

HB

446

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 13, 1984

SUBJECT: Sectional Analysis of House Bill 446

TO: Representative Charlie Bussell
Chairman, House Judiciary Committee

FROM:  Russ Josephson
Legislative Counsel

You have asked for a sectional analysis of HB 446. This bill consists of a single section. It adds a new section of law to the motor vehicle statutes to fill a gap in the existing law. Very simply, it requires a person to stop a motor vehicle when pursued by a law enforcement vehicle that is using lights or a siren to indicate that the peace officer would like the pursued driver to stop.

RJ:lmb
L3/082

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 01/16/84

REQUEST

Bill/Resolution No.: SSHB446
 Title: "...stop at the direction of a Peace Officer"
 Sponsor: Rep. Liska & Syzmanski
 Requestor: House Judiciary
 Date of Request: 1-16-84

FISCAL DETAIL

Agency Affected: Public Safety
 Program Category Affected: Administration of Justice
 BRU, Program or Subprogram(s) Affected: Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

No Fiscal Impact.

Prepared By: Francis C. Allan ^{mck} _{G.C.A.}
 Division: Alaska State Troopers

Phone: 269-5691
 Date: 01/16/84

Approved by Commissioner: Robert J. Sundberg ^{R.B.}
 Agency: Public Safety

Date: 1-19-84

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

September 15, 1983

MEMORANDUM

TO: Representative John Liska

FROM: Deb Pomeroy *Deb*
Administrative Assistant

RE: Stopping for a Police Officer
Research Request 83-199

Linda Edgeworth, of your staff, asked whether or not there is a statute requiring a motorist to stop when flagged down by a police officer. She also asked for information regarding a case in which a defendant was charged with failure to stop for a police officer. The defendant was acquitted because no statute set out this requirement. I spoke with the Gretchen Derr in the Commissioner's Office of the Department of Public Safety, who provided the attached correspondence pertaining to this issue.

The case the defendant won occurred prior to April 28, in Soldotna. A motorist had failed to stop when the police officer turned on the flashing lights and siren, and was subsequently charged with violating 13 AAC 02.140. I spoke with the District Attorney's Office in Kenai and requested the judge's decision as well as any pertinent documents. These will be forwarded to you as soon as we receive them.

The Alaska Administrative Code 13 AAC 02.140 (attached) states that "upon the approach of an authorized emergency vehicle...or a police vehicle making use of either a visual or an audible signal, the driver of every vehicle...shall yield the right-of-way by slowing, stopping, changing lanes or pulling to the right-hand edge of the roadway clear of an intersection to await passage of the emergency vehicle" (emphasis added). It appears that 13 AAC 02.140 pertains mostly to emergency situations.

Judge Anderson of Anchorage, who heard the case, ruled that the State had "made a half hearted attempt" in writing the regulation when it defined what a motorist must do when approached by a police vehicle with visual lights in a non-emergency situation. He went on to state that the police officer was attempting to stop a suspected violator when there was no existing emergency, and that the violator was therefore not required to stop.

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - SSHB446

Support with Amendment

January 16, 1984

SSHB446 - "An Act relating to the duty to stop at the direction of a peace officer.

This legislation deals with the public's responsibility to follow the directions of peace officers in emergency situations. Some confusion has existed on this subject on the part of the public due to the inconcise wording of present regulations (13.AAC.02.140). This proposed legislation clarifies the duty of the public without infringing upon their rights.

The wording in Sec. 28.35.184 requires that a person guilty of flight from a police officer is guilty of a class C felony. This is felt to be too severe a penalty and we request that it be amended to a class B misdemeanor. The original wording would result in many individuals having felony records that now only face misdemeanor violations. Additionally, the numerous violations of the section may place an unnecessarily heavy burden upon the Criminal Justice System.


Robert J. Sundberg
Commissioner



CITY OF KENAI
"Oil Capital of Alaska"

P. O. BOX 580 KENAI, ALASKA 99611

TELEPHONE 283-7535

August 25, 1982

Commissioner William R. Nix
Department of Public Safety
Pouch N
Juneau, AK. 99811

Dear Commissioner Nix,

Request your staff review 13 AAC 02140(a) for possible language changes. As the section is presently interpreted by the local court any one of several possible actions is sufficient to comply with the yield requirement.

If the intent is to require that whenever possible the motorist is to yield to an emergency vehicle by pulling over to the right and stopping, then the other language should possibly be modified or deleted.

If after your review, you determine that this appears to be a local court interpretation, and not a statewide problem or concern, please advise.

Sincerely,

Richard W. Koss
Chief of Police
Kenai Police Dept.

EAR/mp

Soldotna Police Department

P. O. Box 2499

Soldotna - Alaska 99669



April 28, 1983

Duane Udland
Chief of Police

Commissioner Robert Sundberg
Department of Public Safety
Pouch N
Juneau, AK 99811

Dear Commissioner Sundberg:

I am requesting that your staff review 13 AAC02.140 (a) for possible changes. Recently Soldotna had a case ruled on by Judge Anderson from Anchorage. The judge ruled that the State had "made a half hearted attempt" in writing the regulation when it defined what a motorist must do when approached by a police vehicle with visual lights on in a non-emergency situation.

The judge went on to say that in the case of Soldotna where the police officer was attempting to stop a suspected violator there was no existing emergency and the suspected violator was not required to stop. The judge then dismissed the citation that had been issued under the authority of 13 AAC02.140.

I am including in this letter a copy of a similar request made by Chief Ross of the Kenai Police Department. In the case of Kenai our local judge also dismissed a citation because the way the regulation is worded. It seems there is concern from more than one court about this regulation.

