

Draft HRS Statute:

Vehicle Impoundment for Fleeing/Eluding Law Enforcement

Legislative Purpose and Public Safety Rationale

This proposed statute is designed to create a viable alternative to continuing potentially hazardous police pursuits by providing law enforcement officers with an effective post-incident enforcement tool that serves both public safety and deterrent purposes.

Rather than engaging in extended vehicular pursuits that pose significant risks to officers, suspects, and innocent bystanders, law enforcement can allow fleeing vehicles to escape immediate apprehension while maintaining the ability to impose meaningful consequences through vehicle impoundment once the suspect and vehicle are located and positively identified.

This approach recognizes that the temporary loss of custody over a fleeing suspect may be preferable to the risks associated with vehicle chases, while simultaneously providing a substantial deterrent against repeated flight from police. By targeting the instrumentality most essential to the offense (the vehicle itself) this statute ensures that individuals cannot simply flee from law enforcement without consequence, while also imposing a significant financial and logistical burden that serves to discourage future evasion attempts.

The 30-day impoundment period, combined with associated towing and storage costs, creates a proportionate penalty that addresses the serious public safety risks posed by fleeing from law enforcement, while the due process protections ensure that innocent vehicle owners and constitutional rights are adequately protected.

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For review and discussion by the Law Enforcement Standards Board on September 11, 2025.

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Contents

Legislative Purpose and Public Safety Rationale	1
Recommended Placement in Hawaii Revised Statutes	3
Primary Recommendation: Amend HRS Chapter 712A (Forfeiture)	3
Secondary Option: New section in HRS Chapter 291 (Traffic Laws)	3
Option 1: Amendment to HRS Chapter 712A (<i>Recommended</i>)	4
Option 2: Alternative Amendment to HRS § 712A-4	7
Option 3: Standalone Traffic Statute (Alternative Placement)	8
Legislative Notes and Commentary	9
Statutory Placement Rationale	9
Constitutional Considerations	9
Enforcement Mechanism	10
Fiscal Impact	10
APPENDICES	11
Appendix A: Hawaii's Current Legal Framework	11
Existing Asset Forfeiture Authority (HRS Chapter 712A)	11
Current Vehicular Pursuit Legislation (HB 277)	12
Appendix B: Comparative Analysis of State Laws	13
California Vehicle Code §§ 14602.6 and 14602.7	13
Florida Statutes § 316.1935 and Contraband Forfeiture	14
Texas Transportation Code § 545.421	14
Appendix C: California Vehicle Code § 14602.7 (2024)	15
California Vehicle Code Section 14602.7 - Vehicle Impoundment: Fleeing a Peace Officer	15

Recommended Placement in Hawaii Revised Statutes

Primary Recommendation: Amend HRS Chapter 712A (Forfeiture)

- Location: Add new section HRS § 712A-21
- Alternative: Amend HRS § 712A-4 to include fleeing/eluding offenses

Secondary Option: New section in HRS Chapter 291 (Traffic Laws)

- Location: Add new section HRS § 291-XX

DRAFT STATUTE

Option 1: Amendment to HRS Chapter 712A

(Recommended)

SECTION 1. Chapter 712A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§712A-21 Vehicle impoundment for fleeing or eluding law enforcement.

(a) Definitions. For purposes of this section:

"Fleeing or eluding law enforcement" means: (1) Willfully failing to bring a vehicle to a stop after receiving a visual or audible signal from a law enforcement officer in a marked vehicle to stop; or (2) Having stopped in compliance with such signal, willfully fleeing in a vehicle in an attempt to elude the officer; or (3) Any violation of section [vehicular pursuit statute] involving failure to yield to law enforcement.

"Law enforcement officer" means any police officer as defined in section 139-1.

"Marked law enforcement vehicle" means a vehicle bearing the official insignia, markings, or other identifying characteristics of a law enforcement agency and equipped with emergency lights and siren.

(b) Authority to impound.

(1) A law enforcement officer may cause the immediate impoundment of any vehicle when the officer has probable cause to believe that the vehicle was used in the commission of fleeing or eluding law enforcement.

(2) A vehicle impounded under this section shall be held for a period of thirty days, unless: (A) Released earlier pursuant to subsection (e); or (B) Ordered released by a court of competent jurisdiction; or (C) Subject to forfeiture proceedings under this chapter.

