

National Police Accountability Project

A Project of the National Lawyers Guild

OPPOSITION TO HB 2134 – Aggravated Unlawful Flight from Law Enforcement

From – National Lawyers Guild-National Police Accountability Project, Eliana Machefsky, Legal Fellow

House Judiciary Committee – Wednesday, January 17, 2024

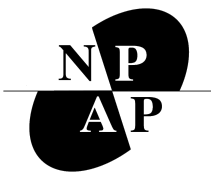
Chairman Nguyen, Vice Chair Bliss, and Members of this Committee,

I write to you on behalf of the National Police Accountability Project (“NPAP”), a nonprofit organization dedicated to promoting public safety by limiting unnecessary contact between law enforcement and civilians and holding law enforcement officers accountable to constitutional and professional standards. NPAP opposes HB 2134, a bill that would enable officers to arrest and prosecute drivers for unknowingly fleeing from law enforcement vehicles without eliminating any of the serious risks to public safety posed by vehicular pursuits.

Under current Arizona law, it is already a felony for a driver to willfully flee or attempt to elude a pursuing law enforcement vehicle, so long as the law enforcement vehicle was clearly marked with its emergency lights and sirens engaged or the vehicle was unmarked but the fleeing driver knew the pursuing vehicle belonged to law enforcement.¹ HB 2134 would not only increase the penalties for this offense but would impose these harsh penalties on drivers who lacked knowledge that they were being pursued by a police vehicle, so long as law enforcement can produce evidence that the driver should have known the unmarked vehicle pursuing them belonged to law enforcement.

Moreover, HB 2134’s harsh criminal penalties would apply with equal force to all drivers, regardless of the underlying suspected offense that triggered the police pursuit in the first place. For example, a driver who fails to use his turn signal and then drives off despite the officer’s command to stop could face the same consequences as a driver

¹ A.R.S. § 28-622.01.



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fleeing the scene of a suspected violent felony. Despite the absurdity of this hypothetical, it is not at all unrealistic, as more than 90 percent of law enforcement-initiated vehicle pursuits nationwide stem from traffic infractions.²

To be sure, vehicle chases pose immense risks to public safety. According to the Bureau of Justice Statistics, between 1996 and 2015 “an average of 355 persons (about 1 per day) were killed annually in pursuit-related crashes.”³ Of the people killed in pursuit-related crashes from 1996 to 2015, approximately 33% were bystanders, 65% were occupants of the vehicles being pursued, and “slightly more than 1%” were law enforcement officers.⁴ The dangers of these vehicular pursuits are borne disproportionately by people of color.⁵

But increasing penalties for the act of fleeing from law enforcement will not reduce the likelihood of such flight, nor will it mitigate the serious risk to human life that these high-speed chases pose.⁶ Individuals may flee from law enforcement for any number of reasons, ranging from knowledge of guilt to knowledge of innocence and fear of police force, despite knowing that fleeing from police can increase the penalties they face. Instead, Arizona should focus its efforts on limiting law enforcement authority to initiate

² POLICE EXECUTIVE RESEARCH FORUM, *Vehicular Pursuits: A Guide for Law Enforcement Executives on Managing the Associated Risks* (2023),

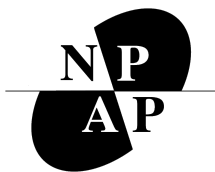
<https://portal.cops.usdoj.gov/resourcecenter/Home.aspx?item=cops-r1134>. Moreover, police are more likely to initiate these pursuits for minor offenses against Black drivers. “In 2013 and 2014, nearly every deadly pursuit triggered by an illegally tinted window, a seat-belt violation or the smell of marijuana involved a black driver.” Thomas Frank, *Black people are three times likelier to be killed in police chases*, USA TODAY (Dec. 1, 2016), <https://www.usatoday.com/pages/interactives/blacks-killed-police-chases-higher-rate/>.

³ Brian A. Reaves, *Police Vehicle Pursuits, 2012-2013*, BUREAU OF JUSTICE STATISTICS 1 (May 2017), <https://bjs.ojp.gov/content/pub/pdf/pvp1213.pdf>.

⁴ *Id.* at 6.

⁵ See, e.g., Frank, *Black people are three times likelier to be killed in police chases*, supra note 2 (“Black people were more likely than whites to be chased in more crowded urban areas, during peak traffic hours and with passengers in their cars, all factors that can increase the danger to innocent bystanders.”); Andrew Ford, *Deadly NJ police chases kill innocent victims, catch few crooks*, ASBURY PARK PRESS (Dec. 29, 2019), <https://www.app.com/in-depth/news/investigations/2019/12/29/deadly-police-chases-kill-dozens-nj-catch-few-fleeing-crooks/2506355001/>.

⁶ See John Eligon, *Running From Police Is the Norm, Some in Baltimore Say*, THE NEW YORK TIMES (May 10, 2015), <https://www.nytimes.com/2015/05/11/us/running-from-police-is-the-norm-some-in-baltimore-say.html>.



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and continue vehicular pursuits.⁷ Indeed, just last year, the Police Executive Research Forum (“PERF”), in conjunction with the U.S. Department of Justice’s Office of Community Oriented Policing Services, published a guide for law enforcement agencies recommending “that pursuits should take place only when two very specific standards are met: (1) A violent crime has been committed and (2) the suspect poses an imminent threat to commit another violent crime.”⁸ And several jurisdictions had restricted police authority to engage in vehicular pursuits prior to the PERF report, all with positive public safety outcomes.⁹

We urge you to oppose HB 2134, which will only ensnare more people in the web of the criminal legal system without improving road safety in Arizona. To mitigate the dangers posed by vehicular pursuits of fleeing suspects, we urge you instead to pursue the research-based and law enforcement-backed solution of restricting law enforcement authority to engage in such pursuits.

I am happy to answer any questions you may have. You can contact me at fellow.npap@nlg.org.

Sincerely,

Eliana Machefsky
National Police Accountability Project

⁷ Research shows that drivers fleeing from the police will slow down and resume safe driving once the police stop chasing them. POLICE EXECUTIVE RESEARCH FORUM, *Vehicular Pursuits*, *supra* note 2, at 16.

⁸ *Id.* at ix.

⁹ *Id.* at 30-32 (discussing various policies).