I have one other concern about the rules of the road contained in 13 AAC. Presently there is no regulation titled "Excessive Acceleration" or some other similar language. A problem comes up frequently when you have a motorist who spins his tires intentionally under heavy acceleration.

The only possible citation that can be issued in this situation is negligent driving. Our court has consistently ruled that absent other factors such as fishtailing, loss of control, etc. the elements of negligent driving are not satisfied.

It would seem to me that a new regulation could be written to cover this type of driving. This type of regulation would be most helpful in curtailing this sort of driving.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in cursive script that reads "Duane A. Udland".

Duane Udland
Chief of Police

DEPARTMENT OF PUBLIC SAFETY
COMMISSIONER'S OFFICE
Juneau, Alaska

MAY 02 1983

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

DIVISION OF STATE TROOPERS

P.O. BOX 6188 ANNEX
ANCHORAGE, ALASKA 99502

PHONE:

September 3, 1982

Richard A. Ross
Chief of Police
Kenai Police Department
Kenai, AK 99611

Re: 13 AAC02.140 (a)

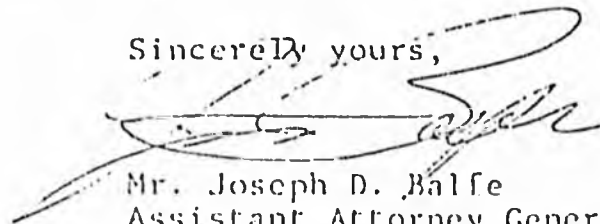
Dear Chief Ross:

Your letter to Commissioner Nix dated August 25, 1982 has been forwarded to me for reply.

As the above cited regulation is now written, it would appear that any of the required actions now listed in the regulation would suffice to comply with it's requirement. The Uniform Vehicle Code clearly sets out that a motorist must drive to the right-hand edge or curb and stop until an emergency vehicle has passed. Though most of the basic regulation was originally taken from the Uniform Vehicle Code, for some reason 13 AAC02.140 (a) was not strictly followed and perhaps should be changed.

I will forward your suggestion to the Commissioner's committee for regulatory changes for its consideration.

Sincerely yours,



Mr. Joseph D. Balfé
Assistant Attorney General
for Law Enforcement

cc: Mr. Ken Simpson

MEMORANDUM

State of Alaska

TO: Robert J. Sundberg
Commissioner
Department of Public Safety

FROM: Inspector Frank N. Gorham
Assistant to the Commissioner
Department of Public Safety

DATE: May 3, 1983

FILE NO:

TELEPHONE NO: 465-4322

SUBJECT: Chief Udland Letter
re: Failure to Stop

As requested, research was done on the requirements, or more, the lack of requirements for a person to stop when signaled to do so by a police officer.

I could find but one area of the State Statutes that requires a person (driver of a vehicle) to obey the signals of an officer. Even at that, it only relates to the condition of directing traffic. See attached AS 28.35.180.

The 13 AAC 2.140 does not directly require a vehicle to stop but makes it an option when an emergency vehicle of any type is approaching. Nor does the companion, 13 AAC 2.195, related to pedestrians.

Also attached is a proposed addition to either the Administrative Code or State Statutes that should serve the purpose. Not being a legal beagle, I am not sure how many holes it has in it.

Enclosures: a/s

RECEIVED
SEP 12 1983

HOUSE RESEARCH AGENCY

MEMORANDUM

State of Alaska *12.5*

TO: Joseph Balfe
Assistant Attorney General
Department of Public Safety

DATE: May 12, 1983

MAY 16 1983

FILE NO:

TELEPHONE NO: 465-4322

FROM: Lt. Col. James D. Vaden *JW*
Office of the Commissioner
Department of Public Safety

SUBJECT: Failure to Stop

Please draft a change in our regulations requiring an individual to stop when lawfully directed to do so by a peace officer.

Return the draft to me and I will begin the procedures necessary to change the traffic regulations.

Since this problem could involve situations not involving a vehicle, we should also propose changes in the statutes. That recommendation should be held until the Administration requests proposed changes through legislation.

Attachments: a/s

cc: Robert J. Sundberg
Commissioner
Department of Public Safety

5/13/83

Rep. John Lisler -

RE: our conversation on 5-11-83 -

WE will proceed as outlined above.

Thank you.

Robert J. Sundberg
Comm

STATE OF ALASKA

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD GOVERNOR

POUCH N
JUNEAU, ALASKA 99811
PHONE: 465-4322

November 4, 1983

Ms. Mary Whitman
Administrative Assistant
Legislative Affairs Agency
Pouch V
Juneau, AK 99811

Dear Ms. Whitman:

This is in reference to your request related to input from this department on HB 446, "An act relating to stopping a motor vehicle at the direction of a peace officer."

I have enclosed some statutes from other states, and the I.A.C.P. model "Uniform Vehicle Code" recommendation on the subject. The statutes sources were from the states of California, Oregon, and Washington. As can be seen, there are a variety of approaches, but all with the same theme.

As for this State, as reflected in a previous internal memorandum of this department, of which you have a copy, there are no requirements for a person, under any circumstances, to stop at the request of, or lawful command of a peace officer except when he is actually regulating or directing traffic (AS 28.35.280). Nor do any administrative code provisions require a person, under any circumstances, to stop as the result of a lawful order of a peace officer (13 AAC 02.140 and 13 AAC 02.195).

The department's desire, and I am sure you would find it the entire law enforcement community's desire, is to develop an all encompassing obedience statute covering a person, vehicle, boat, or aircraft. Whether this can be achieved is another matter.

