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2003 SENATE TRANSPORTATION

SB 2164

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2164

Senate Transportation Committee

☐ Conference Committee

Hearing Date 1-17-03

Tape Number	Side A	Side B	Meter #
1		X	310-2280
Committee Clerk Signature <i>Mary K Monson</i>			

Minutes:

The hearing on SB 2164 relating to the driver of a motor vehicle fleeing or attempting to elude a law enforcement officer was opened by **Chairman Senator Thomas Trenbeath**.

Sergeant Ross Renner: (Supervisor with the City of Fargo Police Department) Testified in support of SB 2164. See attached testimony.

Senator Taylor: Questioned reasons for pursuit as the policy is now?

Sergeant Renner: (Meter 793) Our policies are restricted to only crimes of violence.

Senator Trenbeath: (Meter 858) Are you familiar with the history of this crime?

Sergeant Renner: Somewhat.

Senator Trenbeath: (Meter 865) Explained the history and asked if a difference could be seen in fleeing charges with the past changes.

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Senate Transportation Committee
Bill/Resolution Number SB 2164
Hearing Date 1-17-03

Sergeant Renner: Based on my research we haven't seen a decrease. The offenders we are seeing are repeat offenders. I don't believe we are going to see a vast reduction, but if I see one that prevents a crash resulting in a person being killed or injured I think it is worth it.

Senator Trenbeath: You are looking at us increasing the penalty as being a deterrent. It hasn't done it in the past and it won't do it now.

Sergeant Renner: (Meter 1050) That is part of the problem.

Senator J. Lee: Testified in support of SB 2164. Testimony attached.

Mike Reitan: (Supervisor with the West Fargo Police Department) (Meter 1285) Concur with the testimony presented by Sergeant Renner in reference to SB 2164. We have very restrictive conditions that govern a pursuit as to when that pursuit will take place and when it will be terminated. It is set by national standards.

Senator Trenbeath: In situations where crashes result, do you have other charges besides fleeing that could be levied as a result of that crash?

Mike Reitan: (Meter 1455) Yes.

Lyle Sinclair: (Police Officer with the City of Bismarck) Supports SB 2164.

Mark Nelson: (Field Operations Commander for the North Dakota Highway Patrol) Neutral.
(Meter 1590) Our agency was asked to look at this issue. Explained the penalties now in place for fleeing a police officer. As a representative of the Highway Patrol, we are neutral on the case. We understand the concerns of the cities but are uncertain as to how increasing the penalty will affect pursuits in the future.

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Senator Trenbeath: I think I can speak for the committee. We know it is a national problem and we know it is something that law enforcement and governments throughout the country are wrestling with-- a resolution for or an acceptable policy for dealing with.

The hearing on SB 2164 was closed.

Senator Bercier motions a **Do Not Pass**. Seconded by **Senator Mutch**. Roll call vote 5-0-1.

Passed. Floor carrier is **Senator Bercier**.

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Date: 1-17-03
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. ^{SB} 2164

Senate TRANSPORTATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Senator Bercier Seconded By Senator Mutch

Senators	Yes	No	Senators	Yes	No
Senator Thomas Trenbeath, Chair	✓		Senator Dennis Bercier	✓	
Senator Duaine Espegard, V. Chair	✓		Senator Ryan Taylor	✓	
Senator Duane Mutch	✓				
Senator Dave Nething					

Total (Yes) 5 No 0

Absent 1

Floor Assignment Senator Bercier

If the vote is on an amendment, briefly indicate intent:

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REPORT OF STANDING COMMITTEE (410)
January 23, 2003 11:24 a.m.

Module No: SR-13-0950
Carrier: Bercler
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2164: Transportation Committee (Sen. Trenbeath, Chairman) recommends **DO NOT PASS** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2164 was placed on the Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-13-0950

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2003 TESTIMONY

SB 2164

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(For Sen. J. Lee)

Scratch Pad for Bill: SB 2164

SB 2164
Transportation Committee
January 17, 2003

SB 2164 was introduced at the request of local police chiefs from West Fargo and Fargo. It is intended to eliminate the problem which law enforcement is having with first offenders and the light sentences they are given, if they flee a law enforcement officer.

This bill will eliminate the Class A misdemeanor sentence for first offenders and make any offense a Class C felony.

I expect that law enforcement officers will elaborate for the committee on examples of the difficulties the present law has caused, as they did for me.

