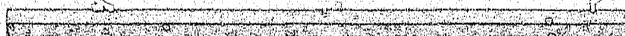
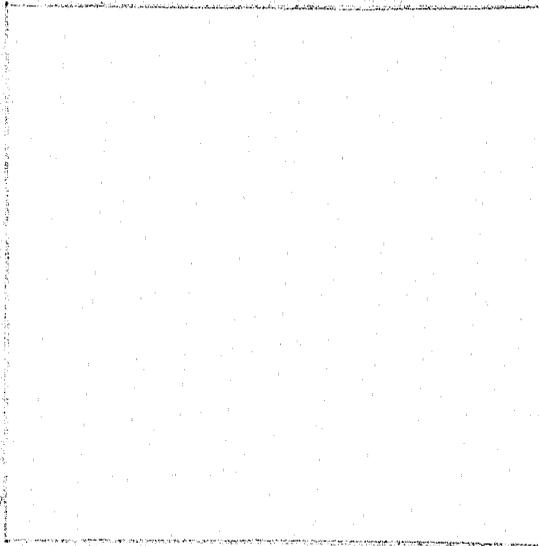
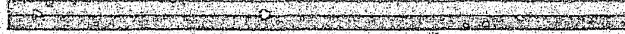


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GOVERNOR'S OFFICE OF CRIMINAL JUSTICE SERVICES



State of Ohio
Richard F. Celeste/Governor
Michael J. Stringer/Director

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SUGGESTED GUIDELINES

HIGH SPEED PURSUIT POLICY

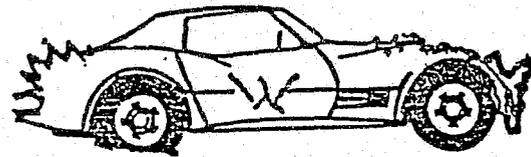
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ACQUISITIONS

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HIGH SPEED PURSUIT



STUDY PAPER AND RECOMMENDED GUIDELINES

Prepared By
Governor's Office Law
Enforcement Liaison Committee
August, 1986

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PREFACE

HIGH SPEED PURSUITS

"Dangers are inherent in pursuit driving. At its best, it can be a risky business. At its worst, it can be a menace to the people on the highways. This must be avoided at all cost."

"Training the Police Pursuit Driver"
by Edward E. Dougherty, Police (Nov.-Dec. 1966)

Existing national research through the U. S. Department of Transportation indicates the magnitude of the problems associated with high speed pursuits:

1. Each year between 50,000 and 500,000 "hot" pursuits occur in the United States.
2. 6,000 to 8,000 of these pursuits result in crashes.
3. 300 to 400 people are killed in such crashes.
4. 2,500 to 5,000 people are injured in these crashes.

The data further indicates:

1. In 90 percent of the cases, the offense leading to pursuit was a traffic offense.
2. The suspect is most likely to be a male under the age of 24 with a poor driving record.
3. Alcohol plays a substantial role in more than 50 percent of the cases.
4. The majority of the pursuits occur at night and on weekends.

INTRODUCTION

HIGH SPEED PURSUITS

During late 1985 and early 1986, members of the Governor's Office Law Enforcement Liaison Committee were contacted regarding growing safety concerns over high speed pursuits by law enforcement officers in Ohio and media attention being given the matter. As a result of the changing nature of governmental liability and varied practices employed by individual departments, the committee believed that a comprehensive review by various law enforcement/public safety officials was appropriate.

A subcommittee was formed to study the issue and prepare recommendations regarding high speed pursuit guidelines that could be utilized by any department in Ohio. The subcommittee consisted of representatives from: Governor's Office of Criminal Justice Services, Ohio Highway Patrol, Ohio Association of Chiefs of Police, Ohio Association of Public Safety Directors, Buckeye Sheriffs' Association and the Ohio Peace Officers Training Council. The subcommittee held a number of meetings analyzing information, data and court cases regarding high speed pursuits.

The goal of the subcommittee was to prepare a discussion paper with solid background information and draft minimum guidelines that could be incorporated into departmental policies.

This document should be considered a starting point for developing specific agency/departmental policies and should not be considered all inclusive.

In July, 1986 a final report was completed by the subcommittee which fulfilled the goal established for the review. We hope this document will be a useful reference tool for law enforcement officials throughout Ohio.

High Speed Pursuit Subcommittee

Major R. L. Yingling, Chairman
Bruce E. Henry, Editor

HIGH SPEED PURSUIT

STUDY COMMITTEE

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Robert Cornwell	Executive Director, Buckeye State Sheriffs' Association
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Joanna Richards	Staff Member, Governor's Office Law Enforce- ment Liaison Committee

Special thanks to Mr. Jeffrey S. Shoskin with the law firm of Dinsmore & Shohl, Cincinnati, Ohio and Deborah Piperni O'Neill, Assistant Ohio Attorney General for providing excellent legal research and general assistance.

BACKGROUND DISCUSSION

LEGAL ISSUES AND RELATED TOPICS

Man flees as police check car

High-speed chase
ends with arrest

Post staff report

LEBANON, Ohio — A Cincinnati man was arrested after a high-speed chase through three counties that began when a woman jumped out of his stopped car and claimed she was being sexually assaulted.

Michael Jones, 25, was being held Sunday in the Warren County Jail on charges of driving while under the influence of alcohol, driving without a driver's license, resisting arrest, fleeing and eluding a police officer and reckless driving.

Greene County sheriff's officers said they were investigating the complaint from the Cincinnati woman who had been in the car.

The chase, which reached speeds in excess of 100 mph, began at 12:15 a.m. Sunday at an exit ramp at Interstate 71 and Ohio 72 in Greene County, according to Sgt. Tom Ariss of the Highway Patrol.

Ariss said an officer had stopped to help occupants of a vehicle that he thought was disabled. As the officer pulled up, a woman jumped out of the car and said she had been sexually assaulted by the car's driver, according to police. At about the same time, the car sped away, and the chase began.

The chase, which wound through Greene, Clinton and Warren counties, was soon taken up by additional officers.

The fleeing car sped south on I-71 into Warren County, left the interstate at Kings Mills, turned around, and went back north on I-71. Later the driver left I-71 again at Ohio 48, went north on Ohio 48 a couple of miles, and turned around on that highway.

