

2023 SENATE TRANSPORTATION

SB 2348

2023 SENATE STANDING COMMITTEE MINUTES

Transportation Committee
Fort Totten Room, State Capitol

SB 2348
2/3/2023

Relating to a motor vehicle owner's liability for fleeing a peace officer and relating to statutory fees for traffic offenses and to provide a penalty.

10:11 AM Chairman Clemens opens hearing.

Senators present: **Clemens, Conley, Larsen, Rummel, Paulson**

Discussion Topics:

- Citation process
- 96-hour limit
- Camera equipment

10:11 AM Senator Piepkorn introduced bill.

10:14 AM Stephanie Dassinger – Chiefs of Police Association, in favor. #19078

10:21 AM David Zibolski – Chief of Police for Fargo Police Department, in favor. #19052

10:30 AM Dave Draovitch – Chief of Police for Bismarck, in favor. #19077

10:33 AM Calvin Benson, ND Peace Officers Association, verbally in favor.

10:34 AM Johnathan Byers – ND attorney Association, verbally neutral.

10:36 AM Chairman Clemens adjourns hearing.

10:36 AM Chairman Clemens opens meeting.

10:39 AM Senator Larsen motioned to adopt Amendment LC 23.0108.01001. #19914

10:40 AM Senator Rummel seconded.

Senators	Vote
Senator David A. Clemens	Y
Senator Cole Conley	Y
Senator Doug Larsen	Y
Senator Bob Paulson	Y
Senator Dean Rummel	Y

Motion passed. 5-0-0

10:41 AM Senator Larsen motioned a Do Pass as amended.

10:41 AM Senator Rummel seconded.

Senators	Vote
Senator David A. Clemens	Y
Senator Cole Conley	Y
Senator Doug Larsen	Y
Senator Bob Paulson	Y
Senator Dean Rummel	Y

Motion passed. 5-0-0

10:42 AM Senator Paulson will carry.

10:43 AM chairman Clemens adjourns meeting.

Nathan Liesen, Committee Clerk

AG
2-3-23
(1-2)

PROPOSED AMENDMENTS TO SENATE BILL NO. 2348

Page 1, line 2, replace "liability for fleeing" with "responsibility regarding a driver who flees"

Page 1, line 11, replace "**liability for fleeing**" with "**responsibility regarding a driver who flees**"

Page 1, line 13, replace "liable for a violation of an offense under" with "to have violated"

Page 1, line 14, remove "The owner of a motor vehicle involved in a violation of section 39-10-71 may not be"

Page 1, remove lines 15 through 17

Page 1, line 18, remove "3."

Page 1, line 23, remove "within seventy-two hours after observing the violation"

Page 2, line 1, replace "on" with "in accordance with the North Dakota Rules of Civil Procedure to"

Page 2, replace lines 3 through 13 with:

3. A motor vehicle owner may not be found to have violated this section if:

a. The driver operating the motor vehicle at the time of the violation of section 39-10-71 has been charged with a violation of section 39-10-71.

b. The motor vehicle was reported stolen before the violation occurred or within a reasonable time after the violation occurred."

Page 2, line 14, remove "A motor vehicle owner is exempt from imposition of liability under this section if the"

Page 2, remove lines 15 and 16

Page 2, line 17, remove "5."

Page 2, line 17, remove "is exempt from imposition of liability under this section or"

Page 2, line 18, replace "section 39-10-71" with "may not be found to have violated this section"

Page 2, line 18, after "provides" insert "to a peace officer"

Page 2, line 19, remove "to a peace officer and"

Page 2, remove lines 20 and 21

Page 2, line 22, replace "violation" with "of section 39-10-71, and further provides to the peace officer information sufficient to establish probable cause to establish the driver violated section 39-10-71"

Page 2, line 23, replace "6." with "5."

Page 2, line 23, replace "is exempt from imposition of liability under" with "may not be found to have violated"

Page 2, line 24, replace "liable under" with "presumed to have violated"

Page 2, line 24, remove "or section 39-10-71"

Page 2, line 29, replace "7." with "6."

Page 2, line 29, replace "owner is exempt from imposition of liability under" with "dealer may not be found to have violated"

Page 2, line 29, remove ", and the"

Page 2, remove line 30

Page 2, line 31, replace "vehicle owner is a dealer." with "if"

Page 3, line 4, replace "8." with "7."

Renumber accordingly

AK
2-3-03
b-2

REPORT OF STANDING COMMITTEE

SB 2348: Transportation Committee (Sen. Clemens, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2348 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

Page 1, line 2, replace "liability for fleeing" with "responsibility regarding a driver who flees"

Page 1, line 11, replace "liability for fleeing" with "responsibility regarding a driver who flees"

Page 1, line 13, replace "liable for a violation of an offense under" with "to have violated"

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Renumber accordingly

2023 HOUSE TRANSPORTATION

SB 2348

2023 HOUSE STANDING COMMITTEE MINUTES

Transportation Committee
Room JW327E, State Capitol

SB 2348
3/9/2023

A bill relating to a motor vehicle owner's responsibility regarding a driver who flees a peace officer and relating to statutory fees for traffic offenses.

Chairman D. Ruby opened the hearing at 9:58AM.

Members present: Chairman Ruby, Vice Chairman Grueneich, Representatives Anderson, Christensen, Dyk, Frelich, Hauck, Koppelman, Murphy, Timmons, Wagner, Dakane, Dobervich. **Members absent:** Representative Weisz.

Discussion Topics:

- Driver violation fees
- Fleeing from peace officers
- Reduction of high-speed chases

Senator Piepkorn verbally introduced the bill in support.

Stephanie Dassinger Engebretson, representing the Chiefs of Police Association of North Dakota and Deputy Director/Attorney for North Dakota League of Cities, testified in support (#23337).

Dave Draovitch, Chief of Police with the Bismarck Police Department, testified in support (#22340, 22339).

Calvin Benson, representing the North Dakota Peace Officers Association, verbally testified in support.

Additional written testimony:

David Zibolski, Chief of Police with the Fargo Police Department, testimony in support (#23053, 23052).

Chairman D. Ruby closed the hearing at 10:45AM.

Mary Brucker, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Transportation Committee
Room JW327E, State Capitol

SB 2348
3/23/2023

A bill relating to a motor vehicle owner's responsibility regarding a driver who flees a peace officer and relating to statutory fees for traffic offenses.

Chairman D. Ruby opened the meeting at 9:52 AM.

Members present: Chairman Ruby, Vice Chairman Grueneich, Representatives Anderson, Christensen, Dyk, Frelich, Hauck, Koppelman, Murphy, Timmons, Wagner, Weisz, Dakane, Dobervich. No members absent.

Discussion Topics:

- Proposed amendment
- Committee vote

Stephanie Dassinger Engrebretson, North Dakota League of Cities, answered questions from the committee and distributed a proposed amendment (#26441).

Representative Koppelman moved a **Do Not Pass**.

Representative Christensen seconded the motion.

Roll call vote:

Representatives	Vote
Representative Dan Ruby	Y
Representative Jim Grueneich	Y
Representative Karen A. Anderson	Y
Representative Cole Christensen	Y
Representative Hamida Dakane	Y
Representative Gretchen Dobervich	N
Representative Scott Dyk	Y
Representative Kathy Frelich	Y
Representative Dori Hauck	Y
Representative Ben Koppelman	Y
Representative Eric James Murphy	Y
Representative Kelby Timmons	Y
Representative Scott Wagner	Y
Representative Robin Weisz	Y

Motion carried 13-1-0

Representative Weisz is the bill carrier.

House Transportation Committee
SB 2348
March 23, 2023
Page 2

Chairman D. Ruby adjourned at 10:12 AM.

Mary Brucker, Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2348, as engrossed: Transportation Committee (Rep. D. Ruby, Chairman)
recommends **DO NOT PASS** (13 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING).
Engrossed SB 2348 was placed on the Fourteenth order on the calendar.

2023 HOUSE STANDING COMMITTEE MINUTES

Transportation Committee
Room JW327E, State Capitol

SB 2348
3/30/2023

A bill relating to a motor vehicle owner's responsibility regarding a driver who flees a peace officer and relating to statutory fees for traffic offenses.

Chairman D. Ruby opened the meeting at 11:01 AM.

Members present: Chairman Ruby, Vice Chairman Grueneich, Representatives Anderson, Christensen, Dyk, Frelich, Hauck, Koppelman, Murphy, Timmons, Wagner, Weisz, Dakane, Dobervich. No members absent.

Discussion Topics:

- Proposed amendment
- Committee discussion

Chairman D. Ruby distributed a proposed amendment from Stephanie Dassinger from the North Dakota League of Cities (#27082).

Committee decided not to reconsider this bill and not make any changes. The Do Not Pass stands from March 23, 2023.

Chairman D. Ruby adjourned at 11:11 AM.

Mary Brucker, Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2348, as engrossed: Transportation Committee (Rep. D. Ruby, Chairman)
recommends **DO NOT PASS** (13 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING).
Engrossed SB 2348 was placed on the Fourteenth order on the calendar.

TESTIMONY

SB 2348

**FARGO POLICE DEPARTMENT**

CHIEF DAVID B. ZIBOLSKI

105 25th Street North

Fargo, ND 58102-4002

Main Line: 701.235.4493 | Fax: 701.297.7789

FargoPolice.com

February 3, 2023

North Dakota Senate
Transportation Committee
Senator David A. Clemens, Chair

RE: Testimony and Support of Senate Bill 2348

Dear Chair and Members of the North Dakota Senate Transportation Committee,

My name is David Zibolski. I am a 38-year law enforcement professional and Chief of Police for the Fargo Police Department. Prior to taking the position as chief in Fargo, I served in both state and local law enforcement agencies in the state of Wisconsin.

I offer my testimony to you today in strong support for Senate Bill 2348 as amended. This bill addresses a dangerous and growing public safety concern not only in the city of Fargo, but all over North Dakota -- fleeing from an officer. As you are aware, fleeing in a vehicle from a law enforcement officer who is attempting to stop a traffic or other criminal violator is a crime. However, under current law unless an officer engages in a pursuit and apprehends the offender, they have little prospect of identifying them and making an arrest. The policing profession recognizes that engaging in pursuits, especially high-speed pursuits that may go through populated areas or encounter unwitting motorists, is of great danger to the public. In deference to that public safety concern, law enforcement agencies including Fargo PD, do not initiate pursuits for traffic or other minor criminal violations. Unfortunately, this has led to an exponential increase in vehicles that flee during traffic stops. In Fargo, we have seen a steady increase since 2016, which was further exacerbated during the Covid years of 2020 and 2021 and continue to present day.

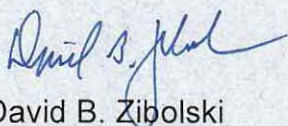
For context, I have provided the Committee with our 2022 end of year fleeing in motor vehicle report. Our Intelligence & Analysis Unit, who also gathers data from other law enforcement colleagues, including West Fargo and Grand Forks PD, tracks this data. As you can see, in 2022 alone 230 vehicles fled Fargo Police Department officers during traffic stops. Most folks may think that a majority of these vehicles are probably stolen. However, the reverse is actually true. Of the 230 cars that fled from our officers in 2022, 178 (77%) are not stolen. Further, in almost all cases and as a result of our in-car camera technology, we have the license plate number and know who the registered owner of the vehicle is. In spite of that statistic, an overwhelming 59% of those fleeing cases go unprosecuted because law enforcement has no tools to assist in identifying the driver of the fleeing vehicle. Senate Bill 2348 provides that very important tool.