I urge the Transportation Committee to support our law enforcement officials and give them the tools they need to do their work. I encourage you to give a favorable review to SB 2164.

<http://auth.intranetapps.nd.gov/lr/legislature/laws?request=LRLawsPrintScratchPad&memb...> 1/16/2003

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Date: 01/17/03

To: ND Senate Transportation Committee

RE: Senate Bill NO. 2164

The Need for Change.

Each year, law enforcement officers throughout the state are involved in pursuits involving offenders committing crimes, from minor theft to more serious crimes, involving violence. Each time an officer initiates a pursuit he places himself, the offender, and the public in danger of being either killed or seriously injured as a result of a crash. National crime data indicates that one person is killed every day as a result of police pursuing a fleeing suspect and one law enforcement officer dies every 11 days as a result of a high speed pursuit.

With these facts in mind, many law enforcement agencies have prohibited police pursuits except in cases involving crimes of violence or when the risk of allowing the offender to remain at large is greater than the risk that is created by initiating a police pursuit. Law enforcement has realized the impact that police pursuits can have on law enforcement officers and the general public and as a result have adopted restrictive pursuit policies to limit the number of pursuits the public is exposed to.

Officers in this state do not feel that the penalty section of **39-10-71, "Fleeing or attempting to elude a peace officer"** accurately reflects the severity of this crime. At present, a suspect can flee from the police and the maximum sentence they may receive is a class A misdemeanor with a penalty of one year in jail and or a fine of \$2000.00. This penalty can be imposed for the first offense but rarely is. A second offense of this statute is a class C Felony with a maximum penalty of five years in jail and a \$5000.00 fine. The underlying issue is this, if the offender does not stop for a pursuing officer, the chance of an offender being charged with the first offense is very small.

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Reasons Offenders Flee.

Offenders will flee the police for a number of reasons, with the primary reason being to elude police for a crime they have committed, or are about to commit. An example of this is a person who has had previous arrests for driving under the influence. This person knows that if they are stopped, they may be arrested for a second or third or fourth offense of driving under the influence of alcohol. At present, there is little to no deterrent for someone in this position not to flee from an officer. A person in this position will simply not see an increase in fine or jail sentence based on our current judicial structure, so fleeing is worth the risk to the offender.

This leaves the offender considering his/her options of taking the chance of fleeing and getting away compared to being arrested when stopped.

Offenders that are familiar with the judicial system realize that, many times multiple charges for different offenses will be plea bargained down or dismissed in an effort to avoid a lengthy trial. This gives the offender the impression that fleeing is once again worth the risk for this law violation.

Based on my thirteen years of being a police officer I have found that most times the offender of this particular law is not the sixteen year old kid who had a few beers and is afraid of being caught. The offender is the person who has been through the judicial system many times and simply knows if apprehended they will once again go to jail. These individuals feel they have nothing to lose under the current law and are willing to risk their life, my life and any one in the communities life to avoid apprehension.

Conclusion

The current penalty for fleeing in the state of North Dakota simply does not provide the deterrent to an offender who may consider fleeing the police. A change in this statute would provide prosecutors and law Enforcement with the necessary deterrent to curb some of the pursuits that are currently taking place, thus putting everyone in our state at risk.

Testimony provide by: Sergeant Ross Renner
Representing agency: Fargo Police Department

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High-Speed Police Pursuits

Dangers, Dynamics, and Risk Reduction

By JOHN HILL, M.S., M.A.



High-speed police pursuits and the inherent risk of injury and death that can result constitute an important law enforcement and public safety issue. Police pursuits are dangerous. Available data indicate that the number of pursuits continues to increase, as well as the number of pursuit-related injuries and deaths. A traffic accident constitutes the most common terminating event in an urban pursuit,¹ and most people agree that these pursuits should be controlled. Yet, researchers note a widespread lack of accurate data on the subject.

Officers face the basic dilemma associated with high-speed pursuits of fleeing suspects: Do the benefits of potential apprehension outweigh the risks of endangering the public and the police?² Research indicates that too many restraints placed on the police regarding pursuits can put the public at risk.³ On the other hand, insufficient controls on police pursuit can result in needless accidents and injuries.