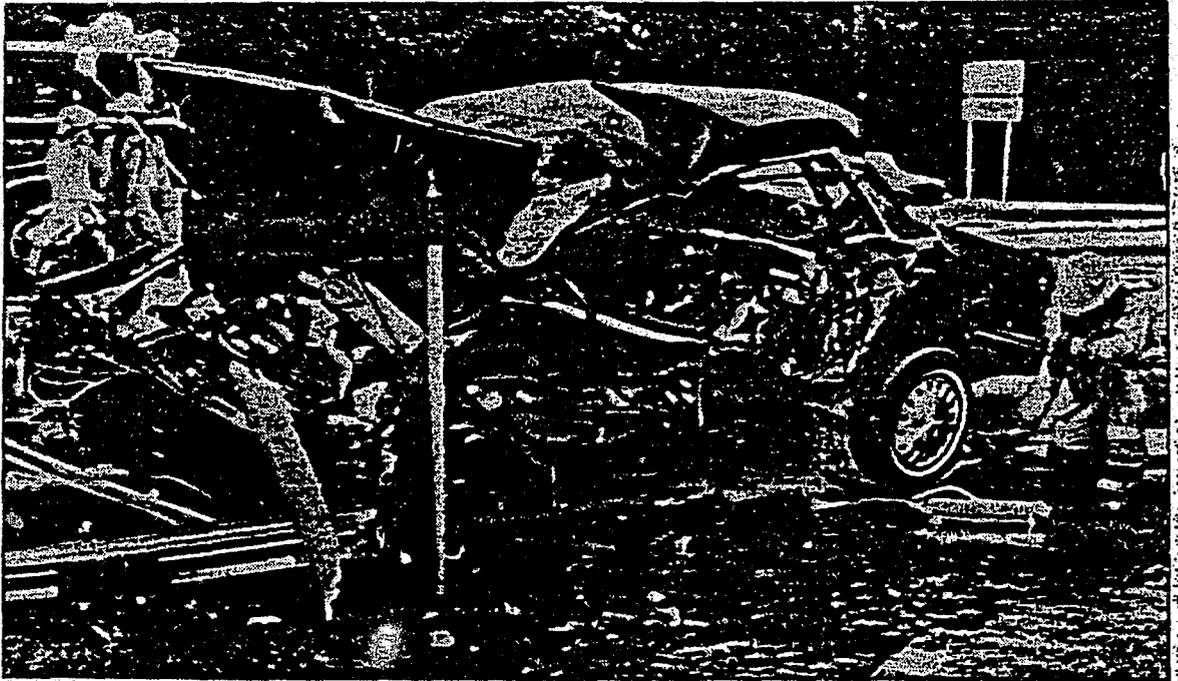
Ultimately, police said Jones lost control of the 1986 model car and was arrested.

He was treated for minor injuries.

CINCINNATI POST

July 21, 1986

EXAMPLE PURSUITS



Six die in crash: A firefighter sprays the wreckage of an automobile at the scene of an accident which killed six people near Moorestown, N.J. Police said four adults and two children died Sunday evening when Steven Bolling, 25, driving a stolen police car and being chased by officers, ran a red light and smashed into their car. Bolling, who suffered minor injuries, was to be charged today. The Associated Press

EXAMPLE PURSUITS

Crash kills man; officer hurt

A Columbus man was killed, and a Hilliard police officer was critically injured when their cars crashed into trees in Dublin in a high-speed chase, police said yesterday.

Robert D. Evans, 26, of 1465 E. 26th Ave. was killed when his car crashed into two trees Friday night along Avery Rd. north of Post Rd., Dublin police said.

Hilliard Police Officer R. Brien Hatfield's cruiser also hit a tree, and he suffered a facial fracture, a concussion, a fractured wrist and internal bleeding. He was in critical condition in Riverside Hospital last night.

Dublin and Hilliard police gave this account:

About 10:15 p.m. Friday, a call-

er told Hilliard police a suspicious person was at a Norwich St. residence. When officers arrived, they saw a car speed away. Hatfield and Sgt. Charles Scalf, in separate cars, pursued the car north on Avery Rd. "at a high rate of speed."

Evans lost control of his car and it struck a tree, spun around and hit another tree. Evans was thrown out.

Hatfield, apparently in an effort to avoid Evans' car, drove off the west side of Avery Rd. and struck a tree.

Washington Township Fire Department medics pronounced Evans dead at the scene. The medics transported Hatfield to the hospital.

Police surround crash scene at Long and N. High Sts. Chase ended when fugitive's car collided with four others

Downtown pileup lands fugitive in jail

A 24-year-old Cleveland man led law enforcement officers on a three-county chase yesterday that ended downtown with the man's arrest after a traffic collision.

Clarence Beachum was placed in the Franklin County Jail on charges of fleeing an officer, possession of stolen property and reckless operation. Police said he was driving a stolen car.

State Highway Patrol Lt. Tom Charles said Beachum also is wanted on two Cleveland war-

rants issued March 28 charging him with felonious assault and aggravated robbery.

The chase began about 10:15 a.m. after Beachum refused a trooper's order to stop the car he was driving on I-71 at Rt. 95 in Morrow County. The patrol said Beachum was speeding.

He was chased by three patrol cruisers and a helicopter south on I-71, sometimes exceeding 100 mph. The chase went through Delaware County and into Columbus, where Beachum took his pursuers

downtown via the Spring St. exit and then onto High St. Apparently he hoped to lose the officers in traffic, Sgt. Timothy Wertman of the Mt. Gilead post of the State Highway Patrol said.

"This kid knew where he was going. It was not a random selection," Wertman said.

Beachum ran a red light at High and N. Long Sts., police said. The car he was driving collided with another car and skidded into two patrol cruisers. In Beachum's attempt to escape northward, his

car jumped a curb but collided in the High-Long intersection with a Columbus police cruiser driven by Officer Dale Sprout.

Beachum was treated at Grant Hospital. The two patrol cruisers were slightly damaged, police said, and Sprout's cruiser had extensive front-end damage.

Wertman said he found luggage and airplane ticket stubs in the front seat of the stolen car. The car is owned by a Cleveland leasing company.

HIGH SPEED PURSUITS

I. OHIO REVISED CODE SECTION 2744.02(B)(1)(a)

A political subdivision is liable for the negligent operation of any motor vehicle by its employees upon the public roads, highways, or streets when the employees are engaged within the scope of their employment and authority. However, one full defense to such liability is when a member of a municipal corporation police department is operating a motor vehicle "while responding to an emergency call and the operation of the vehicle did not constitute willful or wanton misconduct."