Senate Bill 2348 is authored similar to existing law in the state of Wisconsin. It provides the presumption that the registered owner is the driver, but gives law enforcement an important tool that we currently do not have. The incentive for that owner to provide the driver information to our officers so that we may properly pursue fleeing charges with our prosecutor. The legal tool is relatively simple. The registered owner has the opportunity to identify to the officer who the driver was and provide whatever other identifying information they may know about that person. The officer can then conduct the rest of their investigation and forward the case to the prosecutors and/or locate and make an arrest. Should the owner decide not to cooperate in identifying the driver, they face the prospect of a \$500 non-criminal offense. Similar to Wisconsin, the bill contemplates certain circumstances such as the vehicle is stolen, is leased, or is taken from a dealership, and provides sufficient statutory protections so that unwitting owners are provided the same opportunity to provide the information.

There is likely a variety of reasons why the 178 non-stolen vehicles fled from our officers in 2022. Regardless, as these vehicles flee they often create traffic safety concerns, become involved in hit and run accidents, and otherwise unnecessarily endanger the motoring public. It is equally likely that some of the persons who fled were involved in other criminal activity that our officers simply were unaware of at the time of the stop. The lack of a viable tool for law enforcement to identify these drivers not only incentivizes additional fleeing, but likely also negates our ability to solve other crimes. Our officers conducted 7,190 traffic stops in 2022. The 230 fleeing vehicles represent a ratio of one fleeing vehicle per every 31 traffic stops. This is an egregiously high number and continues to get worse. Senate Bill 2348 will provide law enforcement with an important tool to appropriately follow-up, investigate, identify and arrest those persons who choose to flee from traffic stops.

I thank you for the opportunity to testify before you today and strongly encourage you to motion Senate Bill 2348 as amended as a "do pass."

Respectfully,



David B. Zibolski
Chief of Police



FLEEING IN A MOTOR VEHICLE REPORT

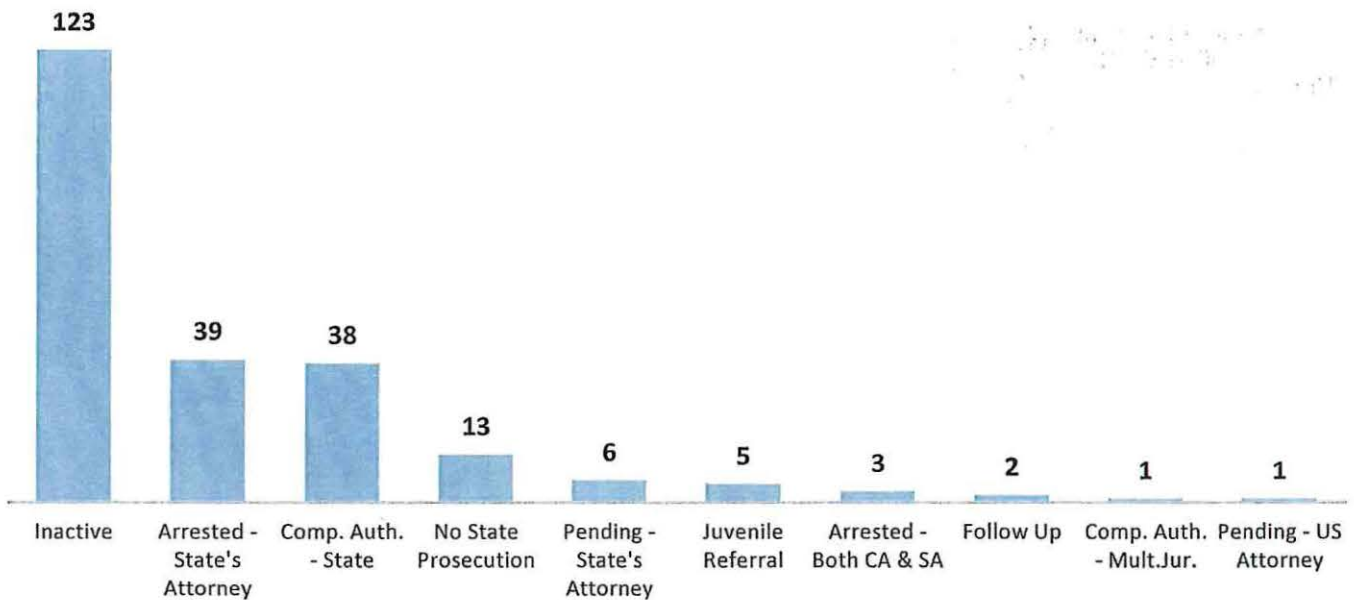
DECEMBER 2022



The Fargo Police Department has had a total of **230** fleeing in a motor vehicle cases from 01/01/22 to 12/31/22. Of these cases, 135 have been labeled misdemeanors, and 95 as felonies. 54 cases have been reported as stolen vehicles. The case status for these months is as follows:

Inactive: 123
Arrested: 39
Comp. Auth: 38
No State Prosecution: 13
Pending - State's Attorney: 6
Juvenile Referral: 5

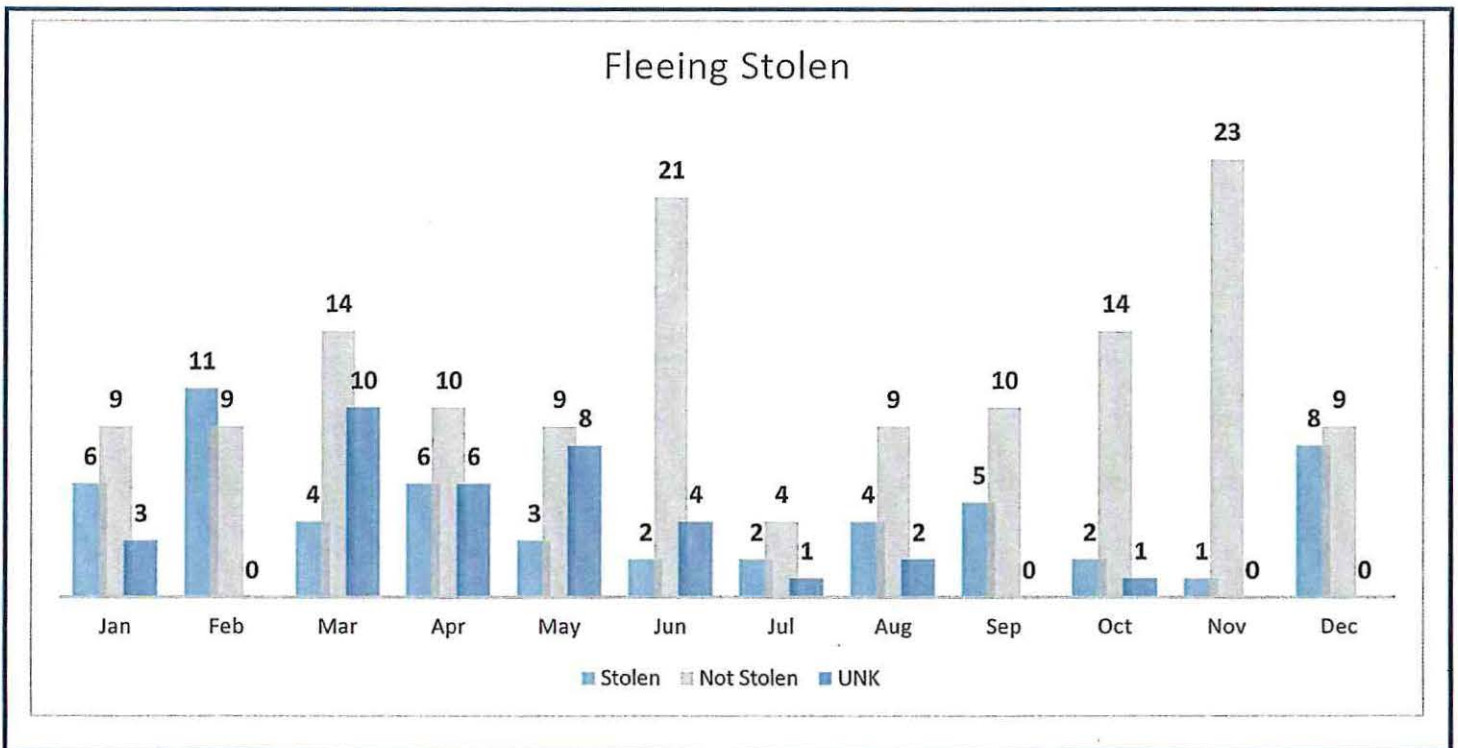
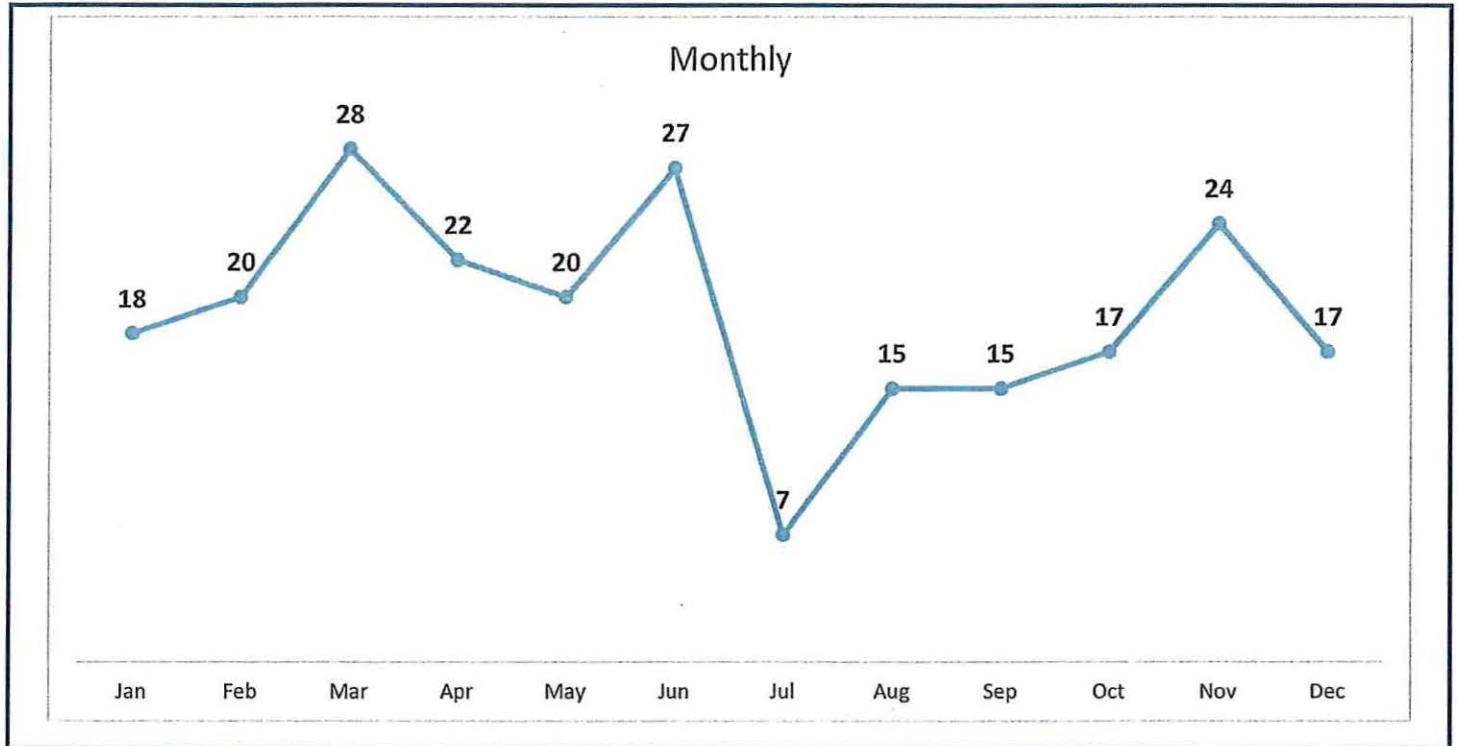
Case Disposition