The Dangers of Pursuit

The interpretation of the term "pursuit-related crash" represents one common police practice that affects accuracy of reporting. Often, police officers or their agencies will make the determination that a crash occurred right after a pursuit was "terminated," hence the crash is not pursuit-related. Agencies immediately can determine if this occurred by

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replaying tapes of radio transmissions during the pursuit, even days after completing a comprehensive accident investigation or reconstruction. Either way, the process can be very subjective.

Some research indicates that police pursuits result in about 350 deaths per year and the number of pursuits increases each year.⁴ One organization estimates that about 2,500 persons die each year as a result of police pursuits and that another 55,000 are injured.⁵ Although some law enforcement sources argue that these estimates are exaggerated, they concede that the 350 figure may be too low.

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The National Highway Traffic Safety Administration (NHTSA) reported that 314 people were killed during pursuits in 1998. Of this total, 2 were police officers and 198 were individuals being chased. The remaining 114 were either occupants of unrelated vehicles or pedestrians.⁶ The total was higher in each of the 4 previous years.

The lack of a mandatory reporting system hampers attempts by NHTSA to track pursuit fatalities and results in the collection of as little as one-half of the actual data.⁷ Typically, only 90 percent of states report pursuit fatality data to NHTSA. By extrapolating the 5-year totals to include 100 percent reporting, calculations would show an average of 375 deaths per year. Even conservative estimates by various researchers recalculate the actual number of fatalities between 400 to 500 deaths per year.



Mr. Hill, a retired New Jersey police officer, serves as an instructor of criminal justice at the University of Phoenix.

Police pursuit records provide some frightening statistics. First, the majority of police pursuits involve a stop for a traffic violation.⁸ Second, one person dies every day as a result of a police pursuit.⁹ On average, from 1994 through 1998, one law enforcement officer was killed every 11 weeks in a pursuit,¹⁰ and 1 percent of all U.S. law enforcement officers who died in the line-of-duty lost their lives in vehicle pursuits.¹¹ Innocent third parties who just happened to be in the way constitute 42 percent of persons killed or injured in police pursuits.¹² Further, 1 out of every 100 high-speed pursuits results in a fatality.¹³

Research indicates that pursuits become dangerous quite quickly. For example, 50 percent of all pursuit collisions occur in the first 2 minutes of the pursuit, and more than 70 percent of all collisions occur before the sixth minute of the pursuit.¹⁴ Although the public sympathizes with the law enforcement community's position on pursuits, they do not want to be placed in harm's way. Public support for pursuits decreases as the severity of the offense that led to the chase decreases.¹⁵ One study found that 58 percent of people interviewed reported that police act correctly when they pursue a motorist who does not stop.¹⁶ When asked if the police act correctly when the pursuit endangers public safety, support decreased by one-half to 29 percent. Almost two-thirds (64 percent) of respondents said that they felt police overreact sometimes or very often when pursuing motorists who do not stop.¹⁷ To decrease the dangers associated with pursuit, agencies must increase training and ensure that they have clear pursuit policies.

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Training and Policy

A lack of training can increase risks of pursuit-related injuries. Only recently has classroom instruction included training on vehicle pursuit tactics, policy, and liability. Previously, agencies taught pursuit-driving techniques behind the wheel without accompanying classroom training. Officers learned *how* to pursue but not *when* to pursue. Inadequate or inapplicable training often resulted, and officers rarely followed training in actual practice. Law enforcement must approach pursuit training similar to firearms training. For example, for every hour agencies spend on training officers how to shoot, they also spend several hours teaching when to shoot.¹⁸

The training deficiency trend has changed in the past few years. Although many agencies have increased or added pursuit training, most have done so only for new officers at the police academy. Therefore, most veteran officers, with their academy days far behind them, lack contemporary pursuit training.

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Training should teach officers the phenomena present while they pursue. Tunnel vision makes them oblivious to what is going on around them. Some 96 percent of officers involved in a pursuit focus on catching the violator "if it's the last thing (they'll) ever do."¹⁹ Research shows that this holds true for many officers.²⁰

While effective pursuit training can curtail certain dangerous situations, policy constitutes another important aspect in police pursuits.²¹ An overwhelming majority of police agencies implemented their pursuit policy in the 1970s.²² Although most of these same agencies modified their policies in the past 2 years by adding restrictions due to liability, problems remain. Insufficiencies still exist in data collection, reporting procedures, and accompanying accountability.²³

One comprehensive study shows that officers can use termination as an effective option to reduce the risks of pursuits.²⁴ This study involved interviews of 146 jailed suspects who had been involved as drivers in high-speed chases. More than 70 percent of the suspects said that they would have slowed down if police had terminated the pursuit or even backed off a short distance.²⁵ Fifty-three percent of the suspects responded that they were willing to run at all costs from the police in a pursuit, and 64 percent believed they would not be caught.²⁶ While 71 percent said that they were concerned for their own safety, only 62 percent said that they were concerned for the safety of others.²⁷ Clearly, the police must be concerned with public safety during pursuits because the suspects are not.

