



Ohio Attorney General's

Advisory Group on Law Enforcement Vehicular Pursuits



Special Report

November 2016



MIKE DEWINE
OHIO ATTORNEY GENERAL



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Dear Fellow Ohioans:

Concerned by the deaths that have resulted from law enforcement vehicle pursuits, my office convened a citizens group in May 2016 to review procedures followed by various agencies and to create a model policy that can be used throughout the state.

Thirteen people representing law enforcement, local government, and the public gathered to form the Attorney General's Advisory Group on Law Enforcement Vehicular Pursuits. For the past 9 months, the group has reviewed National Highway Traffic Safety Administration statistics, consulted the Ohio Revised Code, considered civil liability, examined pursuit policies from Ohio's law enforcement agencies, and discussed the details of pursuit dynamics.

The group talked about the dangers inherent in vehicle pursuits and the fact that officers and supervisors must weigh the immediate risk to the public created by a pursuit against the potential danger to the public should the suspect remain at large. Members also recognized the differences in population, infrastructure, coverage, and duties that would affect the pursuit policies of each of the hundreds of law enforcement agencies in the state. Accordingly, the group recommends that, at a minimum, each agency examine its current pursuit policy, and, when doing so, consider the following report and issues related to this policing function.

This report will be given to the Ohio Peace Officer Training Commission. In addition, copies will be shared with the governor and members of the Ohio General Assembly.

I want to express my sincere appreciation to all members of the Attorney General's Advisory Group on Law Enforcement Vehicular Pursuits. They devoted many volunteer hours to create this report, and I thank them for their selfless service.

Very respectfully yours,

Mike DeWine
Ohio Attorney General

Advisory Group on Law Enforcement Vehicular Pursuits

Chairwoman Andrea Perry, city of Canton public safety director – Canton, Ohio
Erik Abrahamsen, Motorists Insurance – Columbus, Ohio
Arlene Anderson, Cleveland Ohio Chapter of the NAACP – Cleveland, Ohio
Chief Joseph Andzik, German Township Police Department – German Township, Ohio
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Lori Cope, Ohio Municipal League/Mansfield safety service director – Mansfield, Ohio
Lt. James Fitsko, Fraternal Order of Police – Columbus, Ohio
Prosecutor James Flaiz, Geauga County Prosecutor's Office – Chardon, Ohio
Judge William Grim (retired), Athens County Municipal Court – Athens, Ohio
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Recommendations of the Advisory Group on Law Enforcement Vehicular Pursuits

At least 352 people, including one peace officer and 147 bystanders, were killed in law enforcement pursuits in Ohio between 1982 and 2014, according to data from the National Highway Traffic Safety Administration. Additionally, the state requires that all law enforcement agencies in Ohio adopt a motor vehicle pursuit policy, and that those in charge of the agencies advise all officers of the adopted policy.

The Attorney General's Advisory Group on Law Enforcement Vehicular Pursuits focused on the best practices and policies applied by law enforcement in initiating, continuing, discontinuing, and terminating vehicle pursuits, in order to best ensure both the safety of the officer and of the general public.

The advisory group recognized the dangers inherent in vehicle pursuits, and that the officers and supervisors must weigh the immediate danger to the public created by the initiation and continuation of any pursuit against the potential danger to the public should the suspect remain at large. It also recognized the diverse functions and localities of the hundreds of law enforcement agencies in the state. Accordingly, the group recommends that, at a minimum, each agency examine its current pursuit policy, and, when doing so, consider several important topics and issues related to this policing function. Included in the appendix of this report are several examples of pursuit policies.

The advisory group strongly recommends that the Attorney General and the Ohio Peace Officer Training Commission require that a portion of mandatory continuing professional training for all law enforcement officers in the state include vehicle pursuit best practices and safe driving techniques.

Finally, the advisory group recommends that all law enforcement agencies regularly provide relevant information for all vehicle pursuits to a state-maintained central database, which can be analytically reviewed to further develop best practices.

