



National Police Accountability Project

A Project of the National Lawyers Guild

OPPOSITION TO HB 1047 – an act to enhance the penalties for eluding law enforcement

Written Testimony of National Lawyers Guild-National Police Accountability Project, Eliana Machebsky, fellow/attorney

Senate Judiciary Committee – Tuesday, January 30, 2024

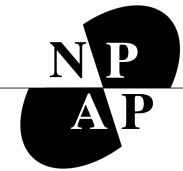
Chair Duhamel, Vice-Chair Stalzer, and Members of this Committee,

Thank you for the opportunity to provide testimony on this important issue. The National Police Accountability Project (“NPAP”) is 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 1047, a bill that would increase penalties for fleeing from law enforcement vehicles without eliminating any of the serious risks to public safety posed by vehicular pursuits.

HB 1047’s increased penalties would apply with equal force to all drivers, regardless of the underlying suspected offense that triggered the law enforcement’s signal to stop 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 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.¹

¹ 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/>.



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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.”² 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.³ The dangers of these vehicular pursuits are borne disproportionately by people of color.⁴

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.⁵ 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, South Dakota should focus its efforts on limiting law enforcement authority to initiate and continue vehicular pursuits.⁶ 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.”⁷ And several jurisdictions had restricted police authority to engage in vehicular pursuits prior to the PERF report, all with positive public safety outcomes.⁸

² Brian A. Reaves, *Police Vehicle Pursuits, 2012-2013*, BUREAU OF JUSTICE STATISTICS 1 (May 2017), <https://bjs.ojp.gov/content/pub/pdf/pvp1213.pdf>.

³ *Id.* at 6.

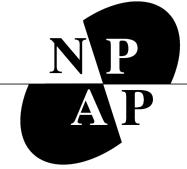
⁴ See, e.g., Frank, *Black people are three times likelier to be killed in police chases*, *supra* note 1 (“Black people were more likely than whites to be chased in more crowded urban areas, during peak traffic hours and with passengers in their cars, all factors that can increase the danger to innocent 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/>.

⁵ 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>.

⁶ 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 1, at 16.

⁷ *Id.* at ix.

⁸ *Id.* at 30-32 (discussing various policies).



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We urge you to oppose HB 1047, which will only ensnare more people in the web of the criminal legal system without improving road safety in South Dakota. 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.

Thank you again for the opportunity to provide testimony on this important issue. Please do not hesitate to contact me at fellow.npap@nlg.org if you have any questions.