Additionally, § 2744.03(A)(6) provides, in pertinent part, that an employee is immune from liability unless: (a) his acts or omissions were manifestly outside the scope of his employment; (b) his acts or omissions were with malicious purpose, in bad faith, or in a wanton or reckless manner; or (c) liability is expressly imposed upon him by a section of the Revised Code.

A. What Constitutes An Emergency Call?

1. Ohio Revised Code Section 2744.01(A)

- a. "Emergency call" means a call to duty including, but not limited to, communications from citizens, police dispatches, and personal observations by peace officers of inherently dangerous situations that demand an immediate response on the part of a peace officer.
- b. This appears to cover a situation whereby a police officer personally observes a crime or felony being committed and the armed and/or dangerous perpetrators are attempting to flee at a high rate of speed. However, it is less than clear that this "inherently dangerous" language would cover a high speed pursuit of a suspected routine traffic violator (i.e., failing to stop at red light).

2. Ohio Case Law

- a. Lingo v. Hoekstra, 176 Ohio St. 417, 200 N.E.2d 325 (1964)

The Ohio Supreme Court held that the police pursuit of a suspected violator of 35 mph speed law for the purpose of spacing him to determine whether he was in fact violating the speed law, and where during such pursuit the suspect ran through a red light at an intersection, did not constitute "responding to an emergency call" [under prior O.R.C. § 701.02].

Thus, the police officer was responsible for his negligence in running through the same red light at an intersection and colliding with a vehicle proceeding through the intersection on a green traffic light, thereby causing injury to a passenger in such vehicle.

The Lingo court's definition of "emergency call": "[d]id it arise from such a dangerous situation that it would excuse the defendant from being liable for his negligent conduct which resulted in the injury to the plaintiff?" 200 N.E.2d at 328.

The Lingo court found no evidence that the police officer had any reason to believe the suspected violator had committed any crime, felony or misdemeanor. The police officer only had the belief that the suspect possibly may have violated the 35 mph speed law (a fact which was never determined).

- b. Maxey v. Lenigar, 14 Ohio App. 3d 458, 471 N.E.2d 1388 (Ct. App. Franklin Cty. 1984)

Motorcyclist brought action against police officer for injuries sustained in accident with officer's cruiser. The police officer was allegedly pursuing the plaintiff who was travelling at 60 mph in a 35 mph zone as well as changing lanes without safety and failing to yield to oncoming traffic.

The Maxey court held that the pursuit of a traffic violator who is creating a continuing hazard to the persons using a highway so as to protect such travelling public from the hazard of the violator by his immediate apprehension could constitute response to an emergency call.

However, while a police officer's observance of a traffic violator gives rise to a call to duty, not every such call to duty constitutes an emergency call. The existence of an emergency situation is to be determined by the danger involved and the need for immediate action.

The Maxey court concluded that reasonable minds could reach different conclusions as to whether the police officer was responding to an emergency call under these facts. There was conflicting evidence as to: the use of the flashing beacon lights and siren; plaintiff's initial speed, as well as his speed at the time of and after he made a left turn -- before falling off his motorcycle; the amount of other traffic in the vicinity; and as to

plaintiff's manner of operating his motorcycle. Thus the case was remanded back to the lower court for trial.

B. What Constitutes Willful Or Wanton Misconduct?

As stated above, once it is determined that the police officers are responding to an emergency call, the next inquiry is whether they operated their vehicles in a willful or wanton manner. Thus, the key question becomes what differentiates merely "negligent" conduct from "willful or wanton" misconduct. This is not an easy task and realistically will be decided on a case-by-case basis.

1. Ohio Case Law

a. Adams v. Peoples, 18 Ohio St. 3d 140, 480 N.E.2d 428 (1985)

A police officer was responding to an emergency call at a bank when he was involved in an accident. The officer had entered the intersection against a red traffic light with his emergency lights flashing and collided with another vehicle. The plaintiffs alleged that the officer's "willful and/or wanton misconduct" was the proximate cause of the accident. [This case was decided prior to the enactment of new O.R.C. § 2744.01.]

The accident occurred at 3:40 p.m. The weather was inclement. The visibility at that time was hazy and roads were wet due to melted snow. Plaintiffs alleged that the officer was not operating his siren when he entered the intersection. The officer had gone left of the center line to enter the intersection on a red light and plaintiff's vehicle entered the intersection from the officer's right on a green light attempting to turn left. The plaintiff-driver's view was blocked by the traffic which the patrol car was passing and a large hedge which ran along the roadway at the intersection.

Thus, plaintiffs' allegations as to the alleged willful and/or wanton misconduct of the officer related to the excessive speed at which he was operating his vehicle (not detailed in the opinion) and his reckless conduct in entering the intersection.

The Ohio Supreme Court reversed the lower court and found that a municipality may be liable for the willful and/or wanton tortious conduct of its police officers. The court did not attempt to legally define "willful and/or wanton" misconduct. However, the instant facts were apparently enough for the Adams court to remand it back for a trial on the merits. Thus, this decision aptly illustrates the

type of scenario that a court may conclude raises a jury question on this issue of what constitutes "willful or wanton" misconduct.

2. Ohio Revised Code Traffic Laws

There are several sections of the Revised Code which expressly encompass emergency or public safety vehicles when responding to emergency calls. The adherence, or non-adherence to, these safety statutes may also impact on whether an officer's conduct during a pursuit is deemed "willful or wanton."

- a. Section 4511.03 - Upon approaching a red or stop signal or any stop sign, the public safety vehicle shall slow down as necessary for safety to traffic, but may proceed cautiously past such signals or signs with due regard for the safety of all persons using the street or highway.
- b. Section 4511.24 - Speed limits do not apply to public safety vehicles when responding to emergency calls and which are equipped with and are displaying at least one flashing, rotating, or oscillating light visible from a distance of 500 feet to the front of the vehicle and when the driver sounds audible signals. This section does not relieve the driver from the duty to drive with due regard for the safety of all persons using the street or highway.
- c. Section 4511.45 - The driver of every vehicle shall yield the right of way upon the approach of a public safety vehicle equipped with a flashing light and sounding an audible signal. This section does not relieve the driver of the public safety vehicle from the duty to drive with due regard for the safety of all persons and property upon the highway.
- d. Section 4511.452 - Every pedestrian shall yield the right-of-way to a public safety vehicle approaching with a flashing light and sounding an audible signal. This section shall not relieve the driver from the duty to exercise due care to avoid colliding with any pedestrian.

