

# HOUSE BILL REPORT

## HB 2390

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**As Reported by House Committee On:**  
Community Safety, Justice, & Reentry

**Title:** An act relating to penalties related to eluding police vehicles and resisting arrest.

**Brief Description:** Concerning penalties related to eluding police vehicles and resisting arrest.

**Sponsors:** Representatives Shavers and Rule.

**Brief History:**

**Committee Activity:**

Community Safety, Justice, & Reentry: 1/23/24, 1/29/24 [DPS].

**Brief Summary of Substitute Bill**

- Establishes procedures for the seizure, impoundment, redemption, and forfeiture of vehicles used in the crime of Attempting to Elude a Police Vehicle.
- Requires one year of community custody, supervised by the Department of Corrections, for a person convicted of Attempting to Elude a Police Vehicle as an adult.
- Requires 18 months of parole for a juvenile convicted of Attempting to Elude a Police Vehicle.

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**HOUSE COMMITTEE ON COMMUNITY SAFETY, JUSTICE, & REENTRY**

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Goodman, Chair; Mosbrucker, Ranking Minority Member; Griffey, Assistant Ranking Minority Member; Davis, Fosse, Graham and Ramos.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Simmons, Vice Chair; Farivar.

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*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.*

**Staff:** Lena Langer (786-7192).

**Background:**

Attempting to Elude a Police Vehicle.

A driver commits the crime of Attempting to Elude a Police Vehicle when the driver willfully fails or refuses to immediately stop his or her car and drives in a reckless manner after being given a visual or audible signal to stop by a police officer. The signal to stop may be given by hand, voice, emergency light, or siren. Further, the police officer giving the signal must be in uniform and driving a vehicle that is equipped with lights and sirens.

The crime of Attempting to Elude a Police Vehicle is a seriousness level I class C felony. A class C felony can have a maximum sentence of five years of incarceration, a fine of \$10,000, or both. For a first time offender convicted of a seriousness level I class C felony, the standard sentence range is zero to 60 days incarceration. In addition to any fine or incarceration, a person convicted of Attempting to Elude a Police Vehicle can have his or her driver's license revoked for one year.

Vehicle Impounds.

In general, when a driver of a vehicle is arrested and taken into custody, the officer has the authority to take custody of the vehicle, at the officer's discretion, and provide for its prompt removal to a safe place. This may include having the vehicle impounded and towed.

If the vehicle is a commercial vehicle or farm transport vehicle and the driver of the vehicle is not the owner of the vehicle, prior to determining that no reasonable alternatives to impound exist and directing impoundment of the vehicle, the police officer must have attempted in a reasonable and timely manner to contact the owner, and release the vehicle to the owner if the owner was reasonably available and not under the influence of alcohol or any drug.

When a vehicle is impounded in response to its driver operating the vehicle under the influence, the impounded vehicle may not be redeemed within 12 hours following the time of impoundment. However, a registered or legal owner who is not the driver of the vehicle may redeem the impounded vehicle after it arrives at the registered tow truck operator's storage facility. The police officer directing the impoundment must notify the driver of the 12-hour hold on redemption and its exceptions.

A vehicle that has been impounded for 120 consecutive hours is considered abandoned. A report must be filed with the Department of Licensing and the owner is provided a notice of custody and sale. If the vehicle remains unclaimed, the vehicle is subject to sale at public auction.

Redemption of Impounded Vehicles.

An impounded vehicle may be redeemed only by certain people and entities, including the

legal owner, the registered owner, or a person authorized in writing by the registered owner. To redeem a vehicle, an eligible person or entity must pay the costs of towing, storage, or other services provided during the course of towing, removing, impounding, or storing the vehicle. Impounded vehicles may not be redeemed for 72 hours when a driver is arrested for racing and the driver is a registered owner of the vehicle, unless there are two or more registered owners of the vehicle or there is another legal owner of the vehicle.

#### Forfeiture.

When authorized by statute, a law enforcement agency may seize possession of property for the purpose of forfeiting a person's right to own or possess that property. Civil asset forfeiture is permitted when the property itself is illegal, was used to facilitate a crime, is an actual proceed of a crime, or was purchased from proceeds traceable to criminal activity.

