



Review and Analysis of Current Division Vehicle Pursuit Policy

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Review

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DIVISION OF POLICE

DATE: June 29, 2020
TO: Chief of Police Calvin D. Williams
FROM: Inspector General Christopher Paul Viland, Esq., CIG®, #3700
SUBJECT: Review and Analysis of Current Division Vehicle Pursuit Policy with Associated Recommendations for Update or Amendment

Sir.

The following review of policy compliance is presented for your use and consideration in any possible future update or amendment to Division policy related to law enforcement vehicular pursuit.

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SECTION A – INTRODUCTION; EXECUTIVE SUMMARY

The Cleveland Division of Police (the Division, CDP) Office of Inspector General (OIG) clearly recognizes that, for law enforcement professionals and executives, law enforcement vehicular pursuits have been a priority issue and a consistent concern for decades¹. Since the early days of enforcement activity, offenders have often chosen to flee, and the duly sworn have laid chase. And, as technology has advanced, with the automobile being so ubiquitous, the levels

of possible harm in those chases have escalated to a primary consideration in risk management for any law enforcement agency, especially considering the liability exposure that is created. There is the need in modern constitutional policing to consistently balance the duty to protect the populace from criminals and their activity with the need to do so fairly and effectively with minimal injury to society, persons and the police themselvesⁱⁱ.

It is unfortunate that the Division has, in the past, publicly struggled with this balanceⁱⁱⁱ. And, as a result of a recent incident^{iv}, public discussion regarding appropriate vehicular pursuit policy is again at the forefront. In fact, the Cleveland Community Police Commission (CPC), after a public meeting / listening session, has published current Division policy on the internet with a request for public comment by the end of March, 2020^v as they look to make pursuit policy recommendations to the Division “to ensure the policy prioritizes officer and public safety and the best possible decisions are made in critical situations.^{vi}” As a result, it is absolutely anticipated that the CPC will be publicly presenting recommendations to the Division at some point in the near future with calls for change from stakeholder and public perspectives.

As you know, the Inspector General (IG) of the Division, has been tasked, in the Settlement Agreement^{vii} with the United States Department of Justice with some specific responsibilities, including, but not limited to: “[to] review CDP policies and practices to determine compliance with state and federal law, effectiveness ... [and] whether they promote public and officer safety...^{viii}”. The IG does consider that a review of Division vehicular pursuit policy falls within this authority; and does perceive that an unbiased review of policy compliance with available best practices and recommendations will serve as foundational to the Division’s future possible amendment or updating of policy and creation of exemplary practices moving into the 2020’s.

It must be clearly stated that there is a political aspect of law enforcement vehicular pursuit policy which is not contemplated in this review: the choice of whether to ever authorize pursuits in any form, at all. This currently presented review includes only compliance with standards and best practices which in their very existence and thorough text and guidance imply that law enforcement vehicular pursuits are authorized in some form or other. There is no formal recommendation being made in this review as to the overarching dilemma of whether pursuits are ever an acceptable police practice. The assessment of whether the Division should or should not pursue is outside the purview of this review. That being said, law enforcement professionals are moving away from viewing pursuits as chasing bad guys (good) vs. letting bad guys go (bad), and coming to the more rational and data driven perspective that police pursuits are always a choice between two bad alternatives^{ix}. It is becoming recognized that more restrictive pursuit policies are best practices^x, and one result of this review is confirmation that the Division has policy that comports with this new modeling, as detailed below.

The OIG has completed the below multi-part compliance review of current Division vehicle pursuit policy. This review assesses Division compliance with recommendations and best practices for law enforcement at the state and national level from recognized authorities. This review additionally assesses current Division actual practice compliance with written policy on a general level. And, finally, this review provides a short discussion regarding possible hidden

data issues and resolution techniques. Findings and recommendations resulting from these reviews are presented, in detail, in following sections of this memorandum.

There are some predominant aspects of the review that the IG has identified for inclusion in this introduction, in summary, as follows:

When compared to best practice recommendations and model policies, the current Division vehicle pursuit policy is arguably, in some aspects, more restrictive and therefore more protective of the safety of both the public and its members^{xi}, as it restricts initiation and continuation of pursuits to circumstances including only violent felony offenses and OVI's. This same restriction applies to assistance with interjurisdictional pursuits involving other agencies. Available standards and model policies require that reasons for initiation or continuation of a pursuit be considered, however are silent as to what types of incidents would actually support such initiation. By implication, those standards and models contemplate and would allow for law enforcement vehicle pursuits for traffic offenses and non-violent property crimes, for example, therefore being more permissive and possibly less protective of the rights and safety of citizens and police officers than the policy established by the Division.

The Division's current vehicle pursuit policy is generally in compliance with a majority of primary substantive recommendations and best practices as reviewed for this memorandum and detailed below, however, the Division is specifically not in compliance with specific substantive recommendations regarding annualized training of sworn officers, annualized review of pursuit incidents and annualized assessment of data with recommendations^{xiii}. These recommendations and best practices are basic risk analysis concepts that are included in a number of other similar high risk driven law enforcement policies, including for example: use of force, and should be a strong focus of Division pursuit incident policy moving forward.

Division policy could and should be improved by adopting many of the secondary or less substantive recommendations and best practices as reviewed for this memorandum and detailed below. These recommendations are listed individually as part of compliance reviews in comparison with individual authorities below and again, *in toto*, at the end of this memorandum.

Division policy must be updated and amended to encompass the pragmatic and day-to-day operational changes that have occurred since its date of effect. Numerous changes have occurred to daily practice, some of which have been memorialized in Divisional Notices, some of which have not, but all of which could lead to a lack of clarity or inability to identify answers to specific inquiry, or in some instances explicit conflict. Uncertainty regarding policy can make members fearful of being held accountable unfairly as well as incapable of being comfortable with knowing and following the required standards. With the goal to

make policy more accessible and understandable to line level members in the agency, these amendments and modifications, as identified in sections below, should be memorialized in updated policy as soon as practicable.

The remainder of this memorandum discusses methodology, details specific compliance reviews, generates and documents recommendations for Division motor vehicle pursuit policy improvement and compliance, and discusses variance between actual practice and current policy. This information is presented so as to assist the Division with meeting the goals of the current Settlement Agreement, especially as regards to policy, practice and promotion of public and officer safety. **Places where the Division is operating at a perceived higher standard or requirement are noted in red font throughout this memorandum.**

SECTION B – METHODOLOGY

The OIG reviewed the following policy documents issued by the Division (for purposes of citation, it is noted that all of these documents are unpublished and maintained and available with the Division Policy Unit):

1. General Police Order 3.2.02 – Vehicle Pursuit, updated policy issued May 22, 2015.
2. Divisional Notice 14-165 – Vehicle Pursuits, Definition of Violent Felony, issued April 23, 2014.
3. Divisional Notice 16-036 – Blue Team Use of Force Reporting, issued February 12, 2016.
4. Divisional Notice 16-289 – Documentation of Recorded Video in Vehicle Pursuits, issued September 22, 2016.
5. Divisional Notice 16-304 – Vehicular Pursuit Definition, issued October 3, 2016.
6. Divisional Notice 17-077 – Deleted Forms – Blue Team, issued March 13, 2017.
7. Divisional Notice 18-144 – Blue Team Update: New Summary Templates, issued May 29, 2018.
8. Divisional Notice 20-059 – Updates – References to Pursuit Investigation Team (PIT), issued February 19, 2020.
9. Bureau of Communications and Property Control, Communications Control Section, Policy and Procedures – Vehicle Pursuits, revised February 10, 2017.

State statutory requirements regarding law enforcement vehicle pursuits binding upon the Division were researched and determined to be contained in:

1. Ohio Revised Code §2935.031. Motor Vehicle Pursuit Policy.

Other associated state statutory provisions were additionally researched, including their interpretations by the Supreme Court of Ohio, as follows:

1. Ohio Revised Code §2744.02. Government Functions and Proprietary Functions of Political Subdivisions. [Tort Liability]
2. Ohio Revised Code §4511.03. Emergency Vehicles at Red Signal or Stop Sign.
3. Ohio Revised Code §4511.041. Exceptions to Traffic Rules for Emergency or Public Safety Vehicle Responding to Emergency Call.

4. Ohio Revised Code §4511.24. Speed Limits Not Applicable to Emergency or Public Safety Vehicles.
5. Ohio Revised Code §4511.45. Right of Way of Public Safety or Coroner's Vehicle.
6. Ohio Revised Code §4513.21. Horns, Sirens, and Warning Devices.

The OIG inquired with various members of the Division including interviews with command and superior officers and input from different divisions. Information was collected from those sources and incorporated as below; much of it in Section C, Part 6.

All of the above referenced materials and information were assessed to determine the Division's current compliance with the various and alternative mandates and best practices in law enforcement vehicle pursuit incidents collected and cited as below. The work encompassed in this review was done in accordance with the Quality Standards for Inspections, Evaluations and Reviews by Offices of Inspector General^{xiii}, as applicable.

SECTION C – DETAILED ANALYSIS RESULTS

Below are presented separate sections of compliance assessment based on the following source materials:

- Part 1 – The Ohio Revised Code
- Part 2 – The Ohio Attorney General's Advisory Group on Law Enforcement Vehicular Pursuits, Special Report, 2016
- Part 3 – Standards for Pursuits of Motor Vehicles as Presented by the Commission on Accreditation of Law Enforcement Agencies (CALEA®)
- Part 4 – Standards for Law Enforcement Vehicular Pursuit as Proposed by the Ohio Collaborative Community-Police Advisory Board
- Part 5 – The International Association of Chiefs of Police Model Policy on Vehicle Pursuits
- Part 6 – Actual Policy Compliance Issues within the Division
- Part 7 – The Settlement Agreement with the Department of Justice

Generally, each section consists of a short statement introducing the authority being referred to, a quotation of the standard or recommendation (if applicable), and then a point by point comparison to identify those places where policy is or is not compliant. Parts 5 & 6 may have a different format based on the lack of standard or recommendation to make direct comparison to.

Part 1

Ohio Revised Code

Ohio statutory law contemplates that motor vehicles will be used by law enforcement entities in the pursuit of offenders and has formalized a general mandate requiring written policy in such regard. Ohio Revised Code §2935.031 provides:

“Motor Vehicle Pursuit Policy. Any agency, instrumentality, or political subdivision of the state that employs a sheriff, deputy sheriff, constable, marshal,

deputy marshal, police officer, member of a metropolitan housing authority police force, state university law enforcement officer, or veterans' home police officer with arrest authority under section 2935.03 of the Revised Code or that employs other persons with arrest authority under the Revised Code, shall adopt a policy for the pursuit in a motor vehicle of any person who violates a law of this state or an ordinance of a municipal corporation. The chief law enforcement officer or other chief official of the agency, instrumentality, or political subdivision shall formally advise each peace officer or other person with arrest authority it employs of the pursuit policy adopted by that agency, instrumentality, or political subdivision pursuant to this section. (3-14-2003)"

In summary, an agency that employs a sworn police officer must adopt a motor vehicle pursuit policy, and that policy must be disseminated by the chief law enforcement officer to each such officer.

The Division has created and established a "Vehicle Pursuits" policy since at least 2002, currently updated on May 22, 2015, memorialized as General Police Order 3.2.02. That policy is disseminated to all members through the General Police Order system which requires each member to study and maintain a copy of all current orders^{xiv}. Additionally, training was provided to each sworn member contemporaneous with current policy implementation during regular annual in-service training sessions; newly hired officers are provided this policy training during police academy sessions.^{xv}

Finding: The Division is in compliance with the Ohio Revised Code statutory mandates regarding vehicle pursuit policy. It has adopted a motor vehicle pursuit policy and it has advised each officer it employs of that policy.

Recommendations:

No current recommendations.

Additionally, state law contemplates that law enforcement vehicles involved in lawful emergency or pursuit activities may be required to be excepted from normal traffic laws or rules. Ohio Revised Code §4511.041 provides in most pertinent part that significant portions of motor vehicle traffic law are not applicable to an emergency vehicle responding to an emergency call so long as the emergency vehicle is, "... equipped with and displaying at least one ... [emergency] light ... and if the driver of the vehicle is giving an audible signal by siren ... [emphasis added]^{xvi}". A strict reading of this statute clearly indicates that in order for officers operating in response to an emergency call to be lawfully exempt from much of the traffic code, they must be displaying lights **and** giving audible signal. Other than a reference to statute by number, current Division policy does not explicitly make this a requirement during a pursuit incident.

Finding: Division policy does reference the Ohio Revised Code provision that exempts officers from traffic code provisions if and only if officers are operating with both emergency lights and siren during response to an emergency call, however, the policy does not explicitly make a policy statement that officers in pursuit shall be utilizing emergency lights and siren at all times.

Recommendations:

Recommendation 1.1 – It is recommended that the provisions of Ohio Revised Code §4511.041 exempting officers from traffic code provisions if on an emergency call and operating both emergency lights and siren be explicitly identified in a policy statement requiring use of lights and siren at all times during pursuit incidents, by amending current policy.

Part 2

The Ohio Attorney General’s Advisory Group on Law Enforcement Vehicular Pursuits - 2016

In 2016, as a result of both state and nation-wide concerns regarding deaths caused by law enforcement vehicle pursuits, the Ohio Attorney General put together a group of professionals from law enforcement, the government sector and the public with the goal of creating recommendations for vehicle pursuit policies for law enforcement agencies in the State of Ohio^{xvii}. This Advisory Group’s focus was on best practices, in order to ensure the safety of police officers and the general public.

Their published Special Report specifically enumerates nine (9) policy recommendations including sub-categories. For purposes of this review, the recommendations and sub-categories have been selectively divided by the author for easier discussion. Each of the Advisory Group’s recommendations and sub-parts thereof, are addressed below as regards to the current state of Division policy and procedure with the following format: Recommendation (or sub-section) restated from the Special Report, analysis of recommendation as compared to current Division policy, specific findings, and recommendations for policy changes that would bring the Division into full and complete compliance with the recommendations of the Advisory Group if opted to by Division leadership. Analysis below:

Vehicle Pursuit Policy Recommendation

1. “Principle of Policy – The policy should explicitly state its purpose. For example, the policy should address the manner in which vehicle pursuits are undertaken and performed. It should also recognize and communicate the inherent danger of pursuits and the need to apply common sense and sound judgement when balancing the safety of the public and officers with the danger of the suspect remaining at large.^{xviii}”

Cleveland Division of Police General Police Order 3.2.02, Vehicle Pursuits has an explicit purpose statement: “PURPOSE: to establish guidelines for pursuit driving as required by the Ohio Revised Code, Section 2935.031. This policy is not all inclusive, but is designed to provide direction and clarity.^{xix}”

General Order 3.2.02 also addresses the manner in which vehicle pursuits are undertaken and performed. The procedures section of the order describes: criteria for initiating a pursuit; considerations for safety; and, the specific duties of pursuing officers, controlling

supervisors, other supervisors, and communications center personnel with specific detail of how a pursuit must be performed^{xx}.

The order does specifically recognize and communicate the dangers of pursuits and the importance of balancing human life with necessity of fugitive apprehension in several different places, i.e.:

“The Division of Police acknowledges the dangers associated with vehicle pursuits.”^{xxxi}

“**Officers shall err on the side of caution and interpret this policy in a more restrictive manner if, for any reason, this directive does not offer clear guidance for a specific set of circumstances.** [Emphasis in GPO]”^{xxii}

“Ohio Revised Code... “does not relieve the driver...from the duty to drive with **DUE REGARD** for the safety of all persons and property upon highway.” [Emphasis in GPO]”^{xxiii}

“Officers may initiate a vehicle pursuit [only] when... **THE IMMEDIATE DANGER OF THE PURSUIT IS LESS THAN THE IMMEDIATE OR POTENTIAL DANGER TO THE PUBLIC IF THE SUSPECT REMAINS AT LARGE;** [emphasis in GPO]”^{xxiv}

“Pursuing officers shall immediately terminate a pursuit if: 1. The level of danger to life outweighs the need for immediate apprehension...”^{xxv}

Finding: Current policy is in compliance with recommendation 1 of the Attorney General’s Advisory Group.

<u>Recommendations</u> : No current recommendations.
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Vehicle Pursuit Policy Recommendation

2. “Definitions – Define the term *vehicular pursuit*. The definition should clarify *vehicular pursuit* as an attempt to apprehend a suspect who is actively attempting to elude apprehension. The policy should also distinguish key terms to avoid confusion. For example, it distinguishes the definition of *discontinuation or abandonment* of pursuits, versus the *termination* of the pursuit by tactical means (for example, spike strips).[Emphasis in original]”^{xxvi}

General Police Order 3.2.02 specifically defines that the term “Vehicular Pursuit”: “occurs when there is an active attempt by an officer in an authorized emergency vehicle to apprehend a suspect who is attempting to apprehend a suspect who is attempting to elude the police.”^{xxvii} **This definition is more restrictive than the Attorney General’s recommendation as it incorporates a clause requiring the use of “an authorized emergency vehicle”.** The Division has taken the additional step of publishing a one page

Divisional Notice providing guidance to all members regarding the definition of “Vehicular Pursuit”. This guidance includes additional example and definition of the phrases “apprehend a suspect” and “elude the police” as well as a strict reminder to officers to strictly adhere to applicable policy.^{xxviii}

In addition, the order does distinguish ten separate definitional terms in order to avoid confusion. These terms are: Clear the Air, Controlling Supervisor, Parallel Pursuit, Pursuit Perimeter, Radio Supervisor, Scene Supervisor, Self-Dispatch, Vehicular Pursuit, Vehicular Pursuit Termination, and Violent Felony.

Finding: Current policy is in compliance with recommendation 2 of the Attorney General’s Advisory Group. **Current policy is more protective of public safety and more restrictive on police operations than is recommended, by inclusion of language that specifically states only authorized emergency vehicles can be used in a vehicle pursuit incident.** The Division has published additional policy guidance by Divisional Notice that should at this time be subsumed into the general policy.

