CITY OF OAKLAND

OFFICE OF THE CITY ATTORNEY

PUBLIC LEGAL OPINION

TO: Mayor Kevin Jenkins
Members of the City Council
City Administrator Jestin D. Johnson
Chief Floyd Mitchell, Oakland Police Department
Chair Ricardo Garcia-Acosta, Oakland Police Commission

FROM: City Attorney Ryan Richardson

DATE: February 3, 2025

RE: City Council and Police Commission Authority to Revise Police Pursuit Policy

INTRODUCTION

Our Office has been asked who has authority to change the Oakland Police Department's pursuit policy. Consistent with our Office's longstanding practice, this is a public legal opinion because it addresses the relative powers of the City Administrator, City Council, and the Police Commission under the City Charter. Like all public opinions, this opinion will be posted on the City Attorney's website.

QUESTIONS AND BRIEF ANSWERS

QUESTION NO. 1

Does the Oakland Police Department's pursuit policy fall within the Oakland Police Commission's Charter authority to propose changes to or approve the Department's proposed changes to certain categories of policies?

BRIEF ANSWER

Yes. Pursuit policy is within the Commission's authority pursuant to Charter sections 604(b)(4) & (5) as policy that "contains elements expressly listed in Federal court orders or Federal court settlements." Certain portions of pursuit policy also implicate "use of force" and "use of force review boards," which are additional categories of policy that are covered by Charter sections 604(b)(4) & (5). Because pursuits are expressly listed in court orders in *Allen v. Oakland* (NSA litigation), however, the most explicit grounds for the Commission's authority over pursuit policy is that it categorically "contains elements expressly listed in Federal court orders or Federal court settlements."

QUESTION NO. 2

What authority does the Oakland City Council have to amend or approve changes to Oakland Police Department's pursuit policy?

BRIEF ANSWER

The City Council is not authorized to directly impose changes to pursuit policy or any Oakland Police Department policy. Pursuant to Charter section 604(b)(4), however, Council is authorized to direct the Oakland Police Commission via a resolution to propose changes to Department policies in the enumerated categories set forth in Charter sections 604(b)(4). As pursuit policy falls within those enumerated categories, Council is therefore authorized to direct the Commission to propose changes to pursuit policy. If the Commission proposes changes, the Charter authorizes Council to approve, modify, or reject the Commission's proposed changes. In the event that the Department proposes changes to a policy that falls within the enumerated categories listed in the Charter and the Commission rejects those changes, the Commission must submit the Department's proposed changes to the Council for consideration to approve or reject the Commission's decision.

LEGAL AUTHORITY

Oakland City Charter Section 604(b), which took effect in 2016, grants certain authority to the Police Commission, including the "powers and duties" to:

> "[p]ropose changes at its discretion or upon direction, by adoption of a resolution, of the City Council, including modifications to the Department's proposed changes, to any policy, procedure, custom, or General Order of the Department which governs use of force, use of force review boards, profiling based on any of the protected characteristics identified by Federal, State, or local law, or First Amendment assemblies, or which contains elements expressly listed in Federal court orders or Federal court settlements which pertain to the Department and are in effect at the time this Charter Section 604 takes effect. All such proposed changes and modifications shall be submitted by the Commission Chair or the Commission Chair's designee to the City Council for review. The City Council shall consider the Commission's proposed changes or modifications within one hundred and twenty (120) days of the Commission's vote on the proposed changes, and may approve, modify and approve, or reject the changes. If the Council does not approve, modify and approve, or reject the Commission's proposed changes or modifications, the changes or modifications will become final." (Charter § 604(b)(4).)

> "[a]pprove or reject the Department's proposed changes to all policies, procedures, customs, and General Orders of the Department which govern use of force, use of force review boards, profiling based on any of the protected characteristics identified by Federal, State, or local law, or First Amendment assemblies, or which contains elements expressly listed in Federal court orders or Federal court settlements which pertain to the Department and are in effect at the time this Charter Section 604 takes effect. If the Commission does not approve or reject the Department's proposed changes within one hundred and twenty (120) days of the Department's submission of the proposed changes to the Commission, the Department's proposed changes will become final. If the Commission rejects the Department's proposed changes, notice of the Commission's rejection, together with the Department's proposed changes, shall be submitted by the Commission Chair or the Commission Chair's designee to the City Council for review. The City Council shall consider the Commission's decision within one hundred and twenty (120) days of the Commission's vote on the Department's proposed changes, and may approve or reject the decision. If the Council does not approve or reject the Commission's decision, the Commission's decision will become final." (Charter § 604(b)(5).)

While City Council is granted limited authority to weigh in on certain categories of Department policy through the Charter process laid out above and with the engagement of the Police Commission, the Charter expressly limits the City Council's authority to directly mandate or encourage the Department to change policy. Charter section 218 contains a non-interference in administrative affairs clause, codified in Oakland Municipal Code, section 2.25.070(E). Pursuant to the Charter and local law, "[n]either the Council nor any Council member shall give orders to any subordinate of the City under the jurisdiction of the City Administrator or such other officers, either publicly or privately; nor shall they attempt to coerce or influence the City Administrator or such other officers, in respect to any contract, purchase of any supplies or any other administrative action." (Charter § 218.)

ANALYSIS

The Department's pursuit policy "contains elements expressly listed in Federal court orders or Federal court settlements which pertain to the Department and are in effect at the time this [Charter section] takes effect."

The Initial Negotiated Settlement Agreement in Allen v. Oakland

The Negotiated Settlement Agreement (NSA) is a Court Order entered with the City's agreement in 2003 that remains in effect to date. The NSA continues to govern federal court oversight of the Department in ongoing litigation, *Allen v. Oakland*. Among the items expressly listed in the NSA are force and force reporting (Tasks 24 and 25), force review boards (Tasks 26 and 30),

vehicle stops and detentions (Task 34), procedures for transporting detainees and community members (Task 36). Pursuit policy contains elements of each of these tasks.

The Department's pursuit policy mandates reporting requirements for pursuits, with special investigation teams and processes, including review boards, when pursuits result in injury or death. *See* DGO J-4, 16-24. Pursuant to NSA Task 30, there must be an Executive Force Review Board for "deadly pursuits." The policy also contains rules governing when units transporting prisoners (detainees), victims, witnesses, civilians on a "ride along," or civilians not on a "ride along" may engage in pursuits or may "trail" pursuits. *See* DGO J-4, 3 & 7. Finally, pursuit policy governs the authorization of pursuit intervention maneuver techniques, also known as PIT maneuvers or PIMs. *Id.* at 7-8. PIMs include techniques using multiple police vehicles to block, hit, or otherwise force the pursued vehicle to come to a stop, or the use of tools such as stop sticks or stop strips to terminate the pursuit. PIMs that involve "the deliberate act of impacting a violator's vehicle with another vehicle to functionally damage or otherwise force the violator's vehicle to stop" constitute force to conduct a seizure. *See e.g., Weaver By and Through Weaver v. State*, Cal.App.4th 188, 203-06 (1988).

Allen v. Oakland "12/12/12" Order

In 2012, the Court overseeing the NSA issued an order making explicit modifications to the NSA. The order was issued pursuant to an agreement between the City and plaintiffs' counsel. Dec. 12, 2012 Order, 1.

The December 12, 2012 Court Order is referred to in shorthand as the "12/12/12 Order." The Order states in pertinent part: "Within 60 days of his or her appointment, the Compliance Director will file a list of benchmarks for the OPD to address, resolve, and reduce: (1) incidents involving the unjustified use of force, including those involving the drawing and pointing of a firearm at a person or an officer-involved shooting; (2) incidents of racial profiling and bias-based policing; (3) citizen complaints; ***and (4) high-speed pursuits***." Dec. 12, 2012 Order, 5 (emphasis added).

With the issuance of the 12/12/12 Order, the four enumerated items became the equivalent of NSA tasks. Since 2012, reducing unjustified force, racial profiling and bias-based policing, community complaints, and high-speed pursuits have been at the heart of the City's work to gain NSA compliance, improve community trust, and increase public safety. The Court requires the City to file NSA Task Compliance Responsibility Charts naming the Department members responsible for compliance accountability for each task. All updated charts filed since 2012 have included compliance accountability for each of the four items expressly enumerated in the 12/12/12 Order. Updated task lists include "Resolve/Reduce high speed pursuits" as a "Compliance Director 12/12/12 Order" task. *See e.g., Allen v. Oakland,* Dkt. 1660-1, Parties' Joint Case Mgmt. Statement, Ex. A, 3 (2024).

