

OAKLAND POLICE DEPARTMENT

Office of Inspector General



REVIEW OF PURSUITS

September 27, 2011

CITY OF OAKLAND

Memorandum

To: Chief Anthony W. Batts
From: Office of Inspector General
Date: September 27, 2011
Subject: **Review of Pursuit Practices**

On August 11 2011, the Office of Inspector General began its review of the Oakland Police Department's practices and policy covering pursuits. The purpose of the review was to determine if OPD's practices in the area of pursuits were properly being managed by command and supervisory personnel.

To conduct this review, the OIG gathered and reviewed all pursuit reports and related documents for every pursuit from January 1, 2010 until July 31, 2011. The pursuit policy and Hearing Board policy were also reviewed.

Anthony Toribio
Captain of Police
Office of Inspector General

OFFICE OF INSPECTOR GENERAL
Audit and Inspections Unit



LEAD AUDITOR
Lieutenant S. Whent

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EXECUTIVE SUMMARY

On August 11, 2011, the Office of Inspector General began its review of pursuit practices and policy at the Oakland Police Department. This area has not been audited before and if reviews have been conducted in the past, it is likely that the data reviewed was inaccurate. During this review, pursuit data discrepancies were identified and resolved. Therefore, for the first time, OPD will be able to accurately tell how many pursuits are occurring, what they are initiated for, and how they are ending. With accurate data in that regard, we can then analyze whether the policy in place is effective at balancing the need to arrest offenders with the tremendous potential they have to cause property damage or loss of life.

The review found that the Department's tracking of pursuits and accountability for those pursuits is seriously deficient. State law requires that police departments report to the Highway Patrol certain information regarding pursuits by their agency. OPD is barely reporting half of this data to CHP and much of what is reported is inaccurate. Pursuit reports travel through various units in the Department before they make it to the final custodian of records, and that custodian of records is not the unit that reports pursuit numbers to the state. When this reviewer talked to the various tracking units for these reports it was discovered that they each have a different understanding of their own and each other's responsibility in the chain of work flow for these reports. It was also discovered in several cases, even where the chain of command recognized issues and determined a pursuit was out of compliance, the reports were never sent to the Department Safety Committee (review board) as required by policy.

In addition to poor tracking and processing of these reports, it was discovered that review of the pursuit related documents by various levels in the chain of command is also deficient. There were numerous instances of information in crime reports and pursuit reports not matching the data entered on the form that is reported to CHP. There were instances of commanders signing and approving pursuit investigations that were clearly missing information. In some cases where a pursuit was determined to be out of policy the report was forwarded to Internal Affairs, who is the custodian of records, and Internal Affairs simply entered the report into the database as being in compliance and filed the case without further follow up or investigation.

Aside from the administrative issues related to pursuit reports, the pursuits themselves are often problematic and there is an apparent reluctance on the part of police officers to terminate chases even when the conditions are extremely hazardous. During the 19 month review period (January 1, 2010 to July 31, 2011), 21 citizens, uninvolved in the pursuit, sustained at least some level of injury as a result of crashes with a car OPD was pursuing. These numbers do not count anyone that was inside of the pursued vehicle. During that period, 128 pursuits resulted in at least one collision where at least some property damage occurred. Countless police reports make reference to a minimal amount of danger presented by a pursuit because a suspect was not speeding excessively but this does not take into account the amount of damage that can be caused by the weight of a moving car, even at reasonable speeds. Only a small percentage of pursuits are terminated by the involved officer meaning a supervisor or commander must direct the officer to terminate the pursuit. There is evidence of a culture that routinely minimizes the threat these pursuits present and places a higher priority on catching the offender, even when the offense is not that serious.

This document makes eight recommendations for improving different aspects of pursuits in the Oakland Police Department. Three of the recommendations are in the area of counting and tracking of pursuit reports and statistics. Two of the recommendations deal with training Department members on completion of state required forms and on basic terminology from the pursuit policy. One recommendation is regarding the review board policy the Department has in place but is not following. One recommendation is regarding more regular training of the PIT maneuver for members. The remaining and most controversial recommendation is regarding a more restrictive criteria for the initiation of pursuits.

PURPOSE

In August 2011, the Office of the Inspector General (OIG) initiated a review of the Oakland Police Department's (OPD) pursuit practices and policy. The purpose of the review was to determine if pursuits are properly being managed by the Department and if the policy is consistent with sound risk management and current best industry practices.

BACKGROUND

State law requires all police departments to have a pursuit policy and to train its officers on that policy on an annual basis. It also requires departments to track certain pursuit information and forward that information to the California Highway Patrol (CHP). The information for CHP is captured on a form titled the "CHP 187 form." At OPD, those forms are collected and tracked by the Department Safety Coordinator who is assigned to the Training Section.