#### Electronic Monitoring.

Electronic monitoring means tracking the location of a person through the use of technology that can determine the monitored person's presence or absence at a particular location and includes, but is not limited to:

- radio frequency signaling technology, which detects if the monitored person is or is not at an approved location and notifies the monitoring agency of the time that the monitored person either leaves the approved location or tampers with or removes the monitoring device; or
- active or passive global positioning system technology, which detects the location of the monitored person and notifies the monitoring agency of the monitored person's location and which may also include electronic monitoring with victim notification technology.

Electronic monitoring may be imposed in various circumstances, including:

- as a condition of community custody when the offender was convicted of a sex offense;
- in connection with a conviction for driving under the influence;
- as a condition of pretrial release;
- at the time of entering a sexual assault protection order, stalking protection order, domestic violence no contact order, or domestic violence protection order; and
- as a penalty for violation of certain domestic violence protections orders, restraining orders, and no contact orders.

#### Juvenile Parole.

The Department of Children, Youth, and Families Secretary may require persons to comply with a period of parole following the person's release from a juvenile rehabilitation facility. Parole is mandatory for persons who receive a juvenile sentence for Theft of a Motor Vehicle, Possession of a Stolen Motor Vehicle, or Taking a Motor Vehicle Without Permission.

## **Summary of Substitute Bill:**

### Vehicle Impounds and Taking Custody.

A vehicle used in the crime of Attempting to Elude a Police Vehicle is subject to impoundment. A police officer may take custody of a vehicle, at his or her discretion, and provide for its prompt removal to a place of safety whenever the driver of a vehicle is arrested for Attempting to Elude a Police Vehicle or if the officer has probable cause to believe the vehicle has been used to commit the crime of Attempting to Elude a Police Vehicle.

### Redemption of Impounded Vehicles.

Impounded vehicles may not be redeemed for 72 hours when a driver is arrested for Attempting to Elude a Police Vehicle and the driver is a registered owner of the vehicle, unless there are two or more registered owners of the vehicle or there is another legal owner of the vehicle. A registered owner or a legal owner, other than the arrested driver of the vehicle, may redeem the impounded vehicle after it arrives at the tow truck operator's storage facility regardless of whether the arrested driver is a registered owner of the vehicle. A police officer must notify the arrested driver of the above stipulations regarding redemption. A registered tow truck operator must notify the agency that ordered the impound when the 72-hour hold period begins.

### Forfeiture.

If a person previously had a vehicle impounded due to conduct related to Attempting to Elude a Police Vehicle, regardless of whether a criminal charge or a conviction resulted from that conduct, and the person is convicted of a subsequent offense of Attempting to Elude a Police Vehicle or a comparable municipal ordinance, the vehicle operated by the person is subject to forfeiture. No property may be forfeited until after a person has been convicted of the crime of Attempting to Elude a Police Vehicle and a finding is made that the person used the vehicle to commit the crime. A vehicle subject to forfeiture may be seized by any law enforcement officer upon process issued by any court having jurisdiction over the property.

Seizure of a vehicle may be made without process if:

- the seizure is incident to an arrest or a search under a search warrant;
- the vehicle has been the subject of a prior judgment in favor of the seizing agency in a forfeiture proceeding related to Attempting to Elude a Police Vehicle; or
- a law enforcement officer has probable cause to believe that the vehicle was used or is intended to be used in a felony.

Within 15 days after seizure, the law enforcement agency must serve notice of the seizure on all known holders of interest in the property. The notice of seizure may be served by any method authorized by law or court rule. Specific notice requirements apply to secured parties with perfected security interests.

Any person responding to the notice within 60 days is entitled to an opportunity to be heard either before the chief law enforcement officer or removed to a court of competent jurisdiction. If no person responds within 60 days of the seizure, the vehicle must be deemed forfeited if the arrested driver is convicted, or returned to the owner of record if the arrested driver is not convicted. Specific procedures, including notice requirements, are provided for the removal of a case to a court.