House Bill 446, as it is now written, meets a portion of law enforcement needs, but may be somewhat vague and broad as it relates to "law enforcement vehicle."

If not being presumptive, and keeping in mind that the author is not trained in the legalized framing of statutes, the following is, at least, a draft revision of HB 446 for

Ms. Mary Whitman

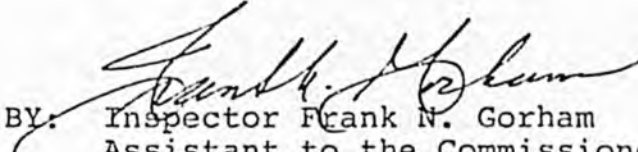
-2-

November 4, 1983

consideration that would meet the law enforcement needs.
The draft is not in proper form.

Sincerely,

ROBERT J. SUNDBERG
COMMISSIONER


BY: Inspector Frank N. Gorham
Assistant to the Commissioner

cc: Emil Notti
Legislative Assistant
to the Governor

Norman Gorsuch
Attorney General
Department of Law

Col. Michael Kolivosky, Director
Division of Alaska State Troopers
Department of Public Safety

*For file in
Cap. Nott's file
11/7/83*

ATTEMPTING TO FLEE OR ELUDE POLICE OFFICER
1964

WHEREAS, The International Association of Chiefs of Police advocates and supports adoption of sound traffic regulations, couched in clear and effective terms so as to merit approval by the courts; and

WHEREAS, For this purpose the International Association of Chiefs of Police consistently supports efforts of the National Committee on Uniform Traffic Laws and Ordinances to develop and maintain the Uniform Vehicle Code to the highest degree of perfection as representing the best example of legislation recommended to the various states for adoption by their legislatures; and

WHEREAS, It is in the furtherance of this purpose that the various provisions of the Uniform Vehicle Code be made as legally sound as possible and be amended as and when necessary and advisable in order to correct defects therein which become apparent in practice from time to time; and

WHEREAS, Traffic officers often find themselves confronted with the problem of drivers who refuse to obey police commands to stop, and who flee from such officers, usually at high speed, sometimes extinguishing their lights at night, or otherwise seek to elude the officer; and

WHEREAS, Some states, including Colorado, Delaware, Oregon, Utah and Washington, have recently enacted legislation making such actions a misdemeanor of serious nature, some calling for mandatory revocation of the driver's license of persons convicted under such statutes; and

WHEREAS, Members of the International Association of Chiefs of Police are primarily concerned with such violations and directly affected by such driver actions and conduct, it is appropriate that the International Association of Chiefs of Police take the lead in formulating a standard or model form of law defining the offense of fleeing from or attempting to elude a police officer; and

WHEREAS, It is in the interest of promoting uniform legislation of this kind, and in the interest of more effective police patrol performance, that such legislation be recommended for adoption by all states; and

WHEREAS, The Uniform Vehicle Code is the proper

ATTEMPTING TO FLEE OR ELUDE POLICE OFFICER (continued)

medium by which such legislation may be so recommended; now, therefore, be it

RESOLVED, That the International Association of Chiefs of Police hereby recommend to the Council of State Governments and the National Committee on Uniform Traffic Laws and Ordinances that the following new section be added to the Uniform Vehicle Code:

"Fleeing or attempting to elude police officer.
(a) Any driver of a motor vehicle who, having been given a visual or audible signal by a police officer directing said driver to bring his motor vehicle to a stop, willfully fails or refuses to obey such direction, increases his speed, extinguishes his lights, or otherwise flees or attempts to elude the officer, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not less than (\$50 - \$100 - \$200) nor more than (\$500), or by imprisonment for not less than (10 - 30 - 60) days nor more than (6) months, or both such fine and imprisonment. The signal given by the police officer may be by hand, voice, emergency light or siren. Provided, the officer giving such signal shall be in uniform, prominently displaying his badge of office and, if driving a vehicle, such vehicle shall be appropriately marked showing it to be an official police vehicle. (b) Upon receiving notice of such conviction the department may forthwith suspend the operator's or chauffeur's license of the person so convicted for a period of not more than (six) months."

whether the person is a problem drinker or drug-dependent person, as defined in ORS 482.477, and

(b) Complete a treatment program or information program designated by the court and paid at the expense of the person convicted. 1975 c. 451 497, 1979 c. 724 131, 1981 c. 800 415, 1981 c. 801 431

487.515 Use of chemical analysis to show intoxication. (1) At the trial of any civil or criminal action, suit or proceeding arising out of the acts committed by a person driving a motor vehicle while under the influence of intoxicants, if the amount of alcohol in the person's blood at the time alleged is less than .10 percent by weight of alcohol as shown by chemical analysis of the person's breath, blood or urine, it is inadmissible evidence that may be used with other evidence, if any, to determine whether or not the person was then under the influence of intoxicants.

(2) Not less than .10 percent by weight of alcohol in a person's blood constitutes being under the influence of intoxicating liquor.

(3) Percent by weight of alcohol in the blood shall be based upon grams of alcohol per one hundred cubic centimeters of blood. 1975 c. 451 198, 1977 c. 692 154, 1981 c. 800 441

487.550 Reckless driving. (1) A person commits the crime of reckless driving if the person recklessly, as defined in ORS 161.085 (9), drives a vehicle upon a highway in a manner that endangers the safety of persons or property.