Department General Order J-4 is the governing policy for pursuits at OPD. That policy covers criteria for initiating, continuing, and terminating pursuits. It also addressed pursuits with outside agencies and how pursuits are supervised and reported. The policy establishes three levels of pursuit investigations. Level 1 pursuit investigations are the most serious and occur when a pursuit results in a fatality or injury likely to be fatal. These investigations are conducted by the Internal Affairs Division. Level 2 pursuit investigations are for pursuits resulting in injury or property damage or any pursuit where a pursuit intervention technique (PIT) is used. These investigations are primarily conducted by Patrol supervisors. Finally, Level 3 pursuit investigations are for pursuits that do not result in any property damage or injury. These reports are also completed by Patrol supervisors but consist only of a review of the police report and completion of the CHP 187 form. Both Level 2 and 3 investigations require the supervisor's commander to review and approve the investigation.

The person assigned to conduct the investigation is required by policy to send the CHP 187 form to the Department Safety Coordinator for all pursuits. The remaining pursuit report documents, including a copy of the CHP 187 form, are forwarded through the chain of command to the captain level and from there to the BFO Admin Unit. BFO Admin then forwards the completed documents to Internal Affairs where the information is entered into the database, and the file is scanned and filed.

Policy requires that Level 1 pursuits are sent to the Executive Force Review Board. Level 2 pursuits go to the Department Safety Committee for a compliance determination. Level 3 pursuits are not reviewed by a board unless they were referred there during the chain of command review.

This review determined that this system has many flaws and all of those will be outlined later in this report. It is also important to note that the pursuit policy was modified during this review period. The current policy became effective 1 Jan 11 and is more restrictive as far as the criteria for continuing a pursuit. This policy change likely accounts for part of the decrease in pursuits in 2011. The revision stills allows for initiation of a pursuit for a minor offense but only until the point it can be established there is no felony want on the vehicle. At that point, the pursuit for a misdemeanor or infraction offense must be terminated. OPD has also recently changed its pursuit policy requiring that officers continuously sound a siren during a pursuit whereas before it was only required that the siren be used as necessary. This change removes the discretion from the pursuing officer as to when a siren might not be necessary during a pursuit.

SCOPE AND POPULATION

Review Scope

The review consisted of pursuit practices since the beginning of 2010. Every pursuit report written between January 1, 2010 and July 31, 2011 was reviewed. There were 219 pursuits in 2010 and 96 as of July 31, 2011. Data from the reports was entered onto a spreadsheet capturing the following information:

1. Pursuit Report #
2. Date
3. Time
4. Duration of Pursuit (Rounded up to next minute)
5. Initiating Offense
6. Number of units in the pursuit
7. Whether a collision occurred at any point during the pursuit
8. Any injury received by police officers in the pursuit
9. Any injury received to someone in the suspect vehicle
10. Any injury received by someone uninvolved in the pursuit
11. How the pursuit ended
12. If it was aborted by OPD, who made the determination to abort
13. Final Arrest charges if in custody
14. Miscellaneous observations regarding that pursuit incident

The spreadsheet used by the Department Safety Coordinator to track pursuits and a spreadsheet version of the information contained in the Department's Pursuit database, which is housed in the Internal Affairs Division, were also reviewed.

Additional Reference Material

Department General Order J-4 Pursuit Driving
Department General Order G-4 Department Safety

PRACTICES, FINDINGS, AND RECOMMENDATIONS

Tracking of Pursuits

As I started this review, the first thing I discovered was that the Department is not carefully tracking pursuits. The Department Safety Coordinator has long been the source of pursuit data in the Department. I knew that he maintained a spreadsheet tracking pursuit information so that is where my initial numbers came from. However, he is not the custodian of records for pursuit reports. I initially solicited from him the number of pursuits the Department has had since 2009. I then went to the Internal Affairs Division and copied every pursuit report they had on the server for those years. The following table shows the numbers of pursuits each year according to IAD and the Department Safety Coordinator.

Year	Department Safety Coordinator	Internal Affairs Division	Percent of pursuits not counted
2009	139	229	39 %
2010	87	219	61%
2011	40	96	58%

Recognizing the discrepancy in the numbers I began to look into the reason. The Department Safety Coordinator told me that he assumed he was receiving all of the reports. He stated he receives the CHP 187 reports from individual supervisors usually by interoffice mail and that he receives reports needing to go to a board from BFO Admin. I talked to a sergeant in BFO Admin who told me they send everything to Internal Affairs and that supervisors are supposed to send the CHP 187 form to the Department Safety Coordinator directly. He also stated he believed it was IAD that sent the Department Safety Coordinator any reports that needed to be heard by a review board. I spoke to administrative staff in Internal Affairs who told me they get their documents from BFO Admin and they don't ever send anything to the Department Safety Coordinator. Since the Department Safety Coordinator is the person assigned to send the CHP 187 forms to CHP, it is apparent the Department has failed to accurately report this information at least for the last two and a half years.