FLEEING IN A MOTOR VEHICLE REPORT

DECEMBER 2022



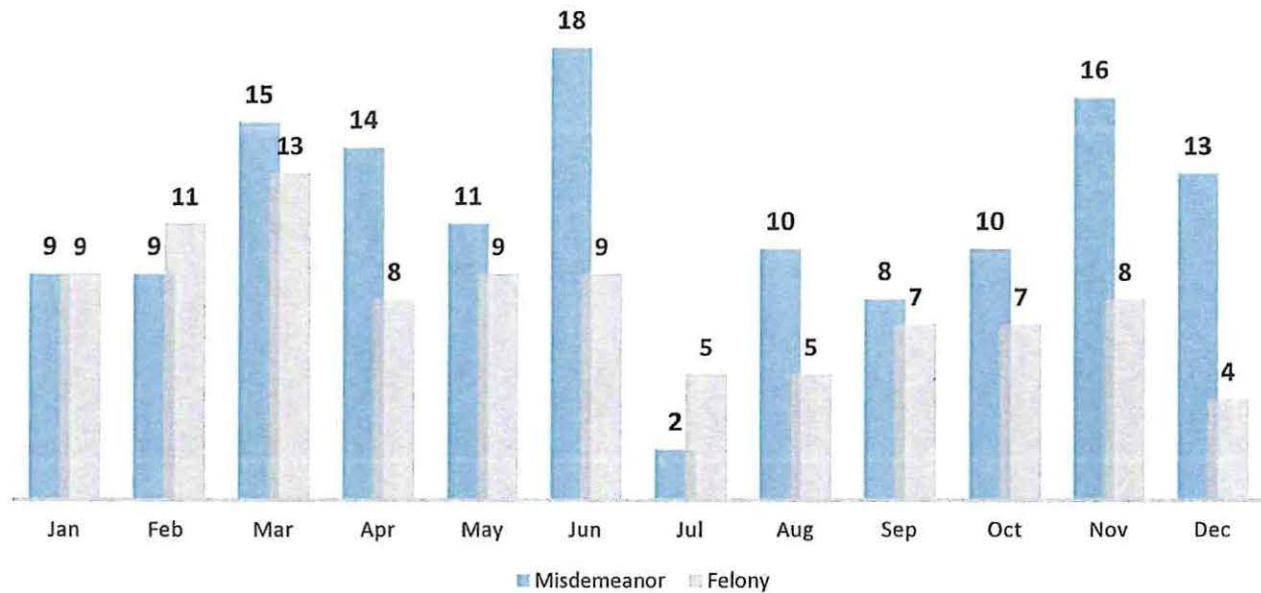


FLEEING IN A MOTOR VEHICLE REPORT

DECEMBER 2022



Mis. Vs. Felony



Traffic Stops/Fleeing 2022	TOTAL	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Fleeing Misdemeanor	135	9	9	15	14	11	18	2	10	8	10	16	13
Fleeing Felony	95	9	11	13	8	9	9	5	5	7	7	8	4
Total Fleeing Cases	230	18	20	28	22	20	27	7	15	15	17	24	17
Total Traffic Stops	7190	318	382	595	587	834	732	743	698	478	499	697	627
RATIO	1:31	1:18	1:19	1:21	1:27	1:42	1:27	1:123	1:47	1:32	1:29	1:29	1:37

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Fargo	1:18	1:19	1:21	1:27	1:42	1:27	1:123	1:47	1:32	1:29	1:29	1:37
West Fargo	1:76	1:56	1:254	1:147	1:105	null	1:117	1:226	1:49	1:179	1:253	1:451
Grand Forks	1:807	1:370	1:177	1:144	1:610	1:335	1:155	1:238	1:298	1:110	1:143	null

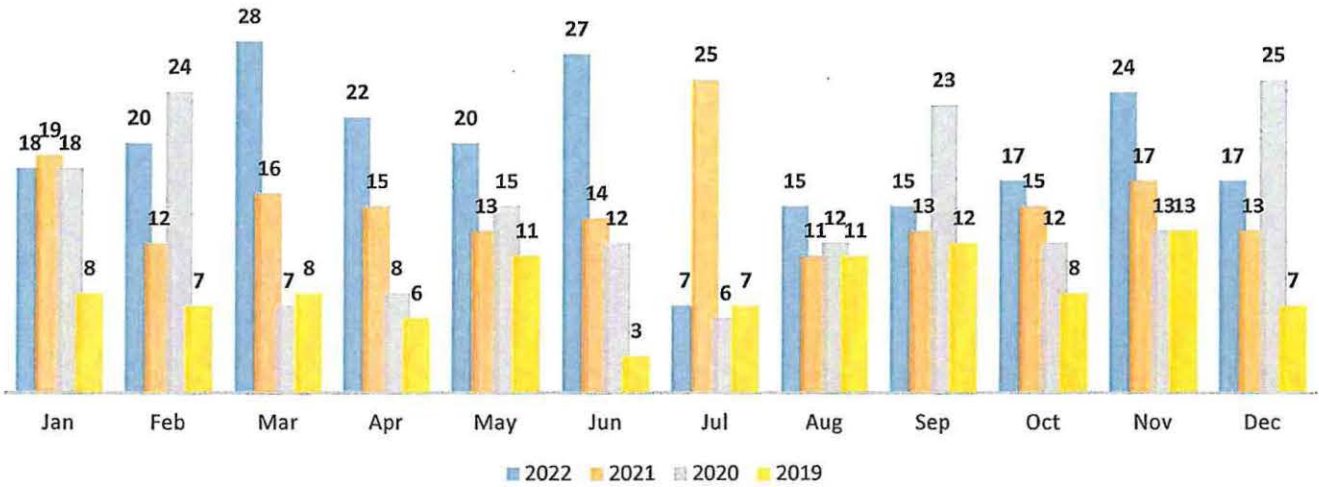


FLEEING IN A MOTOR VEHICLE REPORT

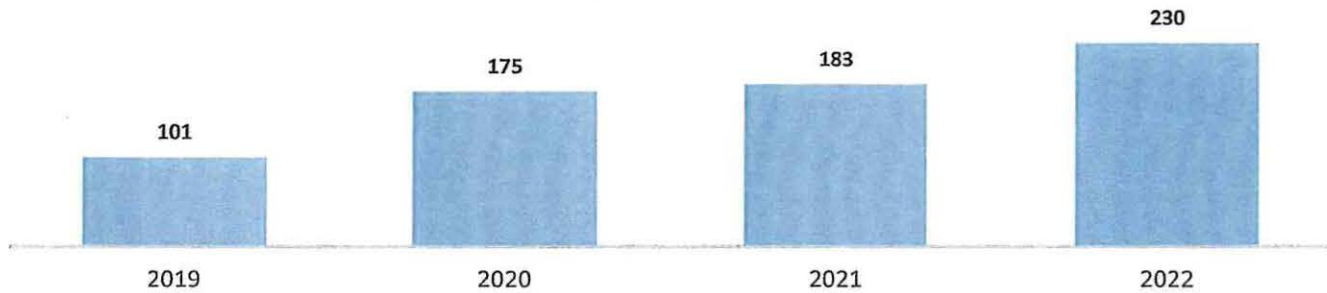
DECEMBER 2022



Yearly Comparison



Yearly Comparison



Fargo YTD	1:31
West Fargo YTD	1:148
GF YTD	1:264

INFORMATION ACCURATE AS OF 01/04/22
END OF REPORT



Bismarck

POLICE

February 3, 2023

From: Dave Draovitch
Chief of Police

To: Senator David Clemens, Chairman, and Members of the Transportation Committee

Subj: SB 2348

I come before you today to seek your support for SB 2348. The City of Bismarck, as well as many other communities in ND, are experiencing many incidents of people fleeing from the police when we initiate a traffic stop. Sometimes the officers don't even get a chance to initiate a stop, the people flee as soon as they see the police car.

The way people flee from the police is without regard for the public's safety. I am amazed that we have not had more serious accidents in which people are seriously injured or killed. In fact, I am very thankful that two of our officers were not killed when a fleeing suspect hit their police car at 70-80 MPH. The officers had no idea there was a fleeing vehicle in the area as the officer that was initiating the stop had no time to warn anyone about the fleeing vehicle. Our public is at this same risk every time a vehicle flees from the police.

There are so many dangerous fleeing incidents that we have teamed with the North Dakota Highway Patrol (NDHP) and the North Dakota National Guard (ND NG) for air support to run special operations in an effort to catch those responsible for the fleeing incidents. These efforts have been successful, but it is not possible to have these special operations on a consistent basis.

I have also submitted our 2022 Pursuit Analysis/Attempting to Elude Incidents report for your review. I believe the report will give you a clear view of what we are facing.

Although I cannot speak to specifics, many of the Chiefs of Police across the State of North Dakota experience similar issues and have similar concerns as we do in Bismarck.

I thank you for the time I have been allowed to provide information about this very important Bill and I thank you for considering supporting it as it is written today.

If you have any questions feel free to contact me at your convenience. I may be reached at ddraovitch@bismarcknd.gov or 701-223-1212.

Dave Draovitch, Chief of Police

Phone: 701-223-1212 • Fax: 701-355-1861 • 700 South 9th Street • Bismarck, ND 58504-5899
www.bismarcknd.gov • TDD 701-221-6820 • An Equal Opportunity-Affirmative Action Employer



Respectfully,

A handwritten signature in black ink, appearing to read "Dave Draovitch". The signature is fluid and cursive, with a large, stylized "D" at the beginning and end.