(2) Reckless driving is a Class A misdemeanor. 1975 c. 451 191, 1981 c. 810 1451

487.555 Fleeing or attempting to elude a police officer. (1) A driver of a motor vehicle commits the crime of fleeing or attempting to elude a police officer if, when given visual or audible signal to bring the vehicle to a stop, he knowingly flees or attempts to elude a pursuing police officer.

(2) The signal given by the police officer may be by hand, voice, emergency light or siren.

(3) As used in this section, "police officer" means a sheriff, municipal policeman or member of the Oregon State Police in uniform, prominently displaying his badge of office or who is operating a vehicle appropriately marked showing it to be an official police vehicle.

(1) Fleeing or attempting to elude a police officer is a Class A misdemeanor. 1975 c. 451 201

487.560 Driving while suspended or revoked or beyond license restriction. (1) A person commits the crime of driving while suspended or revoked if the person drives a motor vehicle upon a highway during a period when the person's license or permit to drive a motor vehicle or the person's right to apply for a license to drive a motor vehicle in this state has been suspended or revoked by a court or by the division or if the person drives a motor vehicle outside the restrictions of a license issued under ORS 482.475 or 482.477.

(2) In a prosecution under subsection (1) of this section, it is an affirmative defense that:

(a) An injury or imminute threat of injury to human or animal life and the urgency of the circumstances made it necessary for the defendant to drive a motor vehicle at the time and place in question, or

(b) The defendant had not received notice of the defendant's suspension or revocation as required by ORS 482.570 or in the manner provided in paragraph (c) of subsection (1) of this section.

(3) The affirmative defense under paragraph (b) of subsection (2) of this section shall not be available to the defendant if:

(a) The defendant refused to sign a receipt for the certified mail containing the notice; or

(b) The notice could not be delivered to the defendant because the defendant had not notified the division of the defendant's address or a change in the defendant's residency as required by ORS 482.290 (3), or

(c) At a previous court appearance, the defendant had been informed by a trial judge that the judge was ordering a suspension or revocation of the defendant's license, permit or right to apply; or

(d) The defendant had actual knowledge of the suspension or revocation by any means prior to the time the defendant was stopped on the current charge.

(4) Any of the evidence specified in subsection (1) of this section may be offered in the prosecution's case in chief.

(5) Except as provided in subsection (6) of this section, driving while suspended or revoked is a Class A misdemeanor.

(6) Driving while suspended or revoked is a Class C felony if the suspension or revoca-

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202507
111. WATERCRAFT

ORS 488.011 to 488.180 and 488.181, 1959 c.66 § 126, 1961 c.183 § 41

488.020 Regulations establishing minimum specifications for rented boats; inspection; cancellation of certificate of boats not meeting specifications. (1) The board shall provide by regulations minimum specifications of design, construction, material and condition of boats rented or chartered to the public. The regulations shall be made in accordance with ORS 181.310 to 181.550.

(2) Designated representatives of the board may annually, each spring inspect all rental boats as to material condition and seaworthiness. Any approval sticker or decal shall be placed in clear view of the operator on all boats which equal or exceed the minimum specifications provided by the board.

(3) After a hearing upon 10 days' notice to the owner of the boat, the board may cancel or revoke the certificate of number for any boat rented or chartered to the public if it does not equal or exceed the minimum specifications provided by the board. 1959 c.66 § 127, 1975 c.584 § 10, 1979 c.28 § 141

488.027 Peace officers to enforce chapter. (1) The sheriff of each county and all other peace officers shall be responsible for the enforcement of this chapter and the regulations made by the board pursuant thereto. In the exercise of this responsibility, a peace officer may stop any boat and direct it to a suitable pier or anchorage for boarding.

(2) No person, while operating a boat on any waters of this state, shall knowingly flee or attempt to elude any law enforcement officer after having received a signal from a law enforcement officer to bring the boat to a stop. 1979 c.66 § 129, 1985 c.579 § 12, 1987 c.170 § 10, 1987 c.620 § 17, 1975 c.584 § 101

488.028 Contrary local laws prohibited. No political subdivision of this state may enact or enforce any law contrary to the provisions of this chapter. 1959 c.66 § 131

488.030 (Repealed by 1977 c.467 § 20)

488.031 Personal flotation devices. (1) All boats shall carry at least one United States Coast Guard approved personal flotation device in good and serviceable condition for each person on board. Each device shall be of an appropriate size for the person for whom it is intended and shall be readily accessible whenever the boat is in use. As used in this subsection, a personal flotation device is not

BOATS AND

"readily accessible" if it is stowed in a locked compartment or locker or is otherwise not immediately, physically available to persons on board the boat in case of an emergency.

(2) The board by regulation will classify types of devices and specify which types are approved for various classes of vessels. The regulations will be consistent with, but shall not exceed those regulations promulgated by the United States Coast Guard. 1957 c.467 § 11, 1959 c.66 § 130, 1967 c.151 § 11, 1971 c.520 § 11, 1975 c.584 § 11, 1977 c.77 § 11

488.040 (Repealed by 1977 c.467 § 20)

488.041 Lights. (1) Except as provided by the regulations adopted by subsection (2) of this section, every boat shall carry and show the following lights when underway between sunset and sunrise:

(a) Manually propelled boats, a lantern capable of showing a white light which shall be temporarily displayed in sufficient time to prevent collision.

(b) (A) Motorboats less than 26 feet in length, a white light aft showing all around, visible for at least two miles, and a combination 20 point light in the forepart of the boat, lower than the white light aft, showing green to starboard and red to port, visible for at least one mile.

(B) Motorboats 26 feet or longer, a white light aft showing all around, visible for at least two miles, two separate 10 point sublights visible for at least one mile and a 20 point white light in the forepart of the boat, lower than the white light aft, visible for at least two miles.