I asked BFO Admin staff how they become aware of pursuits and how they would ever know if a pursuit occurred and the report never came in. The policy currently requires an advanced copy of the face sheet to the pursuit report be sent to the Training Section before the completion of the same shift the pursuit occurred on. The previous version of the pursuit policy required that face sheet to be sent to BFO Admin. At the time the policy was amended the Department was in the process of moving the pursuit database and records from Internal Affairs to the Training Section. Since the move was imminent the change was made during the policy revision, thereby eliminating the need to change the policy twice in a short period of time. However, the move of the database and records never occurred so the policy currently directs supervisors to send the face sheets somewhere they are not needed. Despite the fact this policy flaw exists, it is not really the source of this discrepancy since nobody appears to be following the current policy.

BFO Admin is still receiving most pursuit report face sheets and Training is not, so it appears no supervisors have discovered this flawed change in policy.

Once BFO Admin receives the face sheet, they enter it into a spreadsheet where they can begin tracking it. If the pursuit report does not show up within deadlines they can determine which supervisor had the investigation to complete and which commander is responsible for ensuring its completion. This tracking system appears to be effective. The only potential loophole is if a supervisor was to not send the face sheet then the tracking would never begin for that document.

Recommendation 1: The Communications Section should establish a pursuit log, similar to the log they currently have that tracks complaints and uses of force. That log would be sent to BFO Admin daily, the same as the use of force log, so that BFO Admin staff can begin tracking the pursuit reports immediately without relying on the field supervisor to send them a face sheet.

Recommendation 2: The pursuit policy should be amended to require BFO Admin to also send the CHP 187 forms to the Department Safety Coordinator. BFO Admin already ensures this document is part of each pursuit file before it is forwarded to Internal Affairs. Since they always have the CHP 187 in the file they can always send a copy to the Department Safety Coordinator. This will ensure the Department Safety Coordinator receives them all and frees field supervisors from sending documents to more than one place.

Recommendation 3: The spreadsheet maintained by the Department Safety Coordinator should be maintained instead by BFO Admin. The spreadsheet contains nearly all information worth tracking for pursuits, including several fields I did not track in my review. The only fields not tracked that I did use were the ones for miscellaneous comments and for who made the termination decision. Unfortunately, that information is not on the CHP 187 and the person would have to refer to the rest of the documents to obtain it. The other documents are also valuable in determining if the data on the CHP 187 form is correct, which is often not the case. Since BFO Admin has both the CHP 187 and the other documents the spreadsheet should be maintained by them.

CHP 187 Forms

As mentioned above, state law requires department's to submit pursuit information to CHP using the CHP 187 forms. The most alarming problem in this area was that the Department omitted over half of the pursuits in the time period. However, the missing information is not the only issue in this area. My review discovered that they were not always completely filled out or were filled out incorrectly or inconsistently. So even the data the Department has been reporting to the CHP does not appear to be accurate.

Amongst the problems I found with CHP 187 forms were the following:

- Boxes were left blank – Boxes requesting numbers of injuries, numbers of collisions, duration of pursuit, and whether or not the suspect was taken into custody were the most common blank boxes. Although some reports were missing other critical information such as the offense for which the pursuit was initiated.

- Boxes seemingly inconsistent – The form requires information on the offenses charged upon arrest of the suspect; however, these fields were often filled out even for pursuits where nobody was in custody or even identified.
- Termination of pursuits – The form requires **one** box to be filled in describing how the pursuit was ended. Many of these forms had multiple boxes checked or none checked. Others were apparently misreporting how the pursuit ended. For example, several forms listed “Pursuit aborted by agency” as the reason for terminating the pursuit. However, the accompanying crime report states clearly that officers lost sight of the suspect. There is a check box available that says “Suspect vehicle escaped patrol vehicle.” These are two different things. Aborting a pursuit because of the danger is different than aborting because you can no longer see the suspect vehicle. Also, since the Department Safety Coordinator is using this information for tracking Department statistics, it is misleading to be over-reporting pursuits that are aborted.
- Number of units in the chase – This very straight forward box had incorrect numbers in it frequently.
- Total Time agency was involved in pursuit – This box was sometime misinterpreted to be time of day, rather than duration of pursuit.

