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March 20, 2023

House of Representatives

PO Box 40600
Olympia, WA 98504

RE: ESB 5352 – Vehicular Pursuits

Honorable Members of the House,

I write today to express our support for ESB 5352 – concerning vehicular pursuits. Our support, however, comes with reservations due to the amendment adopted by the Senate. The bill, as amended by the Senate, is objectively better than current law, though it falls far short of the reasonable and balanced vehicular pursuits proposal that was originally introduced. In short, ESB 5352 is necessary but insufficient.

We are particularly concerned by the amendment adopted by the Senate. In addition to narrowing the offenses for which a vehicular pursuit could be authorized, the Senate amendment narrowed the title of the bill to the extent that we believe it effectively prohibits the House from considering many substantive amendments to the bill.

Under the Senate amendment, the House cannot consider amendments to adopt a more reasonable and general definition of “violent offense”, or otherwise expand the criminal offenses eligible for a vehicular pursuit.

Pursuant to SB 5352 as amended by the Senate, many felony offenses remain categorically ineligible for a vehicular pursuit, no matter the circumstances, including when:

- A person who is involved in a vehicular collision resulting in the death of another person and flees the scene (**Hit and run – death** – RCW 46.52.020 (4)(a) – a Class B felony);
- A person enters or remains unlawfully in a dwelling other than a vehicle with the intent to commit a crime against a person or property therein (**Residential burglary** – RCW 9A.52.025 – a Class B felony);
- A person who causes physical injury to another person due to his or her perception of the victim’s race, color, religion, ancestry, national origin, gender, sexual orientation, gender expression or identity, or mental, physical, or sensory disability (**Hate crime** – RCW 9A.36.080 – a Class C felony);
- A person who steals a motor vehicle and as part of an organized auto theft ring (**Taking a motor vehicle without permission 1** – RCW 9A.56.070 – a Class B felony);

- A person who teaches or demonstrates to another person the use, application, or making of any device or technique capable of causing significant bodily injury or death to persons in furtherance of a civil disorder (**Civil disorder training** – RCW 9A.48.120 – a Class B felony);
- A parent or guardian withholds the basic necessities of life to a child and causes great bodily harm (**criminal mistreatment 1** – RCW 9A.42.020 – a Class B felony);
- A person who maliciously uses an explosive device to destroy or damage a building, car, airplane, vessel, common carrier, railroad track, or public utility transmission system or structure (**Malicious explosion of a substance 3** – RCW 70.74.280 – a Class B felony);
- A person who maliciously places an explosive device in, upon, under, against, or near any building, car, vessel, railroad track, airplane, public utility transmission system, or structure (**Malicious placement of an explosive** – RCW 70.74.270 – a Class A or Class B felony);
- An adult who assaults a child causing physical pain or agony that is equivalent to that produced by torture (**assault of a child 2** – RCW 9A.36.130 – a Class B felony);
- Four or more persons who use or threaten to use deadly force against any other person (**criminal mischief** – RCW 9A.84.010 (2)(b) – a Class C felony);
- A person unlawfully delivers a firearm to an ineligible person (**delivery of firearms to ineligible person** – RCW 9.41.080 – a Class C felony);
- Two or more persons assembling to commit criminal sabotage (**Assemblages of saboteurs** – RCW 9.05.030 – a Class B felony);
- A person brings a firearm or explosive into a state institution for the care and treatment of mental illness (**Bringing narcotics, liquor, or weapons into state institution or grounds** – RCW 72.23.300 – a Class B felony);
- A person who violates a domestic violence **protection order**, sexual assault protection order, stalking protection order, vulnerable adult protection order, restraining order, or foreign protection order (RCW 7.105.450, RCW 10.99.040, RCW 10.99.050, RCW 26.09.300, RCW 26.26B.050, RCW 26.52.070);
- A person who is involved in a vehicular collision resulting in injury to another person and flees the scene (**Hit and run – injury** – RCW 46.52.020 (4)(b) – a Class C felony);
- A person who organizes three or more persons with the intent to engage in a pattern of criminal activity or incites others to engage in violence with the intent to further the accomplishment of a pattern of criminal profiteering activity (**Leading organized crime** – RCW 9A.82.060 – a Class A or Class B felony, respectively);
- A person in unlawful possession of a firearm after having been found guilty of a serious offense (**Unlawful possession of a firearm 1** – RCW 9.41.040 – a Class B felony);
- A person who steals a firearm or is in possession of a stolen firearm (**Theft of a firearm** – RCW 9A.56.300 – a Class B felony, and Possession of a stolen firearm – RCW 9A.56.310 – a Class B felony, respectively);
- A person who intentionally and repeatedly harasses or follows another with the intent to frighten and creates a reasonable fear in the person being stalked (**Stalking** – RCW 9A.46.110 – a Class B felony);
- A person who assaults a law enforcement officer with a projectile stun gun (**Assault 3 of a Peace officer with a stun gun** – RCW 9A.36.031 (1)(h) – a Class C felony);