(c) Notice requirements.

(1) Within forty-eight hours of impoundment, excluding weekends and holidays, the impounding agency shall: (A) Notify the registered owner and any legal owner of the vehicle by certified mail, return receipt requested, sent to the address shown on the vehicle registration records; and (B) Provide a copy of the impoundment report and the grounds for impoundment.

(2) The notice shall inform the owner of: (A) The right to request a post-impoundment hearing; (B) The procedure for requesting release of the vehicle; (C) The location where the vehicle is stored; and (D) The daily storage fees and other costs.

(d) Post-impoundment hearing.

(1) The registered owner, legal owner, or their authorized agent may request a post-impoundment hearing within ten days of receiving notice under subsection (c).

(2) The hearing shall be conducted within fifteen days of the request before a hearing officer designated by the impounding agency or before a district court judge.

(3) At the hearing, the agency must establish by a preponderance of the evidence that: (A) Probable cause existed for the impoundment; and (B) The impoundment was conducted in accordance with this section.

(4) If the hearing officer or court finds that probable cause for impoundment did not exist, the vehicle shall be immediately released without payment of storage fees, and the impounding agency shall be liable for all towing and storage costs.

(e) Release procedures.

(1) A vehicle impounded under this section may be released before the thirty-day period expires to: (A) A registered owner who was not the driver at the time of the offense; (B) A legal owner who can establish they did not have knowledge that the vehicle would be used for illegal purposes; (C) Any owner upon court order after a finding that continued impoundment would cause undue hardship and the public safety interests do not outweigh such hardship.

(2) Release under paragraph (1) requires: (A) Proof of ownership and identity; (B) Payment of towing and storage fees; and (C) Proof of valid driver's license and current vehicle registration and insurance.

(f) Storage and fees.

(1) Vehicles impounded under this section shall be stored at a facility designated by the impounding agency.

(2) The registered owner shall be liable for all reasonable towing and storage fees accrued during the impoundment period.

(3) Storage fees shall not exceed the standard rates charged for other impounded vehicles.

(g) Criminal prosecution not required. Impoundment under this section may proceed regardless of whether criminal charges are filed against the driver.

(h) Relationship to forfeiture proceedings. Nothing in this section shall preclude the commencement of forfeiture proceedings under this chapter if the vehicle is subject to forfeiture under section 712A-4.

(i) Administrative costs. The impounding agency may charge reasonable administrative costs not to exceed \$100 for processing the impoundment.

(j) Immunity. No law enforcement agency, officer, or employee thereof shall be liable for any damage to a vehicle impounded under this section that occurs during the towing or storage process, unless such damage results from the gross negligence or intentional misconduct of the agency, officer, or employee.

(k) Records. Each law enforcement agency shall maintain records of all vehicle impoundments conducted under this section, including the reason for impoundment, duration of impoundment, and disposition of the vehicle.

(l) Annual report. Each county police department shall submit an annual report to the attorney general regarding vehicle impoundments under this section, including statistics on the number of impoundments, hearings conducted, and vehicles released or forfeited."

Option 2: Alternative Amendment to HRS § 712A-4

SECTION 1. Section 712A-4, Hawaii Revised Statutes, is amended by adding a new subsection to read as follows:

“(e) Fleeing or eluding a law enforcement vehicle in violation of section [vehicular pursuit statute], willfully failing to yield to law enforcement signals, or reckless driving while attempting to elude law enforcement, which is chargeable as a misdemeanor or felony offense under state law.”

For LESB Review ONLY

Option 3: Standalone Traffic Statute (Alternative Placement)

Location: New HRS Chapter 291, Section 291-XX

"§291-XX Vehicle impoundment for traffic offenses involving law enforcement evasion.