Recommendations:

Recommendation 2.1 – It is recommended that any substantive content of Divisional Notice 16-304 Vehicular Pursuit Definition modifying or amending policy be incorporated directly into the Division Vehicle Pursuit policy by amending current policy.

Vehicle Pursuit Policy Recommendation

3. “Initiation of Pursuit Procedures – The policy should address the types of criminal offenses that support the initial attempt to stop the vehicle and that can be considered when initiating a pursuit. The policy should recognize that some violations create too great a danger to the public by the pursuit when weighed against the danger should the suspect remain at large. For example, the policy should distinguish violent felonies and property offenses, or OVIs and traffic violations. It should also emphasize that all factors be considered when initiating and continuing a pursuit...”^{xxix}

General Police Order 3.2.02 delineates the criteria that authorize initiation of a vehicle pursuit. The Division has specified that only two types of offenses will support initiation of pursuit procedures: violent felony (as further defined in the order) or OVI.^{xxx}

The order does recognize that some violations create too great a danger to the public. See, for example the policy sections quoted in the discussion of Attorney General’s recommendation 1 above.

The term “Violent Felony” is specifically defined in the order as “...a known or suspected crime in which the force attempted or used against a person was deadly or likely to cause serious physical harm as defined by the Ohio Revised Code. The crimes include murder, manslaughter, aggravated robbery, rape, sexual battery, arson, kidnapping, aggravated burglary, felonious assault with a deadly weapon, and felonious assault resulting in serious physical harm...”^{xxxix}

Factors that should be considered in initiating and continuing a pursuit are discussed in Section 3[a] below.

Finding: Current policy is in compliance with the first part of recommendation 3 of the Attorney General’s Advisory Group. Current policy is arguably more protective of public safety and more restrictive on police operations than the Advisory Group’s recommendations by limiting authority to initiate a pursuit to only two specific categories of offense where the Group’s recommendations allow for initiating pursuits for additional categories of offenses including property crimes and traffic offenses.

<u>Recommendations</u> : No current recommendations.
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Vehicle Pursuit Policy Recommendation

3[a]. “...all factors be considered when initiating and continuing a pursuit. The factors include:

- Seriousness of the offense. For example, property crimes such as theft and stolen vehicles may not be worth the risk created by a vehicle pursuit.
- Identification and knowledge of the suspect. The officer should recognize that if the suspect can be apprehended at a later time and place, it may not be prudent to initiate or continue the pursuit.
- Road conditions. For example, dirt or winding roads, or work zones increase the danger associated with pursuits.
- Population and physical location. For example school zones, residential areas, retail business, and entertainment areas may heighten the danger of the pursuit.
- Traffic conditions, both vehicular and pedestrian. Both are extremely important when balancing the risks of pursuits.
- Lighting and visibility.
- Time of day. Dusk may be more precarious than other time during the day or night.
- Weather conditions. For example, rain, snow, sleet and high winds would increase danger.
- Officer training and experience.

- Performance capabilities and condition of law enforcement vehicle. The age, mileage, and body style of the vehicle may increase the risk involved in the pursuit.
- Performance and type of suspect vehicle. For example, the pursuit of motorcycles may be prohibited or discouraged due to the propensity of injury.
- Additional passengers. Consider the risk to all occupants in the law enforcement and suspect vehicles.
- Pursuits against the flow of traffic. Pursuits in the opposite directions on one-way streets or divided highways are particularly dangerous and may be prohibited.
- Length of pursuit. The driving awareness of both the officer and the suspect are likely to subside as the pursuit continues, increasing the risk.
- Speed and evasive tactics of the suspect.^{xxxii}

General Police Order 3.2.02 considers each factor above, as follows:

The ‘seriousness of the offense’ factor is encompassed in the pre-determination that only two categories of offense act as authorization to initiate a pursuit: violent felony or OVI, as discussed in section 3 above. **This is arguably more restrictive than the recommendations allow as the recommendations discuss the possibility of vehicle pursuits in property crimes, theft and stolen vehicles.** Additionally, officers are required to immediately terminate a pursuit when the level of danger to life outweighs the need for immediate apprehension, i.e. the seriousness of the offense.^{xxxiii}

The ‘identification and knowledge of the suspect’ factor is incorporated in Division policy by requiring officers to immediately terminate a pursuit if “[t]here is sufficient identifying information and reasonable probability of arresting the fleeing suspect later.”^{xxxiv}

The order establishes that the ‘road conditions’, ‘population and physical location’, ‘traffic conditions both vehicular and pedestrian’, ‘time of day’, ‘weather’, and ‘performance capabilities and condition of the law enforcement vehicle’, factors are required conditions for consideration when initiating or continuing a pursuit.^{xxxv}

The ‘performance capabilities and condition of the law enforcement vehicle’ factor is additionally considered in the order in prohibitions against officers continuing a pursuit while operating a motorcycle or unmarked unit if a marked unit is available to be the primary pursuit unit.^{xxxvi} Controlling pursuit supervisors also have a responsibility to rotate a unit into or out of a pursuit based on condition of the equipment/vehicle involved.^{xxxvii}

The ‘officer training and experience’ factor is considered in the order as part of the express duties of a controlling supervisor to rotate units into or out of a pursuit based on the ability of the involved officer.^{xxxviii}

The ‘additional passengers’ factor as applicable to a law enforcement vehicle is considered in the order by a prohibition on engaging in a pursuit in a “police vehicle that contains witnesses, suspects, complainants, ride-alongs, or other non-police personnel.”^{xxxix}

The ‘length of the pursuit’ factor is specifically considered in the order as part of the duties of the controlling pursuit supervisor to rotate units into or out of a pursuit based on diminished critical decision making skills.^{xi}

The order recognizes the ‘speed and evasive tactics of the suspect’ factor in specific policy direction to pursuing officers to immediately terminate a pursuit if the pursued driver exhibits such disregard for safety that they disregard traffic control devices without slowing, drive into oncoming traffic, excessively speed, or blatantly disregard the safety of others.^{xli}

Many of these considerations, as described above, are considerations, not only of the pursuing officer, but also of the supervisor involved in controlling the pursuit, thus adding a secondary point of assessment.

The ‘lighting and visibility’ factor of the Attorney General’s recommendations is not currently addressed in Division policy.

The ‘performance and type of suspect vehicle’ factor of the Attorney General’s recommendations is not currently addressed in Division policy.

The ‘additional passengers in a suspect vehicle’ factor of the Attorney General’s recommendations is not currently addressed in Division policy.

The ‘pursuits against the flow of traffic’ factor of the Attorney General’s recommendations is not currently addressed in Division policy.

Finding: Current policy is substantially in compliance with the second part of recommendation 3 of the Attorney General’s Advisory Group. The Division’s policy statement that authorization to initiate or continue a vehicle pursuit is restricted to only violent felonies and OVI’s is a higher standard than that contemplated in the Advisory Group recommendations. There are, however, certain factors recommended for consideration that are not explicitly included in current Division policy.

Recommendations:

Recommendation 2.2 – It is recommended that the Division comply with the recommendation of the Attorney General to include lighting and visibility as a factor to be considered in initiating or continuing a vehicular pursuit by amending current policy.

Recommendation 2.3 – It is recommended that the Division comply with the recommendation of the Attorney General to include the performance and type of suspect vehicle as factors to be considered in initiating or continuing a vehicular pursuit by

amending current policy. It is further recommended that whether a suspect vehicle is a motorcycle or other non-automobile vehicle be a part of that consideration in policy.

Recommendation 2.4 – It is recommended that the Division comply with the recommendation of the Attorney General to include additional passengers in a suspect vehicle as a factor to be considered in initiating or continuing a pursuit by amending current policy.

Recommendation 2.5 – It is recommended that the Division comply with the recommendation of the Attorney General to include pursuits against the flow of traffic as a factor to be considered in initiating or continuing a pursuit by amending current policy. It is further recommended that pursuits against the flow of traffic on a one-way street or divided highway be prohibited as prima facie too unsafe to continue.

Vehicle Pursuit Policy Recommendation

4[a]. “Pursuit Operations, Adherence to Laws and Policy. Lights and sirens should be engaged to maximize safety and comply with state provisions. More particularly, pursuing officers should slow down and take caution when approaching stop signs and traffic signals. See Ohio Revised Code (ORC) sections 4511.03; 4511.24 and 4511.45. Policies might also limit speeds during chases to reduce the likelihood of serious injury. Use of dash cams and body cameras should also be addressed, if used by the agency.”^{xlii}

General Police Order 3.2.02 requires officers to comply with Ohio Revised Code §4513.21 which provides in pertinent part, “... [Emergency vehicle] equipment shall not be used except when such vehicle is operated in response to an emergency call or is in the immediate pursuit of an actual or suspected violator of the law, in which case the driver of the emergency vehicle shall sound such equipment when it is necessary to warn pedestrians and other drivers of the approach thereof.”^{xliii}

The order requires officers to comply with Ohio Revised Code §4511.041^{xliiv} which has a provision that exempts them from certain provisions of the traffic code as long as they are responding to an emergency call while operating both emergency lights and siren. While compliant by implication, this is not an explicit policy statement.

The order further specifically requires pursuing officers to comply not only with Ohio Revised Code §§4511.03, 4511.24 and 4511.45, but also with ORC §4511.041 including the provision that pursuing drivers are not relieved “from the duty to drive with **DUE REGARD** for the safety of all persons and property upon the highway. [Emphasis in GPO]”^{xliv} as recommended.

The order does not limit speeds during pursuit incidents, though this is a permissive and not a mandatory recommendation.

The order specifically addresses the use of body worn video, audio recording device or vehicle equipped with video recording device in sub section XI. This subsection requires

that captured audio and video be immediately reported to the chain of command, collected, entered into evidence, and documented.^{xlvi} Additionally, the Division has published a one page Divisional Notice providing guidance to all members with a reminder to report the existence of such recordings and direction to document and attach such recordings to current division pursuit investigation software databases.^{xlvii}

Finding: Current policy is in full compliance with the first part of recommendation 4 of the Attorney General’s Advisory Group. Nonetheless, certain policy clarifications are recommended.

Recommendations:

Recommendation 2.6 – It is recommended that any substantive content of Divisional Notice 16-289 Documentation of Recorded Video in Vehicle Pursuits which modifies or amends policy be incorporated directly into the Division Vehicle Pursuit policy by amending current policy.

Recommendation 2.7 – It is recommended that the provisions of Ohio Revised Code §4511.041 exempting officers from traffic code provisions if on an emergency call and operating both emergency lights and siren be explicitly identified in a policy statement requiring use of lights and siren during all pursuit incidents by amending current policy.

Vehicle Pursuit Policy Recommendation

4[b]. “Pursuit Operations, Limitations and Prohibitions.

- Number of pursuing law enforcement vehicles. The number of pursuing vehicles is limited to two (primary and secondary) or three vehicles in most policy statements due to increased risk when more vehicles are involved. A number greater than this should be discouraged, unless approved by the appropriate supervisor due to unusual circumstances.
- Following, trailing, and paralleling law enforcement vehicles. To minimize risk, any law enforcement vehicles following, trailing, or paralleling the pursuing law enforcement vehicles should observe and follow all Ohio traffic laws and regulations.
- Aerial surveillance. If aerial surveillance is able to observe the fleeing vehicle, pursuing law enforcement vehicles should consider slowing their speed to minimized the risks of injury.
- Pursuing against the lawful [f]low[sic] of traffic on one-way street or lane of divided highway. A pursuit against traffic should be discouraged.
- Pursuits by unmarked law enforcement vehicles and motorcycles. Pursuing law enforcement vehicles must meet the requirements of

ORC 4511.24 in regard to lights and audible signals. If compliant unmarked vehicles, or motorcycles, initiate a pursuit, they should relinquish the pursuit to marked vehicles at the earliest opportunity.”^{xlvi}

General Police Order 3.2.02 states with specificity that, “Unless specifically approved by the controlling supervisor, no more than two police motor vehicles shall engage in a motor vehicle pursuit.”^{xlix}

The order prohibits engaging in a parallel pursuit without permission from the controlling supervisor.¹ The order language does not, however, specifically address following or trailing law enforcement vehicles or the recommendation that they be required to follow Ohio traffic laws and regulations.

The order addresses aerial surveillance by providing specific directions and operational rules if the aviation unit is available and becomes involved in the pursuit, including that the aviation unit shall become the primary pursuit unit and that ground units shall cease further ground pursuit.ⁱⁱ

The order, as noted in sections above, addresses the use of unmarked law enforcement vehicles and motorcycles. Unmarked units cannot join a pursuit, “unless equipped with emergency red or blue lights and siren unless it is to save or preserve the lives of innocent persons.”^{lii} Motorcycles and unmarked units may not continue a pursuit “if a marked unit with a light bar and siren is available to take over the pursuit.”^{liii}

Finding: Current policy is substantially in compliance with the second part of recommendation 4 of the Attorney General’s Advisory Group.

Recommendations:

Recommendation 2.8 – It is recommended that the Division comply with the recommendations of the Attorney General to include specific language authorizing or prohibiting law enforcement vehicles “following” or “trailing” a vehicle pursuit incident and a requirement that any such vehicles follow all Ohio traffic laws and regulations, by amending current policy.

Vehicle Pursuit Policy Recommendation

4[c]. “Pursuit Operations, Supervisory responsibilities.

- Coordination of pursuit. The appropriate supervisor should coordinate all aspects of the pursuit, including the number of units and any aerial surveillance, and respond to the point where the pursued vehicle stops. The supervisor should also ensure that the dispatcher notifies other nearby jurisdictions.

- Discontinuance of pursuit. The appropriate supervisor should share the responsibility to initiate and discontinue the pursuit with the officer initiating the pursuit. The supervisor’s decision to discontinue the pursuit should be final.”^{liv}

General Police Order 3.2.02 provides that there is a specifically defined and identified “controlling supervisor” in a vehicle pursuit incident.^{lv} That supervisor is in direct control of all aspects of the pursuit^{lvi} including the number of units^{lvii}, aerial surveillance^{lviii} and the requirement to respond to the scene at the point where the pursued vehicle stops^{lix}. The controlling supervisor in a vehicle pursuit situation is also detailed, by policy, with ensuring that the Communication Control Section notifies neighboring jurisdictions when the pursuit reasonably appears to be leaving the City^{lx}.

The order specifically identifies the controlling supervisor in a vehicle pursuit incident as, “the supervisor that assumes all the responsibilities associated with the management of a pursuit (including the pursuit initiation, continuation, and termination).^{lxi} In fact, the order specifically identifies accountability for continuance of any pursuit on the controlling supervisor.^{lxii} In all instances, the order identifies the controlling supervisor as “the final authority ... solely responsible for the management of a vehicular pursuit...”^{lxiii} Most definitively, the order states that an officer shall immediately terminate a pursuit if “**Ordered to do so by a supervisor. Officers shall not** follow a suspect vehicle after a pursuit has been terminated. [Emphasis in GPO]”^{lxiv}

Finding: Current policy is fully in compliance with the third part of recommendation 4 of the Attorney General’s Advisory Group.

<i>Recommendations:</i>	No current recommendations.
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Vehicle Pursuit Policy Recommendation

4[d]. “Pursuit Operations, Radio Communications of Pursuing Officer.

- Officer responsible for maintaining radio contact with dispatcher. Policies should clarify whether officers in primary or secondary law enforcement vehicles are responsible for initiating and maintaining radio contact with dispatchers.
- Content of radio communications.
 - Purpose of stop that prompted pursuit
 - Whether fleeing individuals are armed and/or dangerous
 - Location, speed, direction, and traffic conditions of pursuit
 - Vehicle and suspect descriptions
- Updating information. Officers should continuously update information to allow supervisor(s) to sufficiently assess continuation of the pursuit.”^{lxv}

General Police Order 3.2.02 provides that officers initiating pursuit are responsible for notifying the Communications Control Section of the pursuit and that the first unit behind the fleeing offender is the primary pursuit unit.^{lxvi} There is no specific verbiage in the order, however, that indicates which unit has the responsibility for initiating and maintaining radio communications; that language could use clarification.

The order does mandate that officers initiating a pursuit provide the Communications Control Section with the: reason for the pursuit, direction of travel, description of the suspect vehicle including license plate number, number of occupants and the speeds involved.^{lxvii} Nothing in the order language specifically requires or indicates that a pursuing officer provide information to dispatchers regarding whether the fleeing individuals are armed and/or dangerous or what the various traffic conditions are.

And, while the order implicitly contemplates continuous updated information by which a controlling supervisor monitors and controls the vehicle pursuit incident^{lxviii}, there is no specific language in the order that requires pursuing officers to continuously update broadcast information in order for supervisors to assess on an ongoing basis.

Finding: Current policy lacks specific recommended language and is therefore not in full compliance with the fourth part of recommendation 4 of the Attorney General’s Advisory Group.

Recommendations:

Recommendation 2.9 – It is recommended that the Division comply with the recommendation of the Attorney General to include specific language indicating which unit is directly responsible for initiating and maintaining radio contact with the Communications Control Section by amending current policy.

Recommendation 2.10 – It is recommended that the Division comply with the recommendation of the Attorney General to include specific language indicating that officers responsible for initiating a vehicle pursuit provide information via radio broadcast including whether fleeing suspect(s) are armed and/or dangerous along with initial and continuously updated traffic conditions by amending current policy.

Recommendation 2.11 – It is recommended that the Division comply with the recommendation of the Attorney General to include specific language that officers engaged in a vehicle pursuit incident continuously update information via radio broadcast to allow supervisory assessment by amending current policy.

Vehicle Pursuit Policy Recommendation

4[e]. “Pursuit Operations, Dispatcher responsibilities.

- Designate channel for communications. It is recommended that radio communications associated with a pursuit be conducted on a separate channel, if available.