(c) Boats propelled by sail, a white 12 point light aft, visible for at least two miles and two separate 10 point sublights visible for at least one mile.

(2) As used in this section, "visible" means visible on a dark night with clear atmosphere.

(3) On all waters of the state, every boat shall carry and exhibit the lights required by inland rules for preventing collisions, promulgated by the United States Coast Guard, May 1, 1959 (Part 80, Title 33, Code of Federal Regulations of the United States of America, as amended). 1957 c.467 § 11, 1959 c.66 § 130, 1967 c.151 § 11

488.050 (Repealed by 1977 c.467 § 20)

488.051 (Repealed by 1977 c.467 § 20)

1997 c. 663 s. 016 1997 c. 667 s. 20

488.021 Application of ORS 488.011 to 488.180 and 488.600. (1) Except as provided in subsection (2) of this section, ORS 488.011 to 488.180 and 488.600 apply to all boats operated on the waters of this state, except where inconsistent with any applicable laws or regulations of an agency of the United States in which case such laws or regulations shall prevail.

(2) ORS 488.011 to 488.180 and 488.600 do not apply to the following boats, except as otherwise provided in this section:

1. A boat that has a valid document issued by the Bureau of Customs of the United States or any federal agency that succeeds to the duty of issuing marine documents.

2. Foreign boats operated temporarily in the waters of this state.

3. A boat owned and operated by the United States or by an entity of the United States.

4. A strip launch used solely for lifesaving purposes.

5. A boat belonging to a class of boats that has been exempted from the provisions of ORS 488.745 to 488.749 and 488.745 to 488.749 by the board as provided in ORS 488.020.

6. Subsection (2) of this section does not exempt the following boats:

1. Small passenger vessels of less than 200 gross tons.

2. Commercial vessels that are not required to be inspected under federal law.

3. Publicly owned recreational vessels.

4. 1997 c. 663 s. 016 1997 c. 667 s. 20

488.022 Operating boat in violation of chapter prohibited. No person shall operate a boat in violation of any provision of this chapter. 1997 c. 663 s. 016

488.023 Operating improperly equipped boat prohibited. No person shall operate a boat for or on behalf of another person to operate a boat which is not equipped as required by ORS 488.011 to 488.180 and 488.600. 1997 c. 663 s. 016

488.024 Operator of boat livery to provide properly equipped boats. No operator of a boat livery shall permit any boat he rents to depart from the livery premises unless the boat is equipped as provided under

ORS 488.011 to 488.180 and 488.600. 1997 c. 663 s. 016 1997 c. 667 s. 20

488.026 Regulations establishing minimum specifications for rented boats; inspection; cancellation of certificate of boats not meeting specifications. (1) The board shall provide by regulations minimum specifications of design, construction, material and condition of boats rented or chartered to the public. The regulations shall be made in accordance with ORS 183.310 to 183.350.

(2) Designated representatives of the board may annually, each spring inspect all rental boats as to material condition and seaworthiness. Any approval sticker or decal shall be placed in clear view of the operator on all boats which equal or exceed the minimum specifications provided by the board.

(3) After a hearing upon 10 days' notice to the owner of the boat, the board may cancel or revoke the certificate of number for any boat rented or chartered to the public if it does not equal or exceed the minimum specifications provided by the board. 1997 c. 663 s. 016 1997 c. 667 s. 20

488.027 Peace officers to enforce chapter. (1) The sheriff of each county and all other peace officers shall be responsible for the enforcement of this chapter and any regulations made by the board pursuant thereto. In the exercise of this responsibility, a peace officer may stop any boat and direct it to a suitable pier or anchorage for landing.

(2) No person, while operating a boat on any waters of this state, shall knowingly flee or attempt to elude any law enforcement officer after having received a signal from a law enforcement officer to bring the boat to a stop. 1997 c. 663 s. 016 1997 c. 667 s. 20 1997 c. 663 s. 016 1997 c. 667 s. 20

488.028 Contrary local laws prohibited. No political subdivision of this state may enact or enforce any law contrary to the provisions of this chapter. 1997 c. 663 s. 016

488.030 Personal flotation devices. 1997 c. 667 s. 20

488.031 Personal flotation devices. (1) All boats shall carry at least one United States Coast Guard approved personal flotation device in good and serviceable condition for each person on board. Each device shall be of an appropriate size for the person for whom it is intended and shall be readily accessible whenever the boat is in use. As used in this subsection, a personal flotation device is not

(U) 15 Am. 103

TITLE 46
MOTOR VEHICLES

CHAPTER 46.61--RULES OF THE ROAD

Abandoned junk motor vehicles: RCWA 46.52.145-46.52.160.
18 Am Jur Trials p 443 (unwitnessed automobile accident cases).
Ops Atty Gen 1972 No. 3 (application of provisions of this chapter to United States Forest Service roads).
4 ALR Fed 6 (Federal Tort Claims Act: Automobile negligence cases).

OBEDIENCE TO AND EFFECT OF TRAFFIC LAWS

46.61.005 Provisions of chapter refer to vehicles upon the highways
—Exceptions

Actions of an individual in driving an unlicensed pickup rapidly in circles in a field owned by his parents while under the influence did not fall within purview of RCWA 46.61.506 prohibiting driving while intoxicated in light of fact that it would have been an unreasonable exercise of police power to extend prohibition to defendant's conduct, defendant

was posing no threat to public, vehicle was unlicensed and defendant was not on or even near a public road, land on which he was driving was privately owned, and public had no right to be there nor was public expected to be on the property. State v Day (1951) 96 Wn 2d 646, 638 P2d 546.