[Same substantive provisions as Option 1, with appropriate cross-references to traffic laws rather than forfeiture statutes]

For LESB Review ONLY

Legislative Notes and Commentary

Statutory Placement Rationale

HRS Chapter 712A (Forfeiture) - Recommended

- **Advantages:**
 - Existing comprehensive framework for seizure and impoundment
 - Established due process protections
 - Proven administrative procedures
 - Constitutional safeguards already in place
 - Consistent with current asset forfeiture law
- **Implementation:** Amend § 712A-4 to add fleeing/eluding as covered offense, or add new § 712A-21 for specific impoundment procedures

HRS Chapter 291 (Traffic Laws) - Alternative

- **Advantages:**
 - Direct relationship to traffic violations
 - Logical placement with other driving offenses
 - Clear jurisdiction for traffic courts
- **Disadvantages:**
 - Would require creating new administrative framework
 - Less established precedent for extended impoundment
 - May need additional due process provisions

Constitutional Considerations

Fourth Amendment Compliance:

- Probable cause requirement for seizure
- Prompt post-deprivation hearing (within 15 days)
- Clear notice requirements
- Innocent owner protections

Due Process Protections:

- Right to hearing
- Burden of proof on government
- Release mechanisms for improper impoundment
- Liability for wrongful seizure

Enforcement Mechanism

Integration with HB 277:

- Cross-reference to vehicular pursuit policies
- Coordination with pursuit termination procedures
- Training requirements for law enforcement

Multi-County Considerations:

- Procedures for pursuits crossing county lines
- Cost allocation between jurisdictions
- Standardized impoundment procedures

Fiscal Impact

Revenue Neutral Design:

- Storage fees paid by vehicle owners
- Administrative costs covered by fees
- No general fund impact anticipated

Cost Recovery:

- Towing and storage fees
- Administrative processing costs
- Hearing costs (if applicable)

This draft statute provides comprehensive authority for vehicle impoundment while maintaining strong constitutional protections and practical enforcement mechanisms.

APPENDICES

Appendix A: Hawaii's Current Legal Framework

Existing Asset Forfeiture Authority (HRS Chapter 712A)

Hawaii's current forfeiture statute provides a comprehensive framework that could be extended to pursuit-related vehicle impoundment:

HRS § 712A-4 (Covered Offenses) currently includes:

- Murder, kidnapping, labor trafficking, gambling
- Criminal property damage, robbery, bribery, extortion, theft
- Unauthorized entry into motor vehicle, burglary
- Money laundering, insurance fraud
- Drug-related offenses
- *Gap: Eluding/fleeing police not explicitly covered*

HRS § 712A-5 (Property Subject to Forfeiture):

- Vehicles used to commit, attempt, or facilitate covered offenses
- Proceeds of criminal activity
- Instrumentalities of crime

HRS § 712A-6 (Seizure Authority):

- Upon arrest for covered offenses
- With probable cause belief vehicle used in crime

- Through warrant or court order

HRS § 712A-7 (Law Enforcement Powers):

- Immediate custody upon seizure
- Storage, inventory, and maintenance authority
- Protection from replevin during proceedings

Current Vehicular Pursuit Legislation (HB 277)

House Bill 277 (2025 - *Proposed*)

- establishes statewide vehicular pursuit policies under HRS Chapter 139:
 - Restricts pursuit initiation to specific serious offenses
 - Requires supervisor authorization and ongoing evaluation
 - Mandates pursuit termination under certain conditions
 - Establishes training and reporting requirements
 - Creates foundation for post-pursuit enforcement tools

Appendix B: Comparative Analysis of State Laws

California Vehicle Code §§ 14602.6 and 14602.7

California provides the most comprehensive model:

CVC § 14602.7 - Fleeing a Peace Officer:

- **Authority:** Magistrate warrant for immediate seizure
- **Covered Violations:** CVC §§ 2800.1 (evading), 2800.2 (reckless evading), 2800.3 (evading causing injury/death), 23103 (reckless driving)
- **Impoundment:** Up to 30 days
- **Process:** Peace officer affidavit, reasonable cause standard
- **Due Process:** Notice within 2 working days, post-storage hearing within 10 days

Constitutional Safeguards:

- Innocent owner release provisions
- Hearing officer determination of probable cause
- Financial liability on law enforcement for improper seizure
- Clear release procedures for legal owners

CVC § 14602.6 - Unlicensed Driving:

- **Note:** Subject to constitutional challenge in *Brewster v. Beck* (9th Cir. 2017)
- **Ruling:** 30-day mandatory impoundment violated Fourth Amendment
- **Result:** Prompted discretionary impoundment standards

Florida Statutes § 316.1935 and Contraband Forfeiture

Criminal Penalties Structure:

- **Base Fleeing/Eluding:** 3rd degree felony (up to 5 years, \$5,000 fine)
- **With Lights/Siren:** Enhanced penalties
- **Reckless During Pursuit:** 2nd degree felony (up to 15 years, \$10,000 fine)
- **Causing Injury/Death:** 1st degree felony (up to 30 years, \$15,000 fine)

Florida Contraband Forfeiture Act:

- **Authority:** Permanent forfeiture of vehicles used to flee police
- **Administration:** Department of Highway Safety and Motor Vehicles
- **Standard:** Civil forfeiture proceedings
- **Deterrent Effect:** Complete loss of vehicle

Texas Transportation Code § 545.421

Simpler Misdemeanor Approach:

- **Base Offense:** Class B misdemeanor
- **Enhanced:** Class A misdemeanor if reckless conduct endangers others
- **Limitation:** # Draft HRS Statute: Vehicle Impoundment for Fleeing/Eluding Law Enforcement

Appendix C: California Vehicle Code § 14602.7 (2024)

CVC § 14602.7 is definitively pursuit-related and serves as a viable model for creating similar authority in Hawaii.

California Vehicle Code Section 14602.7 - Vehicle Impoundment: Fleeing a Peace Officer

(a)

1. A magistrate presented with the affidavit of a peace officer establishing reasonable cause to believe that a vehicle (described by make/type and license plate or VIN) was used in the officer's presence in violation of Vehicle Code §§ 2800.1, 2800.2, 2800.3, 23103, or § 23109(a) or (c), shall issue a warrant or court order authorizing any peace officer to immediately seize and remove the vehicle. The warrant or order may be entered into a computerized database. The vehicle may be impounded for up to 30 days.

2. The impounding agency has two working days—excluding weekends and holidays—to notify the legal owner (via certified mail or electronic service per Penal Code § 690.5) that the vehicle has been impounded and provide a copy of the warrant or order. If notification is not made within that timeframe, the law limits charges to a maximum of 15 days of impoundment when the legal owner redeems the vehicle. The law enforcement agency must be open during regular business hours to issue releases to the registered owner, legal owner, or their agents.

(b)

1. The impounding agency must release the vehicle early—without magistrate permission—to the registered owner or their agent if any of the following apply:

(A) The vehicle is stolen.

(B) The vehicle is subject to bailment and driven by an unlicensed employee (e.g., at a repair shop or parking service).

(C) The registered owner convinces the officer that they were not the driver who committed the violation (based on totality of circumstances).

2. Release under this subdivision requires presentation of both a valid driver's license and proof of current vehicle registration, or a court order.

(c)

1. After impoundment, the magistrate who ordered storage must offer a poststorage hearing to the registered and legal owners (or their agents) to evaluate the validity of the storage.

2. A notice of hearing must be sent—by certified mail or electronic service (excluding weekends and holidays)—within 48 hours of impoundment and must include:

(A) Agency contact info.

(B) Storage location and vehicle description (make, license plate, mileage, etc., if available).

(C) A copy of the warrant or court order and officer's affidavit.

(D) Instructions to request the hearing from the magistrate within 10 days, and how to serve notice.

3. The hearing must be conducted within two court days of receipt of the request.

4. The magistrate may release the vehicle if circumstances in subdivision (b) or (e) apply—or if continued impoundment imposes undue hardship for employment or for someone with a community property interest.

5. If the owners or agents fail to request or attend the hearing, that still satisfies the hearing requirement.

6. If the hearing finds no reasonable cause for impoundment, the peace officer's agency must pay all towing and storage costs.

(d)

The registered owner (or agent) remains responsible for all towing, storage, and any administrative charges allowed under § 22850.5.

(e)

The vehicle must be released before the impoundment period expires (without magistrate permission) to the legal owner or their agent—if all of the following are met:

1. The legal owner is a licensed motor vehicle dealer, bank, credit union, acceptance corporation, or other licensed financial institution in California—or another person (not the registered owner) holding a financial interest.

2. The legal owner or agent pays all towing and storage fees. If the vehicle is retrieved within 15 days, lien sale processing fees and administrative charges per § 22850.5 cannot be charged unless the legal owner requested a poststorage hearing.