3. What constitutes due regard for the safety of others?

As can be gleaned from the above Revised Code sections, the Ohio Legislature unequivocally dictates that public safety vehicle drivers, regardless of the circumstances, are not relieved from the duty to drive with "due regard for the safety" of others. Several courts have developed standards to determine what constitutes "due regard" or "without due regard."

- a. City of Sylvania v. Badger, 64 Ohio App. 2d 78, 411 N.E.2d 195 (Ct. App. Lucas Cty. 1978)

The somewhat analogous term "without due regard" [as used in prior O.R.C. § 4511.20 -- Reckless Operation of Vehicles] encompasses situation where the driver does not operate his vehicle in the same manner as would a reasonably prudent person under similar circumstances. See also, Radecki v. Lammers, 15 Ohio St. 2d 101, 238 N.E.2d 545 (1968) and Cothey v. Jones-Lemley Trucking Co., 176 Ohio St. 342, 199 N.E.2d 582 (1964).

- b. State of Ohio v. Leggett, 168 N.E.2d 772 (Ct. App. Lake Cty. 1959)

In order to proceed through red light with due regard for safety of others, an emergency vehicle driver must make sure before "crashing the light" that no accident is likely to result. He must make sure that "he who looks will see and that he who listens will hear."

- c. City of Worthington v. O'Dea, 115 Ohio App. 375, 185 N.E.2d 323 (Ct. App. Franklin Cty. 1962)

Police cruiser, responding to an "OMVI" report from another police vehicle, proceeded through major intersection at 65 mph with little or no braking, and an inadequate use of its siren, and collided with another vehicle. The O'Dea court initially found no evidence indicating the "OMVI" constituted immediate danger to another nor that the other police vehicle was in difficulty. It further noted this behavior was clearly excessive and the vehicle was beyond reasonable control when it entered the major intersection. Thus, as a matter of law, the cruiser was found not to have operated "with due regard for the safety" of others.

- d. Reed v. City of Winter Park, 253 So.2d 475 (Fla. App. 1971)

Police officer in pursuit should be governed by a standard of care different than that normally imposed upon an individual, giving due regard to the type of duty which is required to be performed by an officer in the public interest.

C. Guidelines To Limit The Imposition Of Tortious Liability For High Speed Pursuit Driving By Police Officers

A police officer in performing his duty to pursue and attempt to apprehend actual or suspected violators of the law may drive at such

speeds and take such steps as may be necessary to apprehend the offender. In so doing, however, he must not act in a willful or wanton manner. He also must comply with the above-referenced Revised Code safety sections and always drive with due regard for the safety of others.

1. Factors to Consider In Assuring The Safe Pursuit Of Another Vehicle In A High Speed Chase

a. Condition of Police Cruiser

- (1) age, type, and condition of the vehicle including its tires, brakes, suspension system;
- (2) maximum speed at which vehicle can function while still under reasonable control.

b. Driver's ability to operate the cruiser in safe manner

- (1) experience and training in high speed situations (i.e., ability to pursue violator, maintain radio contact with dispatcher, and still be alert as to safety and whereabouts of innocent third parties);
- (2) familiarity with the road being travelled on;
- (3) familiarity with the maneuverability of his cruiser;
- (4) visibility and illumination in the area being travelled;
- (5) familiarity with obstacles that must be avoided;
- (6) ability to operate car safely while maintaining radio contact.

c. Condition of Roadway Where Chase Occurs

- (1) condition and type of road surface (i.e., loose gravel, asphalt, dirt, wet, slick, icy, narrow, wide);
- (2) number of curves and hills and number of potential "blind spots";
- (3) number of intersections and entrances (whether heavily trafficked) where other vehicles could suddenly and unexpectedly dart out and obstruct the road;
- (4) use of roadway by pedestrians, bicyclists.

The above-referenced guidelines are basically set forth in the Ontario Police Commission's guidelines for high speed pursuits. This is an excellent source of material and provides a sound foundation upon which to draft any hot pursuit policy. For brevity's sake, this outline will not attempt to reiterate the contents of said guidelines.

2. Safety Range

A police pursuit occurs when an attempt is made to apprehend a driver of a vehicle who is resisting apprehension by maintaining or increasing his speed or by ignoring the officer's efforts to stop him. A pursuit situation may also arise where lives are in imminent danger, time is of the essence, and increased speed is mandated. Even though an officer may be engaged in the lawful performance of his duties, he is not relieved of his obligation to exercise due care. Thus, in deciding whether to pursue the alleged violator, the officer should initially consider all of the above-referenced factors: in other words -- know his limitations.

To further complicate matters, he also must consider the seriousness of the alleged offense, the potential consequences of his actions, and the safety of all persons -- including the violator, the public, and himself. As his speed increases during a pursuit so does the likelihood that an accident will occur. It is clear there is no range of "safe" speed. Therefore, the decision to pursue and the methods to be employed during a high speed pursuit, and the decision to abandon pursuit, should be made with extreme caution. Indeed, high speed chases should be the "exception" and not the "rule," if other reasonable alternative means exist to apprehend the violator.

3. Compliance with the Ohio Revised Code - In A Nutshell

In responding to a high speed pursuit situation, and to minimize any potential liability, the officer must comply with the statutorily-mandated safety measures. These are not optional and must be obeyed at all times:

- a. Turn on flashing lights immediately upon pursuit (O.R.C. § 4511.24);
- b. Sound an audible signal immediately upon pursuit (O.R.C. § 4511.24);
- c. Upon approaching a red light or stop sign, slow down as necessary for safety of traffic, and proceed cautiously (O.R.C. § 4511.03);

- d. Always operate with due regard for the safety of all others using the street or highway (O.R.C. §§ 4511.03, 4511.24, 4511.45, 4511.452).

As can be gleaned from the Ohio Supreme Court Adams decision, discussed above, the ignorance of the above-referenced measures may be deemed "willful and wanton" misconduct under § 2744.02(B)(1)(a). It is also important to note that the Revised Code does not enumerate those situations that would justify a high speed pursuit. It simply emphasizes that a police officer cannot operate, under any circumstances, without due regard for the safety of others. Thus, to avoid any potential liability under this nebulous "willful and wanton" standard, it appears that the most prudent course of action is that an officer should comply with the above-referenced factors and discontinue a pursuit when he is exposing himself or the public to high risk or unnecessary danger.

4. Use Of Force In A Moving Vehicle

The Governor's Office of Criminal Justice Services has suggested that law enforcement agencies should establish a written policy governing the use of a firearm during a high speed pursuit. The Model Use-of-Force Policy suggests this policy should prohibit the use of firearms while in a moving vehicle unless in self-defense or in the defense of others in imminent threat of serious physical harm.