It is apparent there is not a common understanding of the required fields on this form. It is also apparent that reviewers are not providing adequate review as to the accuracy of these forms.

Recommendation 4: The Department should train all supervisors and commanders on the proper completion of the CHP 187 form and reviewers should more closely scrutinize the details of the form and compare them with the other documents in the file.

IAD Data Entry

One of the performance dimensions captured in the Department’s PAS system is collisions resulting in property damage. Incorrectly completed CHP 187 forms could lead to incorrect data being entered into IPAS. IPAS gets its pursuit data from the IAD database so the fact that half of the forms don’t get to the Department Safety Coordinator has not affected the data in IPAS. However, I did discover some problems with data entry in the pursuit database which leads me to believe that greater attention to detail needs to be paid by the person entering the information into the pursuit database in IAD. Some examples of the problems I discovered were:

10P-0070 15 May 10 – The authoring supervisor and reviewing commanders all recommended the pursuit be out of compliance. However, BFO Admin did not forward for a review board and IAD entered the pursuit in the database as in compliance. IAD then received a complaint from a citizen that had to jump out of the way of the passing police car. The citizen agreed to an ICR. IAD then pulled the pursuit report and recognized that it had been recommended as out of compliance but still approved the ICR and closed the case. IAD did not change the in compliance finding in the database until after I brought it to their attention during this review.

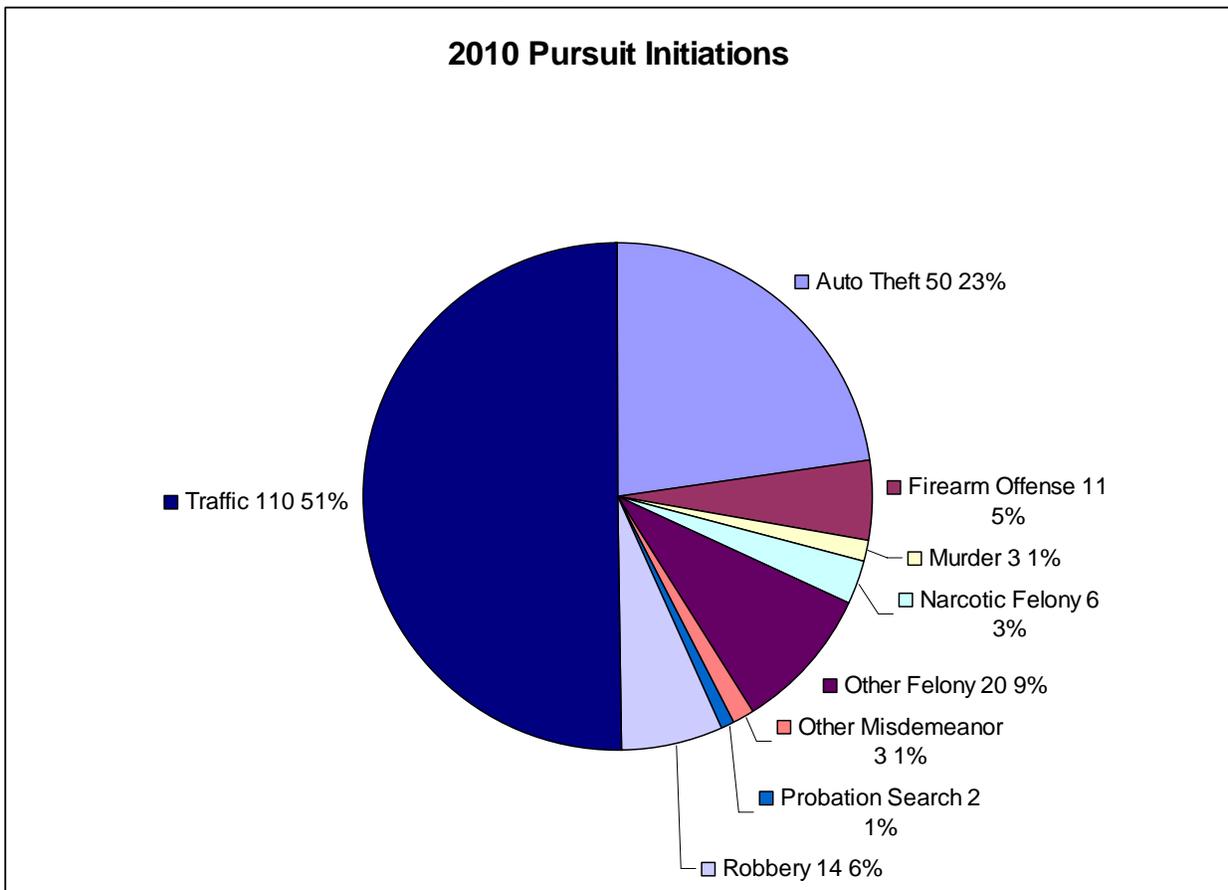
11P-0087 1 Jul 11 – The reviewing lieutenant recommended the pursuit be out of compliance and the captain wrote on the review sheet that he concurred. However, the captain checked the “in compliance” box and forwarded it. IAD entered the pursuit as being in compliance.