DAVE DRAOVITCH
Chief of Police

Dave Draovitch, Chief of Police

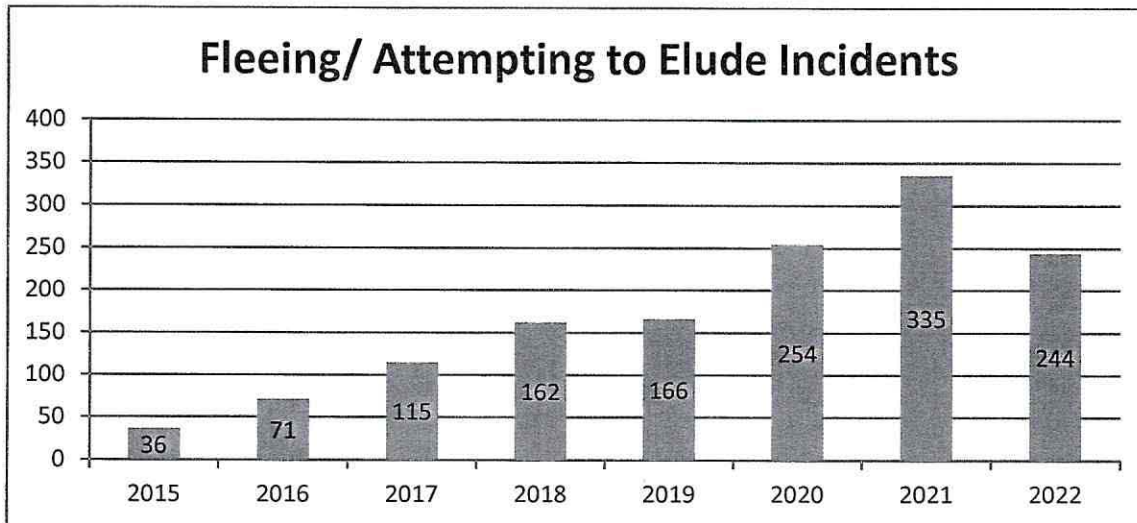
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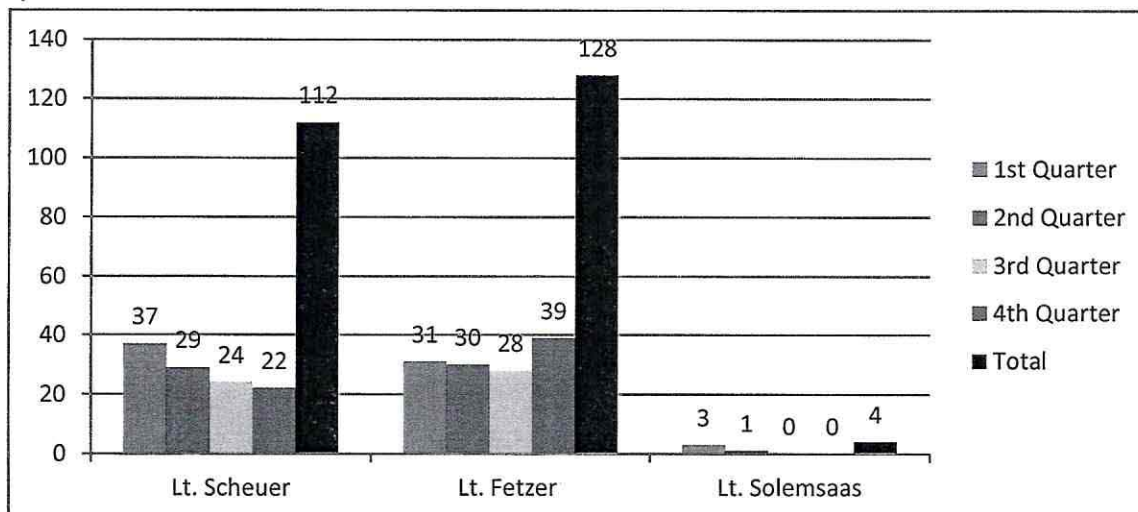
2022 Summary
Pursuit Analysis / Attempting to Elude
Incidents

Lt. Jeff Solemsaas
Traffic Commander

In 2022 there were a total of 244 reported instances of a vehicle pursuit/attempting to elude, which is down from 355 in 2021. This data is used to attempt to identify trends or patterns that may exist and also to suggest any possible changes to the current department policy governing pursuits/attempting to elude incidents. The Bismarck PD has a limited pursuit policy that restricts officers from engaging in pursuits unless certain criteria are met. There is a misconception that the department has a “no pursuit” policy but it is, in fact, a limited pursuit policy which is similar to what a large number of law enforcement agencies are using at the present time.



The following is the breakdown by shift for pursuits/attempts to elude occasions for 2021 by quarter:



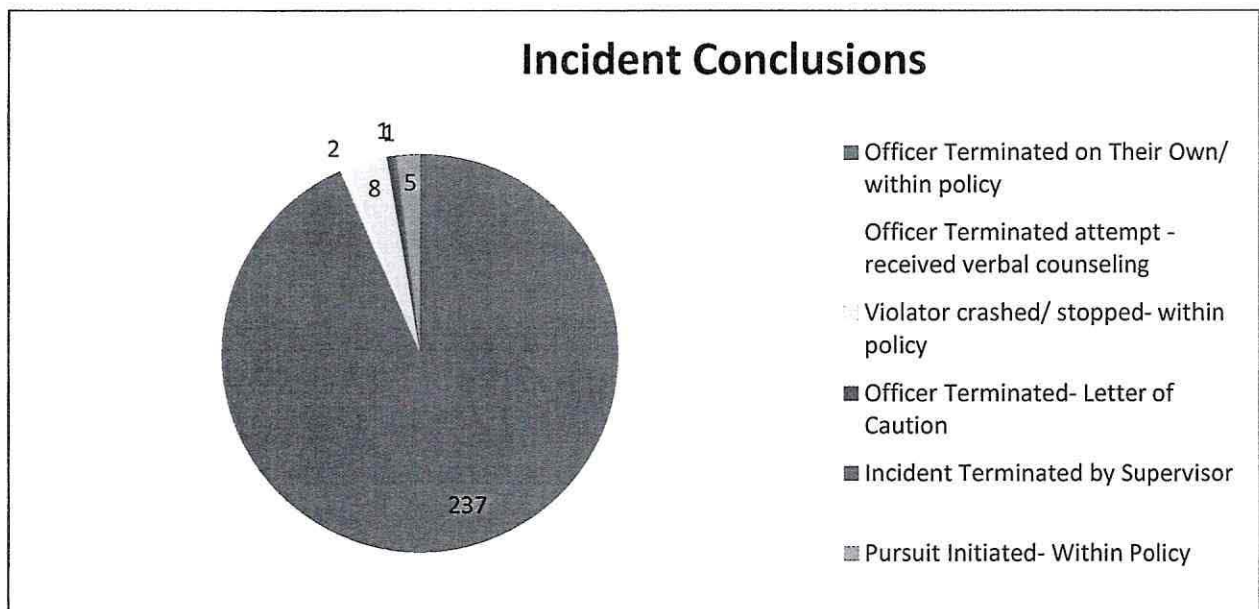
Historically, the most frequent occurrence of a driver fleeing from an attempted traffic stop occurs during the nighttime hours. In 2022 research shows that the majority of instances in which a driver flees from officers continue to follow that trend. There were 157 occasions (64%)

that happened at night, leaving 36% (87 occasions) occurring during the daytime hours. This is the same ratio of nighttime versus daytime occasions from 2021. This is also a very similar ratio from the last several years. For the purpose of establishing this ratio, the shift schedule time was used so that any incident between 0700 hours and 1900 hours is considered as daytime, 1900 hours to 0700 hours is considered nighttime.

When officers are presented with the decision to pursue or to not pursue, in the majority of circumstances, they are making the correct decision to follow the department policy. As noted previously, there were a total of 244 incidents involving the use of a vehicle to flee from an attempt to stop that vehicle. In 237 of those instances (97%), the officer involved terminated the attempt to stop on their own without the direction of a supervisor/commander. For this calculation I used the fact that the officer terminated on their own even if the result was either verbal counseling or a letter of caution from the supervisor. There were 8 (3%) incidents in which the violator crashed his/her vehicle or stopped on their own.

In 2022 there were four (4) instances in which a pursuit was judged to have been initiated. In all cases the pursuit was considered within policy. There were two (2) cases in the 1st quarter, in one case the suspect crashed and was taken into custody. The second case was terminated at the orders of the field supervisor.

There were also two cases in the 2nd quarter, in one , the suspect was involved in a collision and was taken into custody. In the second case the ND Highway Patrol and Burleigh County Sheriffs department assisted with the suspect vehicle being forced to stop with the use of spike strips. All of these was considered to be within policy and authorized.



Please note that the statistics will total more than the total number of incidents due to the fact that a single occasion may have more than one factor. An example would be a pursuit initiated and then having a field supervisor ordering termination. Also, an officer may be authorized but receive discipline for their driving during the event.

There has been a concentrated effort to educate the officers of the importance of following the department policy regarding pursuits. In the past there was a perception that a supervisor or commander had to order the pursuit to be terminated. All officers should now understand that they have the expectation and obligation to “self-terminate” the attempt to stop a fleeing vehicle. Since the training has been expanded there has been a greater understanding of the expectations and officers are more likely to discontinue the attempt to stop on their own without the guidance of a supervisor/commander.

In 2022 the most common reason for the initial attempt for a traffic stop was for a traffic violation. Of the 244 reported instances, 207(85%) were for a traffic violation that the officer observed. The other reason for a traffic stop was for a criminal violation such as physical assault or the driver/occupant was wanted for a criminal violation; these occasions account for 37 (15%) of the total incidents in 2022.



Under the current Bismarck Police Department policy roadblocks are only to be used in cases of emergency in order to capture persons wanted for criminal violations. In 2022 there were no cases of a roadblock being used. The likelihood of using the spike strips in a pursuit situation are somewhat limited in that the department has very few authorized vehicle pursuits and

when they do occur there is limited time given to properly utilize the spike strips. AS noted previously, there was one instance in which spike strips were used by another agency assisting with the fleeing vehicle.

The policy of having commanders review and discuss the incidents with the officers has reinforced the importance that the department has placed on adherence to the policy. Even when officers have violations of the policy, the commanders are able to openly discuss why the policy is such a critical element in the safety of the officers and the community. This has also led to the perception that the department is not looking to punish officers for violations of policy but only to stress the importance of following the policy and the liability for the city and department that comes from vehicle pursuits. This, in turn, makes it more likely that officers will report instances in which the driver fails to obey with the order to stop.

With the large increase in the number of drivers that are fleeing/ attempting to elude officers it would be prudent to look at some possible strategies that would help lower the occurrences. As noted previously, some officers are working with the States Attorney's office to impound vehicles that are frequently involved in fleeing instances. Another possible goal would be to increase the penalties to the drivers of vehicles that flee officer's attempts to conduct traffic stops. In a previous legislative session, a bill was adopted that enhanced the penalties for drivers that flee from law enforcement officers when done so recklessly. The purpose of this bill was to deter and reduce the number of drivers fleeing from officers. In speaking with officers this criminal charge has been used seldomly and, on face value, it appears that it has had no impact reducing the number of violators that chose to flee from an attempted traffic stop. There also appears to be little appetite to seize vehicles with the current legal climate.

There were a couple of special enforcement events that occurred in 2022 involving the use of a Highway Patrol airplane. The plane was used to follow the suspect after officers had discontinued the attempt to stop the suspect vehicle after it had fled. The department announced the enforcement and the results through various media releases and social media postings. There seemed to be a slight decline in the number of fleeing vehicles after the special enforcement events. There are more events planned for 2023. With these events I will more closely monitor the behavior of fleeing drivers to determine the effectiveness of using aerial surveillance.

It appears that the training of the officers has been successful which is reflected in the high voluntary compliance with the expectation of self-termination when the officers are faced with a "pursue/don't pursue" situation. In the fall of 2021 a 'refresher' course was established that was presented to the sworn staff to reinforce the importance of policy adherence. This is now an annual requirement during the department's annual in-house training.

Respectfully submitted,

Lt. Jeff Solemsaas

February 3, 2023
Senate Transportation Committee
SB 2348
Sen. Clemens, Chair

For the record, I am Stephanie Dassinger Engebretson. I am appearing on behalf of the Chiefs of Police Association of North Dakota. I am also the deputy director and attorney for the North Dakota League of Cities.

The Chiefs of Police appear today in support of SB 2348 because it would provide another tool to law enforcement to try to address the large amounts of fleeing events that are occurring in our communities. Some amendments have been drafted by a city prosecutor after concerns were raised about the way the bill was previously written. The Chiefs support the amendments.

To put this issue into perspective, the following is a table showing the pursuit/fleeing incidents in a motor vehicle from 8 of the largest cities in North Dakota:

Number of Pursuits/Fleeing in a Motor Vehicle			
City	2020	2021	2022
Bismarck	254	335	*
Fargo	175	183	230
Grand Forks	29	34	20
Jamestown	2	6	7
Mandan	49	53	55
Minot	78	105	76
West Fargo	54	45	51
Williston	22	17	27

*Data still being processed

As you can see from the data in Bismarck, Fargo, and Minot, fleeing incidents are happening more than once a week there. In Mandan and West Fargo, these incidents are occurring approximately once a week. Fleeing incidents put community members at a huge risk of personal injury or death due to the danger of the fleeing vehicle driving through the city at an increased speed and ignoring traffic rules.

Under the bill, within 96 hours of witnessing a motor vehicle fleeing incident if the driver of the vehicle has not been identified, law enforcement officers can issue a traffic citation to the registered owner of the vehicle. The amount of the citation would be \$500.