Under Ohio's ever present "willful or wanton" misconduct statute, a firearm should only be cautiously utilized in a police pursuit as a last resort and in the extreme case where there is a strong reason to believe (either through personal observation or reliable information) that the person is armed and dangerous and will strike again. Ohio courts, once again, will surely focus on the safety of innocent bystanders in determining whether an officer's decision to discharge his firearm at or from a moving vehicle constituted "willful or wanton" misconduct. Relevant factors in establishing this conduct would include: whether it occurred in night or day; the condition of the roads; the number of pedestrians and fellow innocent motorists in the proximate vicinity of the shoot-out; the possibility of ricochets; the danger of disabling the vehicle totally out of control and into a heavily-trafficked area; the safety of any hostages; and the availability of least destructive alternatives (i.e., apprehend through the use of police communications).

The officers in Ohio should use their best judgment in evaluating and reevaluating the option to use firearms during a high speed chase. Indeed, there are situations where his own

life is in immediate danger and he must discharge his weapon in self-defense. In that situation, time is of the essence but he still must quickly assess the factual scenario to make certain there is not a less dangerous response.

D. Potential Pitfalls Of Ohio Revised Code Section 2744.02(B)(1)(a)

1. No predictability

a. What constitutes an "inherently dangerous situation" demanding an immediate response thereby justifying the label of "emergency call"?

(1) If not deemed an "emergency call" -- it appears the City, as the statute is written, may be held liable for even the negligent conduct of its officers.

(2) This limiting "inherently dangerous" language would appear, at first glance, to preclude the hot pursuit of minor traffic law violators (i.e., failure to use turn signal, pass through red light). However, the pursuit of some speeding violators may rise to this standard thereby justifying a hot pursuit situation.

b. What constitutes "willful or wanton misconduct"?

(1) It appears each case will be decided on a case-by-case basis.

(2) If an officer is properly responding to an emergency call situation in a pursuit fashion and follows the above-referenced safety factors, can he even be sure that his conduct will not be found "willful and wanton"? This is the problem with mixing nebulous "tort" concept standards with real life split-second decision making. The plaintiff-victim always has the advantage of being a "Monday morning quarterback" second-guessing the officer's judgment with impunity. While the defendant-officer must reconstruct why he did what he did as best he can from his memory -- when he knows full well he made his split-second decision on pure instinct.

c. What standard should a police officer's conduct in a specific situation be governed by:

(1) What a reasonably prudent officer in a similar situation would have done? or

- (2) Whether the officer intentionally acted with knowledge that an injury to another or to property was probable or substantially certain to occur?
- (3) As you can see, neither standard lends any real stability to the high speed pursuit issue.

2. No exceptions

- a. There does not appear to be any factual exceptions to Ohio's major tenet that a pursuit must be accomplished with due regard for the safety of others.
- b. Thus, whether an officer is pursuing a mass murderer or a red light violator is irrelevant. He cannot ignore or disregard the underlying public safety concerns under any circumstances. If he does, even in good faith, ignore the public safety concerns in order to facilitate the capture of the subject, and an accident occurs, he risks a court of law finding his conduct "willful or wanton" --- thereby rendering the municipality liable for his actions, regardless of the officer's intentions.

3. More Teeth

Taking into account the amount of legal, financial and/or physical risks involved in a hot pursuit chase, the Revised Code may not provide for severe enough penalties for those individuals who bring pursuit situations to fruition.

- a. Section 4511.02(B) provides that no one shall operate a motor vehicle so as to willfully elude or free a police officer after receiving a visible or audible signal from him to halt.
- b. Section 4511.99(B) provides that one who violates § 4511.02(B) is guilty of a misdemeanor of the first degree. This results in a term of imprisonment of not more than six months, or a fine of not more than \$1,000.00, or both. See O.R.C. § 2929.21. This provision, as it stands, should be utilized in all appropriate situations.
- c. Moreover, an effort should be made to put some extra "teeth" into § 4511.02(B). Then with the proper advertising (i.e., the Ohio commercials on carrying a concealed weapon while committing a crime will get the person an automatic "x" amount of years), the public would learn that high speed perpetrators will be dealt with in as severe a manner as would anyone else committing a

criminal offense. I would suggest, as set forth in the Ontario materials, that an effective deterrent may be a mandatory one-two-or-three year suspension of the driver's license of anyone who willfully engages in a high speed pursuit.

E. MISCELLANEOUS STATE STATUTES - PENALTIES FOR WILLFULLY ELUDING POLICE

1. California [good legislative role model]
 - a. Flight from pursuing peace officer - guilty of misdemeanor - punished by imprisonment in the county jail not exceeding six months, or by fine not exceeding \$1,000.00, or both.
 - b. Death or bodily injury proximately caused by such flight - shall be punished by imprisonment in the state prison, by imprisonment in the county jail for not less than 30 days nor more than six months, or by a fine of not less than \$170.00 nor more than \$500.00, or by both that fine and imprisonment. (See attached).
2. Florida - Punished by imprisonment in the county jail for a period not to exceed 1 year, or by fine not to exceed \$1,000.00, or by both such fine and imprisonment. (See attached).
3. Kentucky - Punished upon first conviction by imprisonment for a period of not less than 5 days nor more than 90 days, or by fine of not less than \$35.00 nor more than \$500.00, or by both; and on a second or subsequent conviction shall be punished by imprisonment for not less than 10 days nor more than 6 months, or by fine not less than \$60.00 nor more than \$1,000.00, or both. (See attached).
4. Massachusetts - Punished by a fine of not less than \$25.00 nor more than \$100.00. (See attached).
5. New Jersey - Deemed a disorderly person and may be subject to a fine not to exceed \$1,000.00; and/or punished by imprisonment for a definite term not to exceed 6 months. (See attached).
6. Pennsylvania - Guilty of summary offense and upon conviction, sentenced to pay \$200.00 fine.

CASE SUMMARIES

HIGH SPEED PURSUITS

The following case summaries outline the approaches various courts take to the due care/regard question and the fact patterns from which the cases arise.

Fisher v. City of Ann Arbor, 339 N.W.2d 413 (Mich. 1983)

The Supreme Court of Michigan reversed a Court of Appeals decision which held that both city and police officers were immune from liability in a motor vehicle collision involving police pursuit because the decision to pursue a fleeing vehicle was a discretionary act which was protected by immunity from tort liability. It found that if pursuit of a suspect by police officers constituted negligent operation of police vehicles, police officers and the city were not immune from tort liability.