- Notify appropriate supervisor(s).
- Relay information from supervisor(s) and pursuing officer(s).
- Contact nearby jurisdictions if appropriate or requested.^{”lxix}

General Police Order 3.2.02 provides that officers involved in a vehicle pursuit incident utilize the main communication channel of the district of occurrence as the pursuit channel.^{lxx} And, that channel remains the primary pursuit communication channel for the duration of the vehicle pursuit incident.^{lxxi}

The order does not place a responsibility for notifying a police supervisor on the dispatch function. Communications Control Section dispatchers are mandated to notify a CCS sworn supervisor or chief dispatcher if a pursuit has been initiated in their district.^{lxxii} The CCS sworn supervisor or chief dispatcher has a responsibility to “ensure a controlling supervisor has control of the pursuit.”^{lxxiii} It is implied, throughout the order that the controlling supervisor self-identify^{lxxiv}, however there are no provisions in policy language that clearly indicate what actions should be taken by dispatch staff if that does not happen.

Similarly, while the order implicitly assumes that ongoing communications between officers, supervisors and dispatchers will be occurring^{lxxv}, there is no specific policy language directing that one of the functions to be specifically provided by dispatch operations is to relay information from and between supervisor(s) and pursuing officer(s).

The order does mandate that dispatch staff notify surrounding districts and/or jurisdictions when it appears that a vehicle pursuit has or is about to leave the district or the City^{lxxvi}.

Finding: Current policy lacks specific recommended language and is therefore not in full compliance with the fifth part of recommendation 4 of the Attorney General’s Advisory Group.

Recommendations:

Recommendation 2.12 – It is recommended that the Division comply with the recommendation of the Attorney General to include specific language authorizing the Communications Control Section to notify a supervisor in the event that a controlling supervisor does not self-identify during a vehicle pursuit incident, or, in the alternative a method by which the Communications Control Section can ensure that a controlling supervisor has been identified, by amending current policy.

Recommendation 2.13 – It is recommended that the Division comply with the recommendation of the Attorney General to include specific language in policy identifying the relaying of information from and between supervisor(s) and pursuing officer(s) as a duty of the Communications Control Section and methods by which to accomplish this duty, by amending current policy.

Vehicle Pursuit Policy Recommendation

5. “Discontinuing Pursuits.

- Discontinuance should be defined and distinguished from intervention tactics to terminate a pursuit.
 - Discontinuance – A conscious decision by pursuing officers or supervisors to disengage from the pursuit
 - Termination – The use of intervention tactics, short of deadly force, to bring the pursuit to an end
- Reassessment of risk and safety factors. It is highly recommended that both officers and supervisors consistently reassess all evolving factors involved in the pursuit to include speed, time, traffic, road, and lighting conditions; and reevaluate the risks to safety when determining to continue the pursuit.^{lxxxvii}

Division General Police Order 3.2.02 clearly defines the term “Vehicular Pursuit Termination” as follows: “occurs when the pursuing vehicle advises the Communications Control Section (CCS) they are discontinuing the pursuit or when ordered to do so by a supervisor; and does so by returning to normal vehicular operations, deactivating its emergency lights and sirens, and changes direction away from the offender’s last know direction.”^{lxxxviii} This definition is substantially equivalent to the term “Discontinuance” used in the Advisory Group’s recommendation. It must also be noted that regional local law enforcement agencies^{lxxxix} and the IACP model policy on Vehicular Pursuit^{lxxx} utilize the term “termination” as the semantical equivalent to the term “discontinuance” used by the Attorney General.

Additionally, with regard to alternative intervention tactics, the order specifically contemplates and identifies only two. First, any intentional vehicle-to-vehicle contact is considered a use of force to be governed pursuant to Division Use of Force policy^{lxxxix} and authorized only by the controlling supervisor.^{lxxxii} The only other intervention tactic contemplated by and authorized by the policy is clearly identified as “Alternative Tactics” consisting of “Roadblocks”.^{lxxxiii} These alternative tactics are clearly and unambiguously differentiated from “Vehicular Pursuit Termination” as discussed above in a separate sub-heading and section in the order.

And, while the order implicitly indicates in various areas that the controlling supervisor actively monitors the vehicle pursuit incident, and there is a designated duty for officers to take certain factors into consideration in initiating or continuing a vehicle pursuit^{lxxxiv}, there is no current, clear specific language that requires the pursuing officers or controlling supervisor to continuously and formally update and reassess the risks and safety factors utilizing speed, time, traffic, road and lighting conditions as part of that judgment during the entirety of a vehicle pursuit incident.

Finding: Current policy utilizes terminology differently than the language used in recommendation by the Attorney General’s Advisory Group. Current Division policy

language is compliant with regional usage as well as other model policy and is semantically equivalent in its usage to the recommendation of the Advisory Group. Current policy adequately distinguishes between terms used indicating voluntary cessation of pursuit and active physical actions to cause a pursuit to end. Current policy lacks, however, specific recommended language and is therefore not in full compliance with recommendation 5 of the Attorney General’s Advisory Group.

Recommendations:

Recommendation 2.14 – It is recommended that the Division comply with the recommendation of the Attorney General to include specific language that mandates that officers and supervisors involved in vehicle pursuit incidents consistently reassess all factors involved in the pursuit to include speed, time, traffic, road, and lighting conditions; and reevaluate the risks to safety when determining to continue the pursuit, by amending current policy. Additionally, the Division should consider requiring the reassessment of all factors delineated in the third recommendation of the Advisory Board, as vehicle pursuit incidents are rapidly and consistently evolving and the risks are fluid moment to moment.

Vehicle Pursuit Policy Recommendation

6. “Use of Intervention Tactics to Terminate Pursuit

- Deployment. Intervention techniques – to include spike strips, channeling, PIT maneuvers, or roadblocks – should only be considered when it is possible to do so safely.
- Supervisory approval. It is recommended that the use of any intervention tactics be approved by supervisors, if feasible.
- Training. It is highly recommended that absent exigent circumstances, officers and supervisors deploying intervention tactics be previously trained in that technique.
- Constitutional requirements and deadly force policy should be referenced when using firearms to terminate a pursuit. Shooting at, or from, moving vehicles increases the risk of injury to others, and may be prohibited. Other intervention techniques, such as roadblocks, may also be deemed a use of deadly force under some circumstances.^{lxxxv}

There are only two intervention techniques specifically addressed in General Police Order 3.2.02; roadblocks and intentional vehicle-to-vehicle contact.^{lxxxvi} There are no mentions, authorizations, or prohibitions of any other alternative intervention techniques (including spike strips, channeling, PIT maneuvers, or vehicle manufacturer control services like OnStar®). The order is silent as to whether alternatives are allowed, prohibited, or available for consideration.

The two authorized alternative intervention tactics in the order do require supervisory approval prior to implementation.^{lxxxvii}

The order is silent as to whether training on any alternative intervention tactic is recommended or required for officers prior to implementation of that tactic.

Authorizations and prohibitions regarding usage of firearms from or at moving vehicles are controlled by separate Division policy: General Police Order 2.01.03 Use of Force - General. The current vehicle pursuit policy makes no reference to this.

While the order does describe the use of intentional vehicle-to-vehicle contact as a use of force and subject to constitutional guidelines^{lxxxviii}, the same is not done for the use of roadblocks, which can be deemed a use of deadly force. Additionally, the single citation in the order to Division use of force policy is incorrect and does not reference the current use of force General Police Order.

Finding: Current policy does not adequately address alternative pursuit intervention techniques by either authorizing or prohibiting all possible alternatives. Current policy does not address training required prior to usage of any alternative intervention technique that is authorized. Current policy does not reference the usage of firearms during a vehicle pursuit incident, even by reference to other controlling Division policy. Current policy does not adequately address the constitutionality or use of force considerations of alternative pursuit intervention techniques, even by reference to other controlling Division policy. Current policy references an incorrect policy number for Division use of force policy. Current policy lacks consideration of certain issues with regard to alternative pursuit intervention techniques and is therefore not in compliance with recommendation 6 of the Attorney General's Advisory Group.

Recommendations:

Recommendation 2.15 – It is recommended that the Division comply with the recommendation of the Attorney General to include language that encompasses the authorization or prohibition of any or all types of alternative pursuit intervention techniques and that any approved techniques be required to be done safely, by amending current policy. [E.g. language may state “any alternative intervention technique not addressed in this policy is expressly prohibited.”]

Recommendation 2.16 – It is recommended that the Division comply with the recommendation of the Attorney General to include language that requires that absent exigent circumstances, prior to usage, officers involved must have been trained in the alternative intervention technique to be used by amending current policy. Additionally, language should be included requiring supervisors to have been trained in policy requirements prior to authorizing use of alternative intervention techniques, also by amending current policy.

Recommendation 2.17 – It is recommended that the Division comply with the recommendation of the Attorney General to include language in the vehicle pursuit policy that adequately identifies the constitutional and use of force considerations, authorizations and prohibitions of the use of firearms, roadblocks, and other alternative

intervention techniques by amending current policy. Alternatively, it is recommended that references to such appropriate governing policy be added to current policy by amendment.

Recommendation 2.18 – It is recommended that the Division update and correct the citation to GPO 2.1.01 on page 14 of current policy by amendment.

Vehicle Pursuit Policy Recommendation

7. “Interjurisdictional Pursuits and Pursuits From Other Jurisdictions

- Pursuing officers, supervisor and dispatcher communications. When it is likely that a pursuit will cross jurisdictional boundaries, a dispatch[*sic*] should immediately notify law enforcement in that jurisdiction.
- Request for assistance. Any decision to request the assistance of the approaching jurisdiction should be made by pursuing officers or supervisor, and clearly and specifically communicated by dispatch to law enforcement in the approaching jurisdiction. Conversely, the requested agency should take over the pursuit only if clearly requested. If the pursuit is taken over by the requested law enforcement agency, the requesting agency should cease emergency driving.
- Applicable policy. Applicable policy as it relates to both requesting and requested law enforcement agencies should be addressed.”^{lxxxix}

General Police Order 3.2.02 requires that Communications Control Section dispatchers notify neighboring jurisdictions, when approved by a controlling supervisor, when a pursuit appears to be or is leaving the City and entering that jurisdiction.^{xc}

The order requires that the Communications Control Section coordinate communications between the Division and outside agencies to ensure that all relevant information is exchanged, including many of the factors described in sections above.^{xcⁱ} The order is specific in identifying when participation in another agency’s pursuit is authorized and what the requirements for that situation are.^{xcⁱⁱ} The order is silent as to the idea of “taking over” a pursuit as identified in the Advisory Group’s recommendation. There is no provision in the order for Division members to “take over” a pursuit for another jurisdiction, and likewise, there is no provision for the Division to request that another agency “take over” a CDP initiated pursuit. This is in keeping with the current regional practice^{xcⁱⁱⁱ} that the primary pursuing agency maintains control of the incident as assisted by other agencies, regardless of whether the initiating agency was the CDP or an outside agency. Nonetheless, there is no specific language in the order that expresses this philosophy.

The order does reflect policy as it relates both to the CDP assisting agencies entering Cleveland with an active pursuit and to CDP pursuing into another agency’s jurisdiction.^{xc^{iv}} **The order is specific in identifying that CDP officers can only engage in**

assisting another agency's pursuit to the extent that the incident meets CDP's own, more restrictive standards of engagement identified in the policy.^{xcv}

Finding: Current policy is substantially in compliance with recommendation 7 of the Attorney General's Advisory Group. Current policy is arguably more protective of public safety and more restrictive on police operations in limiting authority to assist with an interagency pursuit to only those that would be supported under the Division's own (and generally more restrictive) criteria.

Recommendations:

Recommendation 2.19 – It is recommended that the Division amend current policy by adding language that specifically authorizes or prohibits the “taking over” of another agency’s pursuit incident and similarly authorizes or prohibits having another agency “take over” a Division initiated pursuit by amending current policy. Such language should clearly differentiate between assisting and “taking over”.

Vehicle Pursuit Policy Recommendation

8. “Post-pursuit

- Reporting. It is highly recommended that officers and all involved personnel provide written reports of their involvement in any vehicle pursuit. Relevant body-camera or dashcam videos, recorded radio communications, and 911 calls should be preserved with the report.
- Review of report. It is also highly recommended that appropriate supervisors and heads of agencies review all reports of vehicle pursuits to determine if they were conducted in accordance with applicable policy.
- Analyses. Appropriate personnel should regularly review all vehicle pursuits to identify any training topics and changes to policy.^{xxcvi}

Division General Police Order 3.2.02 specifically requires that all vehicle pursuits require the completion of a Vehicle Pursuit Form.^{xcvii} The order further requires that all video or audio recordings that are captured in a vehicle pursuit incident shall be maintained as part of the pursuit investigative package/report.^{xcviii}

The order requires the pursuit investigative report package be forwarded not only through supervisory staff and the chain of command up to the level of Deputy Chief, but also in parallel to the Division Inspection Unit.^{xcix} Each supervisor in the chain of command is required to review and assess the actions of members involved and a determination whether actions were in accordance with policy.^c Final review of the investigative package is done in the office of the Chief of Police.^{ci}

The order is silent as to any requirement for regular review and analysis of vehicle pursuit incident data and duty to identify training and/or policy recommendations.

Finding: Current policy lacks certain, specific recommended language and procedures for analysis of vehicle pursuit incident data and is therefore not in full compliance with recommendation 8 of the Attorney General’s Advisory Group.

Recommendations:

Recommendation 2.20 – It is recommended that the Division comply with the recommendation of the Attorney General by including language and policy creating a duty to collect and analyze data from vehicle pursuit incidents on a regular or annual basis and make recommendations as necessary regarding training and/or policy improvements.

Vehicle Pursuit Policy Recommendation

9. “Training. All officers should be provided periodic training on the vehicle pursuit policy, best practices and safe driving techniques. Training officers and heads of agencies should consider the use of the Ohio Peace Officer Training Academy’s judgmental driving simulators.”^{cii}

While sworn officers of the Division have in the past been trained on pursuit policy^{ciii}, General Police Order 3.2.02 makes no specific reference to continuing periodic training or training methods.

Finding: Current policy lacks language or policy requiring continuing periodic training on pursuit policy, practices and safe driving techniques and is therefore not in compliance with recommendation 9 of the Attorney General’s Advisory Group.

Recommendations:

Recommendation 2.21 – It is recommended that the Division comply with the recommendation of the Attorney General by including language, policy and procedures requiring continuing, periodic training on pursuit policy, practices and safe driving techniques, by amending current policy.

Part 3

Standards for Pursuits of Motor Vehicles as Presented by the Commission on Accreditation of Law Enforcement Agencies (CALEA®)

While the Division is not an accredited law enforcement agency, oft-times best practices can be found in published accreditation standards. In this section, current Division vehicle pursuit incident policy will be analyzed for compliance with the Standards Manual of the Commission on Accreditation for Law Enforcement Agencies (the Commission, CALEA®)^{civ}. The Commission recognizes that vehicle pursuit incidents pose a high risk for officers and the community and therefore require clear and explicit policy which is adequately disseminated and reviewed. Each of the CALEA® pursuit standards are addressed below as regards to the current state of Division policy and procedure with the following format: Most recent version of CALEA® standards, analysis of those standards as compared to Division policy, specific

findings, and recommendations for policy changes that would bring the Division into full and complete compliance with CALEA® standards if opted to by Division leadership. The most current version of the CALEA® standard for Pursuit of Motor Vehicles, number 41.2.2, as found through online research, provides, as follows:

“A written directive governs pursuit of motor vehicles, to include:

- a. evaluating the circumstances;
- b. defining the criteria under which pursuit can be initiated;
- c. initiating unit/personnel responsibilities;
- d. designating the secondary unit’s responsibilities;
- e. specifying roles and restrictions pertinent to marked, unmarked, or other types of police vehicle involvement in the pursuit;
- f. assigning telecommunicator’s responsibilities;
- g. describing supervisor’s responsibilities;
- h. specifying when to terminate pursuit;
- i. specifying authority to terminate pursuit;
- j. engaging in inter- and intra-jurisdictional pursuits involving personnel from the agency and/or other jurisdictions;
- k. requiring a written report and an administrative review of each pursuit; and
- l. conducting a documented annual analysis of pursuit reports, to include a review of policy and reporting procedures, approved by the agency CEO.

[Along with two new proposed subsections:]

- m. documented initial training on the agency’s pursuit policy; and
- n. documented annual review of the pursuit policy by all sworn personnel.”^{cv}

The Cleveland Division of Police maintains a written directive governing the pursuit of motor vehicles in General Police Order 3.2.02^{cv}^{vi}. The order explicitly requires officers and supervisors to evaluate specific circumstances for initiating and continuing a vehicle pursuit^{cv}^{vii}.

The order clearly explicates the restricted circumstances under which a pursuit may be initiated^{cv}^{viii}.

While the order does describe the responsibilities of an initiating unit in a vehicle pursuit incident^{cv}^{ix}, and does identify when pursuing officers must become a secondary unit^{cv}^x, it does not designate any responsibilities specifically to a secondary unit.

The order provides guidance for pursuing units if they are unmarked or motorcycles, and requires marked vehicles to be primary units when available; additionally the order restricts which types of unmarked vehicles may be involved.^{cv}^{xi}

The order lays out the responsibilities of the Communications Control Section (telecommunication)^{cv}^{xii}, and the responsibilities of the controlling supervisor, scene supervisor and other supervisors^{cv}^{xiii} in separate and identified sections.

The order provides specific direction for when a pursuit must immediately be terminated^{cxiv} and also identifies that both a pursuing officer and a supervisor have the authority to terminate a pursuit^{cxv}.

The order provides considerations and direction for both inter- and intra-jurisdictional pursuits, including division of responsibilities for criminal and accident investigations involving multiple jurisdictions^{cxvi} in a separately identified section.

Division policy, through the order, specifically requires a written report of any vehicle pursuit incident, including a full investigative packet^{cxvii}, which is administratively reviewed both by the designated chain of command and the Division's Inspection Unit^{cxviii}.

The written order is silent, however, as to an annual analysis of pursuit related activity and data including policy and reporting procedures, as approved by the Chief of Police.