A citation cannot be issued if the vehicle was reported stolen within a reasonable time of the event occurring. Additionally, the registered owner may not be found to have violated this section if:

- He or she provides the name and address of the individual operating the vehicle at the time of the fleeing;
- In a lessor/lessee motor vehicle ownership arrangement when the lessee provides the identifying information for the lessor; and
- The motor vehicle is a rental vehicle and the rental company provides identifying information for the individual renting the vehicle at the time.

SB 2348 would provide an vital tool for law enforcement and the Chiefs of Police request that you adopted the amendments and provide a Do Pass recommendation on HB 2348.

23.0108.01001
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Prepared by the Legislative Council staff for
Senator Piepkorn
February 2, 2023

PROPOSED AMENDMENTS TO SENATE BILL NO. 2348

Page 1, line 2, replace "liability for fleeing" with "responsibility regarding a driver who flees"

Page 1, line 11, replace "**liability for fleeing**" with "**responsibility regarding a driver who flees**"

Page 1, line 13, replace "liable for a violation of an offense under" with "to have violated"

Page 1, line 14, remove "The owner of a motor vehicle involved in a violation of section 39-10-71 may not be"

Page 1, remove lines 15 through 17

Page 1, line 18, remove "3."

Page 1, line 23, remove "within seventy-two hours after observing the violation"

Page 2, line 1, replace "on" with "in accordance with the North Dakota Rules of Civil Procedure to"

Page 2, replace lines 3 through 13 with:

3. A motor vehicle owner may not be found to have violated this section if:

a. The driver operating the motor vehicle at the time of the violation of section 39-10-71 has been charged with a violation of section 39-10-71.

b. The motor vehicle was reported stolen before the violation occurred or within a reasonable time after the violation occurred."

Page 2, line 14, remove "A motor vehicle owner is exempt from imposition of liability under this section if the"

Page 2, remove lines 15 and 16

Page 2, line 17, remove "5."

Page 2, line 17, remove "is exempt from imposition of liability under this section or"

Page 2, line 18, replace "section 39-10-71" with "may not be found to have violated this section"

Page 2, line 18, after "provides" insert "to a peace officer"

Page 2, line 19, remove "to a peace officer and"

Page 2, remove lines 20 and 21

Page 2, line 22, replace "violation" with "of section 39-10-71, and further provides to the peace officer information sufficient to establish probable cause to establish the driver violated section 39-10-71"

Page 2, line 23, replace "6." with "5."

Page 2, line 23, replace "is exempt from imposition of liability under" with "may not be found to have violated"

Page 2, line 24, replace "liable under" with "presumed to have violated"

Page 2, line 24, remove "or section 39-10-71"

Page 2, line 29, replace "7." with "6."

Page 2, line 29, replace "owner is exempt from imposition of liability under" with "dealer may not be found to have violated"

Page 2, line 29, remove ", and the"

Page 2, remove line 30

Page 2, line 31, replace "vehicle owner is a dealer." with "if"

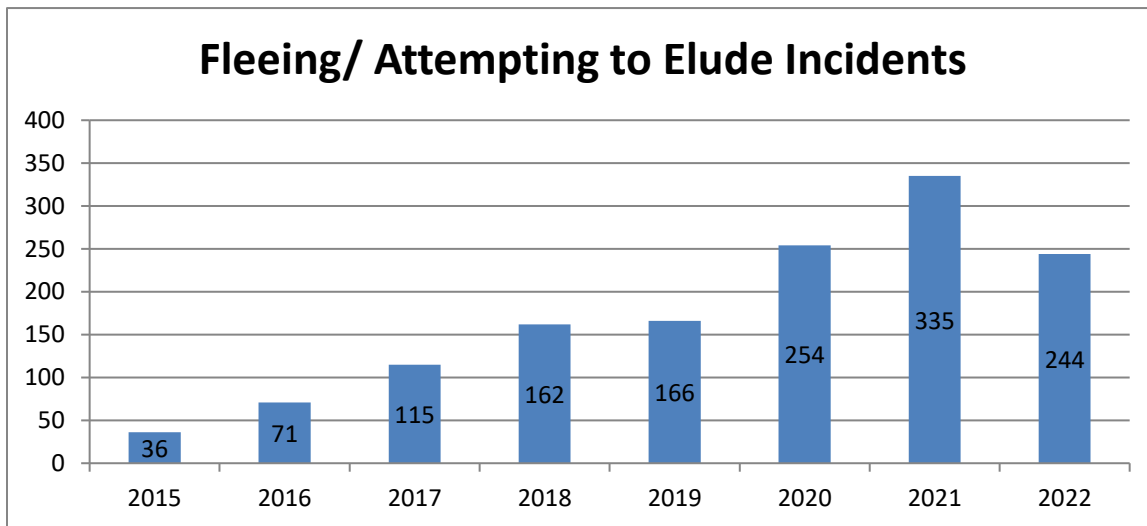
Page 3, line 4, replace "8." with "7."

Re-number accordingly

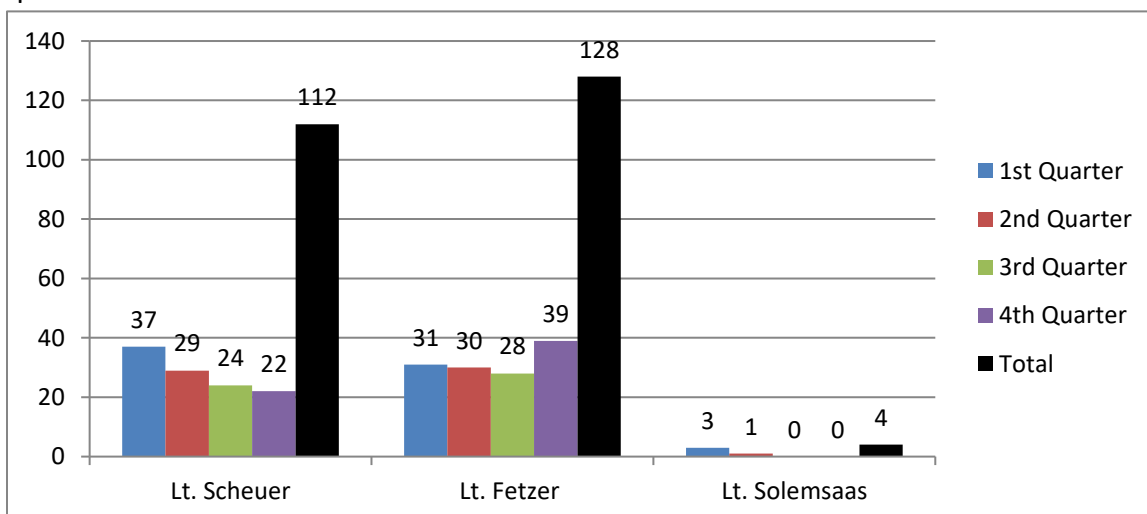
2022 Summary
Pursuit Analysis / Attempting to Elude
Incidents

Lt. Jeff Solemsaas
Traffic Commander

In 2022 there were a total of 244 reported instances of a vehicle pursuit/attempting to elude, which is down from 355 in 2021. This data is used to attempt to identify trends or patterns that may exist and also to suggest any possible changes to the current department policy governing pursuits/attempting to elude incidents. The Bismarck PD has a limited pursuit policy that restricts officers from engaging in pursuits unless certain criteria are met. There is a misconception that the department has a “no pursuit” policy but it is, in fact, a limited pursuit policy which is similar to what a large number of law enforcement agencies are using at the present time.



The following is the breakdown by shift for pursuits/attempts to elude occasions for 2021 by quarter:



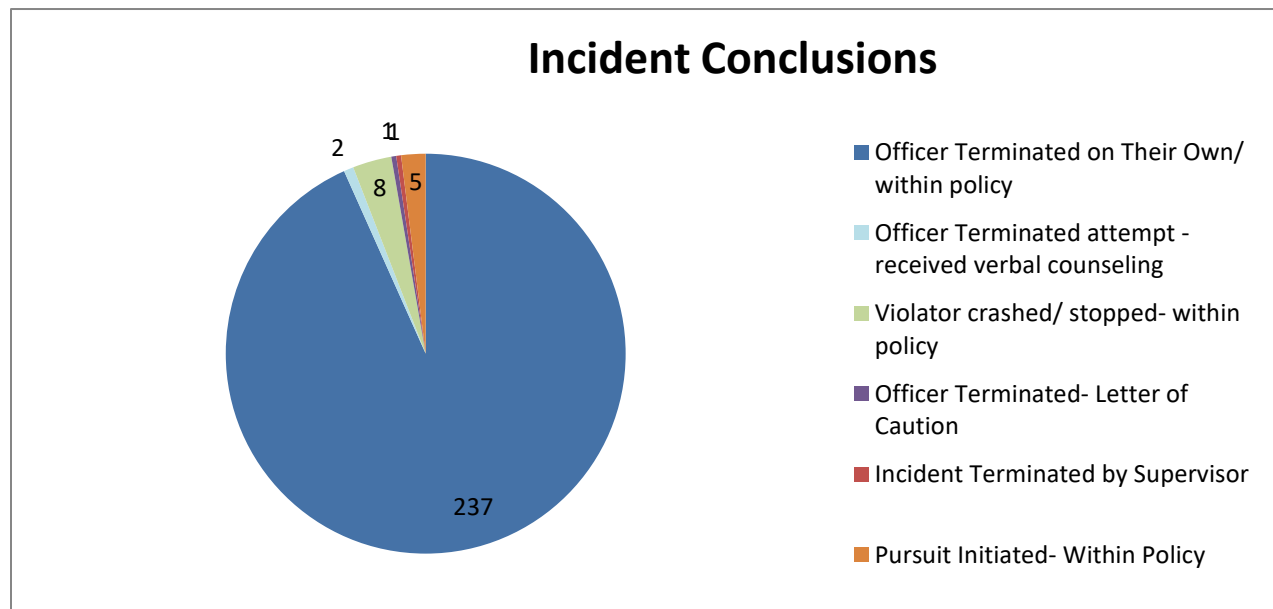
Historically, the most frequent occurrence of a driver fleeing from an attempted traffic stop occurs during the nighttime hours. In 2022 research shows that the majority of instances in which a driver flees from officers continue to follow that trend. There were 157 occasions (64%)

that happened at night, leaving 36% (87 occasions) occurring during the daytime hours. This is the same ratio of nighttime versus daytime occasions from 2021. This is also a very similar ratio from the last several years. For the purpose of establishing this ratio, the shift schedule time was used so that any incident between 0700 hours and 1900 hours is considered as daytime, 1900 hours to 0700 hours is considered nighttime.

When officers are presented with the decision to pursue or to not pursue, in the majority of circumstances, they are making the correct decision to follow the department policy. As noted previously, there were a total of 244 incidents involving the use of a vehicle to flee from an attempt to stop that vehicle. In 237 of those instances (97%), the officer involved terminated the attempt to stop on their own without the direction of a supervisor/commander. For this calculation I used the fact that the officer terminated on their own even if the result was either verbal counseling or a letter of caution from the supervisor. There were 8 (3%) incidents in which the violator crashed his/her vehicle or stopped on their own.

In 2022 there were four (4) instances in which a pursuit was judged to have been initiated. In all cases the pursuit was considered within policy. There were two (2) cases in the 1st quarter, in one case the suspect crashed and was taken into custody. The second case was terminated at the orders of the field supervisor.