CONCLUSION

The 12/12/12 federal Court Order, in effect at present and in 2016 when Charter section 604 took effect, expressly lists the City's need to meet benchmarks to reduce or mitigate "high-speed pursuits." The original NSA is also a federal Court Order, in effect at present and in effect when the Charter section took effect, which expressly lists elements that are incorporated in the Oakland Police Department's pursuit policy. Therefore, the Department's pursuit policy is within the Commission's authority pursuant to Charter sections 604(b)(4) & (5) as policy that "contains elements expressly listed in Federal court orders or Federal court settlements." As such, the Commission may decide to propose changes to pursuant policy or the City Council may direct the Commission via resolution to propose changes to pursuit policy and may approve, modify, or reject the Commission's proposed changes. The Council shall also consider the Commission's rejection of changes to pursuit policy proposed by the Oakland Police Department, and approve or reject the Commission's decision.

Links (1): Negotiated Settlement Agreement

Attachments (3): 12/12/12 Order, OPD NSA Task Compliance Responsibility List (Aug. 2024), OPD DGO J-4 *Pursuit Driving Policy* (rev. 2014)

cc: Assistant Chief James Beere, Oakland Police Department
Mario Fajardo, Chief of Staff, Oakland Police Department
Mykah Montgomery, Chief of Staff, Oakland Police Commission

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12/12/12 Order

United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

DELPHINE ALLEN, et al.,

Plaintiffs,

v.

CITY OF OAKLAND, et al.,

Defendants.

MASTER CASE FILE
NO. C00-4599 TEH

ORDER RE: COMPLIANCE DIRECTOR

Nearly ten years after the parties agreed to a consent decree that was to have been completed in five years but that remains incomplete, the Court was scheduled to hear Plaintiffs' motion to appoint a receiver. After reviewing Defendants' opposition to Plaintiffs' motion, it became clear that Defendants did not dispute many of the issues raised by Plaintiffs, including Plaintiffs' conclusion that Defendants would be unable to achieve compliance without further intervention by this Court. The Court ordered the parties to meet and confer to attempt to reach agreement on how this case should proceed and, following the parties' request, referred this case to a magistrate judge for settlement.

Magistrate Judge Nathanael Cousins held a series of in-person and telephonic settlement conferences that culminated in the filing of a jointly proposed order on December 5, 2012. The parties were able to reach an agreement for additional oversight by a Court appointee who will have directive authority over Defendants relevant to the Negotiated Settlement Agreement ("NSA") and Amended Memorandum of Understanding ("AMOU").[1] The Court now approves the parties' agreement as modified below and therefore VACATES the hearing scheduled for December 13, 2012.

[1]The NSA and AMOU were entered as orders of this Court on January 22, 2003, and June 27, 2011, respectively.

United States District Court
For the Northern District of California

IT IS HEREBY ORDERED that:

A. Appointment of a Compliance Director

1. The Court will appoint a Compliance Director whose mission will be to bring Defendants into sustainable compliance with the NSA and AMOU. As the Court's agent, the Compliance Director will report directly to the Court and will not act as the agent of any party to this action or any other entity or individual.

2. The Compliance Director will have the same rights and privileges as have already been agreed to and/or ordered with respect to the Monitor, including those relating to testifying in this or other matters, confidentiality, and access to information and personnel. Likewise, the Compliance Director shall not be retained by any current or future litigant or claimant in a claim or suit against the City and its employees.

3. The parties will meet and confer and attempt to make a joint recommendation to the Court regarding the selection of the Compliance Director. If they are not able to agree, the parties will each recommend candidate(s) to the Court for consideration. The parties' recommendations, including descriptions of the candidates' qualifications for the position, shall be filed under seal on or before **December 21, 2012**. The selection of the Compliance Director rests solely within the Court's discretion, and the Court will not be limited to the parties' recommendations, whether separate or joint.

4. The Compliance Director will be a full-time position based in Oakland for a minimum of one year and at least until Defendants have achieved full compliance with the NSA and AMOU. The Compliance Director will serve until this case is terminated or until otherwise ordered by the Court. Any party may petition the Court to remove the Compliance Director for good cause.

5. The City will pay the costs of the Compliance Director and all costs related to the Compliance Director's work, including the cost of providing commensurate support services and office space. The Compliance Director's salary will be established by the Court upon appointment, and the Compliance Director will receive benefits commensurate with

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comparable City officials, such as the City Administrator and Chief of Police. The Court expects the City to reach a prompt compensation agreement with the Compliance Director upon appointment. If an agreement or any payment is unduly delayed, the Court will order the City to pay the Compliance Director, as well as the Monitor, through the Court's registry.

6. The AMOU will remain in effect except to the extent it conflicts with this order. This includes the requirement that a task will not be removed from active monitoring until Defendants have demonstrated substantial compliance for at least one year.

B. Role of the Monitor Upon Appointment of the Compliance Director

1. The requirement in the January 24, 2012 order for consultation with the Monitor will terminate upon appointment of the Compliance Director. However, Defendants will not implement any of the types of changes or actions identified in the January 24, 2012 order without the Compliance Director's direction or approval.

2. Unless otherwise ordered, the Monitor's duties and responsibilities will otherwise remain unchanged and will stay in effect until this case is terminated. These duties include the continuation of the Monitor's quarterly reports, drafts of which will be provided simultaneously to the Compliance Director and the parties.

3. The Monitor and the City shall meet and confer concerning compensation to be paid to the Monitor for work performed after the current AMOU termination date of January 22, 2014. If they cannot reach agreement, the matter will be resolved by the Court. If any payment is unduly delayed, the Court will order the City to pay the Monitor, as well as the Compliance Director, through the Court's registry.

4. The Compliance Director and the Monitor will be independent positions that report only to the Court and not to each other. However, the Court expects the Compliance Director and the Monitor to work closely and in consultation with each other. Thus, for example, any technical assistance or informal advice provided by the Monitor to Defendants should include the Compliance Director whenever possible, and the Compliance Director should consult with the Monitor on all major decisions.

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C. Duties of the Compliance Director

1. Within 30 days of his or her appointment, the Compliance Director will file a remedial action plan ("Plan") that both addresses deficiencies that led to noncompliance and explains how the Plan will facilitate sustainable compliance with all outstanding tasks by December 2013 or as soon thereafter as possible. In developing the plan, the Compliance Director will consult with the Monitor, Plaintiffs, the Mayor, the City Administrator, the Chief of Police, and the Oakland Police Officers' Association ("OPOA"). The Compliance Director will work closely and communicate regularly with the Chief of Police, the Chief's staff, and other relevant City personnel to implement the Plan. The Plan will include:

a. A proposed budget, to be included as part of the Oakland Police Department ("OPD") budget, that is mutually agreed to by the Compliance Director, the Mayor, the City Administrator, and the Chief of Police for the fiscal year based on proposed expenditures for task compliance.

b. A plan for the oversight, acquisition, and implementation of a personnel assessment system ("IPAS") that provides a sustainable early-warning system that will mitigate risk by identifying problems and trends at an early stage. The Compliance Director will ensure that all parties are fully informed about both the procurement of new technology and how that technology will be used to identify problems and trends to ensure that officers are provided the requisite assistance at the earliest possible stage.

c. Strategies to ensure that allegations made by citizens against the OPD are thoroughly and fairly investigated.

d. Strategies to decrease the number of police misconduct complaints, claims, and lawsuits.

e. Strategies to reduce the number of internal affairs investigations where improper findings are made. This includes strategies to ensure that investigators apply the correct burden of proof, as well as strategies to ensure that complaints are not disposed of as "unfounded" or "not sustained" when sufficient evidence exists to support that the alleged conduct did occur.

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f. A list of persons responsible for each outstanding task or specific action item. This requirement shall supersede the requirement for Defendants to file updated lists of persons responsible with the Court.

The above list of requirements is not exhaustive. Likewise, the parties have agreed that tasks related to the following areas are key to driving the sustained cultural change envisioned by the parties when agreeing to the NSA and AMOU: collection of stop data, use of force, IPAS, sound management practices, and the quality of investigations by the Internal Affairs Division. These areas are covered by Tasks 5, 20, 24, 25, 26, 30, 34, 40, and 41. The Court agrees that the identified tasks are of utmost importance but, unless otherwise ordered, expects full and sustainable compliance with all NSA tasks.