Chase or apprehension of a violator of the law or person suspected of violation does not necessarily constitute an emergency situation so as to have officer's conduct governed by statutes pertaining to authorized emergency vehicles. Even if police officers are excused by statute from obeying most of the rules of the road when operating emergency vehicles in an emergency situation, officers must not endanger life or property.

The facts which gave rise to this decision are as follows:

The suspect failed to stop after being signaled to do so by police officers who witnessed the suspect disregard a flashing stop signal. The police officers began pursuit using their emergency signals. Such pursuit reached speeds of 110 miles per hour during which time both the suspect and police officers disregarded traffic signals. The suspect lost control of his vehicle which came to a stop. One of the pursuing officers approached the suspect's vehicle on foot. However, before he reached the vehicle, the suspect sped away. The second officer continued to pursue the suspect, even the wrong way down a one-way street. However, this officer lost sight of the suspect. A third officer picked up the pursuit about two minutes later after he received a radio report of the chase. After approximately six blocks, the suspect collided with the plaintiff in an intersection. None of the three officers were involved in the collision.

State of Idaho v. Barsness, 628 P.2d 1044 (Idaho 1981), cert. denied, 454 U.S. 958

The Supreme Court of Idaho held that whether a driver of an emergency vehicle was driving with due regard for the safety of other persons was a question for resolution by the trier of fact and would not be disturbed on appeal. The defendant, in the above case, made a left turn in front of the oncoming emergency vehicle which was displaying emergency lights but not the siren.

Roberson v. Griffeth, 291 S.E.2d 347 (N.C. App. 1982)

In an action to recover for death of officer whose police vehicle was struck by an automobile that had been pursued by an officer of another police department for a misdemeanor traffic violation, summary judgment for pursuing officer and his employing city was precluded by material issues of fact as to: whether the city's police department had failed to adequately train defendant officer concerning high-speed pursuit and alternative warrant arrest procedure; whether defendant officer had created unreasonable risk to decedent; and whether defendant's negligence, if any, had been the proximate cause of death.

Thornton v. Shore, 666 P.2d 655 (Kansas 1983)

The Supreme Court of Kansas held that a police officer who was operating his authorized emergency vehicle in full compliance with requirements of emergency vehicle statute was entitled to privileges and immunities granted by the statute. Although the Court recognized that the privileges granted by the emergency vehicle statute did not relieve the driver of an emergency vehicle from the duty to drive with due regard for the safety of all persons and does not protect the driver from the consequences of the reckless disregard for the safety of others, the Court affirmed a summary judgment in favor of the police officer; i.e., it held that the officer complied with the statute as a matter of law and did not permit the question of whether the officer acted with due regard to go to the trier of fact. The test of due regard as applied to the driver of an emergency vehicle is whether with the privileges and immunities provided by statute he acted as a reasonably careful driver. The Court notes that the duty placed upon the driver of an emergency vehicle relative to driving with due regard for the safety of others applies exclusively to the operation of the emergency vehicle itself. A police officer operating his emergency vehicle in compliance with the statute while pursuing a law violator is granted privileges and immunities by the statute and is not liable, as a matter of law, for reckless and negligent acts committed by the fleeing law violator. The police officer is not the insurer of the law violator he is pursuing. The Court does not distinguish between the severity of the alleged violation of the law in pursuing a "law violator". The dissent argues that due regard and due care are questions of fact, and that even though a police officer's job entails heavy burdens and pressures as a protector of the public, he should not be excused from using due care in furnishing that protection. The majority claims that their view is in line with that of the majority of jurisdictions which holds the law enforcement officer is not liable for the acts of the fleeing violators. The Court provides a good summary of case law in other jurisdictions, which supports this proposition.

Cairl v. City of St. Paul, 268 N.W.2d 908 (Minn. 1978)

The Supreme Court of Minnesota held that negligence doctrines impose the appropriate standard of care on police officers when operating their vehicles in emergency situations and that application of the doctrine of strict liability was reversible error. This case involved a collision of both the suspect vehicle and the police emergency vehicle with a parked car.

DRIVERS OF EMERGENCY VEHICLES SUBJECT TO ORDINARY NEGLIGENCE STANDARD.

An Illinois appeals court ruled that the trial court should have granted the plaintiff judgment n.o.v. after determining that a police officer was negligent as a matter of law when he collided with the plaintiff while on emergency pursuit. He had his lights and siren on, but was traveling too fast for the safety of others, said the court.

The defendants argued that a statute provided exemptions from certain traffic laws to operators of "authorized emergency vehicles when responding to an emergency call" and when "making use of either an audible signal or visual signals". The plaintiff argued that such drivers may violate traffic laws only when placing no one in danger. "The question of negligence is measured by what a reasonable, prudent emergency vehicle driver would do under all of the circumstances, including that of the emergency", agreed the court. Statutory exemptions do not lower the standard of care, argued the plaintiff. Bouhl v. Smith, 475 N.E. 2d 244 (Ill. App. 1985). I-4, D/PS.

(As summarized in the Law Enforcement Legal Defense Manual, Volume 1985, P-12.)

OFFICERS IMMUNE EVEN IF THEY DISREGARD SAFETY; CITY IS NOT.

This action was brought by a woman severely injured when a speeder crashed into her vehicle while pursued by police. The complaint alleged that police were negligently engaged in a high speed chase that reached speeds up to 100 miles per hour through a residential neighborhood to catch a motorist going 49 miles an hour in a 25 mile an hour zone. The court granted immunity to the officers, but not to the city.

The plaintiffs unsuccessfully argued that immunity should apply only when drivers proceed with due regard for the safety of others in accordance with a vehicle statute. The court explained its reasoning for holding the plaintiff's contention without merit. It said:

"Relying on Vehicle Code section 21056, plaintiffs contend that this immunity applies only when the employee drives with due regard for the safety of

all persons using the highways. The contention is without merit. Section 2105 and its companion, section 21055, only establish driving standards for emergency vehicles; they do not set rules for immunity. Even if the driver of an emergency vehicle does not comply with section 210565, only the public entity may be liable for the resultant injury."

The court granted the officer's motion for judgment on the pleadings, but refused to grant the same for the city. City of San Jose v. Super. Court (Martinez), 212 Cal. Rptr. 661 (Cal. App. 1985). I-4 D/PS.