As to the two pending proposed CALEA® standard additions:

According to the Division Training Unit, initial training on the Division's pursuit policy order was documented during in-service training sessions, subsequently hired members received training as part of academy curriculum, and all of those records are maintained^{cxix}.

Information gathered during discussions with the Training Unit does indicate, however, that there is currently no provision for annualized review of pursuit policies with all sworn personnel^{cxx}.

Finding: Current Division policy is in full compliance with CALEA® Pursuit of Motor Vehicles standards 41.2.2 (a-c) and (e-k). Current policy is not compliant with CALEA® standard 41.2.2 (d) which requires that the duties of a secondary unit be specified. Current policy is not compliant with CALEA® standard 41.2.2 (l) which requires a documented annual analysis of pursuit related activity and data including policy and reporting procedures as approved by the Chief of Police. Current Division policy is in full compliance with proposed standard 41.2.2 (m), but is not compliant with standard 41.2.2 (n) which requires that sworn employees are given an annual review of pursuit related policy.

Recommendations:

Recommendation 3.1 – It is recommended that the Division comply with CALEA® standard 41.2.2 (d) by including language and policy identifying specific duties for any unit designated as a secondary unit in a vehicle pursuit incident, by amending current policy.

Recommendation 3.2 – It is recommended that the Division comply with CALEA® standard 41.2.2 (l) by including language and policy requiring an annualized analysis of pursuit related activity and data including policy and reporting procedures as approved by the Chief of Police, by amending current policy.

Recommendation 3.3 – It is recommended that the Division comply with proposed CALEA® standard 41.2.2 (n) by including policy guidance which requires that all sworn

members of the Division are given a documented annual review of pursuit related policy, by amending current policy.

Part 4

Standards for Law Enforcement Vehicular Pursuit as Proposed by the Ohio Collaborative Community-Police Advisory Board

Another source for possible best practices in law enforcement operations are the standards promulgated by the Ohio Collaborative Community-Police Advisory Board (the Collaborative), established in 2015 by Governor John Kasich with the purpose to disseminate best practice and model policy to all of Ohio's law enforcement agencies on specifically developed standards^{cxix}. Each of the applicable Collaborative standard provisions are addressed below as regards to the current state of Division policy and procedure with the following format: Most recent version of Collaborative standard, analysis of the standard provisions as compared to Division policy, specific findings, and recommendations for policy changes that would bring the Division into full and complete compliance with the Collaborative standard if opted to by Division leadership. Law Enforcement Vehicle Pursuits have, until recently, not been a standard that law enforcement agencies had being asked to comply with, however, the proposed standard is available at the Collaborative website^{cxix}, and that standard is expected to become a mandatory part of the Collaborative assessments forthwith.

The Collaborative standard provides as follows:

“Law enforcement agencies shall establish a written policy that governs the pursuit of motor vehicles. The policy, at a minimum, shall include the following:

- Definition of a motor vehicle pursuit;
- Defining the criteria under which a pursuit can be initiated;
- Evaluating the circumstances (seriousness of the alleged offense, conditions of the road and location of the pursuit, time of day and weather conditions);
- A provision that prohibits or discourages pursuits when the suspect is known to the officers or easily identifiable, unless the officers have probable cause to believe the suspect's escape poses a significant threat of death or serious physical injury to officers or others;
- Responsibilities of the initiating and secondary units;
- Specifying the roles and restrictions pertinent to marked, unmarked, or other types of police vehicle involvement in the pursuit;
- Provide communication protocols addressing responsibilities for officers and telecommunicators;
- Describing supervisor's responsibilities;
- Specifying when and who has the authority to terminate a pursuit;
- Engaging in inter and intra-jurisdictional pursuits involving personnel from the agency and/or other jurisdictions;

- A requirement that agencies provide training to officers prior to the utilization of pursuit termination tactics and intervention techniques (e.g. PIT maneuver, tire deflation devices, road blocks, etc.);
- Requiring a written report and an administrative review of each pursuit; and
- Conducting a documented annual analysis of pursuit reports, to include a review of policy and reporting procedures, approved by the head of the agency.^{cxxxiii}

General Police Order 3.2.02 is the written policy of the Division governing pursuits of motor vehicles. The policy includes a definition of “Vehicular Pursuit”^{cxxxiv}, specific defining criteria under which a pursuit can be initiated^{cxxxv}, and a requirement that specific circumstances be taken into consideration when initiating or continuing a vehicular pursuit (including road conditions, location, time of day and weather^{cxxxvi} and seriousness of the offense^{cxxxvii}).

The order specifically requires termination of a pursuit in situations where there is sufficient identifying information and a reasonable probability of arresting the fleeing suspect at a later time^{cxxxviii}.

While the order does describe the responsibilities of an initiating unit in a vehicle pursuit incident^{cxxxix}, and does identify when pursuing officers must become a secondary unit^{cxxx}, it does not designate any responsibilities specifically to a secondary unit. The order does provide guidance for pursuing units if they are unmarked or motorcycles, and requires marked vehicles to be primary units when available, additionally the order restricts which types of unmarked vehicles may be involved.^{cxxxxi}

The order lays out the responsibilities of the Communications Control Section (telecommunication)^{cxxxii}, and the responsibilities of the controlling supervisor, scene supervisor and other supervisors^{cxxxiii} in separate and identified sections.

The order provides specific direction for when a pursuit must immediately be terminated^{cxxxiv} and also identifies that both a pursuing officer and a supervisor have the authority to terminate a pursuit^{cxxxv}.

The order provides considerations and direction for both inter- and intra-jurisdictional pursuits, including division of responsibilities for criminal and accident investigations involving multiple jurisdictions^{cxxxvi} in a separately identified section.

The order addresses authorization to utilize alternative intervention techniques^{cxxxvii}, however is silent on any requirements for training of officers prior to utilization of alternative intervention techniques.

Division policy, through the order, specifically requires a written report of any vehicle pursuit incident, including a full investigative packet^{cxxxviii}, which is administratively reviewed both by the designated chain of command and the Division’s Inspection Unit^{cxxxix}.

The written order is silent, however, as to an annual analysis of pursuit related activity and data including policy and reporting procedures, as approved by the Chief of Police.

Finding: Current Division policy is generally in compliance with the majority of specific recommendations as presented in the Ohio Collaborative Community-Police Advisory Board’s proposed standards on motor vehicle pursuits. Policy is not compliant with the standard which requires that the duties of a secondary unit be specified. Current policy is not compliant with the standard which requires formal training and documentation for officers prior to utilization of any authorized alternative intervention techniques. Current policy is not compliant with the standard which requires an annualized analysis of pursuit related activity and data including policy and reporting procedures as approved by the Chief of Police.

Recommendations:

Recommendation 4.1 – It is recommended that the Division comply with the law enforcement vehicle pursuit standard as proposed by the Ohio Community-Police Collaborative Advisory Board by including language and policy identifying specific duties for any unit designated as a secondary unit in a vehicle pursuit incident, by amending current policy.

Recommendation 4.2 – It is recommended that the Division comply with the law enforcement vehicle pursuit standard as proposed by the Ohio Community-Police Collaborative Advisory Board by requiring formal training on any authorized alternative intervention techniques for all officers prior to utilization, by amending current policy.

Recommendation 4.3 – It is recommended that the Division comply with the law enforcement vehicle pursuit standard as proposed by the Ohio Community-Police Collaborative Advisory Board by including language and policy requiring an annualized analysis of pursuit related activity and data including policy and reporting procedures as approved by the Chief of Police, by amending current policy.

Part 5

International Association of Chiefs of Police – Model Policy – Vehicle Pursuits, December 2015

The International Association of Chiefs of Police (IACP) has established a Model Policy on Vehicle Pursuits as of 2015^{exl}. Assessment of compliance with a model policy is a significantly different process than the assessment of compliance with statute or recommendations as provided above. It is a multi-step process which requires a subject by subject and sometimes a line by line comparison between current policy and model policy and then an evaluation of whether perceived differences raise to the level of being substantive policy differences or simply matters of style in drafting. Additionally, some model policy provisions may be inapplicable in local circumstances.

With that *caveat*, this section will not be a point by point listing of compliance determinations in the same format provided above. Instead, below is a listing of significant

policy differences between current Division pursuit policy and IACP model pursuit policy which will serve as the basis for formal recommendations. A copy of the IACP model policy, as annotated by the OIG, will be included with this memorandum as an appendix, for reference.

Findings:

- While the purpose and policy statements of both policies are substantially similar, the Division adds specific statutory citations and references, making it more comprehensive and appropriately referential.
- The model policy more explicitly, and more generally makes reference to the fact that efforts made to terminate vehicle pursuit incidents are the equivalent of use of force governed by use of force policy and legal precedent. (Similar to issues identified in Recommendation 2.17 above assessing compliance with the Ohio Attorney General’s Special Report.)
- The model policy provides specific definitions for “authorized emergency vehicle” and “pursuit-rated vehicle” that are not in the Division policy definitional section. As current policy specifically details in procedural sections which vehicles are authorized and the Division does not maintain a discrete fleet of pursuit-rated vehicles, it is probable that these additional definitions do not rise to the level of substantive difference.
- The model policy does provide more specific and distinct definitions for the acts of paralleling, trailing and caravanning during a vehicle pursuit incident than Division policy. Such additional description might allow the Division to more accurately authorize or prohibit pursuit related tactics.
- The Division’s definition of “termination” of a pursuit incident is substantially more robust, detailed and descriptive than the model policy, describing specific actions required of an officer.
- The model policy has a specific definition for “termination point” that is not in Division policy. As current policy specifically details procedures at the location where a pursuit ends, it is probable that this additional definition does not rise to the level of substantive difference.
- While both policies provide that vehicle pursuits may only be initiated if a fleeing offender would be a greater danger to life and injury of the public than the pursuit itself, Division policy is more restrictive by specifically limiting the circumstances under which a pursuit is authorized specifically to violent felonies and OVIs.
- The model policy lists certain conditions that must be considered before initiation or continuation of a pursuit that are not specifically listed in Division policy, as follows:
 1. Known information on the suspect.

2. Lighting and visibility conditions.
 3. Apparent conditions and capabilities of the vehicle being pursued.
 4. The pursuing officers' training and experience.
 5. The availability of alternative equipment.
 6. The presence of other occupants in the vehicle being pursued.
- The model policy makes a much clearer and more explicit statement that once a pursuit is initiated, the pursuing officers must activate emergency lights, sirens and cameras; and, that this equipment must remain activated for the duration of the incident. (Similar to Recommendation 1.1 above regarding explicit requirements in the Ohio Revised Code to limit liability and Recommendation 2.7 above regarding compliance with the Ohio Attorney General's Special Report.)
 - The model policy adds information that an officer is required to provide over the air during a pursuit that is not currently in Division policy, to wit: any information concerning the use of firearms, threat of force, or other unusual hazard.
 - The model policy makes it explicit that pursuing officers must continuously update communications and supervisors over the air of all circumstances the policy requires officers to consider prior to initiating or continuing a vehicle pursuit incident. Current Division policy is not explicit regarding this communication.
 - The model policy assigns the specific duty of relaying information and communications during a pursuit incident to any secondary pursuit unit. Current Division policy does not provide for specific duties of a secondary pursuit unit.
 - The model policy specifically prohibits pursuits of motor vehicles against the flow of traffic on one-way streets or lane of divided highways. No such prohibition is explicit in current policy.
 - While the model policy contemplates that a pursuit supervisor may become involved in a vehicle pursuit incident, this is explicitly prohibited by Division policy. Allowing supervisory staff to be more objective and more able to focus on resource availability, communications and control of a vehicle pursuit incident is a significantly a safer overall methodology for supervisory participation in vehicle pursuit incidents.
 - The model policy preferences pursuit-rated vehicle use in vehicle pursuit incidents. Current policy does not specifically address this issue or definition. That being said, Division vehicles are procured outside the chain of command of the Division; City purchasing obtains front line marked units through state bid contract terms that ensure they are pursuit rated. Therefore this provision may not be appropriate for inclusion in Division policy.

- The model policy assigns the specific duty of ensuring that the appropriate radio channel is being used to the pursuit supervisor. This specific duty is not assigned to the pursuit supervisor in Division policy, and is only addressed by implication in Division policy as a responsibility of the Communications Control Section.
- The model policy is explicit in requiring that officers involved in vehicle pursuit incidents must wear seat belts. Division pursuit policy is silent as to this regard. Seat belt usage may be better addressed in different Division policy, i.e. proposed update to General Police Order 4.01.02 Emergency Response Driving, so as to encompass a larger percentage of risk presenting driving behavior.
- The model policy attempts to address all possible types of alternative intervention techniques used in vehicle pursuit incidents. Division policy only addresses the use of roadblocks and intentional vehicle to vehicle contact and is silent as to authorization for other techniques. Preferentially, Division policy would specifically authorize or prohibit different known techniques to provide clarity and accountability to officers, and require supervisory approval prior to use.
- Model policy requires that officers have received training prior to utilization of any authorized alternative intervention technique. Division policy is silent as to training requirements.
- The model policy makes a distinction that is lacking in Division policy that any techniques utilized to end a vehicle pursuit incident are considered uses of force subject to applicable law and legal precedent as well as being constrained to use only when reasonably necessary and when the officer has reason to believe the continued flight would place others in imminent danger of serious physical injury or death and the risk of harm outweighs the risk of harm involved in the use of the specific intervention technique. These use of force considerations should absolutely be referenced in vehicle pursuit policies. (See Recommendation 2.17 above regarding compliance with the Ohio Attorney General’s Special Report.)
- The model policy has specific language prohibiting the discharge of a firearm from a moving vehicle. While this prohibition does exist in separate Division policy^{cxli}, it may be beneficial to officers referencing the policy to have the specific provision included and reinforced in the Division’s pursuit policy.
- The model policy makes a specific policy statement as to how suspects are to be treated at the scene of the end of a vehicle pursuit incident; lawfully and with reasonably necessary force only. The Division’s policy has no provisions as to standards for officers at the scene of the end of a vehicular pursuit.

- The model policy is clear that the full list of circumstances that must be considered before initiating a pursuit must also be continuously considered and updated with a supervisor during a vehicle pursuit incident. (Similar to Recommendation 2.14 above regarding compliance with the Ohio Attorney General’s Special Report.) Division policy does not specifically require continuous consideration and updating.
- Model policy provides provisions for “assuming” or “relinquishing” control of pursuits that enter or leave agency jurisdiction. This is separate from provisions regarding “assisting” with, or getting assistance from other agencies during vehicle pursuit incidents inter-jurisdictionally. As discussed in sections above, regionally, such “assuming” or “relinquishing” does not occur during pursuits as initiating agencies tend to maintain control of vehicle pursuit incidents until such time as they are terminated. These provisions may not directly apply to the Division, however, it is possible that language clarifying that “assuming” or “relinquishing” of pursuit control is prohibited by policy. (Similar to Recommendation 2.19 above regarding compliance with the Ohio Attorney General’s Special Report.)
- The model policy requires an annual analysis of pursuit activity to identify areas requiring policy change and consist of the following considerations of policy implication:
 1. Policy.
 2. Equipment.
 3. Training.
 4. Philosophical approach.
 5. Interjurisdictional issues.
 (Similar to Recommendations 2.20, 3.2, and 4.3 regarding several of the compliance standards discussed above.) Division policy does not currently require any annualized analysis or recommendations.
- The model policy requires that any vehicle involved in a vehicle pursuit incident be removed from service pending an inspection. Division policy does not include post-pursuit vehicle status provisions.
- The model policy requires initial and periodic training in policy and driving tactics. (Similar to Recommendations 2.21, 3.3 and 4.2 above.) Current Division policy does not address training requirements.

Recommendations:

Using the IACP Model Policy on Vehicle Pursuits as comparison, the following recommendations are made to improve comprehensiveness and utility of Division policy:

Recommendation 5.1 – It is recommended that the Division makes explicit in policy that any techniques utilized to end a vehicle pursuit incident are considered uses of force subject to

applicable law and legal precedent as well as being constrained to use only when reasonably necessary and when the officer has reason to believe the continued flight would place others in imminent danger of serious physical injury or death and the risk of harm outweighs the risk of harm involved in the use of the specific intervention technique, by amending current policy.

Recommendation 5.2 – It is recommended that the Division more explicitly define “trailing”, “caravanning”, and “paralleling” of a pursuit and continue with explicit authorizations or prohibitions, by amending current policy.

Recommendation 5.3 – It is recommended that the Division augment the current list of considerations to be assessed prior to initiating or continuing a pursuit to include: 1) known information on the suspect, 2) lighting and visibility conditions, 3) apparent condition and capabilities of the pursued vehicle, 4) the pursuing officers’ training and experience, 5) the availability of alternative equipment, and 6) the presence of other occupants in the pursued vehicle, by amending current policy.

Recommendation 5.4 – It is recommended that the Division include an explicit statement in policy that requires officers to utilize emergency lights, siren and video recording equipment at the time a pursuit is initiated and then continuously throughout a vehicle pursuit incident by amending current policy.

Recommendation 5.5 – It is recommended that the Division augment current information that officers are required to report over the air during a vehicle pursuit incident to include: any information concerning the use of firearms, threat of force or other unusual hazard, by amending current policy.

Recommendation 5.6 – It is recommended that the Division make an explicit statement in policy that pursuing officers must continuously update communications and supervisors over the air of all circumstances the policy requires officers to consider prior to initiating or continuing a vehicle pursuit incident, by amending current policy.

Recommendation 5.7 – It is recommended that the Division assign the specific duty of relaying information and communications during a pursuit incident to any secondary pursuit unit, by amending current policy.

Recommendation 5.8 – It is recommended that the Division specifically prohibit pursuits of motor vehicles against the flow of traffic on one-way streets or lanes of divided highways, by amending current policy.

Recommendation 5.9 – It is recommended that the Division assign the specific duty of ensuring that the appropriate radio channel is being used to the pursuit supervisor, by amending current policy.

Recommendation 5.10 – It is recommended that the Division address the use of vehicle seat belts, either in the vehicle pursuit policy, or in another policy that controls use of Division vehicles, so as to comply with Ohio Revised Code §4513.263.