2. Within 60 days of his or her appointment, the Compliance Director will file a list of benchmarks for the OPD to address, resolve, and reduce: (1) incidents involving the unjustified use of force, including those involving the drawing and pointing of a firearm at a person or an officer-involved shooting; (2) incidents of racial profiling and bias-based policing; (3) citizen complaints; and (4) high-speed pursuits. In developing these benchmarks, the Compliance Director will consult with the Monitor, Plaintiffs, the Mayor, the City Administrator, the Chief of Police, the OPOA, and, as necessary, subject-matter experts to ensure that the benchmarks are consistent with generally accepted police practices and national law enforcement standards.

3. Beginning on May 15, 2013, and by the 15th of each month thereafter, the Compliance Director will file a monthly status report that will include any substantive changes to the Plan, including changes to persons responsible for specific tasks or action items, and the reasons for those changes. The monthly status reports will also discuss progress toward achieving the benchmarks, reasons for any delayed progress, any corrective action taken by the Compliance Director to address inadequate progress, and any other matters deemed relevant by the Compliance Director. These monthly reports will take the place of Defendants' biweekly reports, which shall be discontinued after May 15, 2013.

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4. Prior to filing any documents with the Court, the Compliance Director will give the parties an opportunity to determine whether any portions of the documents should be filed under seal. Requests to file documents under seal must be narrowly tailored and made in accordance with Civil Local Rule 79-5.

5. The Compliance Director may, at his or her sole discretion, develop a corrective action plan for any task for which the Monitor finds Defendants to be out of compliance. As part of any such plan, the Compliance Director will determine the nature and frequency of future internal compliance testing for that task.

6. The Compliance Director will have the power to review, investigate, and take corrective action regarding OPD policies, procedures, and practices that are related to the objectives of the NSA and AMOU, even if such policies, procedures, or practices do not fall squarely within any specific NSA task.

7. The Compliance Director will have the authority to direct specific actions by the City or OPD to attain or improve compliance levels, or remedy compliance errors, regarding all portions of the NSA and AMOU, including but not limited to: (1) changes to policies, the manual of rules, or standard operating procedures or practices; (2) personnel decisions, including but not limited to promotions; engagement of consultants; assignments; findings and disciplinary actions in misconduct cases and use-of-force reviews; the discipline or demotion of OPD officers holding the rank of Deputy Chief and Assistant Chief; and the discipline, demotion, or removal of the Chief of Police; (3) tactical initiatives that may have a direct or indirect impact on the NSA or AMOU; (4) procurement of equipment, including software, or other resources intended for the purpose of NSA and AMOU compliance; and (5) OPD programs or initiatives related to NSA tasks or objectives. The Compliance Director will have the authority to direct the City Administrator as it pertains to outstanding tasks and other issues related to compliance and the overall NSA and AMOU objectives. Unless otherwise ordered, the Compliance Director's exercise of authority will be limited by the following:

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a. The Compliance Director will have expenditure authority up to and including $250,000 for expenditures included in the Plan. This is not a cumulative limit. For individual expenditures greater than $250,000, the Compliance Director must comply with public expenditure rules and regulations, including Oakland Municipal Code article I, chapter 2.04. The City Administrator will seek authorization of these expenditures under expedited public procurement processes. The Compliance Director may seek an order from this Court if he or she experiences unreasonable funding delays.

b. Members of OPD up to and including the rank of Captain will continue to be covered by the Meyers-Milias-Brown Act, the collective bargaining agreement, and OPOA members' rights to arbitrate and appeal disciplinary action. The Compliance Director will have no authority to abridge, modify, or rescind any portion of those rights for these members.

c. The Compliance Director will have no authority to rescind or otherwise modify working conditions referenced in the labor agreements between the City and the OPOA as those contracts relate to any member up to and including the rank of Captain. "Working conditions" include the rights identified in the above subparagraph, as well as salary, hours, fringe benefits, holidays, days off, etc.

d. Prior to removing the Chief of Police or disciplining or demoting the Chief of Police, an Assistant Chief, or a Deputy Chief, the Compliance Director will first provide written notice, including reasons for the intended action, to the parties and the affected individual and an opportunity for appeal to this Court. Where practicable, the Compliance Director will consult with the Mayor, the City Administrator, and the Chief of Police prior to providing such notice.[2] Within seven calendar days of the Compliance Director's written notice, the City, Plaintiffs, and the affected Chief, Assistant Chief, or Deputy Chief may oppose or support any such action, under applicable federal and state law, by filing a notice with the Court seeking an expedited briefing schedule and hearing. The affected Chief,

[2]Prior consultation may not always be practicable. For example, the Compliance Director will not be expected to consult with the Chief of Police on a decision to discipline, demote, or remove the Chief of Police.

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Assistant Chief, or Deputy Chief will retain his or her employment and other rights pending the Court's decision.

e. In all disputes between the City and the Compliance Director relating to this order, except for the demotion, discipline, and removal decisions covered in the preceding subparagraph, the Compliance Director will consult with the Mayor, the City Administrator, the Chief of Police, and Plaintiffs in hopes of reaching consensus. If, after such consultation, the City and the Compliance Director remain in disagreement, the Compliance Director will provide written notice to the parties of the dispute and the Compliance Director's proposed direction. Within seven calendar days of the Compliance Director's written notice, the City may file a notice with the Court seeking an expedited hearing to determine whether the City should be excused from complying with the Compliance Director's direction. The City will comply with any direction that is not timely brought before the Court. The City's right to seek relief from the Court must not be abused and should generally be limited to matters related to employee discipline or expenditures in excess of $250,000. At any hearing on a disputed issue, the City will bear the burden of persuading the Court that the City's failure to follow the Compliance Director's direction will not harm the City's compliance with the NSA or AMOU. Plaintiffs will be a party to any such hearing, and their counsel will be entitled to recover reasonable attorneys' fees and costs from Defendants, as set forth below in paragraph D.

D. Attorneys' Fees and Costs

The parties shall meet and confer regarding reasonable attorneys' fees and costs relating to Plaintiffs' motion to appoint a receiver, any motion that may be filed pursuant to paragraphs A.4, B.7.d, or B.7.e of this order, and any work performed after January 22, 2014. Any disputes over attorneys' fees and costs that the parties cannot resolve independently will be submitted to Magistrate Judge Cousins. Nothing in this order alters the right of Plaintiffs' counsel to receive previously agreed upon or previously earned fees and costs under the AMOU.

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E. Role of the OPOA

Unless otherwise ordered, the OPOA will retain its limited status in intervention until this case is terminated. The Compliance Director will meet no less than once per quarter with the president of the OPOA to discuss the perspective of rank-and-file police officers on compliance efforts.

F. Further Proceedings

The parties shall appear for a status conference on **June 6, 2013, at 10:00 AM**, to discuss Defendants' progress toward compliance. The parties and Intervenor OPOA shall file a joint status conference statement on or before **May 24, 2013**.

The Court is hopeful that the appointment of an independent Compliance Director with significant control over the OPD will succeed – where City and OPD leaders have failed – in helping OPD finally achieve compliance with the NSA and, in the process, become more reflective of contemporary standards for professional policing. If the remedy set forth in this order proves unsuccessful, and Defendants fail to make acceptable progress even under the direction of the person appointed pursuant to this order, the Court will institute proceedings to consider appropriate further remedies. Such remedies may include, but are not limited to, contempt, monetary sanctions, expansion of the Compliance Director's powers, or a full receivership.

IT IS SO ORDERED.

Dated: 12/12/12

THELTON E. HENDERSON, JUDGE
UNITED STATES DISTRICT COURT

OPD NSA Task Compliance Responsibility List (Aug. 2024)