(As summarized in the Law Enforcement Legal Defense Manual, Volume 1985, P.12.)

OPERATING VEHICLE WITHOUT SIREN OR FLASHING LIGHTS NOT GROUNDS FOR LIABILITY.

Neither a trooper nor a state was liable for a head-on collision caused by a suspect when chased by the trooper. Although the trooper may have been negligent in not using his lights or siren during the chase, such negligence was not the cause of the collision. The chase had at times reached 100 m.p.h., but had slowed down to less than 50 m.p.h. when the suspect crashed into the oncoming vehicle, injuring the claimant.

The pursuit was reasonably undertaken due to the danger the suspect posed to the public in zigzagging down the road and throwing beer bottles out his car window. The officer did obtain the driver's license number of the car during the pursuit. At one point, the officer slowed down his vehicle and shut off his lights to let the suspect think the chase had ended before again catching up to the speeder. The court found no liability in the pursuit. Mitchell v. State, 486 N.Y.S. 2d 97 (A.D. 3 Dept. 1985). I-4.

SUGGESTED GUIDELINES
HIGH SPEED PURSUIT POLICY

High speed police chases are a serious matter that have become a growing concern for citizens, police administrators, city managers and legal counsels. The critical nature and potential severe consequences of high speed pursuits are comparable to the use of deadly force and demands the same attention by law enforcement agencies.

Given the obvious hazards of conducting high speed pursuits, certain basic philosophical positions must be considered: first, human life has immeasurable worth and must be foremost in considering the pursuit circumstances and second, society's interest in capturing a serious offender may be so great that at times a certain amount of risk may be required to protect the welfare of others.

In the absence of specific legislation, departmental policies should be carefully written to cover high speed pursuits and the many associated issues. In constructing policies, the areas for consideration include:

1. when to initiate pursuit;
2. number of units permitted;
3. responsibilities of primary and secondary units;
4. driving tactics;
5. communications;
6. capture;
7. discontinuance of pursuit;
8. supervisory responsibilities;
9. firearms use;
10. offense categories-traffic misdemeanors, felonies (types and differing seriousness);
11. blocking, ramming, boxing, roadblocks;
12. absolute speed limits;
13. interjurisdictional considerations;
14. conditions of vehicle, driver, roadway, weather, traffic;
15. hazards to users of highway;
16. reporting and post-pursuit analysis.

To assist law enforcement agencies throughout Ohio, the following guidelines have been drafted based upon current Ohio statutes as well as relevant court decisions. These guidelines should not be construed as all inclusive. Each department should develop policies consistent with the needs of the particular community with analysis and review provided by legal counsel.

PURSUIT

Pursuits involve one or more police officers attempting to apprehend a suspect in a motor vehicle, while the suspect is trying to avoid apprehension, usually by high speed driving or by taking other evasive tactics.

PURPOSE

The purpose of this document is to establish suggested guidelines for use by all members of law enforcement within the State of Ohio in the pursuit and apprehension of fleeing violators. Knowledge of and compliance with these guidelines is of particular importance when more than one police agency is involved in a pursuit. Officers reacting to an inherently dangerous situation demanding an immediate response need a reasonable expectation of what others will or will not do.

INTRODUCTION

The primary goal of Ohio law enforcement is the protection of life and property. If a motor vehicle pursuit exposes any officer, member of the public or suspect to unnecessary risk, then the pursuit is inconsistent with that goal and should be terminated.

Pursuit is justified only when the necessity of apprehension outweighs the level of danger created by the pursuit.

Before pursuing, an officer should ask these questions:

1. Does the seriousness of the crime warrant a chase at excessive speeds?
2. What is the possibility of apprehension?
3. Will the pursuit take place on residential streets, a business district, a freeway, or narrow country type roads?
4. What are the traffic conditions?
5. What are the weather conditions?
6. What is the condition of the police vehicle?
7. Is the pursuing officer alone, or is the assistance of another officer or auxiliary available?

Officers are expected to pursue and apprehend violators of the law. This document is not intended to avoid that responsibility, rather the intent is to make apprehension within the limits of safety.

It is recognized that each and every situation is uniquely different and that no single policy can address every circumstance. However, this document will provide general guidelines to aid in decision making.

APPLICABLE LAWS

When operating under emergency conditions, the operator of a public safety vehicle must comply with the provisions of the following sections of the Ohio Revised Code.

4511.03 - Emergency or public safety vehicle to proceed cautiously past red or stop signal

4511.24 - Emergency vehicles excepted from speed limitations

4511.45 - Right-of-way of public safety vehicles

4513.21 - Horns, sirens and warning devices

These sections place two requirements on the operator of a public safety vehicle:

1. The operator must drive with due regard for the safety of all persons using the streets or highways.
2. A public safety vehicle only gains the right-of-way when using both a pursuit light and siren.

DEPARTMENT REGULATIONS

Police officers must also comply with the rules and regulations of their department or employing agency. These rules might include but are not limited to use of force, use of deadly force (firearms), maximum speeds in pursuit, use of roadblocks, ramming, etc.

NUMBER OF PURSUIT VEHICLES

The primary pursuing officer with one back-up car is usually adequate. All other officers should maintain perimeter control unless given other specific instructions.

More than two police vehicles may add to the hazards of a pursuit. The primary pursuing officer, supervisors and dispatchers should have the responsibility to insure proper pursuit policies are followed.

COMMUNICATIONS

Immediately upon determining that a suspect is fleeing and an inherently dangerous situation is involved which demands an immediate response, notify the dispatcher of:

Location

Direction of travel

Estimated speed

Description of vehicle and occupants

What action caused the pursuit

What your intentions are

Communication during a pursuit is a vital tool. The pursuing officer and dispatcher have an obligation to insure that complete and accurate information is transmitted to all officers involved.

Radio discipline should be maintained to provide clear air time in order for officers directly involved to communicate. Unrelated radio traffic should be kept to a minimum unless an urgent need exists.

Officers in the vicinity from all affected departments should be notified of the pursuit by the appropriate individuals. Other officers should not become involved unless specifically requested to do so.

When conversation is necessary between departments, plain English should be used in place of radio signals to reduce misunderstanding.

DISPATCHER RESPONSIBILITY

The dispatcher from the department with the primary pursuit should immediately broadcast a "pursuit in progress". A sample message would be as follows:

Pursuit in progress. Columbus police in pursuit of a red 1985 Chevrolet sedan, Michigan registration CID623, south-bound on IS-71 at IS-270. The vehicle is a suspected DWI, etc. Has fired upon the pursuing officer, etc.