Recommendation 5.11 – It is recommended that the Division augment current policy provisions dealing with alternative pursuit techniques to identify options more comprehensively and additionally make specific authorization or prohibition statements regarding these techniques, by amending current policy.

Recommendation 5.12 – It is recommended that the Division make an explicit policy statement that officers must be trained in any specific alternative intervention technique prior to being authorized to use it, by amending current policy.

Recommendation 5.13 – It is recommended that the Division make specific policy statements in the vehicle pursuit policy that prohibit discharging a firearm from a moving vehicle while referencing current use of force policy, by amending current policy.

Recommendation 5.14 – It is recommended that the Division makes specific policy statement as to how suspects are to be treated at the scene of the end of a vehicle pursuit incident: that it is to be done lawfully and with reasonably necessary force only, by amending current policy.

Recommendation 5.15 – It is recommended that the Division augment pursuit communications by making an explicit policy statement that the full list of circumstances that must be considered before initiating a pursuit must also be continuously considered and updated with a supervisor during a vehicle pursuit incident, by amending current policy.

Recommendation 5.16 – It is recommended that the Division make an explicit policy statement that assuming or relinquishing control of interjurisdictional pursuits is prohibited; that the initiating agency maintains control of the vehicle pursuit incident until such time as it is terminated, by amending current policy.

Recommendation 5.17 – It is recommended that Division policy require an annual analysis and report of vehicle pursuit incidents, including recommendations in the following areas: policy, equipment, training, philosophical approach, and interjurisdictional issues, by amending current policy.

Recommendation 5.18 – It is recommended that Division policy address the condition of involved law enforcement vehicles post-pursuit by requiring an inspection, by amending current policy.

Recommendation 5.19 – It is recommended that Division policy specifically require annualized training in vehicle pursuit policy for all sworn officers, by amending current policy. Additionally, practical training in driving tactics should be considered.

Part 6

Actual Policy Compliance Issues within the Division

Similar to Part 5 above, this section is not amenable to a point by point comparison of compliance. This section deals primarily with how current Division vehicle pursuit policy is interpreted and pragmatically operating within the Division. It is an assessment of the Division's

operational compliance with its own current policy. Compliance, or lack thereof, does not have a value judgment placed upon it. It is certainly contemplated that Division practices, over time, have evolved, or changed for the better, but that written policy may not have kept up with those operational changes. Lack of formal compliance with current written Division policy may then be more a result of failure of the policy updating process as opposed to any inadequacy in Division operations.

For purposes of this section, the OIG relied on personal observation and experience along with interviews and inquiry with Division personnel. Identified compliance issues are listed below as findings in bullet point format:

- Current policy has been officially amended or modified several times since inception without an actual update to the written policy. Failure to capture these changes within the general policy can lead to lower overall compliance rates as employees have a much more difficult time in remembering, accessing or researching the various changes. Certain of these changes have been through the Divisional Notice (DN) process and include the following:
 1. Divisional Notice 16-036 – Blue Team Use of Force Reporting. This DN completely changed the reporting process for vehicle pursuit incidents to software based reporting. This creates a conflict with a large section of the pursuit policy^{cxlii}. (Also discussed further below).
 2. Divisional Notice 16-289 – Documentation of Recorded Video in Vehicle Pursuits, issued September 22, 2016. This DN requires attachment of captured video to the software based reporting system. This is a significant modification to policy and refers to procedures in the DN listed above, also outside of policy.
 3. Divisional Notice 16-304 – Vehicular Pursuit Definition, issued October 3, 2016. This DN provides significant guidance for employees that should, by this time, have been incorporated directly into policy.
 4. Divisional Notice 17-077 – Deleted Forms – Blue Team, issued March 13, 2017. This DN abolishes the Vehicle Pursuit Form in favor of the software based reporting system. This creates a conflict with sections in the pursuit policy^{cxliii}. (Especially since that form may still be available generally to officers).
 5. Divisional Notice 18-144 – Blue Team Update: New Summary Templates, issued May 29, 2018. This DN provides clarification to usage of the software based reporting system that should be included either in the pursuit policy directly, or in the policy regarding usage of the software system.
 6. Divisional Notice 20-059 – Updates – References to Pursuit Investigation Team (PIT), issued February 19, 2020. This DN abolishes the usage of the term Pursuit Investigation Team (PIT), creating conflict within sections of current policy^{cxliiv}, and leaving certain responsibilities unfilled.
- Current policy refers to the Vehicle Pursuit Report, an attachment to policy referenced as General Police Order 3.2.02A which remains available on the Division Sharepoint®

general police order dissemination system. This is a direct conflict with DN 17-077 as indicated above.

- Section V(A) of the current pursuit policy references that permission to continue a pursuit “shall come from *the controlling supervisor*. [Emphasis in original]^{cxlv}. The policy is silent, however, as to assigning affirmative authorization to continue a pursuit as a distinct duty of the controlling supervisor. Nor does it contemplate whether initial permission is automatic unless formally denied by a controlling supervisor.
- Current policy prohibits the usage of a motorcycle to continue a vehicle pursuit^{cxlvi}. Actual practice, however, is that the Division has instituted specific and targeted tactics to enforce ATV and dirt bike related offenses that utilize trained officers and motorcycle equipment. This is a direct policy conflict.
- Current policy refers to “Sector Supervisor”^{cxlvii}, however, that terminology is not formally defined in any Division document.
- Current policy makes reference to a rescinded General Police Order (1.1.11)^{cxlviii}. In fact, this particular policy section also allows a controlling supervisor to address policy compliance with verbal counseling^{cxlix}. It has been reported, however, that with regard to vehicle pursuit incidents, verbal counseling at the District or Unit level is no longer acceptable practice.
- Current policy directs the Aviation Unit to guide ground units towards a suspect’s location when approved by the controlling supervisor^{cl}. Current practice as has been reported is that this support occurs without the controlling supervisor’s formal approval and this section may be superfluous therefore.
- Current policy makes reference to a rescinded General Police Order (2.1.01)^{cli}.
- Current policy requires initial Vehicle Pursuit Forms be faxed directly to the Division Inspection Unit^{clii}. It has been reported that this is not currently being done, especially since the inception of and widespread use of the current software based reporting system. This is a conflict.
- Similarly, current policy requires that the investigation chain of command go from the respective Deputy Chief to the Inspection Unit^{cliii}. Another conflict borne of the institution of the use of a software based reporting system.
- There is a current policy provision that allows for a controlling supervisor to operate a motor vehicle during management of a vehicle pursuit incident^{cliv}. It has been suggested that prohibiting a controlling supervisor from actively operating a motor vehicle during

active management of a pursuit incident would be safer practice for officers and citizens and would also be appropriate risk management.

- Current policy delineates specific duties for a “Scene Supervisor”^{clv}. These duties should be incorporated into the duties of all other supervisors^{clvi} where possible, or discarded as superfluous.
- Current policy makes allowances for the use of personally owned video recording devices during a vehicle pursuit incident^{clvii}. This is in direct conflict with current Division policy on Wearable Camera Systems which specifically prohibits the usage of any personal recording devices^{clviii}.
- Current policy assigns investigative authority for fatality or serious injury specifically to the Pursuit Investigation Team (PIT)^{clix}; and while the removal of references to the PIT has been dealt with by DN, as stated above, the investigative authority and responsibility duties have not likewise been adequately re-assigned to any entity.
- Current policy allows for the initiation of pursuits, subject to review of various considerations, only for violent felonies and OVIs^{clx} when the immediate danger of the pursuit is less than the immediate or potential danger to the public if the suspect remains at large^{clxi}.

Policy also requires immediate termination of a pursuit if the danger outweighs the need for immediate apprehension, citing as examples:

1. Not attempting to slow for red lights or stop signs.
2. Intentionally driving left of center and into oncoming traffic.
3. Speeds far in excess of safe limits relative to road and traffic conditions.
4. Blatant disregard for the safety of other vehicles or pedestrians.^{clxii}

Feedback from line level personnel indicates that there is a perceived policy compliance conflict in two separate ways. First, it has been reported that pursuits are not being terminated pursuant to the examples indicated in policy due to a lack of a strict reading of these policy provisions, resulting in many Division pursuits being technically in violation of policy.

Alternatively, it has been reported that the examples indicated in policy prohibit any pursuit from continuing as practically all offenders flee without slowing and by speeding and disregarding others. This leads to a perception that there is, in actuality, a no-pursuit policy as opposed to a restrictive pursuit policy.

Regardless of which interpretation is deemed correct, or acceptable by Division command staff, the perceived conflict is indicative of a need for policy or language clarification.

- Current policy defines a vehicle pursuit incident as “an active attempt by an officer in an authorized emergency vehicle” to apprehend a suspect^{clxiii}. The policy, however is silent as to what types of vehicles or in what circumstances a vehicle are considered authorized emergency vehicles.
- Current policy allows for the initiation of a pursuit for the restrictive circumstances of a violent felony or OVI subject to the balance of danger to the public if the suspect remains at large^{clxiv}. In a circumstance where an officer attempts a traffic stop for any other reason or offense, there is a perceived gap in procedure as to what the officer is supposed to do once they have activated overhead lights and sirens and the offender simply refuses to comply. This may be a language or training issue more than a policy issue. (See, for example DN 16-304 referenced above.)(See also, testimony from disciplinary hearing, May 29, 2020, based VP2020-002 and apparent confusion between “pursuit” and “attempt to make a felony stop”.)
- Current policy requires officers involved in vehicle pursuit incidents that result in death or serious injury to attend a mandated ‘block of instruction’ on the subject of vehicle pursuits^{clxv}. No rationale is provided in policy for this mandate; no connection is provided between such mandatory training and a tangible benefit to the Division or its members. Additionally, this policy section presumes that this mandated attendance may assist vehicle pursuit instructors^{clxvi} in some way, without specificity.

Appropriate debriefing and review of vehicular pursuit incidents must be part of best practice policy. That being said, this unsupported policy mandate can be perceived as disciplinary or retributory in nature and possibly hamper efforts to assist members with recovery and wellness. A blanket mandate of training, without taking into consideration the individual circumstances involved in the specific incident, may be superfluous. Involved officers may have performed exactly as trained and in full accordance with policy.

An appropriate annualized review of incident data, as noted and recommended in above sections would serve to provide instructional staff with sufficient information to modify and improve vehicle pursuit related training and information.

Completed investigations of vehicle pursuit incidents should identify positive performance as well as issues with policy violation or lack of training and appropriate recommendations should be made on that individual basis. Further, officers involved in vehicle pursuit incidents involving death or serious injury have the support of the Division through Post Traumatic Incident Protocols^{clxvii}, Employee Assistance and Support^{clxviii} policies, etc. which should be referenced in pursuit policy sections.

Recommendations:

After soliciting input from Division staff members and personal review of operations by the OIG, the following recommendations are made to improve comprehensiveness and utility of Division policy:

Recommendation 6.1 – It is recommended that the Division update current Vehicle Pursuit policy by incorporating the content of all successive and applicable Divisional Notices, by amending current policy. (Specifically, at minimum, DN numbers 16-036, 16-289, 16-304, 17-077, 18-144 and 20-059).

Recommendation 6.2 – It is recommended that the Division abolish all reference to the Vehicle Pursuit Form and the form itself (3. 2.02A) and incorporate the usage of current software based reporting in its place, by amending current policy.

Recommendation 6.3 – It is recommended that the Division clarify pursuit policy language regarding permission for pursuits so as to affirmatively place this duty / responsibility on the controlling supervisor, by amending current policy. Alternatively, policy language could indicate that pursuit approval is permissive until and unless terminated by the controlling supervisor or other command officer.

Recommendation 6.4 – It is recommended that the Division incorporate permission or authority to use motorcycles and trained officers as designated directly by the Chief of Police for narrowly defined, specific anti ATV and dirt bike enforcement tactics, by amending current policy.

Recommendation 6.5 – It is recommended that the Division clarify policy language by providing a more specific definition and procedure for identifying the controlling supervisor in a vehicle pursuit and ensuring that that position is filled during the incident outside the term ‘sector supervisor’ which may not be consistently utilized throughout the Division, by amending current policy.

Recommendation 6.6 – It is recommended that the Division remove or correct reference to rescinded General Police Order 1.1.11, by amending current policy.

Recommendation 6.7 – It is recommended that the Division update policy wording to remove the authority of supervisory staff to use verbal counseling prior to formal discipline as per current informal policy, by amending current policy and/or by reference to current disciplinary policies.

Recommendation 6.8 – It is recommended that the Division clarify or remove policy language that requires the Aviation Unit to get formal approval from a controlling supervisor prior to directing ground units to the location of a suspect, by amending current policy.

Recommendation 6.9 – It is recommended that the Division remove or correct reference to rescinded General Police Order 2.1.01, by amending current policy.

Recommendation 6.10 – It is recommended that the Division update policy sections that require faxing of discontinued Vehicle Pursuit Forms to the Inspection Unit so as to more accurately reflect the current chain of command, method of notification and use of software based reporting, by amending current policy.

Recommendation 6.11 – It is recommended that the Division update policy sections which require investigations be forwarded from the respective Deputy Chief to the Inspection Unit so as to more accurately reflect the currently used processes and use of software based reporting, by amending current policy.

Recommendation 6.12 – It is recommended that the Division policy be amended so as to prohibit a controlling supervisor from actively operating a motor vehicle while simultaneously managing a vehicle pursuit incident so as to increase the safety of the supervisor and others and reduce affiliated risk, by amending current policy.

Recommendation 6.13 – It is recommended that the Division make policy language more concise by both incorporating the responsibilities of ‘scene supervisor’ into the those of all other supervisors in policy and by removing superfluous or duplicative language, by amending current policy.

Recommendation 6.14 – It is recommended that the Division update any and all references to audio and video recording of a pursuit incident so as not to conflict with current Wearable Camera System policy that prohibits the usage of personally owned recording devices of any kind, by amending current policy.

Recommendation 6.15 – It is recommended that the Division update policy provisions by re-assigning the duties and responsibilities previously assigned to the Pursuit Investigation Team (PIT) to some other position or entity, by amending current policy. Current responsibility to respond to and have investigative authority over any scene involving a fatality or hospital confining injury remains unassigned. [Note: Re-establishment of a PIT may serve the same end result].

Recommendation 6.16 – It is recommended that the Division clarify current language requiring officers to terminate a pursuit in certain situations with specific examples as the examples may have led to misinterpretation or misapplication of the policy by line officers and first line supervisory staff, by amending current policy.

Recommendation 6.17 – It is recommended that the Division provide definitional guidance as to what type of vehicle or under what circumstances a vehicle is defined as an authorized emergency vehicle, by amending current policy.

Recommendation 6.18 – It is recommended that the Division provide additional guidance to officers as to what actions are authorized or prohibited in a situation where an officer activates overhead lights and siren in an attempt to effect a traffic stop for reasons other than those which authorize a pursuit and the offender simply fails to comply, by amending current policy language. This may be additionally addressed through annualized training.

Recommendation 6.19 – It is recommended that the Division consider redrafting Section XVI of current policy so as to not mandate training as a result of all pursuits resulting in death or serious injury and to address each such matter on a case by case basis including reference to Division policies supporting post traumatic incidents and officer wellness, by amending current policy.

Part 7

The Settlement Agreement with the Department of Justice

It seems fitting to provide a final section that reviews Division compliance with the aforementioned Settlement Agreement^{clxix} in any provisions specific to requirements affiliated with vehicle pursuit policy content.

The Agreement specifically requires the Division to comply with the following provisions:

“CDP will continue to limit vehicle pursuits to those in which the need to capture the suspect outweighs the danger to the public. CDP will continue to limit the number of CDP vehicles that may be involved in a vehicle pursuit^{clxx}”.

As discussed in several sections above, these minimum requirements are being met and are codified in current policy^{clxxi}.

Finding: Current Division vehicle pursuit policy is in full compliance with requirements as set out in the Settlement Agreement with the Department of Justice. Although, since these are perpetual recommendations, the Division should take some action to ensure that they are maintained in policy regardless of updating procedures for the duration of the Agreement.

Recommendations:

Recommendation 7.1 – It is recommended that the Division memorialize the provisions in current policy that address the Agreement requirement to limit vehicle pursuits to those in which the need to capture the suspect outweighs the danger to the public and the requirement to limit the number of CDP vehicles involved in a vehicle pursuit in such a way as to prevent inadvertent future modification or deletion, by amending current policy, perhaps through annotation.

SECTION D – HIDDEN DATA ISSUES

During the preparation of this memorandum, and while researching current vehicle pursuit policy issues, especially those in other agencies under the review of the Department of Justice, the OIG came across a position paper written by the principal policy writer for the New Orleans Police Department while under Federal Consent Decree^{clxxii}. The paper generally describes the transition, over time, of law enforcement vehicle pursuit policies and liability exposures, from the no holds barred 1970’s through to evidence based and supported restrictive policies that started in the 1990’s.

The paper discusses an unintended consequence of more restrictive vehicle pursuit policies, that being a lack of reporting of pursuit incidents, especially when there was no collision or other necessary affiliated reporting requirement^{clxxiii}. A practice of pursuing fleeing vehicles without reporting has become difficult to identify and correct.

The Division’s current vehicle pursuit policy, as dissected and described in sections above, is arguably a more restrictive policy due to its prohibition on pursuits for any reason other than a violent felony or OVI. With that in mind, it is absolutely appropriate for the Division to have an awareness of this possible hidden data regarding pursuits that may occur, especially now that studies have repeatedly shown that the consequences of police pursuits can have such a high personal and societal cost. The New Orleans Police Department created a process for accessing that type of hidden data and identified 24 incidents of non-reported pursuits in 2018, which were subsequently forwarded for correction and discipline: by 2019, that number had dropped to zero^{clxxiv}. It seems apparent that creating a system through which an agency can identify unreported pursuits and follow up on that data can have a significant effect on overall pursuit activity, policy compliance and risk exposure.