The law enforcement agency that seizes the property and causes the forfeiture may retain the property or sell it. If the law enforcement agency sells the property, the proceeds must be used to fund personnel, programs, services, and equipment related to Attempts to Elude a Police Vehicle violations, or to address and improve general traffic safety within the seizing agency's jurisdiction.

A forfeiture of property encumbered by a security interest is subject to the interest of a secured party who neither had knowledge of nor consented to the commission of the felony at the time the security interest was created.

#### Exemption from Liability.

Registered tow truck operators are not liable for injuries or damages sustained by the driver or third parties that resulted from the driver's conduct relating to Attempting to Elude a Police Vehicle.

If an impound is found to be improper, the police officer directing the impound and the government employing the police officer are not liable for damages for loss of use of the vehicle if the officer had reasonable suspicion to believe the driver of the vehicle was Attempting to Elude a Police Vehicle or a comparable municipal ordinance.

#### Community Custody.

A person convicted of Attempting to Elude a Police Vehicle must, as part of his or her sentence, be sentenced to one year of community custody under the supervision of the Department of Corrections.

#### Electronic Monitoring.

When a person charged with Attempting to Elude a Police Vehicle or Resisting Arrest is released from custody at arraignment or trial, the court may require the person to be placed on electronic monitoring. If the electronic monitoring is required, proof of installation of the monitoring device must be filed with the court within five business days of the date of release from custody, or by a date determined by the court on availability within the jurisdiction.

The court may require electronic monitoring as a condition of community custody for a person convicted of Attempting to Elude a Police Vehicle.

#### Juvenile Charges and Sentences.

When a juvenile charged with Attempting to Elude a Police Vehicle or Resisting Arrest is released from custody at arraignment or trial, the court may require the juvenile to submit to electronic monitoring pending disposition of the charge. Parole of 18 months is required for juveniles adjudicated guilty of Attempting to Elude a Police Vehicle.

**Substitute Bill Compared to Original Bill:**

The substitute bill:

- provides the court discretion on whether to require:
  - an adult or juvenile charged with Attempting to Elude or Resisting Arrest who is being released from custody to be placed on electronic monitoring, instead of requiring electronic monitoring as a condition of release; and
  - electronic monitoring as a community custody condition for a person convicted of Attempting to Elude a Police Vehicle, instead of requiring the court to impose the condition; and
- removes the requirement for a juvenile adjudicated guilty of Attempting to Elude a Police Vehicle to submit to electronic monitoring for the duration of juvenile parole.

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**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on January 30, 2024.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) This bill protects communities and police officers from the risk inherent to vehicle flight. The bill helps police officers build bonds of trust with the community. Attempting to flee is inherently dangerous. Removing the vehicle and impounding the vehicle protects the community. The bill is about public safety, protecting innocent bystanders, and preventing tragic loss. The state faces widespread challenges, and this bill is one prong in the approach to the problems. This bill complements Initiative 2113. This is not a bill about pursuits. This is a bill about fleeing or eluding. This bill discourages people from eluding and provides penalties for those who do. The bill provides that electronic monitoring is required for people who are released for these offenses. There are three types of electronic monitoring and the language in the bill gives the court discretion to choose the appropriate type of electronic monitoring.

(Opposed) The forfeiture of vehicles included in the bill may be a violation of the Constitution. There is concern about the disproportionate racial impact this bill will have on people of color who do not feel safe around the police, because of fears for their personal safety. Resisting arrest is sometimes valid, and sometimes used by an officer to cover for a

crime. This bill requires electronic monitoring for both Eluding a Police Vehicle and Resisting Arrest. Electronic monitoring is credited as partial confinement, and the bill makes it mandatory, which is very different than how it is used in other circumstances. The additional year of electronic monitoring in community custody significantly increases the penalty for the underlying offense. The cost of electronic monitoring can be quite prohibitive. Nothing in the bill requires the court to pay for the electronic monitoring.

**Persons Testifying:** (In support) Representative Clyde Shavers, prime sponsor; Crystal Leatherman, Washington Retail Association; and James McMahan, Washington Association of Sheriffs and Police Chiefs.

(Opposed) Ramona Brandes, Washington Association of Criminal Defense Lawyers/Washington Defender Association.

**Persons Signed In To Testify But Not Testifying:** None.