An integral part of pursuit training involves giving officers a clear understanding about the decision to terminate a pursuit. The Arkansas State Police recently created new pursuit training for state and local officers that stresses keeping pursuits under control and advises that termination is an option.²⁸

Alternatives to Pursuit

The most effective way to reduce risks is to terminate a pursuit. Clearly, too many pursuits continue that officers obviously should have terminated. Research on pursuit data and statistics show that termination dramatically could reduce traffic accidents, fatalities, and injuries. Police must reevaluate their thinking and mission.²⁹ Agencies rarely can justify endangering the public to pursue a violator.

Although many electronic devices still are being evaluated for effectiveness, technology also can decrease pursuit risks. Officers can carry spiked strips (or "stop sticks") in their trunks and deploy them in the path of a fleeing suspect. The strips create a controlled loss of air (not a blowout) from the suspect's tires. Once the violator crosses the strips, the deploying officer quickly pulls them from the roadway to allow pursuing police vehicles to pass. Agencies have begun to use these strips with increasing effectiveness. For example, departments in Cincinnati, Ohio, successfully used them after they sought risk-reduction techniques following a string of pursuit tragedies.³⁰ Similarly, the Ohio State Highway Patrol, the Utah Highway Patrol, and the Pennsylvania State Police also are reporting recent successful use of the spiked strips.

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Fatalities in Crashes Involving Law Enforcement in Pursuit 1994-1998

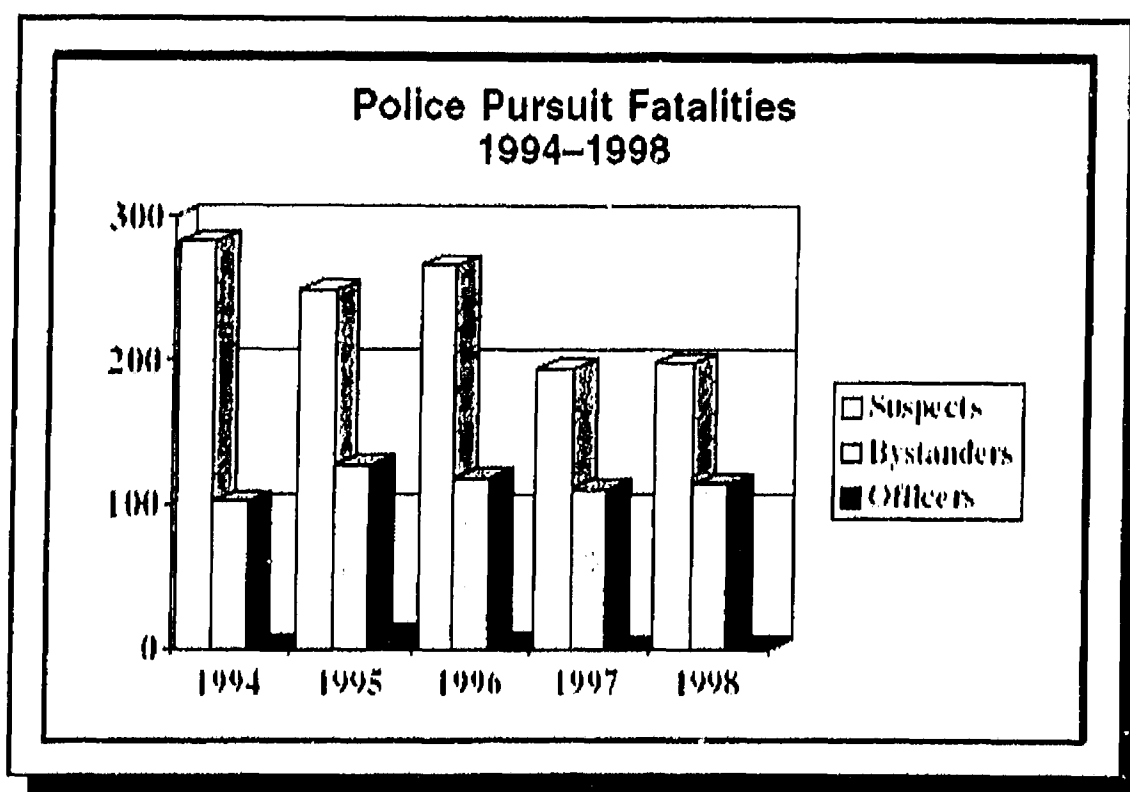
Deaths					
Year	1994	1995	1996	1997	1998
Suspects	283	249	267	194	198
Bystanders	102	127	118	111	114
Officers	3	10	5	1	2