46.61.010 Required obedience to traffic laws—Penalties

Amended by Laws 2nd Ex Sess 1975-76 ch 95 § 1, effective March 13, 1976, and repealed by Laws 1st Ex Sess 1979 ch 136 § 109, effective January 1, 1981.

Reviser's note: RCWA 46.61.010 was repealed by 1979 ex.s. c 136 § 109, effective July 1, 1980; the effective date of 1979 ex.s. c 136 was delayed until January 1, 1981, by 1980 c 128 § 9. For later enactment, see RCWA 46.63.020.

Ops Atty Gen 1976 No. 19 (traffic offenses as crimes; commitment for contempt for failure to comply with order to pay costs).

Ops Atty Gen 1979 No. 1 (although the privilege from arrest in Article II, § 16 of the Washington constitution extends beyond the term of a legislative session, it relates to the possibility of civil arrest only and is not a privilege from arrest for the commission of a crime; therefore, Article II, § 16 does not preclude the arrest of a member of the Washington state legislature for the commission of a traffic offense within the purview of RCWA 46.61.010).

Sheriff who observed defendant's automobile following another vehicle too closely, defendant's suspicious movements in the automobile after he became aware of sheriff's presence, defendant's intoxicated condition, and out-of-date temporary license possessed by defendant, was justified in arresting defendant for misdemeanor offenses relating to defendant's conduct. United State v McCambridge (1977) 551 F2d 865.

After having stopped defendant's automobile and arrested defendant for various misdemeanor offenses relating to defendant's operation of the automobile, sheriff was entitled to enter and secure the automobile, which, left by itself on the highway, would have been subject to vandalism and might have threatened public safety and convenience. United States v McCambridge (1977) 551 F2d 865.

46.61.015 Obedience to police officers, flagmen, or fire fighters

No person shall wilfully fail or refuse to comply with any lawful order or direction of any duly authorized flagman or any police officer or fire fighter

46.61.015

MOTOR VEHICLES

Invested by law with authority to direct, control, or regulate traffic. [Amended by Laws 1975 ch 62 § 17.]

Severability—1975 c 62: See note following RCW 36.75.010.

Washington Court Rules: Bail in traffic offense cases—Mandatory appearance—JCrR 2.09.

In ordinary circumstances, responsibility of police in directing traffic is to maintain due regard for safety of all who would be affected by discharge of such responsibility. *Anthony v C. D. Amende Co.* (1982) 31 Wn App 21, 639 P 2d 231.

In action for personal injuries arising from car accident which allegedly was

caused by negligence of employees of department of transportation in directing traffic on wrong side of street around another accident, trial court erred in imposing upon state burden to exercise higher degree of care than ordinary care. *Anthony v C. D. Amende Co.*, (1982) 31 Wn App 21, 639 P2d 231.

46.61.020 Refusal to give information to or cooperate with officer

Washington Court Rules: Bail in traffic offense cases—Mandatory appearance—JCrR 2.09.

46.61.021 Duty to obey law enforcement officer—Authority of officer

(1) Any person requested or signaled to stop by a law enforcement officer for a traffic infraction has a duty to stop.

(2) Whenever any person is stopped for a traffic infraction, the officer may detain that person for a reasonable period of time necessary to identify the person, check the status of the person's license and the vehicle's registration, and complete and issue a notice of traffic infraction.

(3) Any person requested to identify himself to a law enforcement officer pursuant to an investigation of a traffic infraction has a duty to identify himself, give his current address, and sign an acknowledgement of receipt of the notice of infraction.

[Added by Laws 1st Ex Sess 1979 ch 136 § 4, effective January 1, 1981.]

Effective date—Severability—1979 1st ex.s. c 136: See notes following RCWA 46.63.010.

CJS Arrest §§ 38, 40.

Key Number Digests: Arrest ☞ 63.5(6).

46.61.022 Failure to obey officer—Penalty

Any person who willfully fails to stop when requested or signaled to do so by a person reasonably identifiable as a law enforcement officer or to comply with RCW 46.61.021(3), is guilty of a misdemeanor.

[Added by Laws 1st Ex Sess 1979 ch 136 § 5, effective January 1, 1981.]

Effective date—Severability—1979 1st ex.s. c 136: See notes following RCWA 46.63.010.

Washington Court Rules: Bail in traffic offense cases—Mandatory appearance—JCrR 2.09.

CJS Motor Vehicles §§ 606 et seq.

Key Number Digests: Automobiles ☞ 335.

46.61.024 Attempting to elude pursuing police vehicle

Any driver of a motor vehicle who willfully fails or refuses to immediately bring his vehicle to a stop and who drives his vehicle in a manner indicating a wanton or willful disregard for the lives or property of others while attempting to elude a pursuing police vehicle, after being given a visual or audible signal to bring the vehicle to a stop, shall be guilty of a class C felony.

MOTOR VEHICLES

46.61.024

The signal given by the police officer may be by hand, voice, emergency light, or siren. The officer giving such a signal shall be in uniform and his vehicle shall be appropriately marked showing it to be an official police vehicle.

[Added by Laws Ex Sess 1979 ch 75 § 1; Amended by Laws 1st Ex Sess 1982 ch 47 § 25.]

Severability—1982 1st ex.s. c 47: See note following RCWA 9.41.025.

CJS Motor Vehicles §§ 606 et seq.

Key Number Digests: Automobiles ☞335.

