

HOUSE BILL REPORT

HB 1788

As Reported by House Committee On:
Public Safety

Title: An act relating to vehicular pursuits.

Brief Description: Concerning vehicular pursuits.

Sponsors: Representatives Robertson, Mosbrucker, Ybarra, Klippert, Chase, Walsh, Rude, Klicker, Chambers, Barkis, Dufault, Jacobsen, Caldier, Griffey, Kraft, Graham and Young.

Brief History:

Committee Activity:

Public Safety: 1/18/22, 2/3/22 [DPS].

Brief Summary of Substitute Bill

- Allows a peace officer to engage in a vehicular pursuit when there is reasonable suspicion that a person in the vehicle has committed or is committing a violent offense, escape offense, or driving under the influence offense, subject to certain safety restrictions.
- Establishes additional requirements for supervisory control of vehicular pursuits.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Goodman, Chair; Mosbrucker, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Graham, Griffey, Hackney, Orwall, Ramos and Young.

Minority Report: Do not pass. Signed by 4 members: Representatives Johnson, J., Vice Chair; Davis, Simmons and Thai.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Staff: Kelly Leonard (786-7147).

Background:

A "vehicular pursuit" refers to the attempt by a uniformed peace officer in a vehicle equipped with emergency lights and a siren to stop a moving vehicle where the operator of the moving vehicle appears to be aware that the officer is signaling the operator to stop the vehicle and the operator of the moving vehicle appears to be willfully resisting or ignoring the officer's attempt to stop the vehicle by increasing vehicle speed, making evasive maneuvers, or operating the vehicle in a reckless manner that endangers the safety of the community or the officer. When engaging in a vehicular pursuit, a peace officer may violate certain rules of the road, including, for example, stop signals, speed limits, and parking restrictions.

A peace officer may not engage in a vehicular pursuit, unless:

- there is probable cause to believe that a person in the vehicle has committed or is committing a violent offense, sex offense or an escape offense, or there is reasonable suspicion that a person in the vehicle has committed or is committing a driving under the influence offense;
- the pursuit is necessary for the purpose of identifying or apprehending the person; and
- the person poses an imminent threat to the safety of others and the safety risks of failing to apprehend or identify the person are considered to be greater than the safety risks associated with the vehicular pursuit under the circumstances.

There are additional requirements relating to supervision of vehicular pursuits. The pursuing officer must receive authorization from a supervising officer to engage in the pursuit. The supervising officer must consider the justification for the vehicular pursuit and other safety considerations, including speed, weather, traffic, road conditions, and the known presence of minors in the vehicle. In jurisdictions with fewer than 10 commissioned officers, if a supervising officer is not on duty at the time, the pursuing officer will request the on-call supervisor be notified of the pursuit according to agency procedures. In the absence of a supervising officer in these circumstances, the pursuing officer must still comply with the same requirements and safety considerations in evaluating whether to conduct or terminate a pursuit.

A pursuing officer must comply with any agency procedures for designating the primary pursuit vehicle and determining the appropriate number of vehicles permitted to participate in the vehicular pursuit and comply with any agency procedures for coordinating operations with other jurisdictions, including available tribal police departments when applicable.

Summary of Substitute Bill:

The evidentiary threshold for engaging in a vehicular pursuit is adjusted from probable

cause to reasonable suspicion, and the specific authorization to engage in a vehicular pursuit when there is probable cause for a sex offense is removed. Therefore, a peace officer may not engage in a vehicular pursuit, unless:

- there is reasonable suspicion that a person in the vehicle has committed or is committing a violent offense, escape offense, or driving under the influence offense; and
- the person poses an imminent threat to the safety of others, and the safety risks of failing to apprehend or identify the person are considered to be greater than the safety risks associated with the vehicular pursuit under the circumstances.

The requirements regarding supervision of vehicular pursuits are modified and expanded. A peace officer may not engage in a vehicular pursuit unless the officer notifies a supervising officer immediately upon initiating the vehicular pursuit. There must be supervisory oversight of any vehicular pursuit. The following requirements apply to any vehicular pursuit:

- the supervising officer, the pursuing officer, or dispatcher must notify other law enforcement agencies or surrounding jurisdictions that may be impacted by the vehicular pursuit or called upon to assist with the vehicular pursuit;
- the pursuing officer must be able to directly communicate with other officers engaging in the pursuit, the supervising officer, and the dispatch agency, such as being on a common radio channel or having other direct means of communication;
- the pursuing officer, supervising officer, or responsible agency, as soon as practicable after initiating a vehicular pursuit, must develop a plan to end the pursuit through the use of available pursuit intervention options, such as the use of the pursuit intervention technique (also commonly referred to as PIT maneuver), deployment of spike strips or other tire deflation devices, or other department-authorized pursuit intervention tactics; and
- the pursuing officer must have completed an emergency vehicle operator's course, have completed updated emergency vehicle operator training in the previous two years, and be certified in at least one pursuit intervention.

The exceptions and alternate procedures for jurisdictions with fewer than 10 commissioned officers are removed. All jurisdictions are subject to the requirements regarding supervisory oversight of vehicular pursuits.