Source: Fatality Analysis Reporting Systems ARF, National -Highway Traffic Safety Administration, Washington, DC, 2000

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One electronics company is testing a radar warning system that police can activate that sends a signal to any motorist with a radar detector of an approaching police pursuit. Motorists then can pull over to the side of the road or otherwise get out of the way.

Other technological ideas include an ultrasonic device that shoots a burst of microwave energy at a fleeing suspect. This causes the suspect vehicle's electronic system to fail, thus immediately disabling the violator.³¹ Experts are studying a similar technology in which a robot-like cart jettisons from the front of the primary police pursuit vehicle. The cart then attempts to overtake the fleeing vehicle and electronically "zaps" the engine out of service. Researchers also are testing radio-technologic devices (similar to stolen car tracking systems) that electronically would disable the fleeing vehicle.³² Agencies have used helicopters with good results in pursuits, in parts of California and in cities, such as Baltimore, Maryland; Miami, Florida; and Philadelphia, Pennsylvania. The versatility, range, and vantage point of the helicopter allows ground officers to decrease the use of high-speed pursuits and increase apprehension rates.³³ With a helicopter observing the suspect, ground units can slow down and retreat to reduce accident risks. While most agencies cannot afford their own helicopter, they can develop regional interagency assistance plans.



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Most experts agree that increased criminal penalties also will reduce pursuits. Individuals who elude and flee the police should face severe criminal penalties. Consequently, some states have made eluding a second-degree crime.³⁴

Conclusion

High-speed police pursuits constitute an important public safety issue. Research clearly indicates the dangers associated with these pursuits. While some are necessary, many are not. Curtailing unnecessary pursuits can reduce the inherent risks associated with this dangerous practice.

Law enforcement agencies should provide appropriate pursuit training to recruits during their instruction at police academies, as well as to seasoned officers. Additionally, police administrators should ensure that their department's pursuit policy provides clear guidance and they should make use of available technology that can aid in safer pursuits. Taking such initiatives can help departments increase the effectiveness of pursuits while simultaneously reducing the risks involved to citizens and officers.

Endnotes

¹ National Highway Traffic Safety Administration, Fatality Analysis Reporting Systems - ARF, *Fatalities in Crashes Involving Law Enforcement in Pursuit 1998* (Washington, DC, 2000).

² G. P. Alpert, U.S. Department of Justice, National Institute of Justice, *Police Pursuit: Policies and Training* (Washington, DC, May 1997).

³ Ibid.

⁴ Supra note 2.

⁵ R. Van Sant, "High-Speed Chases: Mayhem on the Street," *The Cincinnati Post*, May 19, 1998.

⁶ Supra note 1.

⁷ D. P. Van Blaricom, "He Flees—To Pursue or Not to Pursue: That is the Question," *Police* 22, no. 11, (1998).

⁸ Supra note 2. ⁹ Supra note 1.

¹⁰ Supra note 1.

¹¹ *In the Line of Duty: Police Pursuits Prove Deadly*, (National Law Enforcement Officers Memorial Fund: Washington, DC, 1997).

¹² Supra note 7.

¹³ D. Falcone, "Police Pursuit: In Pursuit of Policy, The Empirical Study, Volume II," *AAA Foundation for Traffic Safety* (Washington, DC, 1992).

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¹⁴ G. P. Alpert, U.S. Department of Justice, National Institute of Justice, *Pursuit Management Task Force Report* (Washington, DC, 1998).

¹⁵ Supra note 2.

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