OAKLAND POLICE DEPARTMENT
NSA TASK COMPLIANCE RESPONSIBILITY CHART
AUGUST 28, 2024

Task	Task Name	Compliance Accountability
1	IAD Staffing & Resources	Acting Captain Gordon Dorham
2	Timeliness Standards & Compliance w/IAD Investigations	Acting Captain Gordon Dorham
3	IAD Integrity Tests	Acting Captain Gordon Dorham
4	Complaint Control System for IAD	Acting Captain Gordon Dorham
5	Complaint Procedures for IAD	Acting Captain Gordon Dorham
6	Refusal to Accept or Refer Citizen Complaints	Acting Captain Gordon Dorham
7	Methods for Receiving Citizen Complaints	Acting Captain Gordon Dorham
8	Classification of Citizen Complaint	Acting Captain Gordon Dorham
9	Contact of Citizen Complaint	Acting Captain Gordon Dorham
10	IAD Manual	Acting Captain Gordon Dorham
11	Summary of Citizen Complaints Provided to OPD Personnel	Acting Captain Gordon Dorham
12	Disclosure of Possible Investigator Bias	Acting Captain Gordon Dorham
13	Documentation of Pitchess Responses	Acting Captain Gordon Dorham
14	Investigation of Allegations on MOR Violations	Acting Captain Gordon Dorham
15	Reviewing Findings & Disciplinary Responses	Acting Captain Gordon Dorham
16	Support IAD Process-Supervisor/Managerial Accountability	Acting Captain Gordon Dorham
17	Audit, Review, and Evaluation of IAD Functions	Acting Captain Gordon Dorham
18	Arrest Approval and Report Review	DC Casey Johnson
19	Unity of Command	DD Kiona Suttle
20	Span of Control for Supervisors	DC Casey Johnson
21	Members, Employees & Supervisors Performance Reviews	DD Kiona Suttle
22	Management Level Liaison	DC Frederick Shavies
23	Command Staff Rotation	DD Kiona Suttle
24	Use of Force Reporting Policy	AC James Beere/ DC Anthony Tedesco
25	Use of Force Investigation and Report Responsibilities	DC Anthony Tedesco
26	Force Review Board	DC Angelica Mendoza
27	OC Log and Check-out Procedures	DC Frederick Shavies
28	Use of Force – Investigation of Criminal Misconduct	DC Frederick Shavies
29	IAD Investigation Priority	Acting Captain Gordon Dorham
30	Executive Force Review Board	DC Angelica Mendoza
31	Officer-Involved Shooting Investigation	DC Frederick Shavies

32	Use of Camcorders	Not Applicable
33	Reporting Procedures for Misconduct	Acting Captain Gordon Dorham
34	Vehicle Stops, Field Investigation and Detentions	DC Casey Johnson
35	Use of Force Witness Identification	DC Anthony Tedesco
36	Transporting Detainees and Citizens	DC Anthony Tedesco
37	Internal Investigations Retaliation Against Witnesses	Acting Captain Gordon Dorham
38	Citizens Signing Statements	DC Anthony Tedesco
39	Personnel Arrested, Sued, or Served	Acting Captain Gordon Dorham
40	PAS Purpose	DC Angelica Mendoza
41	Use of PAS	DC Angelica Mendoza
42	Field Training Program	DC Angelica Mendoza
43	Academy Training Program	DC Angelica Mendoza
44	Personnel Practices	DD Kiona Suttle
45	Consistency of Discipline	Chief Floyd Mitchell/ AC James Beere
46	Promotional Consideration Review	DD Kiona Suttle
47	Community Policing	DC Anthony Tedesco
48	Departmental Annual Management Reports	AC James Beere
49	Monitor Selection/Compensation	Chief Floyd Mitchell
50	Compliance Unit Liaison Policy	Chief Floyd Mitchell/ AC James Beere
51	Compliance Audits and Integrity Tests	Chief Floyd Mitchell/ AC James Beere
Compliance Director (CD) 1 12/12/12 Order	Resolve/Reduce incidents that may involve unjustified force, OIS, pointing of firearms	DC Anthony Tedesco
CD2 12/12/12 Order	Resolve/Reduce incidents that may involve racial profiling and bias-based policing	DC Casey Johnson
CD3 12/12/12 Order	Resolve/Reduce Citizen Complaints	Acting Captain Gordon Dorham
CD4 12/12/12 Order	Resolve/Reduce high speed pursuits	DC Angelica Mendoza

OPD Departmental General Order J-4
Pursuit Driving Policy (rev. 2014)

DEPARTMENTAL
GENERAL
ORDER

J-4

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Pursuit Driving

Effective Date
25 Aug 14

Evaluation Coordinator:
Training Section Commander

Evaluation Due Date:
25 Feb 15

Modified By:
SO 9192 (28 Dec 18)

PURSUIT DRIVING

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DEPARTMENTAL GENERAL ORDER

J-4

Index as:

Pursuit Driving

Effective Date
25 Aug 14

Evaluation Coordinator:
Training Section Commander

Evaluation Due Date:
25 Feb 15

Automatic Revision Cycle:
3 Years

PURSUIT DRIVING

The purpose of this order is to establish Departmental policy and procedures for vehicle pursuits.

I. VALUE STATEMENT

The protection of human life shall be the primary consideration when deciding to engage in a vehicle pursuit. Vehicle pursuits are inherently dangerous, but at times may be necessary to apprehend dangerous criminals who evade police in an attempt to escape. However, the decision to engage in a vehicle pursuit to immediately apprehend a fleeing suspect requires a careful weighing of the risks to the safety of officers, motorists, bystanders and the general public versus the benefit to public safety. Therefore, this policy only allows vehicle pursuits for violent forcible crimes and/or crimes involving the use or possession of firearms.

II. ENGAGING IN A VEHICLE PURSUIT

A. What is a vehicle pursuit

A **Vehicle Pursuit** is an event involving one or more law enforcement officers attempting to apprehend a suspected or actual violator of the law in a motor vehicle while the driver is using evasive tactics, such as high speed driving, driving off a highway or turning suddenly and failing to yield to the officer's signal to stop.

B. When a pursuit may be initiated

Vehicle pursuits may only be initiated when there is **reasonable suspicion** to believe the suspect committed a violent forcible crime (See Appendix A) and/or a crime involving the use of a firearm, or **probable cause** that the suspect is in possession of a firearm.

A monitoring commander may authorize a pursuit for a crime not involving a violent forcible crime or firearms, under exigent circumstances, when the fleeing suspect's actions pose an immediate and serious threat to officers and the public. A pursuit report shall be completed and forwarded to the Department Safety Coordinator for all pursuits initiated under exigent circumstances and shall go before the Department Safety Committee for a full review to determine policy compliance.

C. When a pursuit must be terminated

Pursuits shall be terminated whenever the totality of circumstances known or which should be known to involved personnel during the pursuit indicate that the risks in continuing the pursuit reasonably appear to outweigh the risks resulting from terminating the pursuit.

III. RISK FACTORS

Involved personnel shall consider all Risk Factors, in determining whether to initiate and continue a vehicle pursuit, including but not limited to:

1. The volume of vehicular and pedestrian traffic in the area;

2. Traffic conditions;

3. Location of pursuit;

4. Safety of the public in the area of the pursuit (e.g., the presence of children, the elderly or disabled, the proximity to hospital or school zones in the vicinity of the pursuit);

5. Safety of the pursuing officers;

6. Speeds of both officer and suspect vehicles;

7. Familiarity of the officer and supervisor with the area of the pursuit;

8. Road and weather conditions;

9. Time of day;

10. Quality of communications between the pursuing units, the Communications Section, and/or supervisor;

11. The performance capabilities of the police vehicle or the operation of the emergency lights and siren;

12. Availability of air or field support;

13. Whether the officer has a ride-along passenger with him/her;

14. Whether the suspect is known and can be apprehended at a later time;

15. Whether the suspect is known to be a juvenile;

16. When a non-suspect vehicle and/or pedestrian accident has occurred during a pursuit;

17. The safety of occupants in the fleeing vehicle;

18. The distance between the pursuit and fleeing vehicles is so great that further pursuit is futile; and

19. The pursued vehicle's location is no longer known.

IV. DUTIES OF INVOLVED PERSONNEL

"Involved personnel" refers to officers, supervisors and commanders who are involved in the pursuit of the fleeing suspect or making command and control decisions relative to the pursuit.

A supervisor or commander, who becomes engaged in the pursuit, shall relinquish his/her supervisory control to an uninvolved supervisor or commander as soon as reasonably practical.

A passenger officer in a pursuit vehicle is considered involved personnel and shall be held accountable for advising the driver whenever a pursuit should be terminated.

Involved personnel shall comply with all other policy requirements including the driving rules, notification and reporting requirements.

A. Initiating a pursuit

1. When initiating a pursuit, involved officers must ensure there is:

a. **Reasonable Suspicion** the pursuit is for a violent forcible crime and/or a crime involving the use of a firearm; or

b. **Probable Cause** that the suspect is in possession of a firearm.

2. All vehicle pursuits shall be conducted with red light and siren, as required by 21005 VC, and with due regard and caution for the safety of all persons using the highway, as required by 21056 VC.

3. During a pursuit, involved officers and monitoring supervisors/commanders shall continually consider the Risk Factors and whether the pursuit should be terminated in order to protect officers and the public from the risks associated with the pursuit. All involved personnel may be required to explain their decision making and analysis of the risk factors.

B. Terminating a vehicle pursuit

1. Vehicle Pursuits shall be terminated when, after evaluating the risk factors and the safety risks to officers and the public, the risks outweigh the benefits of immediately apprehending fleeing suspects.