- A person who assaults a law enforcement officer (**Assault 3** – excluding Assault 3 on a Peace officer with a stun gun – RCW 9A.36.031 (1)(a-g)&(i-j) – a Class C felony);
- A person who operates a vessel in a reckless manner and causes serious bodily injury to another (**Assault by watercraft** – RCW 79A.60.060 – a Class B felony);
- A person knowingly or intentionally permits a dependent child or dependent adult to be ingest, inhale, or have contact with methamphetamine (**Endangerment with a controlled substance** – RCW 9A.42.100 – a Class B felony);
- An adult who assaults a child under the age of 13 by means of a weapon likely to produce bodily harm (**Assault of a Child 3** – RCW 9A.36.140 – a Class C felony);
- A person who enters or remains unlawfully in a building other than a vehicle or dwelling with the intent to commit a crime against a person or property therein (**Burglary 2** – RCW 9A.52.030 – a Class B felony);
- A person who assaults a community corrections officer performing their official duties (**Custodial assault** – RCW 9A.36.100 – a Class C felony);
- A person who commits theft of property with a value of at least \$5,000 from a mercantile establishment with an accomplice (**Organized retail theft 1** – RCW 9A.56.350 (2) – a Class B felony);
- A person who manufactures or possesses an incendiary device (**Possession of incendiary device** – RCW 9.40.120 – a Class B felony);
- A person unlawfully manufactures, owns, buys, sells, loans, furnishes, transports, or possesses a machine gun, bump-fire stock, undetectable firearm, short-barreled shotgun, or short-barreled rifle (**Possession of machine gun, bump-fire stock, undetectable firearm, or short-barreled shotgun or rifle** – RCW 9.41.190 – a Class c felony);
- A person knowingly or recklessly organizes, manages, or traffics the theft of property for sale to others (**Trafficking in stolen property 1** – RCW 9A.82.050 – a Class B felony & Trafficking in stolen property 1 - RCW 9A.82.055 – a Class C felony, respectively);
- A person knowingly and unlawfully restrains another person (**Unlawful imprisonment** – RCW 9A.40.040 – a Class C felony);
- A person knowingly and maliciously causes physical damage to the property of another in an amount exceeding \$5,000, or causes an interruption of service rendered to the public by physically damaging an emergency vehicle, or causes the impairment of the safety of an aircraft by physically damaging the aircraft (**Malicious mischief 1** – RCW 9A.48.070 – a Class B felony);
- A person posses a stolen motor vehicle (**Possession of stolen vehicle** – RCW 9A.56.068 – a Class B felony);
- A person commits theft of property other than a firearm which exceeds \$5,000, or more than \$750 but less than \$5,000 (**Theft 1** – RCW 9A.56.030 – a Class B felony & Theft 2 – RCW 9A.56.040 – a Class C felony); or
- A person commits theft of a motor vehicle (**Theft of motor vehicle** – RCW 9A.56.065 – a Class B felony).

Note that the list above is a small example of the felonies categorically ineligible for a vehicular pursuit, no matter the circumstances, under both current law and SB 5352, and does not include any gross

misdeemeanor or simple misdemeanor offenses where a vehicular pursuit would remain ineligible no matter the circumstances, such as:

- Non-DV Assault 4 (RCW 9A.36.041);
- Reckless endangerment (RCW 9A.36.050);
- Impersonating a law enforcement officer (RCW 9A.6.045);
- Disarming a law enforcement or corrections officer (RCW 9A.76.023);
- Luring a child or person with a developmental disability (RCW 9A.40.090);
- Possession of a firearm in violation of an Extreme Risk Protection Order (RCW 7.105.460);
- Bail jumping for any offense other than 1st degree murder (RCW 9A.76.170);
- Mutilation of human remains (RCW 68.50.140);
- Attempting to overthrow the government (RCW 9.81.020); or
- Buying or selling a child (RCW 9A.64.030).

While we believe that SB 5352 as amended by the Senate presents an improvement over current law, we must be clear with the Legislature that the concerns of our communities and most Washingtonians remain – fleeing in a vehicle may continue to be a “get out of jail free card” for many criminal offenses.

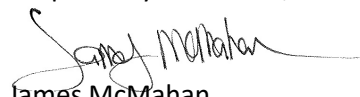
SB 5352 as originally introduced sought to allow a vehicular pursuit only if the pursuit were not more dangerous than the criminal offense for the pursuit, as did HB 1363 as originally introduced, and SB 5919 as originally introduced during the 2022 session. We continue to believe that this policy has the support of a majority of the members of the House and a majority of the members of the Senate, if allowed a vote of their respective chambers.

Given the near continuous debate on the issue of vehicular pursuits for nearly three full legislative sessions, we cannot attribute these circumstances to be an oversight – they must be acknowledged as intentional policy decisions by the Legislature. Whether the text of SB 5352 is decided via parliamentary procedure or policy votes, the outcome is the same. We do not agree with these decisions and intend to ask the 2024 Legislature for a more comprehensive revision to this statute, whether SB 5352 is enacted or not.

Whether SB 5352 is enacted or not, WASPC commits to asking Washington’s law enforcement agencies to track data on the number of “pursuits” conducted, as well as the number of “fleds.” We hope that this information will provide additional, reliable, information to evaluate any vehicular pursuit restrictions enacted by the Legislature.

In conclusion, we agree with the Seattle Times Editorial Board [“For community safety, state House must pass new police-pursuit law”](#) when it wrote last week in urging the House to pass the bill: “The Senate bill is not perfect. But, but doing nothing is irresponsible and would run counter to common sense and public sentiment. House leaders, bring this legislation to a vote. It’s a necessary stopgap, as lawmakers are sure to revisit this issue next year.”

Respectfully submitted,



James McMahan
Policy Director

CC: Members of the Senate