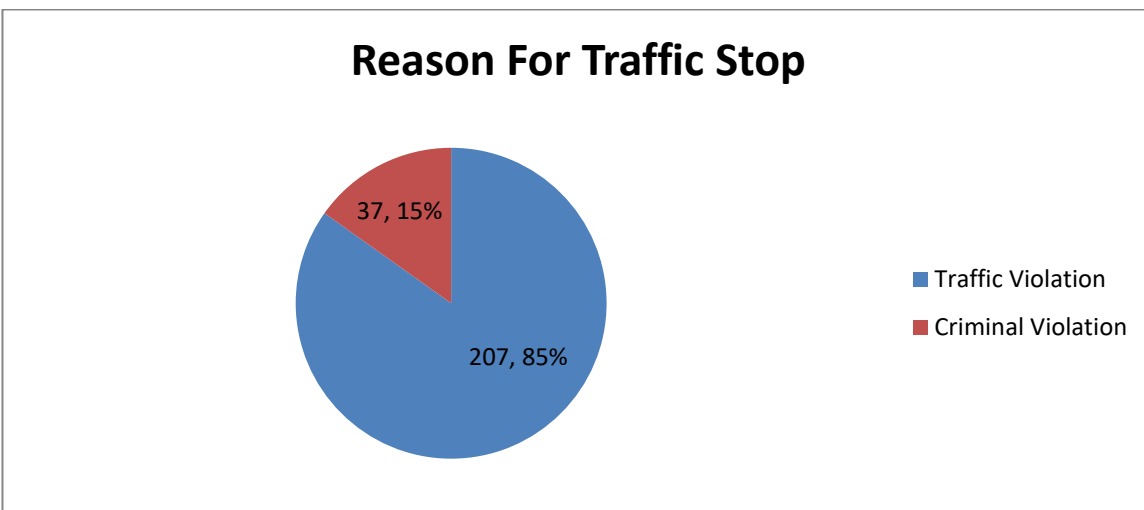
There were also two cases in the 2nd quarter, in one , the suspect was involved in a collision and was taken into custody. In the second case the ND Highway Patrol and Burleigh County Sheriffs department assisted with the suspect vehicle being forced to stop with the use of spike strips. All of these was considered to be within policy and authorized.



Please note that the statistics will total more than the total number of incidents due to the fact that a single occasion may have more than one factor. An example would be a pursuit initiated and then having a field supervisor ordering termination. Also, an officer may be authorized but receive discipline for their driving during the event.

There has been a concentrated effort to educate the officers of the importance of following the department policy regarding pursuits. In the past there was a perception that a supervisor or commander had to order the pursuit to be terminated. All officers should now understand that they have the expectation and obligation to “self-terminate” the attempt to stop a fleeing vehicle. Since the training has been expanded there has been a greater understanding of the expectations and officers are more likely to discontinue the attempt to stop on their own without the guidance of a supervisor/commander.

In 2022 the most common reason for the initial attempt for a traffic stop was for a traffic violation. Of the 244 reported instances, 207(85%) were for a traffic violation that the officer observed. The other reason for a traffic stop was for a criminal violation such as physical assault or the driver/occupant was wanted for a criminal violation; these occasions account for 37 (15%) of the total incidents in 2022.



Under the current Bismarck Police Department policy roadblocks are only to be used in cases of emergency in order to capture persons wanted for criminal violations. In 2022 there were no cases of a roadblock being used. The likelihood of using the spike strips in a pursuit situation are somewhat limited in that the department has very few authorized vehicle pursuits and

when they do occur there is limited time given to properly utilize the spike strips. AS noted previously, there was one instance in which spike strips were used by another agency assisting with the fleeing vehicle.

The policy of having commanders review and discuss the incidents with the officers has reinforced the importance that the department has placed on adherence to the policy. Even when officers have violations of the policy, the commanders are able to openly discuss why the policy is such a critical element in the safety of the officers and the community. This has also led to the perception that the department is not looking to punish officers for violations of policy but only to stress the importance of following the policy and the liability for the city and department that comes from vehicle pursuits. This, in turn, makes it more likely that officers will report instances in which the driver fails to obey with the order to stop.

With the large increase in the number of drivers that are fleeing/ attempting to elude officers it would be prudent to look at some possible strategies that would help lower the occurrences. As noted previously, some officers are working with the States Attorney's office to impound vehicles that are frequently involved in fleeing instances. Another possible goal would be to increase the penalties to the drivers of vehicles that flee officer's attempts to conduct traffic stops. In a previous legislative session, a bill was adopted that enhanced the penalties for drivers that flee from law enforcement officers when done so recklessly. The purpose of this bill was to deter and reduce the number of drivers fleeing from officers. In speaking with officers this criminal charge has been used seldomly and, on face value, it appears that it has had no impact reducing the number of violators that chose to flee from an attempted traffic stop. There also appears to be little appetite to seize vehicles with the current legal climate.

There were a couple of special enforcement events that occurred in 2022 involving the use of a Highway Patrol airplane. The plane was used to follow the suspect after officers had discontinued the attempt to stop the suspect vehicle after it had fled. The department announced the enforcement and the results through various media releases and social media postings. There seemed to be a slight decline in the number of fleeing vehicles after the special enforcement events. There are more events planned for 2023. With these events I will more closely monitor the behavior of fleeing drivers to determine the effectiveness of using aerial surveillance.

It appears that the training of the officers has been successful which is reflected in the high voluntary compliance with the expectation of self-termination when the officers are faced with a "pursue/don't pursue" situation. In the fall of 2021 a 'refresher" course was established that was presented to the sworn staff to reinforce the importance of policy adherence. This is now an annual requirement during the department's annual in-house training.

Respectfully submitted,

Lt. Jeff Solemsaas



March 9, 2023

From: Dave Draovitch
Chief of Police

To: Representative Dan Ruby, Chairman, and Members of the Transportation Committee

Subj: SB 2348

I come before you today to seek your support for SB 2348. The City of Bismarck, as well as many other communities in ND, are experiencing many incidents of people fleeing from the police when we initiate a traffic stop. Sometimes the officers don't even get a chance to initiate a stop, the people flee as soon as they see the police car.

The way people flee from the police is without regard for the public's safety. I am amazed that we have not had more serious accidents in which people are seriously injured or killed. In fact, I am very thankful that two of our officers were not killed when a fleeing suspect hit their police car at 70-80 MPH. The officers had no idea there was a fleeing vehicle in the area as the officer that was initiating the stop had no time to warn anyone about the fleeing vehicle. Our public is at this same risk every time a vehicle flees from the police.

There are so many dangerous fleeing incidents that we have teamed with the North Dakota Highway Patrol (NDHP) and the North Dakota National Guard (ND NG) for air support to run special operations in an effort to catch those responsible for the fleeing incidents. These efforts have been successful, but it is not possible to have these special operations on a consistent basis.

I have also submitted our 2022 Pursuit Analysis/Attempting to Elude Incidents report for your review. I believe the report will give you a clear view of what we are facing.

Although I cannot speak to specifics, many of the Chiefs of Police across the State of North Dakota experience similar issues and have similar concerns as we do in Bismarck.

I thank you for the time I have been allowed to provide information about this very important Bill and I thank you for considering supporting it as it is written today.

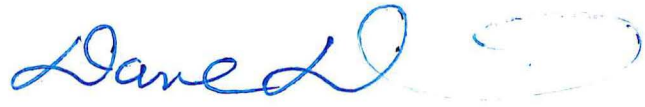
If you have any questions feel free to contact me at your convenience. I may be reached at ddraovitch@bismarcknd.gov or 701-223-1212.

Dave Draovitch, Chief of Police

Phone: 701-223-1212 • Fax: 701-355-1861 • 700 South 9th Street • Bismarck, ND 58504-5899
www.bismarcknd.gov • TDD 701-221-6820 • An Equal Opportunity-Affirmative Action Employer



Respectfully,



DAVE DRAOVITCH
Chief of Police

Dave Draovitch, Chief of Police

Phone: 701-223-1212 • Fax: 701-355-1861 • 700 South 9th Street • Bismarck, ND 58504-5899
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FARGO POLICE DEPARTMENT

A SAFE AND UNIFIED COMMUNITY BUILT ON TRUST, ACCOUNTABILITY AND INCLUSION

CRIMINAL INVESTIGATIONS DIVISION

MEMORANDUM

To: Chief David Zibolski

From: Criminal Intelligence Analyst Caleb Boehm *CB*

Date: 01.04.23

RE: Fleeing in a Motor Vehicle Report

The following report contains data and analysis of all fleeing in a motor vehicle incidents through the month of December 2022. All information presented in this report is accurate as of 01.04.23.

RECEIVED
FARGO POLICE DEPARTMENT

JAN 09 2023

MICHAEL BERNIER *MB*
LIEUTENANT
REF: *AC Stefanowicz*

copy sent to capt. Vinson

RECEIVED
FARGO POLICE DEPARTMENT

JAN 09 2023

TRAVIS STEFONOWICZ
ASSISTANT CHIEF OF POLICE
REF: *Chief Zibolski - boehm*

RECEIVED
FARGO POLICE DEPARTMENT

JAN 10 2023

DAVID B ZIBOLSKI
CHIEF OF POLICE
REF: *five* *03*



FLEEING IN A MOTOR VEHICLE REPORT

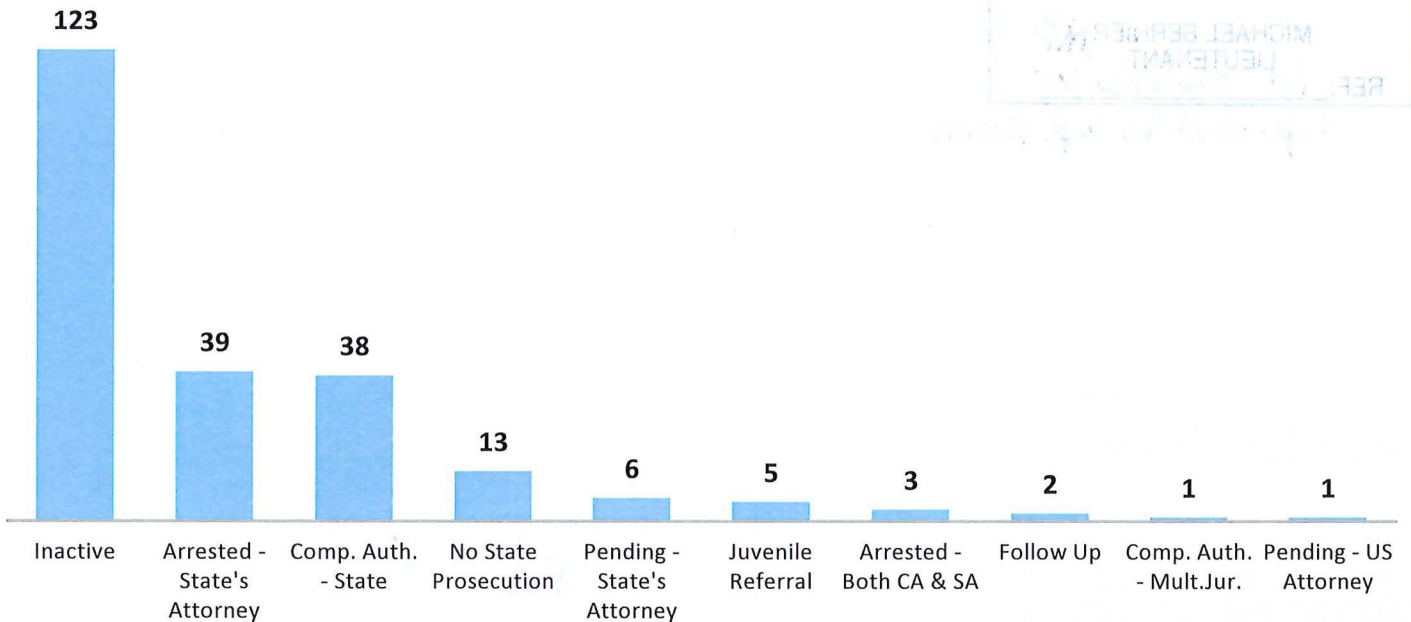
DECEMBER 2022



The Fargo Police Department has had a total of **230** fleeing in a motor vehicle cases from 01/01/22 to 12/31/22. Of these cases, 135 have been labeled misdemeanors, and 95 as felonies. 54 cases have been reported as stolen vehicles. The case status for these months is as follows:

Inactive: 123
 Arrested: 39
 Comp. Auth: 38
 No State Prosecution: 13
 Pending - State's Attorney: 6
 Juvenile Referral: 5

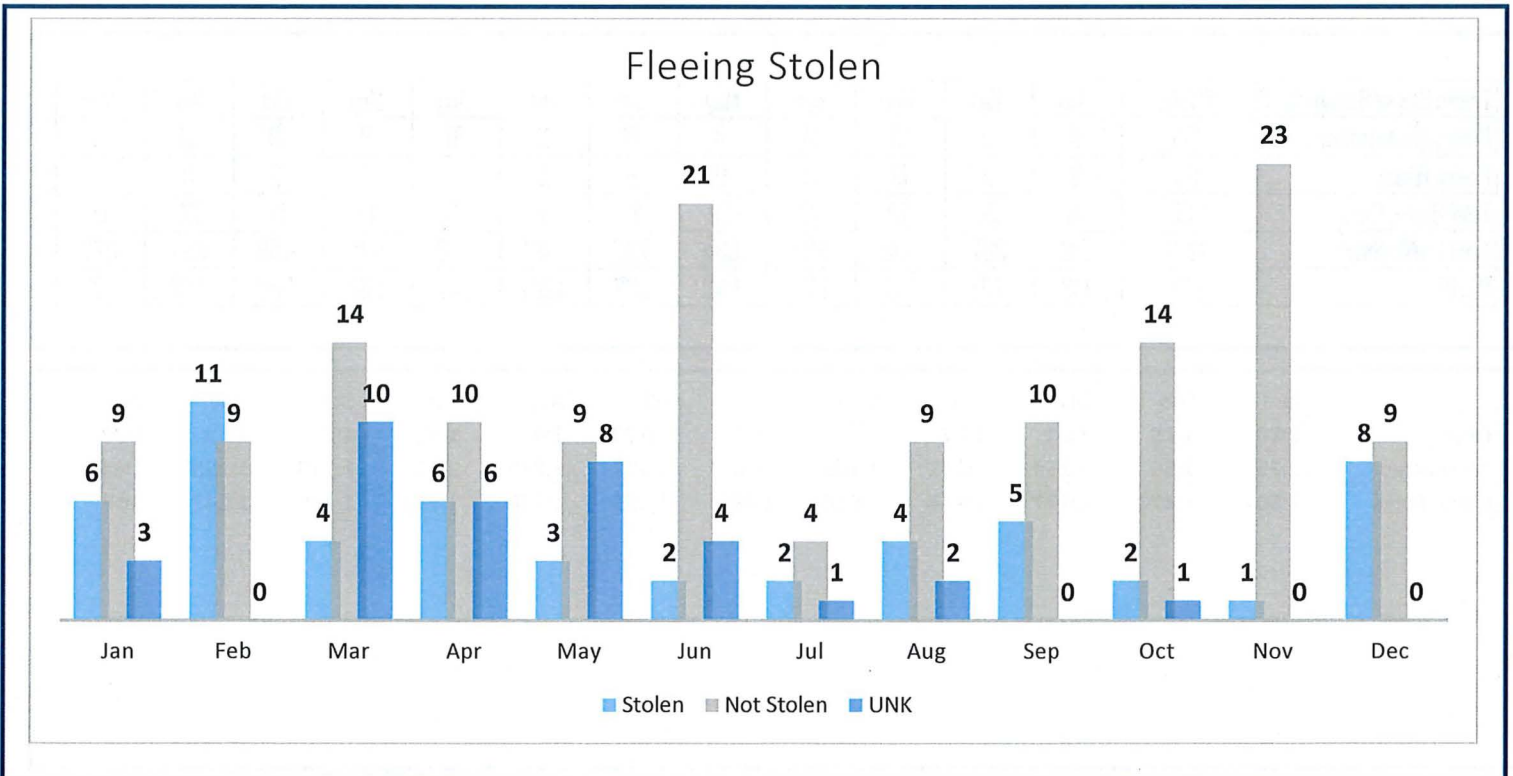
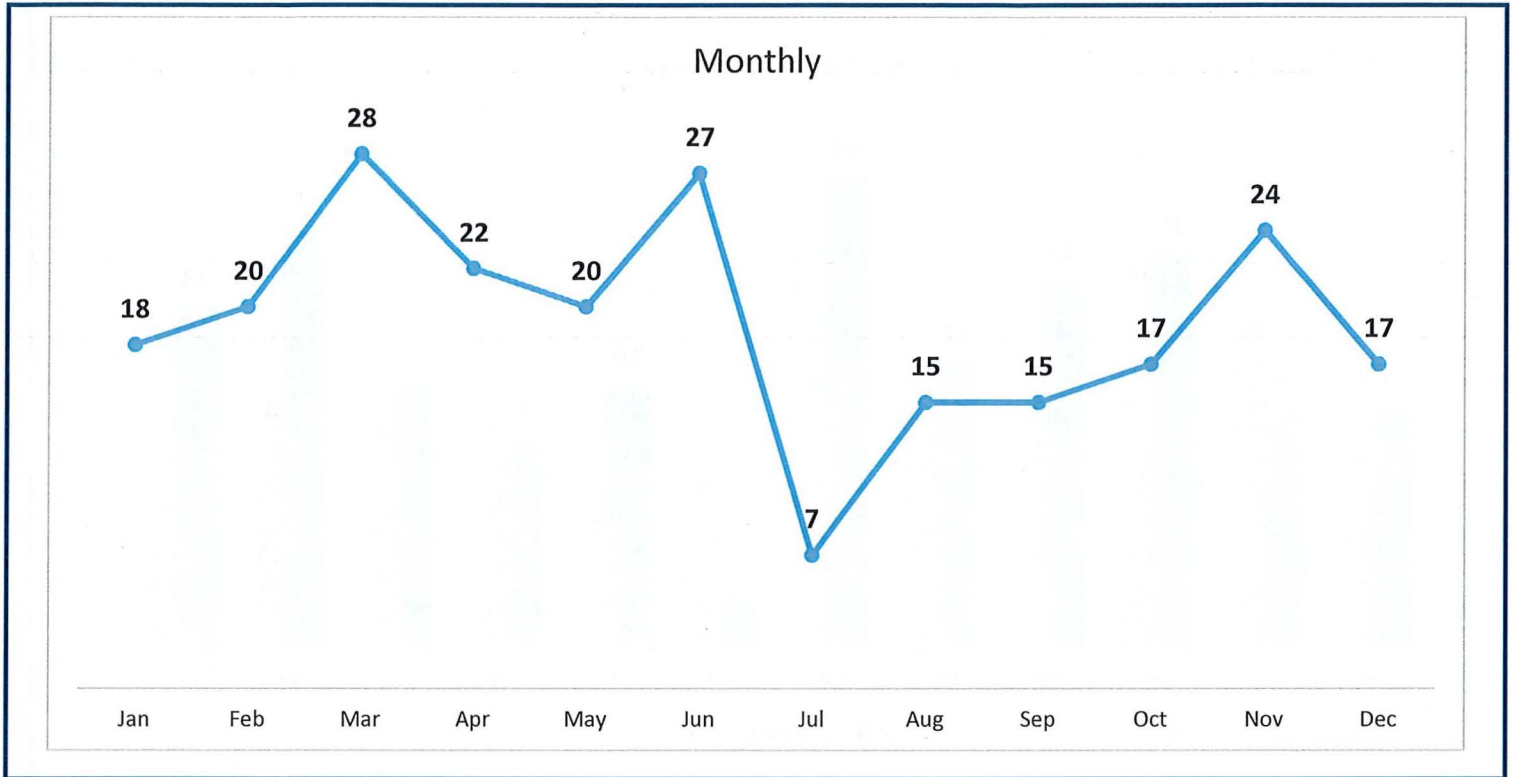
Case Disposition





FLEEING IN A MOTOR VEHICLE REPORT

DECEMBER 2022



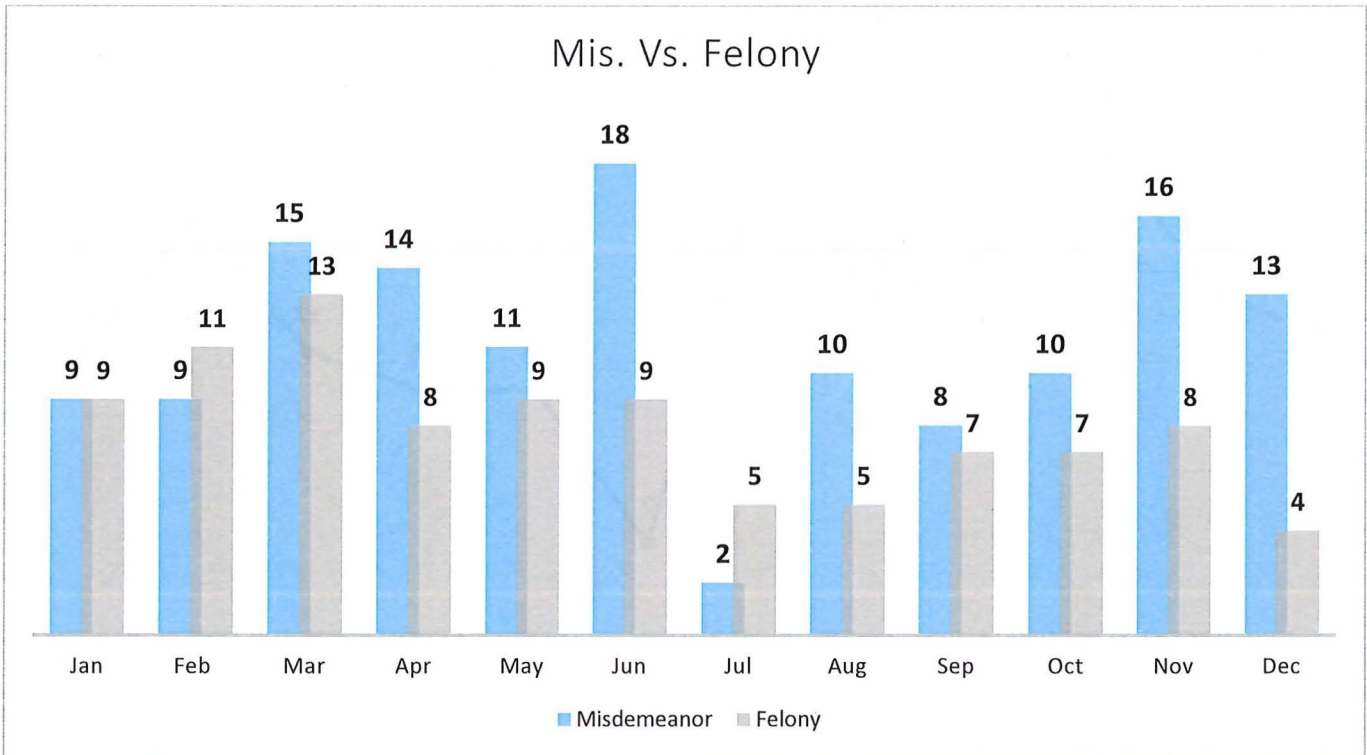


FLEEING IN A MOTOR VEHICLE REPORT

DECEMBER 2022



Mis. Vs. Felony



Traffic Stops/Fleeing 2022	TOTAL	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Fleeing Misdemeanor	135	9	9	15	14	11	18	2	10	8	10	16	13
Fleeing Felony	95	9	11	13	8	9	9	5	5	7	7	8	4
Total Fleeing Cases	230	18	20	28	22	20	27	7	15	15	17	24	17
Total Traffic Stops	7190	318	382	595	587	834	732	743	698	478	499	697	627
RATIO	1:31	1:18	1:19	1:21	1:27	1:42	1:27	1:123	1:47	1:32	1:29	1:29	1:37