   Involved officers and monitoring supervisors/commanders are responsible for terminating a pursuit whenever the need to immediately apprehend a fleeing suspect is outweighed by the need to protect officers and the general public from harm.

2. The Communications Section shall be notified when a decision is made to terminate a pursuit. The pursuing unit(s) shall immediately:

   a. Disengage the pursuit by turning off from the pursued vehicle's direction of travel or pulling to the curb[1]. Units **shall not** trail or parallel the previously-pursued vehicle;

   b. Deactivate their emergency red lights and siren; and

   c. Obey all speed and traffic laws.

   Involved personnel shall comply with all other policy requirements including the driving, notification and reporting requirements.

[1] Circumstances may occur where it is not possible to turn off from the pursued vehicle's direction of travel and/or it is unsafe to pull to the curb (e.g., on the freeway). Accordingly, members shall follow parts b and c of Section IV.B.2 above and seek: the next exit point from the roadway to turn off of the path or a safe location to pull to the curb.

V. AUTHORIZED UNITS AND OFFICER RESPONSIBILITY

Only two units shall be authorized to engage in a vehicle pursuit, unless additional units are approved by a supervisor or commander via radio or other communication.

The requirements of this policy apply equally to the driver and passenger officers of primary and secondary units.

A. Primary Unit

1. The officer(s) who initiates a pursuit is designated as the primary pursuit unit in control of the pursuit until control is relinquished to another unit or otherwise directed by a supervisor or commander.

    a. The responsibility of the primary unit is to safely apprehend fleeing suspects without unnecessarily endangering the lives and safety of officers or the general public.

    b. The primary unit shall make the initial decision to continue in a pursuit until a supervisor/commander authorizes or terminates the pursuit.

    c. Communications Notification

2. Upon initiating a pursuit, the primary unit shall immediately, or as soon as reasonably practical, notify the dispatcher on a radio channel of:

    a. Reasons for the pursuit and suspected or known law violations;

    b. Description of the fleeing vehicle;

    c. Number and description of occupants, if known; and

    d. Continually report location, direction of travel, traffic conditions and speeds

3. Supervisory approval

    The primary unit shall notify the immediate supervisor as soon as reasonably practical and obtain verbal approval for the pursuit. If immediate verbal approval is not given, the primary unit shall terminate the pursuit. In the event the immediate supervisor is not available, another supervisor may authorize the pursuit and assume the responsibility for supervising the pursuit.

4. Broadcast Progress

The primary unit shall be responsible for broadcasting the progress of the pursuit, unless relieved by a secondary unit, or if required to relinquish the responsibility to the secondary unit in order to concentrate on pursuit driving.

5. Driving requirements

The primary unit shall be required to:

a. Activate the vehicle's emergency red lights and/or auxiliary lights;

b. Continuously sound the siren as a warning to other drivers and pedestrians; and

c. Maintain contact with the Communications Section.

B. Secondary Unit

The secondary unit shall notify the Communication Division and immediate supervisor or supervisor monitoring the pursuit immediately when responding or joining as the secondary unit.

1. The secondary unit shall meet the same driving requirements as specified for the primary unit above.

2. The secondary unit must remain a safe distance behind the primary unit unless authorized to assume the primary officer role or if the primary unit is unable to continue the pursuit.

3. The secondary unit also has a responsibility of assessing the pursuit and making a determination to continue or terminate the pursuit.

4. When practical, the secondary officer/unit shall assume responsibility of providing updates to the Communications Section when engaged in the pursuit.

C. Additional Units

1. A monitoring supervisor or commander may authorize more units to become engaged in the vehicle pursuit if warranted by the circumstances. The supervisor or commander must specifically state the number of additional units that are allowed to be in the pursuit.

2. Additional units shall meet all requirements specified for the secondary unit above.

D. Other Units

1. An unmarked unit may initiate or join a pursuit but shall disengage immediately when marked units become available and are in position to take over the pursuit. As soon as practical, the first marked unit becomes the primary pursuing unit.

2. A motorcycle unit may initiate a pursuit but shall disengage immediately when a marked unit joins the pursuit. Motorcycle units shall not continue or join in a pursuit as a cover unit due to the elevated risk involved.

3. Units transporting prisoners, victims, witnesses, civilians, an officer in the back seat without ability to exit the vehicle; or units with a civilian ride-along are prohibited from initiating, engaging or joining in a pursuit. This does not prohibit units with a civilian ride-along or an officer in the back seat without the ability to exit from trailing a pursuit (See Part VII. A "Trailing".)

4. Employees (non-sworn) are prohibited from initiating, engaging or joining in a vehicle pursuit.

VI. DRIVING RULES, TACTICS AND TECHNIQUES

The following rules and guidelines apply and involved officers and monitoring supervisors/commanders are required to adhere to these requirements:

A. Vehicle pursuits are subject to the provisions of California Vehicle Code Sections 21055(a) /21056 and the requirements of this policy that involved personnel **(1) activate the vehicle's emergency red and/or auxiliary lights; and (2) continuously sound the siren as a warning to drivers and pedestrians.**

B. A Code 3 response is governed by DGO J-4.1, EMERGENCY DRIVING REGULATIONS.

C. Pursuit Intervention Maneuver (PIM) techniques

1. PIM techniques shall only be used after receiving approval from a supervisor/commander or when exigent circumstances exist.

2. PIM techniques, as specified in Training Bulletin III-B.9, PURSUIT INTERVENTION MANEUVER TECHNIQUES, may be utilized in order to apprehend the suspect by bringing a pursuit to a safe conclusion and minimizing the risk to public safety and reducing property damage.

3. In determining whether to request and/or authorize the use of PIM techniques, the involved officers and the monitoring supervisor/commander shall continually consider: (a) the gravity of the offense and (b) the importance of and necessity for the immediate apprehension in relationship to public safety and the Risk Factors enumerated in this policy.

VII. ROLE OF AUXILIARY/UNINVOLVED UNITS

Assisting units and uninvolved personnel shall comply with all policy requirements, including driving, notification and reporting requirements.

A. Trailing

Trailing is the following of a pursuit and/or responding to the area of a pursuit. Trailing is conducted to provide assistance in the apprehension of a fleeing suspect, to provide information relative to the initiating crime or subsequent crimes, to assist in the recovery of any discarded evidence or to provide for the safety of those involved in or in the area of the pursuit. Although Trailing has a function of a vehicle pursuit (i.e. apprehension of a fleeing suspect), Trailing is not a vehicle pursuit because the officer is not signaling the driver to stop.

1. Trailing with helicopter support

Upon notification by the helicopter unit of visual contact with the fleeing vehicle, all ground units, unless authorized to continue by a commander, **shall disengage from the pursuit of the vehicle by deactivating the emergency lights and siren and obeying all speed and traffic laws (Code 2 status**.) After disengaging from the pursuit, members may trail the fleeing vehicle by responding to the directions of the helicopter unit, **with the intent of not being seen by the suspect** and to facilitate the arrest or detention of the driver and/or occupants of the vehicle.

2. Trailing without helicopter support

Trailing requires that units maintain sufficient distance from the pursuit units and/or the pursued vehicle by deactivating their emergency lights and siren and obeying all speed and traffic laws in order to clearly establish the absence of participation in the pursuit (Code 2 status.)

3. Trailing to conduct Safety Measures or additional duties

Officers must obey all speed and traffic laws and drive in a non-emergency status (Code 2) when responding to the area of the pursuit to assist with evidence recovery, clearing intersections, traffic control or with duties involved in the termination of the pursuit, unless emergency response (Code 3) is authorized by a supervisor or commander.

Upon arrival at an intersection along the pursuit path, uninvolved units shall activate their emergency lights and siren, as necessary, to alert and safely clear vehicular and pedestrian traffic from the pursuit path.

4. Trailing may be done by:

a. The primary or secondary units who relinquish control of the pursuit to another unit, the helicopter unit or other jurisdiction;

b. Uninvolved Area Officers;

c. Adjacent[2] Area Officers; or

d. Non-Adjacent[2] Area Officers with supervisory approval.

5. Trailing outside of the city requires supervisory or command approval.

B. Area and Adjacent Area Officers

Trailing should be conducted primarily by officers assigned to the Area or Adjacent Area to the pursuit.

C. Non-Adjacent Area Officers

[2] Adjacent Area is defined as sharing a border with the Area where the pursuit is occurring. Non-Adjacent Area is defined as not sharing a border with the Area where the pursuit is occurring.