The methodology utilized by the New Orleans Police began with auditing computer aided dispatch records to identify self-initiated traffic stops by proactive specialty units that resolved with no enforcement disposition after a set time^{clxxv}. Whether that type of methodology is transferrable remains to be seen; and, there are other places to begin an investigation such as automatic vehicle locator (AVL) records. The importance of this discussion is a recognition that the Division, in order to identify this type of hidden pursuit data, should create and implement a program of accountability for these *de facto* pursuits based on the systems and data currently available.

This may be appropriately a part of an annualized data review, assessment and reporting similar to Recommendations 2.20, 3.2, 4.3, and 5.17 above and in summary below.

Recommendations:

Recommendation 8.1 – It is recommended that the Division research and create a program of identifying data from non-reported pursuit incidents and creating an accountability system in order to improve pursuit activities, strengthen policy compliance, and reduce liability exposure. It may be appropriate that this system is codified outside the written vehicle pursuit policy, but must be part of an annualized data review and assessment regarding pursuits.

SECTION F – CONCLUSION


Law enforcement activity, by its very nature, carries risk: risk to law enforcement personnel, risk to law enforcement agencies and risk to the public being served. Of the many types of law enforcement activity where the consequences of that risk can be catastrophic, there are very few with as much liability exposure as police motor vehicle pursuit incidents.

With a recent re-kindling of public scrutiny of the Cleveland Division of Police vehicle pursuit policy, the CDP Office of the Inspector General has undertaken a thorough review of the

current policy. That review includes assessments of compliance with best practices and model policies from recognized authorities as well as examination of internal compliance and conflict identification. An extensive listing of recommendations has been identified and presented for the sole purpose of assisting the Division in any future modification and/or updating of policy. The OIG does recommend that that process commence as soon as practicable as Division policy does have numerous opportunities for improvement in future policy development specifically in this area.

The OIG pledges to make itself available to assist with any policy creation and development needs of the Division.

Respectfully submitted,



Christopher Paul Viland, Esq., CIG®
City of Cleveland, Division of Police, Inspector General #3700
Work Product #20014-R

cc: *via email only:* Deputy Chief J. O'Neill
Hon. Gregory White

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SECTION F – SUMMARY OF RECOMMENDATIONS

The Ohio Revised Code

While current Division policy is in compliance with motor vehicle pursuit policy statute, the following recommendation is made to clarify additional statutory operational requirements and reduce liability exposure.

Recommendation 1.1 – It is recommended that the provisions of Ohio Revised Code §4511.041 exempting officers from traffic code provisions if on an emergency call and operating both emergency lights and siren be explicitly identified in a policy statement requiring use of lights and siren during all pursuit incidents by amending current policy.

The Ohio Attorney General’s Advisory Group on Law Enforcement Vehicle Pursuits – 2016

The following list of recommendations is provided to the Division in order to come fully into compliance with the Attorney General’s recommended vehicle pursuit policy considerations:

Recommendation 2.1 – It is recommended that any substantive content of Divisional Notice 16-304 Vehicular Pursuit Definition modifying or amending policy be incorporated directly into the Division Vehicle Pursuit policy by amending current policy.

Recommendation 2.2 – It is recommended that the Division comply with the recommendation of the Attorney General to include lighting and visibility as a factor to be considered in initiating or continuing a vehicular pursuit by amending current policy.

Recommendation 2.3 – It is recommended that the Division comply with the recommendation of the Attorney General to include the performance and type of suspect vehicle as factors to be considered in initiating or continuing a vehicular pursuit by amending current policy. It is further recommended that whether a suspect vehicle is a motorcycle or other non-automobile vehicle be a part of that consideration in policy.

Recommendation 2.4 – It is recommended that the Division comply with the recommendation of the Attorney General to include additional passengers in a suspect vehicle as a factor to be considered in initiating or continuing a pursuit by amending current policy.

Recommendation 2.5 – It is recommended that the Division comply with the recommendation of the Attorney General to include pursuits against the flow of traffic as a factor to be considered in initiating or continuing a pursuit by amending current policy. It is further recommended that pursuits against the flow of traffic on a one-way street or divided highway be prohibited as prima facie too unsafe to continue.

Recommendation 2.6 – It is recommended that any substantive content of Divisional Notice 16-289 Documentation of Recorded Video in Vehicle Pursuits which modifies or

amends policy be incorporated directly into the Division Vehicle Pursuit policy by amending current policy.

Recommendation 2.7 – It is recommended that the provisions of Ohio Revised Code §4511.041 exempting officers from traffic code provisions if on an emergency call and operating both emergency lights and siren be explicitly identified in a policy statement requiring use of lights and siren during all pursuit incidents by amending current policy.

Recommendation 2.8 – It is recommended that the Division comply with the recommendations of the Attorney General to include specific language regarding law enforcement vehicles “following” or “trailing” a vehicle pursuit and a requirement that all Ohio traffic laws and regulations be followed by amending current policy.

Recommendation 2.9 – It is recommended that the Division comply with the recommendation of the Attorney General to include specific language indicating which unit is directly responsible for initiating and maintaining radio contact with the Communications Control Section by amending current policy.

Recommendation 2.10 – It is recommended that the Division comply with the recommendation of the Attorney General to include specific language indicating that officers responsible for initiating a vehicle pursuit provide information via radio broadcast including whether fleeing suspect(s) are armed and/or dangerous along with initial and continuously updated traffic conditions by amending current policy.

Recommendation 2.11 – It is recommended that the Division comply with the recommendation of the Attorney General to include specific language that officers engaged in a vehicle pursuit incident continuously update information via radio broadcast to allow supervisory assessment by amending current policy.

Recommendation 2.12 – It is recommended that the Division comply with the recommendation of the Attorney General to include specific language authorizing the Communications Control Section to notify a supervisor in the event that a controlling supervisor not self-identify during a vehicle pursuit incident, or, in the alternative a method by which the Communications Control Section can ensure that a controlling supervisor has been identified, by amending current policy.

Recommendation 2.13 – It is recommended that the Division comply with the recommendation of the Attorney General to include specific language in policy identifying the relaying of information from and between supervisor(s) and pursuing officer(s) as a duty of the Communications Control Section and methods by which to accomplish this duty, by amending current policy.

Recommendation 2.14 – It is recommended that the Division comply with the recommendation of the Attorney General to include specific language that mandates that officers and supervisors involved in vehicle pursuit incidents consistently reassess all factors involved in the pursuit to include speed, time, traffic, road, and lighting

conditions; and reevaluate the risks to safety when determining to continue the pursuit, by amending current policy. Additionally, the Division should consider requiring the reassessment of all factors delineated in the third recommendation of the Advisory Board, as vehicle pursuit incidents are rapidly and consistently evolving and the risks are fluid moment to moment.

Recommendation 2.15 – It is recommended that the Division comply with the recommendation of the Attorney General to include language that encompasses the authorization or prohibition of all types of alternative pursuit intervention techniques and that any approved techniques be required to be done safely, by amending current policy. [E.g. language may state “any alternative intervention technique not addressed in this policy is expressly prohibited.”]

Recommendation 2.16 – It is recommended that the Division comply with the recommendation of the Attorney General to include language that requires that absent exigent circumstances, prior to usage, officers involved must have been trained in the alternative intervention technique to be used by amending current policy. Additionally, language should be included requiring supervisors to have been trained in policy requirements prior to authorizing use of alternative intervention techniques, also by amending current policy.

Recommendation 2.17 – It is recommended that the Division comply with the recommendation of the Attorney General to include language in the vehicle pursuit policy that adequately identifies the constitutional and use of force considerations, authorizations and prohibitions of the use of firearms, roadblocks, and other alternative intervention techniques by amending current policy. Alternatively, it is recommended that references to such appropriate governing policy be added to current policy by amendment.

Recommendation 2.18 – It is recommended that the Division update and correct the reference to GPO 2.1.01 on page 14 of current policy.

Recommendation 2.19 – It is recommended that the Division amend current policy by adding language that specifically authorizes or prohibits the “taking over” of another agency’s pursuit incident and similarly authorizes or prohibits having another agency “take over” a Division initiated pursuit. Such language should clearly differentiate between assisting and “taking over”.

Recommendation 2.20 – It is recommended that the Division comply with the recommendation of the Attorney General by including language and policy creating a duty to collect and analyze data from vehicle pursuit incidents on a regular or annual basis and make recommendations as necessary regarding training and/or policy improvements.

Recommendation 2.21 – It is recommended that the Division comply with the recommendation of the Attorney General by including language, policy and procedures requiring continuing, periodic training on pursuit policy, practices and safe driving techniques, by amending current policy.

Standards for Pursuits of Motor Vehicles as Presented by the Commission on Accreditation of Law Enforcement Agencies (CALEA®)

The following list of recommendations is provided to the Division in order to come fully into compliance with the standards for vehicle pursuit recommended by CALEA®:

Recommendation 3.1 – It is recommended that the Division comply with CALEA® standard 41.2.2 d by including language and policy identifying specific duties for any unit designated as a secondary unit in a vehicle pursuit incident, by amending current policy.

Recommendation 3.2 – It is recommended that the Division comply with CALEA® standard 41.2.2 l by including language and policy requiring an annualized analysis of pursuit related activity and data including policy and reporting procedures as approved by the Chief of Police, by amending current policy.

Recommendation 3.3 – It is recommended that the Division comply with proposed CALEA® standard 41.2.2 n by including policy guidance which requires that all sworn members of the Division are given a documented annual review of pursuit related policy, by amending current policy.

Standards for Law Enforcement Vehicular Pursuit as Proposed by the Ohio Collaborative Community-Police Advisory Board

The following list of recommendations is provided to the Division in order to come fully into compliance with the standards for vehicle pursuit recommended by the Ohio Collaborative:

Recommendation 4.1 – It is recommended that the Division comply with the law enforcement vehicle pursuit standard as proposed by the Ohio Community-Police Collaborative Advisory Board by including language and policy identifying specific duties for any unit designated as a secondary unit in a vehicle pursuit incident, by amending current policy.

Recommendation 4.2 – It is recommended that the Division comply with the law enforcement vehicle pursuit standard as proposed by the Ohio Community-Police Collaborative Advisory Board by requiring formal training on any authorized alternative intervention techniques for all officers prior to utilization, by amending current policy.

Recommendation 4.3 – It is recommended that the Division comply with the law enforcement vehicle pursuit standard as proposed by the Ohio Community-Police Collaborative Advisory Board by including language and policy requiring an annualized analysis of pursuit related activity and data including policy and reporting procedures as approved by the Chief of Police, by amending current policy.

International Association of Chiefs of Police – Model Policy – Vehicle Pursuits, December 2015

The following list of recommendations is provided to the Division in order to match best practices exemplified in the Vehicle Pursuits Model Policy created and published by the IACP:

Recommendation 5.1 – It is recommended that the Division makes explicit in policy that any techniques utilized to end a vehicle pursuit incident are considered uses of force subject to applicable law and legal precedent as well as being constrained to use only when reasonably necessary and when the officer has reason to believe the continued flight would place others in imminent danger of serious physical injury or death and the risk of harm outweighs the risk of harm involved in the use of the specific intervention technique, by amending current policy.

Recommendation 5.2 – It is recommended that the Division more explicitly define “trailing”, “caravanning”, and “paralleling” of a pursuit and continue with explicit authorizations or prohibitions, by amending current policy.

Recommendation 5.3 – It is recommended that the Division augment the current list of considerations to be assessed prior to initiating or continuing a pursuit to include: 1) known information on the suspect, 2) lighting and visibility conditions, 3) apparent condition and capabilities of the pursued vehicle, 4) the pursuing officers’ training and experience, 5) the availability of alternative equipment, and 6) the presence of other occupants in the pursued vehicle, by amending current policy.

Recommendation 5.4 – It is recommended that the Division include an explicit statement in policy that requires officers to utilize emergency lights, siren and video recording equipment at the time a pursuit is initiated and then continuously throughout a vehicle pursuit incident by amending current policy.

Recommendation 5.5 – It is recommended that the Division augment current information that officers are required to report over the air during a vehicle pursuit incident to include: any information concerning the use of firearms, threat of force or other unusual hazard, by amending current policy.

Recommendation 5.6 – It is recommended that the Division make an explicit statement in policy that pursuing officers must continuously update communications and supervisors over the air of all circumstances the policy requires officers to consider prior to initiating or continuing a vehicle pursuit incident, by amending current policy.

Recommendation 5.7 – It is recommended that the Division assign the specific duty of relaying information and communications during a pursuit incident to any secondary pursuit unit, by amending current policy.

Recommendation 5.8 – It is recommended that the Division specifically prohibit pursuits of motor vehicles against the flow of traffic on one-way streets or lanes of divided highways, by amending current policy.

Recommendation 5.9 – It is recommended that the Division assign the specific duty of ensuring that the appropriate radio channel is being used to the pursuit supervisor, by amending current policy.

Recommendation 5.10 – It is recommended that the Division address the use of vehicle seat belts, either in the vehicle pursuit policy, or in another policy that controls use of Division vehicles, so as to comply with Ohio Revised Code §4513.263.

Recommendation 5.11 – It is recommended that the Division augment current policy provisions dealing with alternative pursuit techniques to identify options more comprehensively and additionally make specific authorization or prohibition statements regarding these techniques, by amending current policy.

Recommendation 5.12 – It is recommended that the Division make an explicit policy statement that officers to be trained in any specific alternative intervention technique prior to being authorized to use it, by amending current policy.

Recommendation 5.13 – It is recommended that the Division make specific policy statements in the vehicle pursuit policy that prohibit discharging a firearm from a moving vehicle while referencing current use of force policy, by amending current policy.

Recommendation 5.14 – It is recommended that the Division makes specific policy statement as to how suspects are to be treated at the scene of the end of a vehicle pursuit incident: That it is to be done lawfully and with reasonably necessary force only, by amending current policy.

Recommendation 5.15 – It is recommended that the Division augment pursuit communications by making an explicit policy statement that the full list of circumstances that must be considered before initiating a pursuit must also be continuously considered and updated with a supervisor during a vehicle pursuit incident, by amending current policy.

Recommendation 5.16 – It is recommended that the Division make an explicit policy statement that assuming or relinquishing control of interjurisdictional pursuits is prohibited; that the initiating agency maintains control of the vehicle pursuit incident until such time as it is terminated, by amending current policy.

Recommendation 5.17 – It is recommended that Division policy require an annual analysis and report of vehicle pursuit incidents, including recommendations in the

following areas: policy, equipment, training, philosophical approach, and interjurisdictional issues, by amending current policy.

Recommendation 5.18 – It is recommended that Division policy address the condition of involved law enforcement vehicles post-pursuit by requiring an inspection, by amending current policy.

Recommendation 5.19 – It is recommended that Division policy specifically require annualized training in vehicle pursuit policy for all sworn officers, by amending current policy. Additionally, practical training in driving tactics should be considered.

Actual Policy Compliance Issues within the Division

The following list of recommendations is provided to the Division in order to de-conflict and improve current vehicle pursuit policy based on suggestions from staff and observations by the OIG:

Recommendation 6.1 – It is recommended that the Division update current Vehicle Pursuit policy by incorporating the content of all successive and applicable Divisional Notices, by amending current policy. (Specifically, at minimum, DN numbers 16-036, 16-289, 16-304, 17-077, 18-144 and 20-059).

Recommendation 6.2 – It is recommended that the Division abolish all reference to the Vehicle Pursuit Form and the form itself (3. 2.02A) and incorporate the usage of current software based reporting in its place, by amending current policy.

Recommendation 6.3 – It is recommended that the Division clarify pursuit policy language regarding permission for pursuits so as to affirmatively place this duty / responsibility on the controlling supervisor, by amending current policy. Alternatively, policy language could indicate that pursuit approval is permissive until and unless terminated by the controlling supervisor or other command officer.

Recommendation 6.4 – It is recommended that the Division incorporate permission or authority to use motorcycles and trained officers as designated directly by the Chief of Police for narrowly defined, specific anti ATV and dirt bike enforcement tactics, by amending current policy.

Recommendation 6.5 – It is recommended that the Division clarify policy language by providing a more specific definition and procedure for identifying the controlling supervisor in a vehicle pursuit and ensuring that that position is filled during the incident outside the term 'sector supervisor' which may not be consistently utilized throughout the Division, by amending current policy.

Recommendation 6.6 – It is recommended that the Division remove or correct reference to rescinded General Police Order 1.1.11, by amending current policy.

Recommendation 6.7 – It is recommended that the Division update policy wording to remove the authority of supervisory staff to use verbal counseling prior to formal discipline as per current informal policy, by amending current policy and/or by reference to current disciplinary policies.

Recommendation 6.8 – It is recommended that the Division clarify or remove policy language that requires the Aviation Unit to get formal approval from a controlling supervisor prior to directing ground units to the location of a suspect, by amending current policy.

Recommendation 6.9 – It is recommended that the Division remove or correct reference to rescinded General Police Order 2.1.01, by amending current policy.

Recommendation 6.10 – It is recommended that the Division update policy sections that require faxing of discontinued Vehicle Pursuit Forms to the Inspection Unit so as to more accurately reflect the current chain of command, method of notification and use of software based reporting, by amending current policy.

Recommendation 6.11 – It is recommended that the Division update policy sections which require investigations be forwarded from the respective Deputy Chief to the Inspection Unit so as to more accurately reflect the currently used processes and use of software based reporting, by amending current policy.

Recommendation 6.12 – It is recommended that the Division policy be amended so as to prohibit a controlling supervisor from actively operating a motor vehicle while simultaneously managing a vehicle pursuit incident so as to increase the safety of the supervisor and others and reduce affiliated risk, by amending current policy.

Recommendation 6.13 – It is recommended that the Division make policy language more concise by both incorporating the responsibilities of ‘scene supervisor’ into the those of all other supervisors in policy and by removing superfluous or duplicative language, by amending current policy.