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Fargo	1:18	1:19	1:21	1:27	1:42	1:27	1:123	1:47	1:32	1:29	1:29	1:37
West Fargo	1:76	1:56	1:254	1:147	1:105	null	1:117	1:226	1:49	1:179	1:253	1:451
Grand Forks	1:807	1:370	1:177	1:144	1:610	1:335	1:155	1:238	1:298	1:110	1:143	null

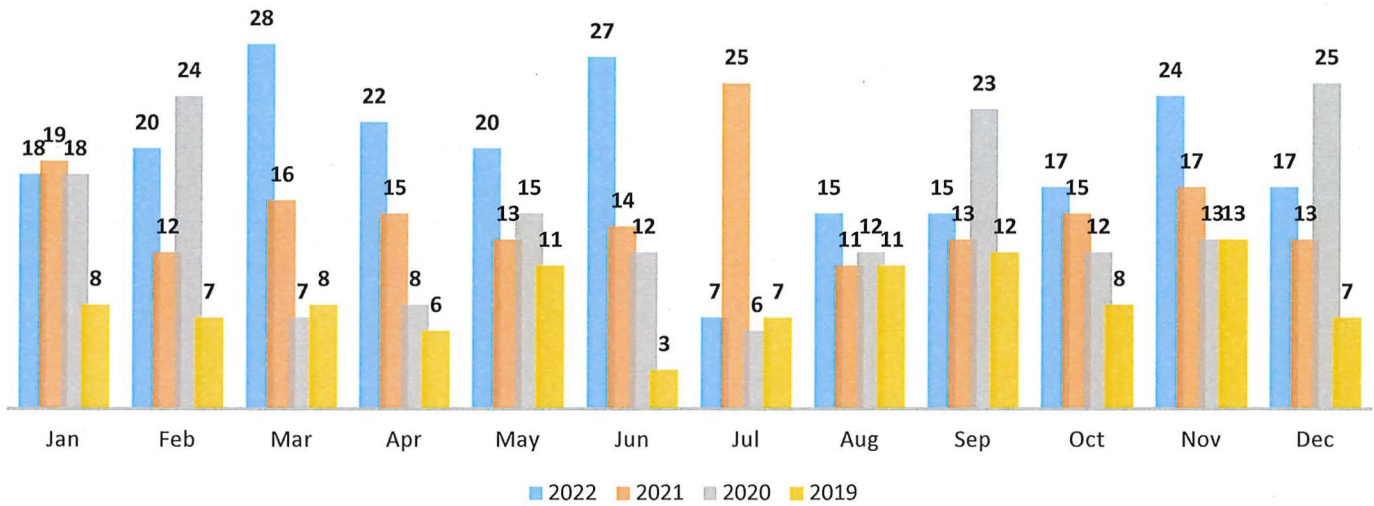


FLEEING IN A MOTOR VEHICLE REPORT

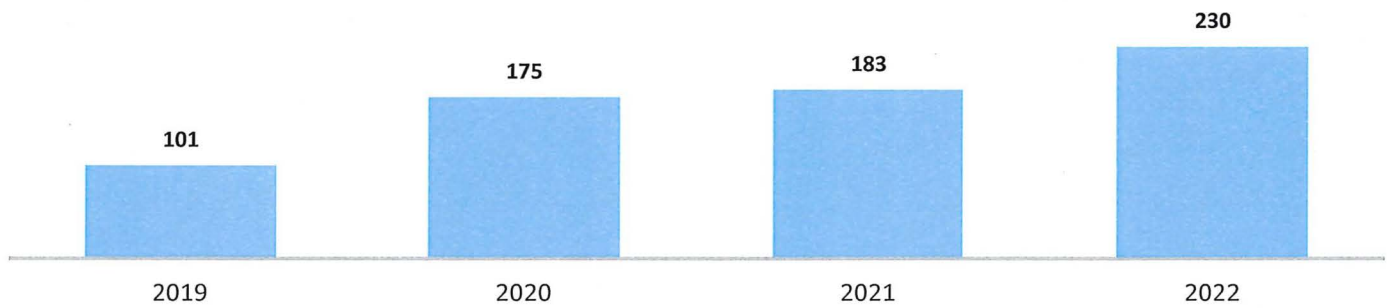
DECEMBER 2022



Yearly Comparison



Yearly Comparison



Fargo YTD	1:31
West Fargo YTD	1:148
GF YTD	1:264

INFORMATION ACCURATE AS OF 01/04/22
END OF REPORT

**FARGO POLICE DEPARTMENT**

CHIEF DAVID B. ZIBOLSKI

105 25th Street North

Fargo, ND 58102-4002

Main Line: 701.235.4493 | Fax: 701.297.7789

FargoPolice.com

March 9, 2023

North Dakota Senate
Transportation Committee
Representative Ruby, Chair

RE: Testimony and Support of Senate Bill 2348

Dear Chair and Members of the North Dakota House of Representatives Transportation Committee,

My name is David Zibolski. I am a 38-year law enforcement professional and Chief of Police for the Fargo Police Department. Prior to taking the position as chief in Fargo, I served in both state and local law enforcement agencies in the state of Wisconsin.

I offer my testimony to you today in strong support for Senate Bill 2348 as amended. This bill addresses a dangerous and growing public safety concern not only in the city of Fargo, but all over North Dakota -- fleeing from an officer. As you are aware, fleeing in a vehicle from a law enforcement officer who is attempting to stop a traffic or other criminal violator is a crime. However, under current law unless an officer engages in a pursuit and apprehends the offender, they have little prospect of identifying them and making an arrest. The policing profession recognizes that engaging in pursuits, especially high-speed pursuits that may go through populated areas or encounter unwitting motorists, is of great danger to the public. In deference to that public safety concern, law enforcement agencies including Fargo PD, do not initiate pursuits for traffic or other minor criminal violations. Unfortunately, this has led an exponential increase in vehicles that flee during traffic stops. In Fargo, we have seen a steady increase since 2016, which was further exacerbated during the Covid years of 2020 and 2021 and continue to present day.

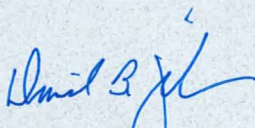
For context, I have provided the Committee with our 2022 end of year fleeing in motor vehicle report. Our Intelligence & Analysis Unit, who also gathers data from other law enforcement colleagues, including West Fargo and Grand Forks PD, tracks this data. As you can see, in 2022 alone 230 vehicles fled Fargo Police Department officers during traffic stops. Most folks may think that a majority of these vehicles are probably stolen. However, the reverse is actually true. Of the 230 cars that fled from our officers in 2022, 178 (77%) are not stolen. Further, in almost all cases and as a result of our in-car camera technology, we have the license plate number and know who the registered owner of the vehicle is. In spite of that statistic, an overwhelming 59% of those fleeing cases go unprosecuted because law enforcement has no tools to assist in identifying the driver of the fleeing vehicle. Senate Bill 2348 provides that very important tool.

Senate Bill 2348 is authored similar to existing law in the state of Wisconsin. It provides the presumption that the registered owner is the driver, but gives law enforcement an important tool that we currently do not have. The incentive for that owner to provide the driver information to our officers so that we may properly pursue fleeing charges with our prosecutor. The legal tool is relatively simple. The registered owner has the opportunity to identify to the officer who the driver was and provide whatever other identifying information they may know about that person. The officer can then conduct the rest of their investigation and forward the case to the prosecutors and/or locate and make an arrest. Should the owner decide not to cooperate in identifying the driver, they face the prospect of a \$500 non-criminal offense. Similar to Wisconsin, the bill contemplates certain circumstances such as the vehicle is stolen, is leased, or is taken from a dealership, and provides sufficient statutory protections so that unwitting owners are provided the same opportunity to provide the information.

There is likely a variety of reasons why the 178 non-stolen vehicles fled from our officers in 2022. Regardless, as these vehicles flee they often create traffic safety concerns, become involved in hit and run accidents, and otherwise unnecessarily endanger the motoring public. It is equally likely that some of the persons who fled were involved in other criminal activity that our officers simply were unaware of at the time of the stop. The lack of a viable tool for law enforcement to identify these drivers not only incentivizes additional fleeing, but likely also negates our ability to solve other crimes. Our officers conducted 7,190 traffic stops in 2022. The 230 fleeing vehicles represent a ratio of one fleeing vehicle per every 31 traffic stops. This is an egregiously high number and continues to get worse. Senate Bill 2348 will provide law enforcement with an important tool to appropriately follow-up, investigate, identify and arrest those persons who choose to flee from traffic stops.

I thank you for the opportunity to testify before you today and strongly encourage you to motion Senate Bill 2348 as amended as a "do pass."

Respectfully,



David B. Zibolski
Chief of Police

March 9, 2023
 Senate Transportation Committee
 SB 2348
 Rep. Ruby, Chair

For the record, I am Stephanie Dassinger Engebretson. I am appearing on behalf of the Chiefs of Police Association of North Dakota. I am also the deputy director and attorney for the North Dakota League of Cities.

The Chiefs of Police appear today in support of SB 2348 because it would provide another tool to law enforcement to try to address the large amounts of fleeing events that are occurring in our communities. Some amendments have been drafted by a city prosecutor after concerns were raised about the way the bill was previously written. The Chiefs support the amendments.

To put this issue into perspective, the following is a table showing the pursuit/fleeing incidents in a motor vehicle from 8 of the largest cities in North Dakota:

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*Data still being processed

As you can see from the data in Bismarck, Fargo, and Minot, fleeing incidents are happening more than once a week there. In Mandan and West Fargo, these incidents are occurring approximately once a week. Fleeing incidents put community members at a huge risk of personal injury or death due to the danger of the fleeing vehicle driving through the city at an increased speed and ignoring traffic rules.

Under the bill, within 96 hours of witnessing a motor vehicle fleeing incident if the driver of the vehicle has not been identified, law enforcement officers can issue a traffic citation to the registered owner of the vehicle. The amount of the citation would be \$500.

I worked on some language related to SB 2348 and trying to address the concerns surrounding the requirement that an owner of the motor vehicle provide law enforcement with enough information to provide probable cause that the individual committed the offense of fleeing. Here's the amendments that I am proposing to the subsection:

4. A motor vehicle owner may not be found to have violated this section if the motor vehicle owner provides to a peace officer either the name and address of the individual operating the motor vehicle or information that can be used to ascertain the identity of the individual operating the motor vehicle at the time of the violation of section 39 - 10 - 71, and further provides to the peace officer information sufficient to establish probable cause to establish the driver violated section 39 - 10 - 71.

Law enforcement's goal with this bill is to get cooperation from a vehicle owner when a vehicle is involved in a fleeing incident. Unfortunately, that is not happening in a lot of cases.

Stephanie Dassinger Engebretson
ND League of Cities | Deputy Director/Staff Attorney
410 E Front Ave | Bismarck, ND 58504
701-223-3518 800-472-2692

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2348

Page 2, line 6, replace "provides to a peace officer the name and address of the individual" with "was not"

Page 2, line 7, remove ", and further provides to the peace officer information sufficient to establish probable cause to establish the driver violated section 39 - 10 - 71"