Officers assigned to the Non-Adjacent Areas to the pursuit should remain in their assigned area and should not become involved in the pursuit unless directed by a supervisor.

VIII. SUPERVISORY AND COMMAND RESPONSIBILITY

A. Supervisors and commanders shall provide appropriate levels of supervision and command and control at all times during a vehicle pursuit.

1. A supervisor/commander shall monitor the pursuit via radio transmissions and maintain control of the pursuit through clear directives and communications with involved officers and relevant personnel.

2. Upon notification of a pursuit, the supervisor or commander shall assume command, control, and responsibility of the pursuit and shall verbally authorize or terminate the pursuit.

3. The immediate supervisor of the primary unit shall have primary responsibility for supervising and monitoring the pursuit. In the event the immediate supervisor is unavailable, the pursuit may be authorized and monitored by the following:

a. Supervisor from the same Area;

b. Another field supervisor (i.e., adjacent Area supervisor, specialized unit supervisor, etc.);

c. Area Commander or other commander; or

d. Communications Section Sergeant/Commander

The monitoring supervisor, if not the immediate supervisor, shall complete the Pursuit Report.

B. The duties of the monitoring supervisor include consideration of the following factors in making supervisory decisions related to the pursuit:

1. The supervisor/commander reasonably believes that the pursuing unit has:

a. Reasonable suspicion the pursuit involves a violent forcible crime and/or a crime involving the use of a firearm; or
b. Probable cause that the suspect is in possession of a firearm;

2. The pursuit is justified based on an evaluation of the Risk Factors;

3. Proper type and number of units are involved in the pursuit;

4. Available aircraft has been requested;

5. Proper communication protocols and radio channel are used;

6. Affected agencies are being notified;

7. The decision to request an outside agency's assistance;

8. The decision to grant assistance in response to the request of an outside agency conducting its own vehicle pursuit; and

9. The decision whether or not to terminate the pursuit.

C. The monitoring supervisor of the pursuing officer shall have the primary responsibility for supervising the pursuit and evaluating the risk factors in deciding whether a pursuit should continue. If the pursuing officer's immediate supervisor is unavailable, another supervisor or commander may assume primary supervisory responsibility and transmit that decision.

1. Upon making a decision to terminate or continue a pursuit, the supervisor shall communicate it to the pursuing units.

2. If practical, a supervisor/commander shall not be actively involved in a pursuit.

D. The supervisor/commander shall proceed to the termination point of the pursuit and direct the actions of field personnel unless relieved by a higher ranking officer.

E. Accountability

Supervisor/commanders shall be held equally accountable for authorizing the continuation of a pursuit.

1. Involved officers and the approving supervisor/commander shall be held accountable for the continuation of a pursuit they knew or reasonably should know violates policy.

2. Upon termination of the pursuit the supervisor shall, when operationally feasible, debrief the pursuit with those members involved in the pursuit.

IX. PURSUITS INTO OTHER JURISDICTIONS

A. When a pursuit extends into the jurisdiction of another law enforcement agency, the monitoring supervisor or commander shall determine whether to terminate or relinquish the pursuit. In making this determination, the following factors, in addition to the Risk Factors, shall be considered:

1. Whether involved OPD officers are familiar with the area;

2. The distance involved;

3. Communication limitations; and

4. Whether the pursuit can be assumed by another agency.

B. The involved officers or supervisor/commander shall request the Communications Section notify the other jurisdiction of the pursuit.

C. The involved officer or supervisor/commander shall inform the Communications Section if assistance from another agency will likely be needed.

D. If it is determined that the pursuit is to be relinquished to another agency, the request shall be clearly relayed by the Communications Section to that agency and confirmation of acceptance of the pursuit shall be obtained before the pursuit is relinquished. Mere notification to another agency of a pursuit in progress shall not constitute a request to join or transfer responsibilities for the pursuit.

E. When a pursuit is terminated, the involved officers, supervisor or commander shall immediately notify the Communications Section who shall broadcast to all involved personnel, pursuit units and auxiliary units to abandon the pursuit. This information shall also be immediately relayed to any other involved agency.

F. When a pursuit is taken over by another agency, the officer engaged in the initial pursuit shall proceed, if practical and with supervisor or command approval, to the termination point in Code 2 status to provide information which may be required for the arrest.

G. The control and management of a scene which terminates in another agency's jurisdiction is the responsibility of that agency. Any officer at the termination point shall coordinate their actions with the other agency and update the appropriate OPD supervisor/commander as necessary

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X. OUTSIDE AGENCY PURSUITS WITHIN THE CITY OF OAKLAND

At times outside agencies will initiate a vehicle pursuit within the City of Oakland or continue a pursuit that started elsewhere into Oakland city limits. The policy of the department in responding to outside agency pursuits occurring within city limits is as follows:

A. The Department may participate in outside agency pursuits occurring in Oakland only when the pursuit meets OPD Department Policy criteria for a pursuit.

B. The outside agency must formally request the involvement of OPD; notification that a pursuit is in progress and in Oakland does not constitute a formal request.

C. Only authorized personnel at the level of sergeant or commander may approve OPD's participation in an outside agency pursuit.

D. The notification of the decision to decline or accept the outside agency's request to join and/or take over control of their pursuit shall be relayed by the Communications Section.

E. In determining whether to approve OPD's participation and the nature of OPD's participation, the following factors shall be considered:

1. Whether OPD should take over the pursuit or engage as a secondary unit;

2. Evaluate the Risk Factors (Part II);

3. Whether the outside agency already has two (2) or more vehicles involved in the pursuit; and

4. Whether there is adequate communications between the outside agency and OPD units.

F. Upon authorization of OPD's involvement in the outside agency pursuit, the authorizing sergeant or commander shall designate the units authorized to engage in the pursuit and inform the designated units of the specific role authorized.

G. Authorized units/involved officers shall comply with the provisions of this order when participating in a pursuit involving an outside agency.

H. If necessary, the monitoring supervisor/commander shall direct an appropriate number of units to the vicinity/direction of flight of the pursuit in an appropriate response mode to assist the outside agency, but not to become actively involved in the pursuit.

I. OPD has the primary responsibility for the control, coordination and management of all police personnel at the termination point, inside Oakland city limits, of an outside agency pursuit that was joined or taken over by OPD.

J. The involved officers and monitoring supervisor/commander shall continually consider the gravity of the offense and the importance of and necessity for the immediate apprehension in relationship to public safety and Risk Factors (Part II) in determining whether to terminate engagement or assistance in the pursuit. If a decision is made to terminate OPD participation in an outside agency's pursuit, involved personnel shall notify the Communications Section. The Communication Section shall then notify the outside agency.

K. Nothing in this policy prohibits officers in the area of the pursuit, when not authorized to join and/or take over an outside agency pursuit within the City of Oakland, from providing traffic control measures to protect other drivers or pedestrians.

XI. HELICOPTER SUPPORT

A. The Helicopter Unit shall respond, when practical, to the scene of a pursuit to assist and coordinate ground activities.

B. When visual contact with a pursuit is made, the helicopter unit shall notify the Communications Section.

C. Upon notification by the helicopter unit of visual contact with the fleeing vehicle, all ground units shall disengage from the pursuit of the vehicle by **deactivating the emergency lights and siren and obey all speed and traffic laws**. After disengaging from the pursuit, members may trail the fleeing vehicle by responding to the direction of the helicopter unit, **with the intent of not being seen by the suspect** and to facilitate the arrest or detention of the driver and/or occupants of the vehicle (See Part VII. A "Trailing".)

A Commander, under exigent circumstance, may authorize ground units to not disengage and continue in direct pursuit. When this occurs a pursuit report shall be completed and forwarded to the Department Safety Coordinator and shall go before the Department Safety Committee for a full review to determine policy compliance.

D. In order to assist ground units, the helicopter unit shall be used for, but not limited to:

1. Identify and broadcast the direction of flight and the number of ground units trailing or involved in a pursuit;

2. Advise trailing or pursuing officers and the monitoring supervisor/commander of potential hazards/safety risks to be considered in continuing or terminating a pursuit;

3. Facilitate coordination of ground units for arrest procedures;

4. Video record the pursuit and the post-pursuit activity, when available; and

5. Provide information on risk factors to be evaluated in deciding whether the pursuit should be continued or terminated.

E. Supervisors or Commanders may terminate the entire pursuit, including helicopter support, and shall notify the Communications Section. Upon notification of such termination members shall comply with policy requirements for terminating a vehicle pursuit, as specified in Part IV.B, and the helicopter unit shall return to normal service.