Recommendation 6.14 – It is recommended that the Division update any and all references to audio and video recording of a pursuit incident so as not to conflict with current Wearable Camera System policy that prohibits the usage of personally owned recording devices of any kind, by amending current policy.

Recommendation 6.15 – It is recommended that the Division update policy provisions by re-assigning the duties and responsibilities previously assigned to the Pursuit Investigation Team (PIT) to some other position or entity, by amending current policy. Current responsibility to respond to and have investigative authority over any scene involving a fatality or hospital confining injury remains unassigned. [Note: Re-establishment of a PIT may serve the same end result].

Recommendation 6.16 – It is recommended that the Division clarify current language requiring officers to terminate a pursuit in certain situations with specific examples as

the examples may have led to misinterpretation or misapplication of the policy by line officers and first line supervisory staff, by amending current policy.

Recommendation 6.17 – It is recommended that the Division provide definitional guidance as to what type of vehicle or under what circumstances a vehicle is defined as an authorized emergency vehicle, by amending current policy.

Recommendation 6.18 – It is recommended that the Division provide additional guidance to officers as to what actions are authorized or prohibited in a situation where an officer activates overhead lights and siren in an attempt to effect a traffic stop for reasons other than those which authorize a pursuit and the offender simply fails to comply, by amending current policy language. This may be additionally supported through annualized training.

Recommendation 6.19 – It is recommended that the Division consider redrafting Section XVI of current policy so as to not mandate training as a result of all pursuits resulting in death or serious injury and to address each such matter on a case by case basis including reference to Division policies supporting post traumatic incidents and officer wellness, by amending current policy.

The Settlement Agreement with the Department of Justice

The following recommendation is provided to assist the Division in maintaining current and continuing future compliance with the Settlement Agreement with the Department of Justice:

Recommendation 7.1 – It is recommended that the Division memorialize the provisions in current policy that address the requirement to limit vehicle pursuits to those in which the need to capture the suspect outweighs the danger to the public and the requirement to limit the number of CDP vehicles involved in a vehicle pursuit in a way to prevent inadvertent future modification or deletion, by amending current policy, perhaps through annotation.

Hidden Data Issues

The following recommendation is provided as a result of an issue identified in research regarding identification of non-reported pursuit data in the City of New Orleans:

Recommendations:

Recommendation 8.1 – It is recommended that the Division research and create a program of identifying data from non-reported pursuit incidents and creating an accountability system in order to improve pursuit activities, strengthen policy compliance, and reduce liability exposure. It may be appropriate that this system is

codified outside the written vehicle pursuit policy, but must be part of an annualized data review and assessment regarding pursuits.

ⁱ See, e.g., Lum, Cynthia, and Fachner, George, Policy Pursuits in an Age of Innovation and Reform, International Association of Chiefs of Police, Alexandria, VA, September 2008.

ⁱⁱ *Id.*

ⁱⁱⁱ See, e.g., https://en.wikipedia.org/wiki/Shooting_of_Timothy_Russell_and_Malissa_Williams.

^{iv} See, e.g., Press Release, Community Police Commission Statement on Tragic Loss of Tamia Chappman and CDP Officer, Cleveland Community Police Commission, December 27, 2019. See also, “Family of teen girl killed during Cleveland police chase files lawsuit”, cleveland.com, posted date May 28, 2020, <https://www.cleveland.com/court-justice/2020/05/family-of-teen-girl-killed-during-cleveland-police-chase-files-lawsuit.html>.

^v Cleveland Community Police Commission website: <https://www.surveymonkey.com/r/cpc-feedback-pursuits>, as viewed April 2, 2020.

^{vi} *Id.*

^{vii} *United States of America v. City of Cleveland*, United States District Court, Northern District of Ohio, Eastern Division, 1:15 CV 01046, Settlement Agreement, June 12, 2015.

^{viii} *Id.* at ¶253(a).

^{ix} Aronie, Jonathan and Alpert, Geoff, 16 to a Dealer’s 10: Could Blackjack Odds Help Inform Police Pursuit Policies? PoliceOne.com, March 2, 2020.

^x *Id.*

^{xi} See, e.g.: City of Cleveland, General Police Order 3.2.02, *infra* note xix at pg. 3 and pg. 14 (Section XIV(C)); See also, Aronie, J. and Alpert, G. *supra* note ix.

^{xii} See: Ohio Attorney General, *infra* note xvii, at pg. 8 & Recommendation 2.20 *supra*; Ohio Attorney General, *infra* note xvii, at pg. 8 & Recommendation 2.21 *supra*; CALEA® standards, *infra* note cv & Recommendation 3.2 *supra*; CALEA® standards, *infra* note cv & Recommendation 3.3 *supra*; Ohio Collaborative standard, *infra* note cxxii & Recommendation 4.3 *supra*; IACP Model Policy, *infra* note lxxx & Recommendation 5.17 *supra*; IACP Model Policy, *infra* note lxxx & Recommendation 5.19 *supra*.

^{xiii} Association of Inspectors General, Principals and Standards for Offices of Inspector General, Philadelphia, PA, May, 2014.

^{xiv} City of Cleveland, Department of Public Safety, The Manual of Rules for the Conduct and Discipline of Employees of the Cleveland Division of Police 2012, Rev. Oct. 2012, at Rule 2.04 and 2.05.

^{xv} Information from teleconference with Division Training Section Supervisor, Lt. Shawn Smith, interview date 3/25/2020.

^{xvi} Ohio Revised Code §4511.041, as amended April 20, 2012, with edits and emphasis added.

^{xvii} Ohio Attorney General’s Advisory Group on Law Enforcement Vehicular Pursuits, Special Report 2016, November 2016, at pg. 1.

^{xviii} *Id.* at pg. 4.

^{xix} City of Cleveland, Division of Police, General Police Order 3.2.02 Vehicle Pursuits, May 22, 2015.

^{xx} *Id.* at pgs. 3-15.

^{xxi} *Id.* at pg.1.

^{xxii} *Id.*

^{xxiii} *Id.*

^{xxiv} *Id.* at pg. 4.

^{xxv} *Id.* at pg. 5.

^{xxvi} Ohio Attorney General, *supra* note xvii, at pg. 4.

^{xxvii} General Police Order 3.2.02, *supra* note xix, at pg. 3.

^{xxviii} City of Cleveland, Division of Police, Divisional Notice 16-304 Vehicular Pursuit Definition, October 3, 2016.

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- xxix Ohio Attorney General, *supra* note xvii, at pg. 4.
- xxx General Police Order 3.2.02, *supra* note xix, at pg. 3.
- xxxi *Id.*
- xxxii Ohio Attorney General, *supra* note xvii, at pgs. 4-5.
- xxxiii General Police Order 3.2.02, *supra* note xix, Section V(E)(1) at pg. 5.
- xxxiv *Id.* Section V(E)(4) at pg. 5.
- xxxv *Id.* Section III at pg. 4.
- xxxvi *Id.* Section VI(E) at pg. 6.
- xxxvii *Id.* Section VII(H)(2)(b) at pg. 7.
- xxxviii *Id.*
- xxxix *Id.* Section VI(B) at pg.6.
- xl *Id.* Section VII(H)(2)(c) at pg.8.
- xli *Id.* Section V(E)(1) at pg. 5.
- xlii Ohio Attorney General, *supra* note xvii, at pg. 5.
- xliii Ohio Revised Code §4513.21(A).
- xliv General Police Order 3.2.02, *supra* note xix, at pg. 1.
- xlvi *Id.*
- xlvi *Id.* Section XI at pg. 12-13.
- xlvi *Id.* City of Cleveland, Division of Police, Divisional Notice 16-289 Documentation of Recorded Video in Vehicle Pursuits, September 22, 2016.
- xlvi *Id.* Ohio Attorney General, *supra* note xvii, at pg. 5-6.
- xlvi *Id.* General Police Order 3.2.02, *supra* note xix, at pg. 1.
- l *Id.* Section VI(G), at pg. 6.
- li *Id.* Section XII, at pg. 13-14.
- lii *Id.* Section VI(F), at pg. 6.
- liii *Id.* Section VI(E), at pg. 6.
- liv Ohio Attorney General, *supra* note xvii, at pg.6.
- lv General Police Order 3.2.02, *supra* note xix, at pg. 2.
- lvii *Id.* at Section VII(A-O), at pg. 7-9.
- lvii *Id.* at Sections VII(D)&(E), e.g., at pg. 7.
- lviii *Id.* at Section VII(H)(7), at pg. 8.
- lix *Id.* at Section VIII(B), at pg. 10, “[scene supervisor will] take control of the scene until the controlling supervisor arrives on scene.”
- lx *Id.* at Section X(B)(5), at pg. 11.
- lxi *Id.* at pg. 2.
- lxii *Id.* at Section VII(I), at pg. 8.
- lxiii *Id.* at Section X(D), at pg. 12.
- lxiv *Id.* at Section V(E)(2), at pg. 5.
- lxv Ohio Attorney General, *supra* note xvii, at pg. 6.
- lxvi General Police Order 3.2.02, *supra* note xix, at Section V(A&B), at pg. 4.
- lxvii *Id.* at Section V(A), at pg. 4.
- lxviii *See, e.g., Id.* at Section VII(H), at pg. 7.
- lxix Ohio Attorney General, *supra* note xvii, at pg. 6-7.
- lxx General Police Order 3.2.02, *supra* note xix, at Section V(C), at pg. 4.
- lxxi *Id.* at Section V(G), at pg. 5.
- lxxii *Id.* at Section X(B)(1), at pg. 10-11.
- lxxiii *Id.* at Section X(C)(1), at pg. 11.
- lxxiv *Id.* at Section VII(A), at pg. 7.
- lxxv *See, e.g., Id.* at Section (VII)(H), at pg.7.
- lxxvi *Id.* at Section X(B)(4&5), at pg. 11.
- lxxvii Ohio Attorney General, *supra* note xvii, at pg. 7.
- lxxviii General Police Order 3.2.02, *supra* note xix, at pg. 3.
- lxxix *See, e.g.,* Cuyahoga County Police Chiefs Association, Draft - 2015-2016 County-wide Interjurisdictional Pursuit Protocol, unpublished document (copy in possession of author).
- lxxx International Association of Chiefs of Police, Inc., IACP Law Enforcement Policy Center Vehicular Pursuit Model Policy, Alexandria, VA, December, 2015.

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- lxxxvi General Police Order 3.2.02, *supra* note xix, at Section XIII(B), at pg. 14.
- lxxxvii *Id.* at Section VII(H)(5), at pg. 8.
- lxxxviii *Id.* at Section XIII(A), at pg. 14.
- lxxxix *Id.* at Section III, at pg. 4.
- lxxxv *Ohio Attorney General, supra* note xvii, at pg. 7.
- lxxxvi General Police Order 3.2.02, *supra* note xix, at Section XIII, at pg. 14.
- lxxxvii *Id.* at Section XIII(A)(2), at pg. 14: *Id.* at Section VI(D), at pg. 6.
- lxxxviii *Id.* at Section XIII(B), at pg. 14.
- lxxxix *Ohio Attorney General, supra* note xvii, at pg.7-8.
- xc General Police Order 3.2.02, *supra* note xix, at Section X(B)(5), at pg. 11: *See also, Id.* at Section XIV(A), at pg. 14.
- xc *Id.* at Section XIV(E), at pg. 15.
- xcii *Id.* at Sections XIV(C&D), at pg. 14.
- xciii *See, e.g.,* Cuy. Co. Police Chiefs Assoc. Draft, *supra* note lxxxix.
- xciv *See, e.g., Id.* at Section XIV, at pg. 14-15.
- xcv *Id.* at Section XIV(C), at pg. 14.
- xcvi *Ohio Attorney General, supra* note xvii, at pg. 8.
- xcvii General Police Order 3.2.02, *supra* note xix, at Section XV(A), at pg. 15.
- xcviii *Id.* at Section XI(B&C), at pg. 12-13.
- xcix *Id.* at Section VII(K), at pg. 9.
- c *Id.* at Section XV(C)(2&3), at pg. 16.
- ci *Id.* at Section XV(C)(4)(b), at pg. 17.
- cii *Ohio Attorney General, supra* note xvii, at pg. 8.
- ciii *See* note xv, *supra*.
- civ *E.g.,* Commission on Accreditation for Law Enforcement Agencies, Inc., Standards for Law Enforcement Agencies, 5th Edition, Gainesville, VA, February 2009.
- cv <https://www.calea.org/forum/topic/proposed-revision-law-enforcement-standard-4122-relating-pursuits>.
- cvi General Police Order 3.2.02, *supra* note xvii.
- cvi *Id.* at Section III, at pg. 4: *See also, Id.* at Section V(A) and Section X(B)(4).
- cvi *Id.* at Section I(A-C), at pg. 3.
- cix *Id.* at Section V, at pg.4-6.
- cx *Id.* at Section V(B&D), at pg. 4.
- cx *Id.* at Section V(D), at pg. 4, and *Id.* at Section VI(E&F), at pg. 6.
- cxii *Id.* at Section X, at pg. 10.
- cxiii *Id.* at Sections VII –IX, at pg. 7-10.
- cxiv *Id.* at Section V(E), at pg. 5.
- cxv *Id.* at Section V(E-F), at pg. 5, and Section VII(H)(8), at pg. 8.
- cxvi *Id.* at Section XIV, at pg. 14-5.
- cxvii *Id.* at Section XV, at pg. 15-7.
- cxviii *Id.*
- cxix *See, Interview with Lt. Smith, supra* note xv.
- cxix *Id.*
- cxix <https://www.ocjs.ohio.gov/ohiocollaborative/index.html>.
- cxix <https://www.ocjs.ohio.gov/ohiocollaborative/links/VehicularPursuitStandard.pdf>, as downloaded April 13, 2020.
- cxix *Id.*
- cxix General Police Order 3.2.02, *supra* note xix, at pg. 3.
- cxix *Id.* at Section I(A), at pg. 3-4.
- cxix *Id.* at Section III, at pg. 3.
- cxix *Id.* at Section I(B), at pg. 4.
- cxix *Id.* at Section V(E)(4), at pg. 5.
- cxix *Id.* at Section V, at pg.4-6.
- cxix *Id.* at Section V(B&D), at pg. 4.
- cxix *Id.* at Section V(D), at pg. 4, and *Id.* at Section VI(E&F), at pg. 6.
- cxix *Id.* at Section X, at pg. 10.
- cxix *Id.* at Sections VII –IX, at pg. 7-10.
- cxix *Id.* at Section V(E), at pg. 5.

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- cxxxv *Id.* at Section V(E-F), at pg. 5, and Section VII(H)(8), at pg. 8.
- cxxxvi *Id.* at Section XIV, at pg. 14-5.
- cxxxvii *Id.* at Section VII(H)(5), at pg. 8.
- cxxxviii *Id.* at Section XV, at pg. 15-7.
- cxxxix *Id.*
- cxli IACP Model Policy, *supra*, note lxxx.
- cxlii City of Cleveland, Division of Police, General Police Order 2.01.03 Use of Force – General, July 1, 2019.
- cxliii General Police Order 3.2.02, *supra* note xix, at Section XV.
- cxliiii *Id.* at Section VII(K&O), at Section XV(A-B), at Section XI(C).
- cxliv *Id.* at pg. 2 Definitions, Controlling Supervisor; at Section VII(M), at Section XV(C)(1), at Section XV(D).
- cxlv *Id.* at Section V(A).
- cxlvi *Id.* at Section VI(E).
- cxlvii *Id.* at pg. 2 Definitions, Controlling Supervisor.
- cxlviii *Id.* at Section VII(O)(2).
- cxlix *Id.*
- cl *Id.* at Section XII(D).
- cli *Id.* at Section XIII(B).
- clii *Id.* at Section XV(A&B).
- cliii *Id.* at Section XV(C)(4).
- cliv *Id.* at Section VII(B).
- clv *Id.* at Section VIII.
- clvi *Id.* at Section IX.
- clvii *Id.* at Section XI.
- clviii City of Cleveland, Division of Police, General Police Order 4.06.04 Wearable Camera System, January 1, 2020, at Section I(K).
- clix General Police Order 3.2.02, *supra* note xix, at Section XV(D).
- clx *Id.* at Section I(A).
- clxi *Id.* at Section I(B).
- clxii *Id.* at Section V(E)(1).
- clxiii *Id.* at Section Definitions.
- clxiv *Id.* at Section I.
- clxv *Id.* at Section XVI.
- clxvi *Id.*
- clxvii City of Cleveland, Division of Police, General Police Order 1.1.38 Post Traumatic Incident Protocol, March 2, 2015.
- clxviii City of Cleveland, Division of Police, General Police Order 1.1.41 Employee Assistance and Support, December 24, 2010. *See also*, City of Cleveland, Division of Police, General Police Order 1.1.31 Wellness Program, January 11, 2007.
- clxix U.S. v Cleveland, *supra* note vii.
- clxx *Id.* at ¶46(I).
- clxxi *See*: City of Cleveland General Police Order 3.2.02, *supra* note xix, at pg. 1, 4 (Section I(B)), & 5 (Section I(E)(1)). *See also*: *Id.* at pg. 1, Policy.
- clxxii Pfeiffer, M. and Alpert, G., Developing Methodology for Finding Ghosted Police Vehicle Pursuits, Translational Criminology, Center for Evidence-Based Crime Policy (CEBCP), New Orleans, LA, Spring 2020.
- clxxiii *Id.*
- clxxiv *Id.*
- clxxv *Id.*

APPENDICES

IACP Law Enforcement Policy Center
VEHICULAR PURSUIT
Model Policy
December 2015

Commented [CV1]: Comments below are comparisons to Cleveland Division of Police General Police Order 3.2.02 Vehicle Pursuits, 5-22-2015.

I. PURPOSE

The purpose of this policy is to establish guidelines for the initiation and continuation of vehicular pursuits.

Commented [CV2]: CDP 3.2.02 Purpose Section, pg. 1. Substantially similar to CDP. CDP adds statutory provision.