Vehicle Pursuit Policy Recommendations

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 judgment when balancing the safety of the public and officers with the danger of the suspect remaining at large.

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).

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 the 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.

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 times 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. Motorcycles and unmarked vehicles are also problematic and may be restricted or prohibited in pursuits.
- **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 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 suspect are likely to subside as the pursuit continues, increasing the risk.
- **Speed and evasive tactics of suspect.**

4. 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 dashcams and body cameras should also be addressed, if used by the agency.
- **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 the 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 minimize risks of injury.

- **Pursuing against lawful flow 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.
- **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.
- **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.
- **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.**

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.

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.

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 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 supervisors, 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.

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.

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.

Mandatory Vehicle Pursuit Continuing Professional Training Recommendation

Absent a legislative mandate, the Ohio Peace Officer Training Commission can only require continuing professional training for law enforcement officers if funding is available to offset costs associated with the training and reimburse officers' agencies. Under those circumstances, the funding source can mandate the subject matter of reimbursed continuing professional training. It is highly recommended that some portion of required continuing professional training be mandated and devoted to vehicle pursuit best practices and safe driving techniques.

Vehicle Pursuit Data Collection Recommendation

Absent the requirement to forward reports of vehicle crashes to the Ohio Department of Transportation, there is no requirement of law enforcement agencies in the state to report all vehicle pursuits. There is also no central state database for agencies to voluntarily provide vehicle pursuit information. Accordingly, it is recommended that such a data collection site be initiated and maintained, and that collected data be analyzed to further develop best practices in this law enforcement activity.

Appendix A

Ohio Revised Code References

Ohio Revised Code Sections 2935.031; 2921.331; 2744.02; 2744.03; 4511.03; 4511.24; 4511.45; and 4513.21.

2935.031 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.

Effective Date: 03-14-2003

2921.331 Failure to comply with order or signal of police officer.

(A) No person shall fail to comply with any lawful order or direction of any police officer invested with authority to direct, control, or regulate traffic.

(B) No person shall operate a motor vehicle so as willfully to elude or flee a police officer after receiving a visible or audible signal from a police officer to bring the person's motor vehicle to a stop.

(C)

(1) Whoever violates this section is guilty of failure to comply with an order or signal of a police officer.

(2) A violation of division (A) of this section is a misdemeanor of the first degree.

(3) Except as provided in divisions (C)(4) and (5) of this section, a violation of division (B) of this section is a misdemeanor of the first degree.

(4) Except as provided in division (C)(5) of this section, a violation of division (B) of this section is a felony of the fourth degree if the jury or judge as trier of fact finds by proof beyond a reasonable doubt that, in committing the offense, the offender was fleeing immediately after the commission of a felony.

(5)

(a) A violation of division (B) of this section is a felony of the third degree if the jury or judge as trier of fact finds any of the following by proof beyond a reasonable doubt:

(i) The operation of the motor vehicle by the offender was a proximate cause of serious physical harm to persons or property.

(ii) The operation of the motor vehicle by the offender caused a substantial risk of serious physical harm to persons or property.

4511.03 Emergency vehicles at red signal or stop sign.

(A) The driver of any emergency vehicle or public safety vehicle, when responding to an emergency call, upon approaching a red or stop signal or any stop sign shall slow down as necessary for safety to traffic, but may proceed cautiously past such red or stop sign or signal with due regard for the safety of all persons using the street or highway.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor.

4511.24 Speed limits not applicable to emergency or public safety vehicles.

The prima-facie speed limitations set forth in section 4511.21 of the Revised Code do not apply to emergency vehicles or public safety vehicles when they are responding to emergency calls and are equipped with and displaying at least one flashing, rotating, or oscillating light visible under normal atmospheric conditions from a distance of five hundred feet to the front of the vehicle and when the drivers thereof sound audible signals by bell, siren, or exhaust whistle. This section does not relieve the driver of an emergency vehicle or public safety vehicle from the duty to drive with due regard for the safety of all persons using the street or highway.

