

HB20 (2d Sub)—Emergency Vehicle Operator Duty of Care—House Concurrence Vote

We suggest a **NO** vote on concurrence. (The bill still needs work.)

We oppose this bill in its current form and feel that it has some technical problems that create a significant, negative, unintended consequence. We suggest sending the bill to conference committee where it can be looked at more closely to fix these problems. **We oppose final passage of the bill in its current form.**

HB20 inadvertently creates **absolute immunity from civil liability** to a suspect for negligent behavior by operators of emergency vehicles when pursuing suspects in vehicle chases. By codifying that such operators “owe no duty of care” to the suspect in an evading/fleeing vehicle, it would have the effect of **immunizing from any and all civil liability** those operators who may act grossly negligent in pursuits or who ignore or violate established pursuit policies and procedures.

Line 88: “(7)(a) **Except** as provided in Subsection (7)(b), the privileges granted under this section do not relieve the operator of an authorized emergency vehicle of the duty to act as a reasonably prudent emergency vehicle operator under the circumstances.”

This exception is important because subsection (7)(b) is the part where “the operator of a marked authorized emergency vehicle **owes no duty of care**” to a fleeing suspect or voluntary passengers in the fleeing vehicle. Thus, under the exception, the operator **is** relieved of the duty to act reasonably **for civil liability purposes**—this extends as far as even allowing violation of pursuit policy or otherwise acting unreasonably or grossly negligent. [We understand that operators will be accountable to their agencies for violations of policy, but this bill is about civil liability—not employee disciplinary action.]

Civil liability for an operator would only be allowed under this bill if the operator had “actual intent to cause harm to the fleeing suspect in an act that was unrelated to the legitimate object of the arrest.” Defense attorneys we have spoken with indicate that **this would be impossible to prove in court**. Further, no civil liability would be allowed even if an operator acted in a grossly negligent manner or violated pursuit policy. In other words, individuals would be denied access to seek redress in court.

Additionally, lines 107-110 are irrelevant because they do not apply to an operator’s *civil liability* to a suspect and thus do not mandate an operator’s compliance with pursuit policy as it concerns a fleeing suspect. Also, it may not have the intended application; ambulances don’t have pursuit policies, yet their operators may receive total immunity for their actions (such as striking a car and harming its passengers) so long as they turn on their emergency lights and sound their siren.

We feel as a matter of public policy that pursuit policies are designed and intended to ensure safety for **all** parties, including a fleeing suspect, and thus feel that creating absolute immunity for an operator as to civil liability to a fleeing suspect goes too far and undermines the intent of public policy to protect suspect safety. The intent of the bill is good, as we think a **qualified immunity** system is appropriate, but the technical language of the bill falls short of accomplishing those ends by inadvertently creating **absolute immunity** instead.