- The storage facility must accept cash or a valid bank credit card (not a retail-issued card), and must have enough change on hand during regular business hours. Violations of these rules make the facility civilly liable to the owner for up to four times the fees, not to exceed \$500.

- Credit charges must comply with Civil Code § 1748.1; law enforcement can include credit-payment cost recovery in tow agreements.

3. The legal owner or agent must present:

- A copy of the assignment (as defined in Business & Professions Code § 7500.1).

- One of: a certificate of repossession, a security agreement, or title confirming legal ownership.

- Government-issued photo ID.

- Documents may be original, photocopies, faxed, or electronic. Notarization is not required.

- If the agent is not a repossession licensee, the agency may require proof of exemption or a copy of the repossession license.

- Administrative costs under § 22850.5 cannot be charged unless the legal owner voluntarily requested a hearing. Agencies may not require additional documents or hearings for release, and must provide the owner a copy of any documents they are asked to sign, except a vehicle evidentiary hold logbook, though the agency may retain photocopies.

(f)

1. A legal owner (or agent) who obtains release under subdivision (e) cannot release the vehicle to the registered owner (or their agent)—unless that registered owner is a rental car agency—until the impoundment period ends.
2. The legal owner or agent must confirm that any driver requesting release has a valid driver's license (or temporary license) before release. They should ensure the driver was not involved in the original impoundment.
3. The legal owner may require the registered owner to pay any towing, storage, or administrative fees under § 22850.5 incurred by the legal owner.
4. Any legal owner who knowingly releases the vehicle to the registered owner (or agent) in violation of this subdivision commits a misdemeanor, punishable by up to \$2,000 in fines plus any other legal penalties.
5. No person may change the legal or registered owner on DMV records until the vehicle is released from impound.

(g)

1. A vehicle impounded under (a) must be released early—without magistrate permission—if the rental car agency is the legal or registered owner and pays all towing and storage fees.
2. After recovery, the rental agency may continue renting the vehicle—but they cannot rent another vehicle to the same driver for 30 days after the impoundment.
3. The rental agency may require the renter to pay all applicable towing, storage, and administrative fees.

(h)

Regardless of other provisions, the registered owner—not the legal owner—is responsible for towing, storage, administrative charges (§ 22850.5), plus any parking fines, penalties, or administrative fees incurred.

(i)

1. Section 14602.7 does not apply to vehicles removed under the Abandoned Vehicle Abatement Program (Vehicle Code §§ 22660–22668, § 22710), impounded for investigation under § 22655, or removed from private property under § 22658.
2. It also does not apply to abandoned vehicles removed under § 22669 with an estimated value of \$300 or less.

(j)

Law enforcement and impounding agencies (or their storage facilities) must comply with this section—and if they release a vehicle in accordance with its terms, they are not liable to the registered owner for improper release to the legal owner or agent. The legal owner must indemnify the storage facility for any claims related to release decisions—including defense costs. Agencies may not refuse release to a legal owner or agent based on prior releases.

(Amended by Stats. 2024, Ch. 504, Sec. 2. Effective January 1, 2025.)

https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=VEH§ionNum=14602.7

Direct Pursuit-Related Vehicle Code Violations Referenced:

§ 2800.1 - Evading a peace officer (basic fleeing/eluding) **§ 2800.2** - Reckless evading **§ 2800.3** - Evading causing injury/death

Related Pursuit-Context Violations:

§ 23103 - Reckless driving (often occurs during pursuits) **§ 23109(a) or (c)** - Speed contests/racing (can trigger pursuits)

Key Pursuit-Specific Language:

The statute authorizes impoundment for vehicles **"used in the officer's presence in violation of"** the above sections - this directly references the officer witnessing the pursuit/evasion behavior.

Pursuit Context Throughout:

- **"reasonable cause to believe that a vehicle...was used in the officer's presence"** - indicates direct observation of pursuit behavior
- **Immediate seizure authority** - designed for post-pursuit enforcement
- **30-day impoundment** - substantial penalty for pursuit-related offenses
- **Officer affidavit requirement** - documentation of pursuit incident

The entire statute is structured around **post-pursuit vehicle impoundment** - it's specifically designed to allow law enforcement to seize vehicles after pursuit incidents involving the listed Vehicle Code violations (2800.1, 2800.2, 2800.3, 23103, 23109).