4511.45 Right-of-way of public safety or coroner's vehicle.

(A)

(1) Upon the approach of a public safety vehicle or coroner's vehicle, equipped with at least one flashing, rotating or oscillating light visible under normal atmospheric conditions from a distance of five hundred feet to the front of the vehicle and the driver is giving an audible signal by siren, exhaust whistle, or bell, no driver of any other vehicle shall fail to yield the right-of-way, immediately drive if practical to a position parallel to, and as close as possible to, the right edge or curb of the highway clear of any intersection, and stop and remain in that position until the public safety vehicle or coroner's vehicle has passed, except when otherwise directed by a police officer.

(2) Upon the approach of a public safety vehicle or coroner's vehicle, as stated in division (A)(1) of this section, no operator of any streetcar or trackless trolley shall fail to immediately stop the streetcar or trackless trolley clear of any intersection and keep it in that position until the public safety vehicle or coroner's vehicle has passed, except when otherwise directed by a police officer.

(B) This section does not relieve the driver of a public safety vehicle or coroner's vehicle from the duty to drive with due regard for the safety of all persons and property upon the highway.

4513.21 Horns, sirens, and warning devices.

(A) Every motor vehicle or trackless trolley when operated upon a highway shall be equipped with a horn which is in good working order and capable of emitting sound audible, under normal conditions, from a distance of not less than two hundred feet.

No motor vehicle or trackless trolley shall be equipped with, nor shall any person use upon a vehicle, any siren, whistle, or bell. Any vehicle may be equipped with a theft alarm signal device which shall be so arranged that it cannot be used as an ordinary warning signal. Every emergency vehicle shall be equipped with a siren, whistle, or bell, capable of emitting sound audible under normal conditions from a distance of not less than five hundred feet and of a type approved by the director of public safety. Such 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.

2744.02 Governmental functions and proprietary functions of political subdivisions.

(A)

(1) For the purposes of this chapter, the functions of political subdivisions are hereby classified as governmental functions and proprietary functions. Except as provided in division (B) of this section, a political subdivision is not liable in damages in a civil action for injury, death, or loss to person or property allegedly caused by any act or omission of the political subdivision or an employee of the political subdivision in connection with a governmental or proprietary function.

(2) The defenses and immunities conferred under this chapter apply in connection with all governmental and proprietary functions performed by a political subdivision and its employees, whether performed on behalf of that political subdivision or on behalf of another political subdivision.

(3) Subject to statutory limitations upon their monetary jurisdiction, the courts of common pleas, the municipal courts, and the county courts have jurisdiction to hear and determine civil actions governed by or brought pursuant to this chapter.

(B) Subject to sections 2744.03 and 2744.05 of the Revised Code, a political subdivision is liable in damages in a civil action for injury, death, or loss to person or property allegedly caused by an act or omission of the political subdivision or of any of its employees in connection with a governmental or proprietary function, as follows:

(1) Except as otherwise provided in this division, political subdivisions are liable for injury, death, or loss to person or property caused by the negligent operation of any motor vehicle by their employees when the employees are engaged within the scope of their employment and authority. The following are full defenses to that liability:

(a) A member of a municipal corporation police department or any other police agency was operating a motor vehicle while responding to an emergency call and the operation of the vehicle did not constitute willful or wanton misconduct;

2744.03 Defenses - immunities.

(A) In a civil action brought against a political subdivision or an employee of a political subdivision to recover damages for injury, death, or loss to person or property allegedly caused by any act or omission in connection with a governmental or proprietary function, the following defenses or immunities may be asserted to establish nonliability:

(1) The political subdivision is immune from liability if the employee involved was engaged in the performance of a judicial, quasi-judicial, prosecutorial, legislative, or quasi-legislative function.

(2) The political subdivision is immune from liability if the conduct of the employee involved, other than negligent conduct, that gave rise to the claim of liability was required by law or authorized by law, or if the conduct of the employee involved that gave rise to the claim of liability was necessary or essential to the exercise of powers of the political subdivision or employee.