Offense of felony flight was decriminalized from January 1, 1981 until April 15, 1981. *State v Taylor* (1982) 97 Wn 2d 724, 649 P2d 633.

No crime is committed under RCWA 46.61.024 if one being pursued by a police vehicle merely fails to immediately stop his vehicle, since to violate the statute one must also engage in conduct that indicates wanton and wilful disregard for life and property of others. *State v Mather* (1981) 28 Wn App 700, 626 P2d 44.

Police power may lawfully extend to prohibiting flight from unlawful detention where such flight indicates wanton and wilful disregard for life and property of others. *State v Mather* (1981) 28 Wn App 700, 626 P2d 44.

Constitutional right to be free from unreasonable searches and seizures does not create a constitutional right to react unreasonably to illegal detention. *State v Mather* (1981) 28 Wn App 700, 626 P2d 44.

Although RCWA 46.61.024, proscribing attempt to elude pursuing police vehicle, is directed at unreasonable resistance to both legal and illegal detentions, it is not for such reason overbroad. *State v Mather* (1981) 28 Wn App 700, 626 P2d 44.

RCWA 46.61.024, proscribing attempt to elude pursuing police vehicle, provides fair notice of conduct that is prohibited and is drafted so as to avoid punishment of constitutionally protected behavior. *State v Mather* (1981) 28 Wn App 700, 626 P2d 44.

While defendant, charged with attempting to elude pursuing police vehicle, argued that the statute in question is vague and overbroad because it does not require knowledge that the pursuing vehicle is a police vehicle, the statute does require that defendant wilfully fail

and refuse to stop his vehicle while attempting to elude a pursuing police vehicle, and wilfulness in this context is identical with knowledge. *State v Mather* (1981) 28 Wn App 700, 626 P2d 44.

RCWA 46.61.024, proscribing attempt to elude pursuing police vehicle, was not unconstitutionally vague or overbroad by reason of the fact that it does not require pursuing officer to have probable cause to stop vehicle. *State v Mather* (1981) 28 Wn App 700, 626 P2d 44.

Respondents were not denied due process on ground that they did not have proper notice of proscribed conduct because a person reading one chapter would reasonably conclude that "eluding" had been decriminalized and would not be referred to another chapter where "eluding" was listed as a felony exception to RCWA 46.63.020 decriminalizing traffic offenses. *State v Dalnard* (1982) 31 Wn App 628, 644 P2d 1222.

RCWA 46.61.024, governing eluding of a pursuing police vehicle, continues to be an excluded felony exception to RCWA 46.63.020, decriminalizing traffic offenses. *State v Dalnard* (1982) 31 Wn App 628, 644 P2d 1222.

Constitutional prohibition against being twice put in jeopardy precluded multiple punishment of defendant who was convicted of both reckless driving and reckless endangerment following high speed police chase, because the state necessarily had to prove reckless driving to prove reckless endangerment. *State v Potter* (1982) 31 Wn App 883, 645 P2d 60.

Trial court, in prosecution for reckless driving and reckless endangerment involving incident in which police gave chase to defendant's car, properly permitted police officer to testify that 22 months earlier defendant had been in-

§ 2543. Convictions

8 Cal Jur 3d Automobiles § 145.

§ 2544. Disciplinary Actions

8 Cal Jur 3d Automobiles § 144.

§ 2545. Surrender of License

8 Cal Jur 3d Automobiles § 147.

§ 2547. Period for Filing Accusations

8 Cal Jur 3d Automobiles § 155.

§ 2548. Revocation or Suspension of Additional License

8 Cal Jur 3d Automobiles § 148.

§ 2549. Reinstatement of License

8 Cal Jur 3d Automobiles § 149.

ARTICLE 6

Hazardous Waste Inspections

[Added by Stats 1979 ch 1097 § 6.]

§ 2560. Annual inspection fee

§ 2561. [Repealed]

§ 2560. Annual inspection fee

The commissioner may determine the fee for the annual inspection of trucks, trailers, semitrailers, vacuum tanks, cargo tanks, and containers used to transport hazardous waste. The fee, established by regulation, shall be sufficient to cover the cost to the department of conducting hazardous waste inspections but shall not exceed fifty dollars (\$50).

Added Stats 1979 ch 1097 § 6; Amended Stats 1980 ch 1112 § 10.

Amendments:

1980 Amendment: Added "semitrailers," in the first sentence.

Review of Selected 1979 California Legislation, 11 Pacific LJ 527.

§ 2561. [Added by Stats 1979 ch 1097 § 6 and repealed by Stats 1981 ch 912 § 4.5, effective September 28, 1981.]

See II & S C § 25168.5.

§ 2600. Members of Reciprocity Commission

The Reciprocity Commission is composed of the Lieutenant Governor, the Director of Motor Vehicles, the Director of Transportation, the State Controller, and the Commissioner of the California Highway Patrol.

Amended Stats 1974 ch 345 § 155.

Amendments:

1974 Amendment: Substituted "Transportation" for "Public Works".

§ 2800 and following sections—general references:

Cal Jur 3d Schools § 330.

§ 2800. Obedience to Traffic Officers

It is unlawful to willfully fail or refuse to comply with any lawful order, signal, or direction of any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, when that peace officer is in uniform and is performing duties under any of the provisions of this code, or to refuse to submit to any lawful inspection under this code.

Amended Stats 1981 ch 644 § 1.

Amendments:

1981 Amendment: Substituted "peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, when that peace officer is in uniform and is performing duties under any of the provisions of this code," for "traffic officer".

Optional appearance before a magistrate by anyone arrested for specified offenses: § 40303.