II. POLICY

Vehicular pursuit of fleeing suspects can present a danger to the lives of the public, officers, and suspects involved in the pursuit. Tactics used to stop a fleeing vehicle may be considered a use of force. It is the policy of this law enforcement agency to regulate the manner in which vehicular pursuits are undertaken and performed.

Commented [CV3]: Policy Section, pg. 1. CDP acknowledges dangers.

Commented [CV4]: Use of force aspect not addressed in CDP Policy Statement.

Commented [CV5]: Policy Section, Pg. 1. Substantially similar to CDP. CDP adds statutory provisions.

III. DEFINITIONS

Vehicular Pursuit: A deliberate attempt by an officer in an authorized emergency vehicle to apprehend a fleeing suspect who is actively attempting to elude apprehension.

Commented [CV6]: Definitions Section, pg. 2. Substantially similar to CDP.

Authorized Emergency Vehicle: A vehicle of this agency equipped with operable emergency equipment as designated by state law.

Commented [CV7]: Topic not specifically defined in CDP policy.

Pursuit-Rated Vehicle: An authorized emergency vehicle that is specially designed and equipped for use during high-speed pursuits.

Commented [CV8]: Topic not specifically defined in CDP policy.

Primary Unit: The police unit immediately following the suspect vehicle at a reasonable distance and that assumes primary control of the pursuit.

Commented [CV9]: Defined in Section V(B), pg. 4 of policy.

Secondary Unit: Any police unit that becomes involved as a backup to the primary unit and follows the primary unit at a safe distance.

Commented [CV10]: Defined in Section V(B), pg. 4 of policy.

Trail or Trailing: The unauthorized following of a pursuit at any distance, to include paralleling, intercepting, or tracking.

Commented [CV11]: Definition Section, pg. 2. Less inclusive definition in CDP policy. Prohibition is provided in Section VI(G), pg. 6.

Caravanning: Direct participation in, or following of, a pursuit by emergency vehicles other than the primary and authorized secondary units.

Commented [CV12]: Not specifically defined in CDP policy. Prohibition is provided in Section VI(G), pg. 6.

Terminate: To abandon or abort the pursuit.

Commented [CV13]: Definition Section, pg. 3. CDP definition is more detailed and specific.

Termination Point: The location where the pursuit comes to a conclusion.

Commented [CV14]: Term not defined specifically in CDP policy.

IV. PROCEDURES

A. Initiation of Pursuit

- Pursuit is authorized only if the officer has a reasonable belief that the suspect, if allowed to flee, would present a danger to human life or cause serious injury. In general, pursuits for minor violations are discouraged.
- The decision to initiate a pursuit must be based on the pursuing officer's conclusion that the immediate danger to the officer and the public created by the pursuit is less than the immediate or potential danger to the public should the suspect remain at large.
- Unless a greater hazard would result, a pursuit should not be undertaken if the subject(s) can be identified with enough certainty that they can be apprehended at a later time.

Commented [CV15]: Substantially similar to Section I(A-B), pg. 3-4. CDP policy is more restrictive regarding authorized reasons to initiate.

Commented [CV16]: Analogous to Section I(B), pg. 4. Substantially similar to Section V(E)(1), pg. 5.

Commented [CV17]: Substantially similar to Section V(E)(4), pg. 5.

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4. In deciding whether to initiate or continue a pursuit, the officer shall take the following into consideration:
 - a. The seriousness of the offense **Commented [CV18]:** Contemplated in Section I(A), pg. 6.
 - b. Known information on the suspect **Commented [CV19]:** Not specifically addressed in CDP policy.
 - c. Road configuration (e.g. interstate, divided highway, work zone) **Commented [CV20]:** Section III, pg. 4.
 - d. Physical location and population density (e.g. residential area, school zone, business district) **Commented [CV21]:** Section III, pg. 4.
 - e. Existence of vehicular and pedestrian traffic **Commented [CV22]:** Section III, pg. 4.
 - f. Lighting and visibility **Commented [CV23]:** Not specifically addressed in CDP policy.
 - g. Weather and environmental conditions **Commented [CV24]:** Section III, pg. 4.
 - h. The relative performance capabilities of the pursuit vehicle and the vehicle being pursued **Commented [CV25]:** Section III, pg. 4.
 - i. Officer training and experience **Commented [CV26]:** Not addressed in CDP policy.
 - j. Available equipment **Commented [CV27]:** Not addressed in CDP policy.
 - k. Speed and evasive tactics employed by the suspect **Commented [CV28]:** Not addressed in CDP policy. Partially contemplated for supervisory consideration in Section VII(H)(2)(b), pg. 7.
 - l. The presence of other persons in the police and suspect vehicle **Commented [CV29]:** Contemplated in Section V(E)(1), pg. 5.
 - m. Any other condition or situation that would create an unreasonable risk **Commented [CV30]:** Contemplated in Section VI(B), pg. 6.
 5. A pursuit should not be initiated or engaged in while providing transportation for any person, other than law enforcement officers. **Commented [CV31]:** Not addressed in CDP policy.
- B. Pursuit Operations
1. All emergency vehicle operations shall be conducted following jurisdictional laws and related regulations. **Commented [CV32]:** Substantially similar to Section III, pg. 4. Although not all considerations are combined in one comprehensive statement in CDP policy.
 2. Upon undertaking a pursuit, the pursuing vehicle shall activate emergency lights, sirens, and cameras, and they shall remain activated for the duration of the pursuit. **Commented [CV33]:** Contemplated in Section V(E)(1), pg. 5.
 3. Upon undertaking a pursuit, the officer shall notify communications of the
 - a. initial purpose of the stop;
 - b. any information concerning the use of firearms, threat of force, or other unusual hazard;
 - c. location, direction and speed of the pursuit;
 - d. description of the pursued vehicle, including license plate number, if known; and
 - e. number, identity, and description of any known occupants. **Commented [CV34]:** Same as item 4(m) immediately above. Contemplated in Section VI(B), pg. 6.
 4. The officer shall continuously update communications on the pursuit conditions, location, weather conditions, and presence of other traffic. **Commented [CV35]:** Statutory requirements set forth in Policy Section, pg. 1.
 5. Communications personnel shall notify an available supervisor of the pursuit, clear the radio channel of non-emergency traffic, and relay necessary information to other officers and jurisdictions. **Commented [CV36]:** Not addressed in CDP policy.
 6. When available, the secondary unit shall immediately notify communications that they are joining the pursuit and should assume responsibility for relaying information to communications. **Commented [CV37]:** Not addressed in CDP policy.
 7. No pursuit shall be conducted in a direction against the lawful flow of traffic on a one-way street or lane of a divided highway. **Commented [CV38]:** Substantially similar to Section V(A), pg. 4, with some exceptions..
 8. Unless circumstances dictate otherwise, a pursuit shall consist of no more than two police vehicles: a primary and a secondary unit. **Commented [CV39]:** Not addressed in CDP policy.
- Commented [CV40]:** Not addressed in CDP policy.
 - Commented [CV41]:** Contemplated in Section X, pg. 10-11.
 - Commented [CV42]:** Not addressed in CDP policy.
 - Commented [CV43]:** Not specifically addressed in CDP policy.
 - Commented [CV44]:** Addressed in the Policy statement, pg. 1. Also addressed in Section VII(D), pg. 7.

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- a. All other personnel shall stay clear of the pursuit unless instructed to participate by a supervisor. **Commented [CV45]:** Contemplated in Section VI(A&G), pg. 6.
- b. Caravanning and trailing is prohibited. However, officers should monitor the progress of the pursuit and be prepared to assist if directed by a supervisor. **Commented [CV46]:** Contemplated in Section VI(G), pg. 6. Although not using the defined terms "caravanning and trailing", under the rubric of "parallel".
- c. The number of vehicles engaged in a pursuit may be adjusted to fit the situation with supervisory approval. **Commented [CV47]:** Contemplated in Section VII(D), pg. 7.
- d. A supervisor who has joined in the pursuit and supervises the units shall be considered an additional unit. **Commented [CV48]:** Prohibited under CDP policy, Section VII(B), pg. 7.
- e. The supervisor shall consider units from other jurisdictions in determining the number of vehicles participating.
- 9. Whenever possible, pursuit-rated vehicles should be utilized. **Commented [CV49]:** Not addressed in CDP policy.
- 10. The primary unit shall become secondary when the fleeing vehicle comes under air surveillance or when another unit has been assigned as the primary unit. **Commented [CV50]:** Contemplated in Section V(B&D), pg. 4.
- C. Supervisory Responsibilities
 - 1. Supervisors are responsible for managing all vehicular pursuits to include determining whether the pursuit should continue or be terminated. **Commented [CV51]:** Contemplated in Section VII(H), pg. 7-8.
 - 2. When made aware of a vehicular pursuit, the appropriate supervisor shall notify communications that he or she is monitoring the pursuit and accepting supervisory responsibility. **Commented [CV52]:** Substantially similar to Section VII(A), pg. 7.
 - 3. The supervisor is responsible for
 - a. monitoring incoming information; **Commented [CV53]:** Section VII(H)(1), pg. 7.
 - b. coordinating and directing activities as needed to ensure that proper procedures are used, to include ensuring that
 - (1) no more than the necessary number of units are involved, **Commented [CV54]:** Section VII(H), pg. 7-8.
 - (2) where available, aircraft has been requested, **Commented [CV55]:** Section VII(D), pg. 7.
 - (3) the appropriate radio channel is being utilized, and **Commented [CV56]:** Section VII(H)(7), pg. 8.
 - (4) surrounding jurisdictions have been notified; and **Commented [CV57]:** Not specifically addressed in CDP policy.
 - c. discontinuing the pursuit when necessary. **Commented [CV58]:** Section X(B)(5), pg. 11.
 - 4. A supervisor shall respond to the termination point following a pursuit. **Commented [CV59]:** Section VII(H)(8), pg. 8.
- D. Pursuit Tactics
 - 1. All officers involved in a vehicular pursuit shall wear a seat belt. **Commented [CV60]:** Implied in Section VIII(B), pg. 10. Not explicitly stated in CDP policy.
 - 2. Non-involved officers shall not follow the pursuit on parallel streets unless authorized by a supervisor or when it is possible to conduct such an operation without unreasonable hazard to other vehicular or pedestrian traffic. **Commented [CV61]:** Not addressed in CDP policy.
 - 3. Available patrol units having the most prominent markings and emergency lights shall be used to pursue, particularly as the primary unit. When a pursuit is initiated by other than a marked patrol unit, such unit shall disengage when a marked unit becomes available. **Commented [CV62]:** Section VI(G), pg. 6.
 - 4. Available patrol units having the most prominent markings and emergency lights shall be used to pursue, particularly as the primary unit. When a pursuit is initiated by other than a marked patrol unit, such unit shall disengage when a marked unit becomes available. **Commented [CV63]:** Implied in Section V(D), pg. 4.
 - 5. Motorcycles should not be used for pursuits except in extremely exigent circumstances and when weather and related conditions allow. Motorcycle units shall disengage when support from marked patrol units becomes available. **Commented [CV64]:** Section V(D), pg. 4.
 - 6. All intervention tactics short of deadly force such as spike strips, low speed tactical intervention techniques, PIT maneuver, and low speed channeling (with appropriate advance warning) should be used when it is possible to do so safely and when the officer utilizing such tactics has received appropriate training. **Commented [CV65]:** Section VI(E), pg. 6.
 - 7. All intervention tactics short of deadly force such as spike strips, low speed tactical intervention techniques, PIT maneuver, and low speed channeling (with appropriate advance warning) should be used when it is possible to do so safely and when the officer utilizing such tactics has received appropriate training. **Commented [CV66]:** Not addressed in CDP policy. Especially training requirement.

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- a. Officers shall employ only the force option that reasonably appears necessary to control the situation.
 - b. The decision to use intervention tactics shall be based on careful consideration of all facts known to the officer and should be initiated when conditions permit.
 - c. A supervisor's permission should be obtained prior to the use of intervention tactics.
6. Intervention tactics should be used only when
- a. the officer has reason to believe the continued movement of the pursued vehicle would place others in imminent danger of serious physical injury or death; and
 - b. the apparent risk of harm, to other than the occupant of the pursued vehicle, is so great as to outweigh the apparent risk of harm involved in making the forcible stop.
7. Firearms shall not be discharged from a moving vehicle.
8. Once the pursued vehicle is stopped, officers shall utilize appropriate officer safety tactics. The suspect(s) shall be taken into custody in accordance with law and agency policy, using only the amount of force reasonably necessary to affect an arrest.
- E. Termination of the Pursuit
- 1. The primary unit and supervisor shall continually reevaluate and assess the pursuit situation including all of the initiating factors and terminate the pursuit whenever it is reasonable to believe the risks associated with continued pursuit are greater than the public safety benefit of making an immediate apprehension.
 - 2. The pursuit may be terminated by the primary unit at any time.
 - 3. A supervisor may order the termination of a pursuit at any time.
 - 4. A pursuit should be terminated if the suspect's identity has been determined, immediate apprehension is not necessary to protect the public or officers, and apprehension at a later time is feasible.
 - 5. The pursuit should be terminated if the pursued vehicle's location is no longer definitively known.
- F. Interjurisdictional Pursuits
- 1. The pursuing officer shall notify a supervisor and communications when it is likely that a pursuit will continue into a neighboring jurisdiction or across the county or state line. Communications shall immediately notify law enforcement in the jurisdiction being entered by the pursuit.
 - 2. When a pursuit extends into another jurisdiction, the responsible supervisor, or the primary unit if a supervisor is not available, shall determine if the other jurisdiction should be asked to assume the pursuit. The following should be considered:
 - a. The distance between the pursuing and pursued vehicles and the speed involved
 - b. The pursuing officer's level of familiarity with the area
 - c. The willingness and capability of the other jurisdiction to assume control of the pursuit
 - d. Communication limitations at longer distances

Commented [CV67]: Not addressed in CDP policy.

Commented [CV68]: Substantially similar to Section XIII(A)(2), pg. 14, for roadblocks only.

Commented [CV69]: Not specifically addressed in CDP policy.

Commented [CV70]: Not addressed in CDP Pursuit policy. Prohibited in Division Use of Force policy.

Commented [CV71]: Not addressed in CDP policy. Contemplated in separate Division policy.

Commented [CV72]: Not explicitly stated in policy that considerations be continually reevaluated in CDP policy.

Commented [CV73]: Contemplated in Section V(E), pg. 5.

Commented [CV74]: Substantially similar to Section VII(H)(8), pg. 8.

Commented [CV75]: Substantially similar to Section V(E)(4), pg. 5.

Commented [CV76]: Substantially similar to Section V(E)(5), pg. 5.

Commented [CV77]:

Commented [CV78]: Substantially similar to Section X(B)(5), pg. 11.

Commented [CV79]: There are no provisions in policy to request another agency to "assume" a pursuit. Perhaps specific prohibition language is necessary.

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- 3. If it is determined that the control of the pursuit should be relinquished to another jurisdiction, the request shall be clearly relayed to that agency. Confirmation of their acceptance of control of the pursuit should be obtained. **Commented [CV80]:** There are not provisions in policy to “relinquish” a pursuit. Perhaps specific prohibition language is necessary.
 - 4. Pursuit into a bordering jurisdiction shall conform to the laws of both jurisdictions and any applicable interjurisdictional agreements. The action of officers shall be governed by the policy of the officers’ own agency. **Commented [CV81]:** Not addressed in CDP policy.
 - 5. Once a pursuit has been taken over by the law enforcement agency of another jurisdiction, the initial pursuing officers shall cease emergency driving and proceed to the termination point. **Commented [CV82]:** Not addressed in CDP policy.
- G. Pursuits from Other Jurisdictions
- 1. Participation in a neighboring jurisdiction’s pursuit is appropriate only in response to a specific request for participation. Mere notification of the existence of a pursuit shall not be construed as a request for participation. Upon such notification, the communications center shall clarify whether this agency is being requested to assist in the pursuit. **Commented [CV83]:** Contemplated in Section XIV, pg. 14-5.
 - 2. Prior to acceptance of a pursuit from another agency, the responsible supervisor shall determine the degree of this agency’s involvement, if any, and provide the appropriate direction. **Commented [CV84]:** There are not provisions in policy to “accept” a pursuit. Perhaps specific prohibition language is necessary. Contemplated in Section XIV(B-D), pg. 14.
 - 3. When the pursuit is assumed by this agency and where appropriate, the supervisor shall attempt to cancel units from the other agency. **Commented [CV85]:** There are not provisions in policy to “assume” a pursuit. Perhaps specific prohibition language is necessary.
- H. Post-Pursuit Procedures
- 1. Whenever an officer engages in a pursuit, he or she shall file a written report on the appropriate form detailing the circumstances. This report shall be reviewed by the appropriate supervisor(s) to determine compliance with policy. **Commented [CV86]:** Current Policy requires that a written report be done by the controlling supervisor, Section VII(K), pg. 9.
 - 2. Any pursuit that results in a fatality, personal injury, or serious property damage shall be investigated by personnel who were not directly involved in the pursuit. **Commented [CV87]:** Contemplated in Section XV(C), pg. 16.
 - 3. All videos of vehicular pursuits shall be reviewed following the incident. **Commented [CV88]:** Substantially similar to Section XV(C), pg. 16.
 - 4. The department shall analyze police pursuit activity at least annually and identify any additions, deletions, or modifications warranted in departmental pursuit procedures. This analysis shall
 - a. consider the following implications on the organization:
 - (1) Policy
 - (2) Equipment
 - (3) Training
 - (4) Philosophical approach
 - (5) Interjurisdictional issues; and
 - b. occur even if a pursuit did not occur during the designated time period. **Commented [CV90]:** Not addressed in CDP policy.
 - 5. Any vehicle involved in a pursuit should be inspected before returning to service. **Commented [CV91]:** Not addressed in CDP policy.
- I. Training
- Officers who drive police vehicles shall be given initial and periodic updated training in the agency’s pursuit policy and in safe driving tactics. **Commented [CV92]:** Updated training not addressed in CDP policy.

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Acknowledgment

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