

HOUSE BILL REPORT

ESB 5919

As Reported by House Committee On:
Public Safety

Title: An act relating to the standard for law enforcement authority to detain or pursue persons.

Brief Description: Concerning the definition of "physical force," "necessary," and "totality of the circumstances," and the standard for law enforcement authority to use physical force and providing the authority for a peace officer to engage in a vehicular pursuit when there is reasonable suspicion a person has violated the law and the officer follows appropriate safety standards.

Sponsors: Senators Van De Wege, Mullet, Conway, Gildon, Honeyford, Lovick, Randall, Salomon and Wagoner.

Brief History:

Committee Activity:

Public Safety: 2/22/22, 2/24/22 [DPA].

Brief Summary of Engrossed Bill
(As Amended By Committee)

- Modifies the restrictions on vehicular pursuits, including modifying the types of offenses where pursuits are permitted, lowering the evidentiary threshold from probable cause to reasonable suspicion, and restricting pursuits to when a person in the vehicle poses a threat of significant injury or death to another person.
- Establishes additional supervisory and safety-related requirements for vehicular pursuits.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: Do pass as amended. Signed by 7 members: Representatives Goodman, Chair; Mosbrucker, Ranking Minority Member; Davis, Griffey, Hackney, Orwall

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.

and Ramos.

Minority Report: Without recommendation. Signed by 5 members: Representatives Johnson, J., Vice Chair; Klippert, Assistant Ranking Minority Member; Graham, Simmons and Thai.

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;
- 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 Amended Bill:

The restrictions on vehicular pursuit are modified by lowering the evidentiary threshold from probable cause to reasonable suspicion, adjusting the threat threshold, and removing the authorization to engage in pursuits in circumstances involving sex offenses (that are not also violent offenses). 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;
- the person poses a threat of significant injury or death to another person; 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.

Amended Bill Compared to Engrossed Bill:

The amended bill removes the intent section and all amendatory provisions pertaining to the standard for use of force by peace officers.

The amended bill modifies the restrictions on vehicular pursuits by: limiting the authority to engage in pursuits to 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 (rather than reasonable suspicion that a person in the vehicle has committed or is committing any criminal offense where the public safety risks of failing to apprehend or identify the person are considered to be greater than the safety risks of the vehicular pursuit under the circumstances, as provided in the underlying bill); and prohibiting pursuits unless a person in the vehicle poses a threat of serious injury or death to another person, (rather than poses a public safety risk, as provided in the underlying bill, or an imminent threat to the safety of others, as provided in current law).

The amended bill modifies the supervisory requirements for vehicular pursuits by: requiring the pursuing officer to notify a supervising officer immediately upon initiating a pursuit (rather than requiring the pursuing officer to receive authorization to continue the pursuit from a supervising officer, as provided in the underlying bill); requiring supervisory oversight of the pursuit (rather than supervisory control of the pursuit, as provided in current law and the underlying bill); and removing current law alternatives for when a supervisor is not on duty, thereby requiring supervisory oversight in all pursuits.

The amended bill also adds restrictions for vehicular 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: Not requested.

Effective Date of Amended Bill: The bill contains an emergency clause and takes effect

immediately.

Staff Summary of Public Testimony:

(In support) The bill is not an attempt to roll back police reforms enacted in 2021. To the contrary, it is intended to clarify how these reforms are to be interpreted and implemented. Engrossed Second Substitute House Bill 1310 and Engrossed Substitute House Bill (ESHB) 1054 had the unintended consequence of increasing crime and victimization, including property crimes and gun violence. Some communities are starting to take on a "wild west" atmosphere, which is also incentivizing vigilantism. It is imperative for peace officers to be able to enforce laws and carry out their duties.

Being in a vehicle should not be a "get out of jail free" card, yet this has been the consequence of ESHB 1054. It is happening daily. Current law effectively bans vehicular pursuits. A person should not be able to steal a catalytic converter, commit a residential burglary, or assault another person, and then avoid consequences by simply getting in a car and driving away. Peace officers rely on voluntary compliance. The unintended effect of ESHB 1054 has been to incentivize people to flee in vehicles. They know officers cannot pursue them. It is more important to the ability to pursue suspects, which will then incentivize cooperation and decrease the likelihood that pursuits will actually take place, than to actually pursue them.

There is a common misconception about law enforcement agencies not supporting reform efforts. This is not true. Good policing and reforms are not mutually exclusive. The reasonable suspicion threshold, alongside a safety balancing test, is a common sense approach. The bill strikes the appropriate balance between accountability and public safety.

The Legislature should pass the version of the bill as it was referred to committee. The striking amendment, which was briefed during the public hearing, does not adequately address the many serious issues. However, either version would be preferred over current law.

(Opposed) Impacted families and community members have already expressed opposition to rolling back police reform efforts on several occasions. These legislative proposals are retraumatizing. Over policing and discriminatory policing are real and are hurting communities. The Legislature should have the courage to focus its efforts on addressing systemic racism, rather than injecting more harm into the system. The law should protect the dignity and safety of human life.

The purpose of any vehicular pursuit should be to apprehend a person suspected of a violent offense. Most often, this can be accomplished through other means. Vehicular pursuits are inherently dangerous to peace officers, subjects, and innocent bystanders. They should be used rarely, if at all. Current law strikes the correct balance. Probable cause is already a low threshold; it does not require an officer to have made an identification. It should not be

adjusted to reasonable suspicion. Reasonable suspicion is an illusion. This exposes the community to more danger by escalating incidents. The bill would increase use of force and pursuits of innocent people.

The state should expand the data collection program at the Attorney General's Office to include vehicular pursuits. This will help inform policy decisions regarding this inherently dangerous police tactic.

Persons Testifying: (In support) Senator Kevin Van De Wege, prime sponsor; Brian Smith, Port Angeles Police Department; James McMahan, Washington Association of Sheriffs and Police Chiefs; Brett Gailey, City of Lake Stevens; Nancy Backus, City of Auburn; Armondo Pavone, City of Renton; Jim Ferrell, City of Federal Way; Michael McKinley; Jeff DeVere, Washington Council of Police and Sheriffs; and Nadine Woodward, City of Spokane.

(Opposed) Austin Field, Seattle Community Police Commission; Kathy Strauss; Jac Archer, Spokane Community Against Racism and Peace and Justice Action League of Spokane; Teri Rogers-Kemp, Washington Defender Association; Braden Pence; Tamer Abouzeid, King County Office of Law Enforcement Oversight; and Martina Morris, Next Steps Washington.

Persons Signed In To Testify But Not Testifying: Vivian Korneliussen; Marjorie Carlson; Ruth Lipscomb; Rheta Rubinstein; Valeria Carrillo, Washington State Democratic Latino Caucus; and Ed Lindsay.