Cal Jur 3d Automobiles § 195, Criminal Law §§ 3197, 3206.

A passenger in a vehicle stopped by officers who suspected the driver to be under the influence of alcohol was guilty of violation of Veh. Code, § 2800, where he failed to remain in the vehicle as requested by the police, prevented one of the officers from "administering the walk-the-line test" to the driver, and refused to move back to the vehicle so that the investigation of the driver could continue. Within the meaning of the language in Veh. Code, § 2800 that it is unlawful to wilfully fail or refuse to comply with any lawful order, signal, or direction of any traffic officer, an order the disobedience of which is illegal under the statute includes a lawful order, wilfully disregarded or disobeyed, that is relevant to and reasonably necessary in the performance by a traffic officer of the duties imposed on him under Veh. Code, § 623, respecting the enforcement of the rules of the road. *People v Ritter* (1981) 115 CA3d Supp 1, 175 Cal Rptr 901.

In a prosecution of defendant, on the basis of the same misconduct, for violation of Pen. Code, § 148, specifying the offense of wilfully resisting, delaying, or obstructing a

public officer in the discharge of any duty of his office, and for violation of Veh. Code, § 2800, for disobedience of a lawful order of an officer issued in aid of his performance of duties involving enforcement of the rules of the road (Veh. Code, § 623), acquittal of the charge of violation of Pen. Code, § 148, did not require a finding of not guilty on the charge of violation of Veh. Code, § 2800, where defendant had refused an officer's request to stay in a car in which he was a passenger, stopped because the police suspected the driver was intoxicated. The request had been made to enable investigation of the driver without defendant's interference. Although violation of Veh. Code, § 2800, is a lesser offense than violation of Pen. Code, § 148, a Veh. Code, § 2800, offense is not a necessarily lesser included offense within the offense defined in Pen. Code, § 148, since it is possible to violate Pen. Code, § 148, without violating Veh. Code, § 2800. As to offenses for disobedience of an officer's order, many types of offenses can occur when an officer is discharging a duty having nothing to do with a traffic offense. *People v Ritter* (1981) 115 CA3d Supp 1, 170 Cal Rptr 901.

§ 2800.1. Flight from peace officer

Any person who, while operating a motor vehicle and with the intent to evade, wilfully flees or otherwise attempts to elude a pursuing peace officer's motor vehicle, is guilty of a misdemeanor if all of the following conditions exist:

- (a) The peace officer's motor vehicle is exhibiting at least one lighted red lamp visible from the front and the person either sees or reasonably should have seen the lamp.
- (b) The peace officer's motor vehicle is sounding a siren as may be reasonably necessary.
- (c) The peace officer's motor vehicle is distinctively marked.
- (d) The peace officer's motor vehicle is operated by a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, and that peace officer is wearing a distinctive uniform.

Added Stats 1982 ch 947 § 2.

Former Section: Former § 2800.1, similar to the present section, was added by Stats 1977 ch 1104 § 1, amended by Stats 1978 ch 504 § 1, Stats 1981 ch 600 § 2, and repealed by Stats 1982 ch 947 § 1.

Flight causing bodily injury or death: § 2800.2.

Review of Selected 1977 California Legislation. 9 Pacific LJ 434.

Review of Selected 1978 California Legislation. 10 Pacific LJ 439.

In an action by a policeman against a motorist for injuries incurred while plaintiff was in pursuit of defendant for speeding, defendant's alleged violation of various statutory provisions did not preclude enforcement of the fireman's rule prohibiting recovery by a policeman for injuries sustained in the course of his duty. While Veh. Code, § 2800.1, makes it a misdemeanor wilfully to disregard an officer's siren and red light and to attempt to flee or attempt to elude pursuit, and Pen. Code, § 148, proscribes wilful resistance, delay or obstruction of a police officer, and Pen. Code, § 834a, forbids using force

or a weapon to resist arrest, none of the statutory provisions were specifically designed to protect persons in plaintiff's class. *Hubbard v Hoelt* (1980) 28 C3d 480, 169 Cal Rptr 706, 620 P2d 136.

In a prosecution of defendant for attempt to evade a pursuing peace officer (Veh. Code, § 2800.1), the trial court correctly instructed the jury that defendant's state of intoxication was relevant in determining whether he had the specific intent necessary to convict him of an attempt to evade a pursuing peace officer. *People v Finney* (1980) 110 CA3d 703, 168 Cal Rptr 80.

§ 2800.2. Flight from peace officer causing death or bodily injury

Whenever willful flight or attempt to elude a pursuing peace officer in violation of Section 2800.1 proximately causes death or bodily injury to any person, the person driving the vehicle, upon conviction, shall be punished by imprisonment in the state prison, by imprisonment in the county jail for not less than 30 days nor more than six months, or by a fine of not less than one hundred seventy dollars (\$170) nor more than five hundred dollars (\$500), or by both that fine and imprisonment.

Added Stats 1982 ch 947 § 3.

§ 2801. Obedience to Firemen

Cal Jur 3d Automobiles § 14, Criminal Law §§ 3197, 3206.

§ 2802. Load Inspection

(a) Any traffic officer having reason to believe that a vehicle is not safely loaded or that the height, width, length, or weight of a vehicle and load is unlawful may require the driver to stop and submit to an inspection, measurement, or weighing of the vehicle. The weighing may be done either by means of portable or stationary scales and the officer may require that the vehicle be driven to the nearest scale facility, in the event the scales are within five miles.

(b) Selected inspection facilities and platform scales operated by the Department of the California Highway Patrol may, at the discretion of the commissioner, be open for extended hours, up to and