearson.

Staff: Derek Green (786-5793); Yvonne Walker (786-7841).

Background:

It is a criminal offense to intentionally refuse to stop when ordered to do so by a police

officer. The gravity of the offense depends upon the circumstances. It is a misdemeanor offense for a person to willfully fail to stop when ordered by a law enforcement officer, but the offense can increase to a felony if the driver willfully refuses to stop while attempting to elude a police vehicle.

A driver commits the crime of attempting to elude a pursuing police vehicle when the driver willfully fails or refuses to immediately stop his or her car and drives in a manner indicating wanton or willful disregard for the lives or property of others after being given a visual or audible signal to stop by a police officer. The signal to stop may be given by hand, voice, emergency light, or siren. Further, the police officer giving the signal must be in uniform and driving a vehicle appropriately marked showing it to be an official police vehicle.

The crime of attempting to elude a police vehicle is a seriousness level I class C felony. A class C felony can have a maximum sentence of five years of incarceration, a fine of \$10,000 or both. For a first time offender convicted of a seriousness level I class C felony, the standard sentence range is zero to 60 days incarceration. In addition to any fine or incarceration, a person convicted of attempting to elude a police vehicle has his or her driver's license revoked for one year.

Reckless driving is also a criminal offense on its own, absent an attempt to elude a police officer. Reckless driving is defined as driving "in willful or wanton disregard for the safety of persons or property," and is punishable as a gross misdemeanor.

Summary of Engrossed Substitute Bill:

The definition of attempting to elude a pursuing police vehicle is amended. Driving in a "reckless" manner replaces the requirement of driving in a "wanton or wilful disregard for the lives or property of others." The requirement that the pursuing vehicle be appropriately marked as a police vehicle is replaced with the requirement that the vehicle's license plate be appropriately marked.

An affirmative defense is added based upon the behavior of a reasonable person. A driver can assert the defense that a reasonable person would not believe that the signal to stop was given by a police officer, and that continuing to drive after being signaled to stop was reasonable given the circumstances.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill

is passed.

Testimony For: (Original bill) State courts have reversed convictions based upon the fact that a police car was not properly marked; this bill would prevent this outcome. Courts have interpreted the current law as requiring door decals, which do not have anything to do with providing drivers with notice that a police vehicle is following. Police often use unmarked cars now because they help to slow down traffic and are needed for traffic enforcement. This bill addresses the concern of police impersonation by allowing drivers to continue driving in a non-reckless manner until they find a safe place to stop. Drivers can also drive away if they realize the person is not a police officer. The bill does not change the culpability standard, it just updates the language.

(Substitute bill) The modifications address the concerns about the original bill.

Testimony Against: (Original bill) Eliminating the requirements of having a properly marked car and having a police officer in uniform increases the concern over police impersonations. A pulled over driver is vulnerable, and this bill will increase agitation over pulling over. A possible constitutional issue exists over creating a reasonable person standard for the affirmative defense, as opposed to actual knowledge. This bill makes it a crime to elude an imposter police officer.

Testified: (In support) Representative Lovick, prime sponsor; Larry Erickson, Washington Association of Sheriffs and Police Chiefs; Glenn Cramer, Washington State Patrol; and Tom McBride, Washington Association of Prosecuting Attorneys.

(With concerns) Peter Teets, Department of Licensing; and Sherry Appleton, Washington Defenders Association and Washington Association of Criminal Defense Lawyers.