Substitute Bill Compared to Original Bill:

The substitute bill allows an officer to engage in a vehicular pursuit only when there is reasonable suspicion that a person in the vehicle has committed or is committing a violent offense, escape offense, or driving under the influence (DUI) offense (rather than when there is reasonable suspicion that a person in the vehicle has committed or is committing a criminal offense as provided in the underlying bill, or when there is probable cause to believe that a person in the vehicle has committed or is committing a violent offense, sex offense, or escape offense, or reasonable suspicion that a person in the vehicle has

committed or is committing a DUI offense as provided in current law). The substitute bill restores the current law providing that a peace officer may not engage in a vehicular pursuit unless the person in the vehicle poses an imminent threat to the safety of others.

The substitute bill requires supervisory oversight of the pursuit by a supervising officer. The substitute bill also restores current law requiring the supervising officer to evaluate the justification for the vehicular pursuit and other safety considerations, and consider alternatives to the pursuit (rather than requiring the pursuing officer to evaluate and consider those elements in consultation with a supervising officer as provided in the underlying bill). The substitute bill also adds restrictions for pursuits, including:

- requiring the supervising officer, the pursuing officer, or dispatcher to notify other law enforcement agencies or surrounding jurisdictions that may be impacted by the vehicular pursuit or called upon to assist with the vehicular pursuit;
- requiring the pursuing officer to be able to directly communicate with other officers engaging in the pursuit, the supervising officer, and the dispatch agency, such as being on a common radio channel or having other direct means of communication;
- requiring the pursuing officer, supervising officer, or responsible agency, as soon as practicable after initiating a vehicular pursuit, to develop a plan to end the pursuit through the use of available pursuit intervention options, such as the use of the pursuit intervention technique, deployment of spike strips or other tire deflation devices, or other department-authorized pursuit intervention tactics; and
- specifying that the pursuing officer must have completed an emergency vehicle operator's course, have completed updated emergency vehicle operator training in the previous two years, and be certified in at least one pursuit intervention option.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) Many new laws need to be modified and adapted after considering real experiences in the field. This bill aims to do this with respect to the recently established restrictions on vehicular pursuits. The law should focus on safety considerations, rather than a bright line rule related to particular offenses. Limiting pursuits to when there is probable cause for certain offenses is a functional ban on vehicular pursuits. This incentivizes persons to flee and evade police officers. While there may be a reduction in pursuits, there has been a dramatic increase in persons fleeing and evading officers. People are ignoring criminal and traffic laws. They believe that law enforcement officers cannot do anything. Unfortunately, they are correct. The current restrictions are making

communities unsafe and causing dramatic increases in crime.

It is not possible to develop probable cause in these situations. If a person is fleeing in a vehicle, there is no probable cause. Officers typically have reasonable suspicion, and then develop probable cause after stopping the person. This bill restores the threshold to reasonable suspicion for all criminal offenses, but it maintains the safety balancing requirements. Many legislators already believe this to be the current standard. The risk-benefit analysis in the safety balancing requirement is the correct approach. It allows local jurisdictions and officers to make thoughtful judgment calls when doing their jobs. Trained officers should be allowed to engage in vehicular pursuits when it is safe to do so. The risks of the pursuit must be outweighed by the risk of not apprehending the person in the vehicle. They must take into account specific factors relating to the road and traffic conditions in the area. If this standard had been in place (without the higher restriction relating to probable cause for a limited set of offenses), then law enforcement would have been able to respond to many high profile incidents, like a stolen school bus and drive-by shooting. Sometimes bad things happen, and officers need the ability to pursue and apprehend persons who are responsible. Crime victims suffer greatly, and the government needs to be responsive to their concerns.

The changes to the supervisory control requirements are also important. Officers should be required to notify supervisors rather than obtain advance authorization. These communications often go through a dispatcher and there is not time to wait for advance authorization.

(Opposed) This bill mocks the important policy reforms enacted in 2021. Before these reforms were put into place, there were numerous incidents involving traffic stops and pursuits where innocent members of the public were killed by police officers. The reforms acknowledge the experiences of vulnerable persons and persons of color. It is well known that people of color are stopped at higher rates and are subject to excessive police intervention and force. Since the reforms were enacted, there has been a 60 percent reduction in police violence. This bill rolls back these reforms based on a campaign of misinformation. There is no evidence that vehicular pursuits will make communities safer.

High speed pursuits are hazardous to the public and peace officers. The evidence shows that their vehicular pursuits have high rates of fatal collisions and bystander injuries. Vehicular pursuits are inherently dangerous and should be reserved for rare circumstances involving probable cause of serious offenses and reasonable suspicion for DUI. Human life is more important than property.

Persons Testifying: (In support) Representative Eric Robertson, prime sponsor; Brian Smith, Port Angeles Police; James McMahan, Washington Association Sheriffs and Police Chiefs; Spike Unruh, Washington State Patrol Troopers Association; Jeff DeVere, Washington State Patrol Lieutenants and Captains Association; Jim Ferrell, City of Federal Way; and Bob Songer and Tim Neher, Klickitat County Sheriff's Office.

(Opposed) Martina Morris, Nickeia Hunter, Sonia Joseph, and Po Leapai, Washington Coalition for Police Accountability; Enoka Herat, American Civil Liberties Union of Washington; Adrienne Wat, King County; and Teri Rogers Kemp, Washington Defender Association and Washington Association Criminal Defense Lawyers.

Persons Signed In To Testify But Not Testifying: Laurie Layne.