F. A Supervisor or Commander may utilize the helicopter, if available, to continue observing the direction of flight of the fleeing vehicle/suspect after the pursuit has been terminated to facilitate coordination of ground units for arrest procedures.

G. A Supervisor or Commander may authorize ground units to re-engage in a pursuit should the helicopter unit be redirected or circumstances arise that restrict or prevent the helicopter unit from safely continuing.

XII. POST PURSUIT APPREHENSION

Applicable Department policies relevant to the apprehension of outstanding suspects following the end of a vehicle pursuit include but are not limited to:

- TB III-B.9, High-Risk Vehicle Stops;

- TB III-Z, Gaining The Advantage Over A Suspect In A Foot Pursuit;
- DGO K-3, Use Of Force; and
- DGO K-5, Tactical Operations Team

XIII. REPORTING REQUIREMENTS

A. State Reporting Requirement

California Vehicle Code Section 14602.1 requires that every local law enforcement agency complete a California Highway Patrol (CHP) report concerning a police pursuit, and forward to the CHP. A CHP 187A form is not required for a "Non-Response Pursuit" (see Parts G and H of this Section.)

B. Level 1 – Supervisor/Commander Responsibilities

1. If a vehicle pursuit within the City of Oakland results in a death or injury likely to cause death, the assigned supervisor/commander shall:

a. Ensure medical assistance is summoned;

b. Respond to the scene;

c. Ensure the scene is secured;

d. Ensure a Crime Scene Security Log is maintained to record the time and identifying information of all persons entering and exiting the scene, to include:

1) Department personnel;

2) Medical personnel;

3) Fire Department unit number and personnel; and

4) Other persons.

e. Ensure the Crime Scene Security Log is delivered to the appropriate investigator (criminal and/or traffic) for inclusion in the investigative case file;

f. Ensure the Area Commander is notified and briefed of the incident;

g. Ensure the Fatal Accident Standby Team (FAST) is notified;

h. Ensure the Internal Affairs Division (IAD) is notified;

i. Ensure the Homicide Section is notified and briefed of the incident, if OPD personnel are involved in the pursuit;

j. Ensure involved and witness personnel have been separated and advised that communication is prohibited;

k. Attempt to obtain and document a Public Safety Statement, to include:

1) A verbal account from involved personnel to help determine the general circumstances of the incident;

2) Assess the need for resources and notifications;

3) Help set the perimeter;

4) Locate injured persons;

5) Determine the nature of the evidence to seek;

6) Identify the number of suspects involved;

7) Identify the number of suspects outstanding; and

8) The supervisor shall not ask the involved personnel to provide a step-by-step narrative of the incident or to provide a motive for their actions.

2. Coordinate the apprehension of the suspect, if still outstanding;

3. Coordinate the preliminary investigation with Departmental investigators including but not limited to:

a. Identifying involved and witness personnel;

b. Ensuring the preservation of evidence; and

c. Identifying other witnesses

4. Assist Traffic investigators to ensure proper statements are taken;

5. Respond to the location of a witness who has declined to give a statement or has refused to give witness identification information when requested by a member or employee. The outcome shall be documented in the member's Supplemental Report after the supervisor has talked to the witness;

6. Separate and prohibit communication between involved and witness personnel;

7. Ensure involved personnel limit any discussion of the incident to information necessary:

   a. For a Public Safety Statement;

   b. To assist in the investigation; or

   c. Leading to the apprehension of the suspect.

8. Ensure personnel complete a Supplemental Report who were on scene at the time of the incident (not including involved or witness personnel) or were assigned to assist at the scene;

9. Offense/Supplemental Reports shall be prepared independently without discussing the details of the incident with other personnel on scene. Group reporting and interviewing is prohibited;

10. Contact and provide the IAD investigator with complaint information, if notified of an allegation of misconduct.

C. Level 2 – Primary Officer Reporting Responsibilities

1. Complete an offense report and other documentation, as required, to document the details of the pursuit[3]; and

2. Submit the completed offense report and other documentation to his/her supervisor for review.

D. Level 2 – Supervisor/Commander Responsibilities

1. For Level 2 vehicle pursuits, the supervisor/commander shall:

   a. Ensure medical assistance is summoned, if necessary;

[3] See Part XV, IMPOUNDING VEHICLES UNDER AUTHORITY 14602.7 CVC

b. Respond to the termination point of the pursuit;

c. Ensure the scene is secured;

d. Coordinate the apprehension of the suspect, if still outstanding;

e. Ensure the on-duty Area Commander or Watch Commander is notified and briefed of the incident;

f. Ensure involved and witness personnel, outside agency personnel and private person witnesses are identified;

g. Designate personnel to prepare a vehicle collision report, if required;

h. In the event of a collision involving a police vehicle, conduct a separate, personal interview with involved and witness personnel including, if necessary, a written statement;

i. Ensure the suspect is admonished and an attempt is made to take a statement, when possible. A suspect shall not be admonished in any case in which there is a Criminal Investigation Division (CID) callout unless an approved exception exists as specified in RWM S-01, STATEMENTS;

j. Contact and provide the Communications Section with the required pursuit information for entry on the Pursuit Tracking Log;

k. By the end of the reporting supervisor's next scheduled work day, send a copy of the Pursuit Report face sheet to BFO Admin for tracking purposes; and

l. Within seven (7) calendar days of the pursuit, the reporting supervisor/commander shall:

1) Review the Offense Report and other documentation;

2) Complete the appropriate Pursuit Report for each incident;

3) The narrative of the Pursuit Report shall include but not limited to the following:

a) A brief summary of the pursuit including the events that led to engaging in the pursuit;

b) Document any discrepancies of interviews (or statements) of non-personnel and personnel witnesses;

c) Based on the analysis of the facts revealed by the investigation, make a determination as to whether the pursuit was in compliance with Departmental policy;

d) Document any relevant training issues revealed by the investigation; and

e) Analysis of relevant evidence including PDRD video.

2. Endorse (signature required) the Pursuit Review Tracking Sheet (TF-3257).

3. Prepare a Pursuit Report packet to include:

a. Original Pursuit Report (TF-3051);

b. Original signed Pursuit Review Tracking Sheet (TF-3257);

c. Copy of CHP 187A form;

d. Copy of Collision Report;

e. Copy of Radio purge;

f. Copy of the electronic recording file (PDRD), if available, or that a request for a copy is documented;

g. Photographs, if available;

h. Copy of any statements, if taken;

i. Copy of Offense Report; and

j. Ancillary documents.

4. Prepare and forward the original CHP 187A report to the Department Safety Coordinator;

5. Maintain a copy of the Pursuit Report for his/her file for one (1) year from the date of the pursuit; and

6. Forward the Pursuit Report packet for review through the appropriate chain–of-review.[4]

E. Level 3 – Primary Officer Reporting Responsibilities

1. Complete an offense report and/or other documentation, as required, to document the details of the pursuit; and

2. Submit the completed offense report and/or other documentation to his/her supervisor for review by the end of tour of duty.

F. Level 3 - Supervisor/Commander Responsibilities

For Level 3 pursuits, the supervisor/commander shall:

1. Respond to the termination point of the pursuit;

2. Review the Offense Report and/or other documentation;

3. Contact and provide the Communications Section with the required pursuit information for entry on the Pursuit Tracking Log;

4. Prepare and forward the original CHP 187A report to the Department Safety Coordinator;

5. Prepare and endorse (signature required) a Pursuit Review Tracking Sheet (TF-3257); and

6. Forward the Pursuit Review Tracking Sheet, Offense Report and a copy of the CHP 187A through the appropriate chain-of-review within seven (7) calendar days of the pursuit.

G. Non-Response Pursuit – Primary Officer Reporting Responsibilities

[4] For the purpose of this order, the appropriate chain-of-review shall be through the first level-commander under which the involved officer was working during that tour of duty when the pursuit occurred.

In all cases, where an officer attempts to stop a violator and the violator flees or fails to stop and the officer makes no attempt to keep up with or pursue the violator, the incident shall be deemed a "Non-Response Pursuit."

The primary officer shall:

1. Complete offense report and/or other documentation, as required, to document the details of why the vehicle stop was attempted; and

   NOTE: For the majority of Non-Response Pursuits, the most appropriate documentation to complete is an FI/Stop Data Report, which is required per DGO M-19 and RWM R-1.

   The completion of a Crime Report for 2800.1, in addition to the FI/Stop Data Report, is not required unless a member desires further follow-up on the incident such as: the member knows or has the ability to positively identify the driver and is attempting to have him/her charged with the crime or the member is seeking to have the vehicle impounded as specified in TB III-E.5.