(3) The political subdivision is immune from liability if the action or failure to act by the employee involved that gave rise to the claim of liability was within the discretion of the employee with respect to policy-making, planning, or enforcement powers by virtue of the duties and responsibilities of the office or position of the employee.

(4) The political subdivision is immune from liability if the action or failure to act by the political subdivision or employee involved that gave rise to the claim of liability resulted in injury or death to a person who had been convicted of or pleaded guilty to a criminal offense and who, at the time of the injury or death, was serving any portion of the person's sentence by performing community service work for or in the political subdivision whether pursuant to section 2951.02 of the Revised Code or otherwise, or resulted in injury or death to a child who was found to be a delinquent child and who, at the time of the injury or death, was performing community service or community work for or in a political subdivision in accordance with the order of a juvenile court entered pursuant to section 2152.19 or 2152.20 of the Revised Code, and if, at the time of the person's or child's injury or death, the person or child was covered for purposes of Chapter 4123 of the Revised Code in connection with the community service or community work for or in the political subdivision.

(5) The political subdivision is immune from liability if the injury, death, or loss to person or property resulted from the exercise of judgment or discretion in determining whether to acquire, or how to use, equipment, supplies, materials, personnel, facilities, and other resources unless the judgment or discretion was exercised with malicious purpose, in bad faith, or in a wanton or reckless manner.

(6) In addition to any immunity or defense referred to in division (A)(7) of this section and in circumstances not covered by that division or sections 3314.07 and 3746.24 of the Revised Code, the employee is immune from liability unless one of the following applies:

(a) The employee's acts or omissions were manifestly outside the scope of the employee's employment or official responsibilities;

(b) The employee's acts or omissions were with malicious purpose, in bad faith, or in a wanton or reckless manner;

Appendix B

Motor Vehicle Pursuit Policies

CALEA Requirements for Pursuit of Motor Vehicle Directives

City of Canton, Ohio Police Department

City of Cincinnati, Ohio Police Department

City of Cleveland, Ohio Police Department

City of Columbus, Ohio Police Department

City of Mansfield, Ohio Police Department

City of Marion, Ohio Police Department

CORSA Vehicular Pursuit Model Policy

German Township, Ohio Police Department

International Association of Chiefs of Police Vehicular Pursuit Model Policy

Licking County, Ohio Sheriff's Office

Ohio State Highway Patrol

"Police Pursuits in an Age of Innovation and Reform" — the International Association of Chiefs of Police (IACP) Police Pursuit Database

(To review the Appendix B documents, visit www.OhioAttorneyGeneral.gov/VehicularPursuits.)

Appendix C

Ohio Peace Officer's Training Academy's Mobile Driving Academy

The Attorney General's Ohio Peace Officer Training Academy (OPOTA) has revolutionized its approach to advanced training. With state-of-the-art equipment and expert instructors, OPOTA's Mobile Academy takes training directly to local law enforcement. Courses are available at no cost to local agencies.

- **Judgmental Driving Training**

OPOTA's cutting-edge driving simulators feature programmable dashboards that replicate those of all popular cruiser models. Instructors use scenarios to help officers improve decision-making during traffic stops, pursuits, emergency responses, and vehicle handling. The simulators are housed in climate-controlled trailers allowing instruction to take place anywhere.

- **Judgmental Firearms Training**

OPOTA's state-of-the-art firearms simulators present officers with various scenarios to allow them to engage in critical decision-making processes regarding use of force. An emphasis is placed on proper de-escalation techniques to minimize the need for force. Instructors provide individualized after-action critiques, which allow students to receive valuable feedback, and they provide alternative resolutions where appropriate.

- **Portable Training Facility**

OPOTA's portable training facility allows students to practice scenarios related to room entry and building clearing. The temporary structure can be quickly set up in limitless configurations and offers many variations of room sizes, inward/outward opening doors, hallways, four-way intersections, and target placement. OPOTA's training officers demonstrate a variety of options, methods, and tactics that emphasize officer safety when clearing an unfamiliar, and potentially occupied, structure.

To schedule Mobile Academy Training at your department email AskOPOTA@OhioAttorneyGeneral.gov.



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