The dispatcher should have the responsibility to notify a supervisor and keep all departments advised of the progress of the pursuit.

Dispatchers should enforce radio discipline as necessary.

SUPERVISOR RESPONSIBILITY

Supervisors involved in pursuit situations, unless they are the primary pursuing officer, should assume a backup position. The supervisor's role should be to direct and control the pursuit through communications.

The supervisor's responsibility should be safety, methods of identifying the fleeing vehicle, tactics to stop the fleeing violator, and coordination of all officers involved.

A supervisor or any primary pursuing officer should never hesitate to order the termination of a pursuit if conditions warrant.

In some pursuit situations, the best decision is to abandon the chase, especially if heavy traffic, highly congested areas, or erratic driving, which endangers others, is involved. By terminating the chase, the fleeing driver has an opportunity to slow down and possibly abandon the vehicle.

Again, motor vehicle pursuit is justified only when the necessity of immediate apprehension clearly outweighs the level of danger created by the pursuit.

TACTICS FOR STOPPING THE FLEEING VIOLATOR

Pursuit at high speeds, even under the best of conditions, may be extremely dangerous. Any tactic contemplated when high speed is involved should take into consideration all of the factors surrounding the incident at hand. Safety is always the foremost factor to be considered.

The following are some possible alternatives that may be considered in stopping the fleeing motor vehicle:

1. Through radio communication and assistance of other police officers, can the suspect be identified and apprehended later?
2. Consider using the CB radio or outside speaker to communicate with the violator or other motorists.
3. Give the violator an opportunity to stop by placing a stationary police vehicle alongside the road with pursuit lights on and an officer in a safe location directing the suspect to stop.
4. Use fusees or traffic cones to set up an apparent roadblock in advance of the pursued vehicle. Clear the road and select a safe location.
5. A moving roadblock, using two police cars in front or two in front and one alongside the violator, may be considered.

This is extremely hazardous if high speed or weapons are involved and is best utilized on a divided highway.

6. Use of a spot light focused on the back window of the pursued vehicle.
7. Stationary roadblocks. (See section on use of roadblocks.)
8. Ramming should only be considered to stop a fleeing vehicle as a last resort and then only in those extreme cases where the use of force is justified to prevent injury or death to the officer or other persons. The officers must consider the extreme danger to themselves and other users of the highway.
9. Firearms will be used only when the use of deadly force is justified.
10. When an aircraft is available and has visual contact with the pursued vehicle, the primary officer will generally discontinue high speed pursuit allowing the aircraft to continue the surveillance of the suspect vehicle. The aircraft will assume the responsibility of directing the ground officers so as to apprehend the suspect without the dangers involved in a ground pursuit.

ROADBLOCKS

As a last resort, in those extreme cases where the use of force would be justified to prevent injury or death to the officer or other persons, a stationary roadblock may be considered. If suitable devices such as construction barricades are not available, unoccupied police vehicles with emergency lights in operation may be used.

Stationary roadblocks should only be set up with authorization of a supervisor. To avoid creating an unnecessary hazard to pursuing officers and innocent persons, the barricade should be located in an area which provides a safe stopping distance for oncoming traffic. Under no circumstances should a roadblock consist of occupied or private vehicles. All efforts should be made to remove private vehicles from the path of the pursuit.

Design the roadblock in such a manner as to leave an open path through the restricted area. This path should be designed so that it would be necessary to proceed slowly through it.

Roadblocks should be authorized only by a supervisor from the department who initiated the pursuit or a supervisor from another department who has been given control of the pursuit by the initiating department.

RAMMING

Except in those circumstances where in the judgment of the officer such actions are necessary in the interest of protecting the public, deliberate contact between vehicles or forcing the pursued vehicle into parked cars, ditches or any other obstacle should be discouraged. Boxing-in, heading-off, ramming or driving alongside the pursued vehicle while it is in motion should also be discouraged.

USE OF FIREARMS

Department policy regarding the use of deadly force shall be strictly followed.

Officers shall not discharge a firearm at or from a moving vehicle except as the ultimate measure of self-defense or defense of another when the suspect is using deadly force by means other than the vehicle.

Officers shall be guided by the following:

1. Officers shall not, under most conditions, fire upon a pursued vehicle. If fired upon, officers may return fire when appropriate.
2. Firing to disable a vehicle shall be a last resort measure and done only when failure to do so will, with a high degree of probability, result in injury or death to innocent persons.
3. Officers shall take into account the location, vehicular and pedestrian traffic, and hazard to innocent persons.

WHO IS IN CHARGE WHEN MULTIPLE DEPARTMENTS ARE INVOLVED

The department which starts the pursuit should notify other nearby officers of the reason for the pursuit, the route of travel, speed, etc. The originating department should remain in charge of the pursuit unless entering a substantially different jurisdiction, such as into an urban or from an urban into a rural area. In these cases, the pursuit should be turned over to the department with authority and which is in a position to follow through with the pursuit.

The department originating the pursuit should remain in control and be responsible for the outcome until turned over to another department. Other departments should not join the pursuit or take any other action such as blocking the road, without a request from the originating agency to do so. Other departments should maintain a backup or perimeter position.

OUT-OF-STATE PURSUITS AND PURSUITS COMING INTO THE STATE

Hot pursuit of a misdemeanor violator should be terminated if the vehicle enters another state.

Hot pursuit of felony violators across state lines is expected. Officers anticipating a pursuit into another state should notify officers and request assistance of that state as soon as it is apparent that the adjacent state will be entered. Upon entering another state, the officer should relinquish control and position to the first officer(s) encountered in that state.

Officers arresting a suspect in another state should immediately release the suspect to the nearest officer having jurisdiction. On pursuits coming into Ohio, Ohio officers should honor any requests for assistance by the originating agency. Confirmation of the violation and the suspect's conduct should determine what actions should be taken by Ohio police officers.

MISCELLANEOUS SUGGESTIONS

Only marked police cars should be used in a pursuit.

Two or three-wheeled police vehicles should never be used in high speed pursuits.

Officers should not pursue when civilian passengers are in the police vehicle.

When a pursuit is ended, officers should leave the area and return to normal duty unless a supervisor directs otherwise.

Pursuit the wrong way on a one-way street or divided highway should be discouraged except in those circumstances where, in the judgment of the officer such actions are necessary in the interest of protecting the public.

General critiques and post pursuit analyses are recommended as a basis to assist in training and general improvement to future operations.