2. Notify his/her supervisor of the Non-Response Pursuit.

H. Non-Response Pursuit Supervisor/Commander Responsibilities

For all Non-Response pursuits the supervisor or commander shall:

1. Review the Offense Report and/or other documentation; and

2. Contact and provide the Communications Section with the required information for entry on the Pursuit Tracking Log (TF-3283b). No CHP 187A or pursuit report is required.

I. BFO Admin Responsibilities

Upon receipt of a Pursuit Report packet, BFO Admin shall:

1. Shall ensure the original CHP 187A form was forwarded to the Training Section by the supervisor completing the report;

2. Forward a copy of the Level 2 Pursuit Report packet to the Department Safety Coordinator;

3. Forward original Pursuit Report packets to the Training Section;

4. Maintain a spreadsheet tracking information obtained from the Pursuit Report packets; and

5. Maintain statistics regarding "Non-Response Pursuits" logged.

J. Training Section Responsibilities

Upon receipt of a Pursuit Report packet, the Training Section shall:

1. Assign a Pursuit Number to the incident;

2. Enter information into the Department Pursuit Database;

3. For any pursuit received from the Department Safety Coordinator with an "out of compliance" finding, forward to an IAD Intake Officer for creation of an IAD case to track discipline; and

4. Maintain pursuit documentation for a period of five (5) years.

K. Communications Section Responsibilities

Upon notification of a pursuit or non-response pursuit from a supervisor/commander, Communications Section personnel shall:

1. Enter the pursuit information provided on the Pursuit Tracking Log (TF-3283b).

2. Forward a copy of the Pursuit Tracking Log to BFO Admin on a daily basis after 0600 via email (BFOadmin@oaklandnet.com).

L. Fatal Accident Scene Team (FAST) Responsibilities

For Level 1 pursuits, the FAST shall conduct the fatal accident investigation in accordance with established procedures.

M. Internal Affair Division (IAD) Responsibilities

1. For Level 1 pursuits, IAD shall conduct a Vehicle Pursuit Related Death (VPRD) investigation and prepare the Vehicle Pursuit Related Death Report in accordance to established procedures.

2. IAD Investigators shall also contact the Communications Section to place the pursuit on the Pursuit Tracking Log.

N. Homicide Responsibilities

For Level 1 pursuits, Homicide investigator shall conduct interviews in accordance with established policy and procedures.

XIV. IMPOUNDING VEHICLES UNDER AUTHORITY 14602.7(a) CVC

CVC section 14602.7(a) allows officers to obtain a warrant to remove vehicles that are used in violation of CVC §§ 2800.1 2800.2, 2800.3 or 23103 and impound them for 30 days. See Training Bulletin III-E.5, IMPOUNDING VEHICLES UNDER AUTHORITY 14602.7(a) CVC for policy and procedures.

XV. DEPARTMENTAL SAFETY COORDINATOR/COMMITTEE

A. The Departmental Safety Coordinator shall:

1. Forward original CHP 187A forms to the CHP; and

2. Advise the Safety Committee Chairperson of pursuit incidents requiring review by the Department Safety Committee;

3. Review all pursuits, Level 2 & 3 Pursuits, for compliance with OPD policy, training recommendations and/or liability issues. Prepare and forward a quarterly report of all pursuits to the Safety Committee Chairperson and the Chief of Police. The quarterly report shall minimally include:

a. The number of pursuits for the quarter;

b. The number of pursuits resulting in a collision and/or an injury;

c. The number of reports found in compliance or out of compliance; and

d. Any patterns/trends identified.

B. The members of the Departmental Safety Committee shall review all Level 2 & 3 pursuits for compliance with OPD policy, training recommendations, and/or liability issues.

C. Any Departmental Safety Committee member may refer any pursuit to a Department Safety Committee full review.

A full Department Safety Committee review requires a presentation from the investigating supervisor and subject members involved in the pursuit to the Department Safety Committee.

NOTE: The Office of Inspector General shall conduct a yearly audit to ensure pursuits are being reviewed in accordance with this policy.

D. The Departmental Safety Committee Chairperson or designee shall convene the Departmental Safety Committee for a full board review, to review the following pursuit reports in accordance with the provisions of DGO J-4 Pursuit DRIVING, DGO J-4.1 EMERGENCY DRIVING, DGO G-4, DEPARTMENTAL SAFETY:

1. A pursuit resulting in injury;

2. Departmental vehicle damage; and

3. At the request of any supervisor, commander, the Departmental Safety Coordinator, or any member of the Departmental Safety Committee, who has reviewed the Pursuit Report packet, to address Departmental training and/or tactical issues that cannot be handled at his or her level of supervision/command.

4. A full Department Safety Committee review requires a presentation from the investigating supervisor and subject members involved in the pursuit to the Department Safety Committee.

E. The Chief of Police may direct a full board review of any pursuit.

F. The Departmental Safety Committee Chairperson or designee shall forward all pursuits found "out of compliance" to the Internal Affairs Division to initiate the discipline process.

XVI. TRAINING REQUIREMENTS[5]

A. Members are required to attend annual training on vehicle pursuits, Departmental policy and procedures and as required by Vehicle Code Section 17004.7(c) and Police Officers' Standards and Training Guidelines (Penal Code 13519.8.)

B. Members shall certify in writing that they have received all required training and have read and understand the provisions of this policy.

[5] Per SB 719; VC Section 17004.7 (b)(1) and (2)

C. The Training Section shall be responsible for collecting, tracking and maintaining required training records.

By order of

Sean Whent
Chief of Police

Date Signed: 8-25-14

APPENDIX A

DEFINITIONS AND TERMINOLOGY

A. Vehicle Pursuit

A **Vehicle Pursuit** is an event involving one or more law enforcement officers attempting to apprehend a suspected or actual violator of the law in a motor vehicle while the driver is using evasive tactics, such as high speed driving, driving off a highway or turning suddenly but failing to yield to the officer's signal to stop.

B. Non-Response Pursuit

A **Non-Response Pursuit** is when an officer attempts to stop a vehicle and the violator flees or fails to stop and the officer does not respond to the driver's action, making no attempt to keep up with or pursue the vehicle. A Non-Response Pursuit is not a vehicle pursuit.

C. Serious Bodily Injury (SBI)

Serious bodily injury means a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement.

D. Great Bodily Injury (GBI)

Great bodily injury means a significant or substantial physical injury.

E. Pursuit Intervention Maneuvers (PIM)

One or more authorized techniques designed to terminate a Vehicle Pursuit in a safe and prudent manner.

F. Officer

For the purpose of this order, the term "officer" shall include sworn and reserve officers, sergeants, and commanders.

G. Involved Officer

Driver or passenger of a police vehicle engaged in vehicle pursuit.

H. Violent Forcible Crime

For purposes of this policy, a Violent Forcible Crime is defined as the **commission or attempted commission of**:

1. Murder;

2. Manslaughter;

3. Mayhem

4. Kidnapping;

5. Robbery;

6. Carjacking;

7. Arson to an inhabited structure, inhabited property or that causes GBI;

8. Explode or ignite a destructive device or any explosive causing GBI or death;

9. Use or possession of a weapon of mass destruction;

10. Use of a firearm in the commission of a felony;

11. Assault with a deadly weapon, firearm;

12. Assault with a deadly weapon, other than a firearm*, with SBI/GBI;

    * The use of a motor vehicle to solely flee a scene or enforcement action does not meet the criteria for this part unless there is a clearly articulable intentional act by the driver to use the vehicle as a weapon.

13. Aggravated Battery with SBI/GBI; and

14. Any of the following sexual assaults committed against a person's will by means of force, violence, duress, menace, fear of immediate and unlawful bodily injury on the person or another, or in concert:

    a. Rape;
    b. Sodomy;
    c. Oral Copulation;
    d. Lewd Act on a Child under the age of 14; or
    e. Sexual penetration

I. Unmarked vehicle

Any non-black and white police vehicle displaying distinctive markings including "Oakland Police" lettering, the Department insignia and a vehicle number. The Department does not have any "semi-marked" vehicles.

J. Level 1 Pursuit

1. A vehicle pursuit that results in death or serious injury likely to cause death; or

2. A Level 2 pursuit raised to a Level 1 by a supervisor or commander.

K. Level 2 Pursuit

A vehicle pursuit which involves injury or property damage and/or whenever a PIM was utilized shall be a Level 2 Pursuit Report.

L. Level 3 Pursuit

A vehicle pursuit which does not result in injury or property damage, unless a PIM technique was utilized.