Additionally, in at least six cases IAD received only CHP 187 forms with no police reports or accompanying documents. IAD staff that scan and file pursuit reports should have recognized that a single piece of paper was not a complete report and that they were missing information. Rather than determining the reason for the missing documents, IAD simply scanned and filed the single page.

Pursuit Initiations

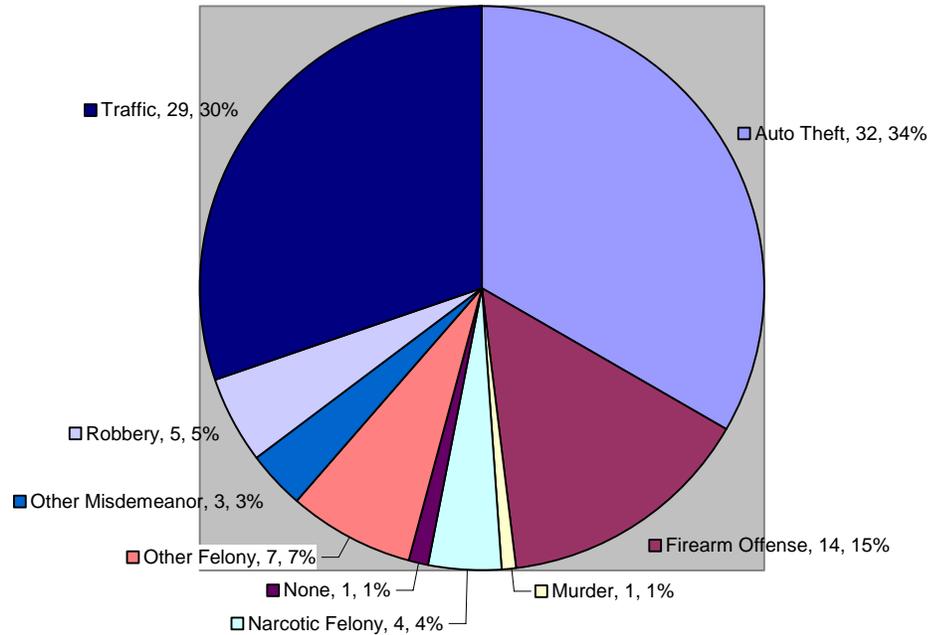
The first and most important part of analysis regarding pursuits is to determine the reasons pursuits are being initiated. Although the Department has looked at statistics regarding pursuit initiations, it is now clear that those reviews were all based on incomplete data. The Department allows for pursuits to be initiated for any infraction, misdemeanor, or felony offense the officer has reasonable suspicion the suspect has committed.

The following chart shows the reasons pursuits were initiated in 2010:



In January of 2011, General Order J-4 was modified. It still allowed for a pursuit to be initiated for a traffic offense but that pursuit could not be continued once it was determined there were no other felony wants for the vehicle. This verification usually consists of running the license plate in the computer system. The following chart shows the reasons pursuits were initiated in 2011, after this change in policy:

2011 Pursuit Initiations



Traffic offenses dropped from 50% of all pursuits down to 30%. While the percentage of pursuits for auto theft increased, it is really only an increase due to the decrease in traffic pursuits. With 32 auto theft pursuits from January to July of 2011, the Department is on a pace to have 54 of them by the end of the year which is relatively consistent with the number in 2010. Percentages for other crimes are relatively consistent from year to year although there is an increase this year for pursuits of firearm offenses. There have been 14 pursuits for firearm offenses as of July 31; there were only 11 for all of 2010.

Collisions During Pursuits

The most obvious concern with pursuits is the danger created by them. All pursuits have the potential to involve a serious traffic collision. Oakland is a heavily populated area and there are very few remote roads in the City, thereby increasing the likelihood of an unintended collision. The following chart shows the number of pursuits that involved at least one collision:¹

Year	With a Collision	Percent	Without a Collision	Percent
2010	82	37 %	137	63%

¹ This is not the same as the number of pursuits ending in a crash. Many pursuits may have a collision that occurs during the pursuit but it continues and ends in some other manner.

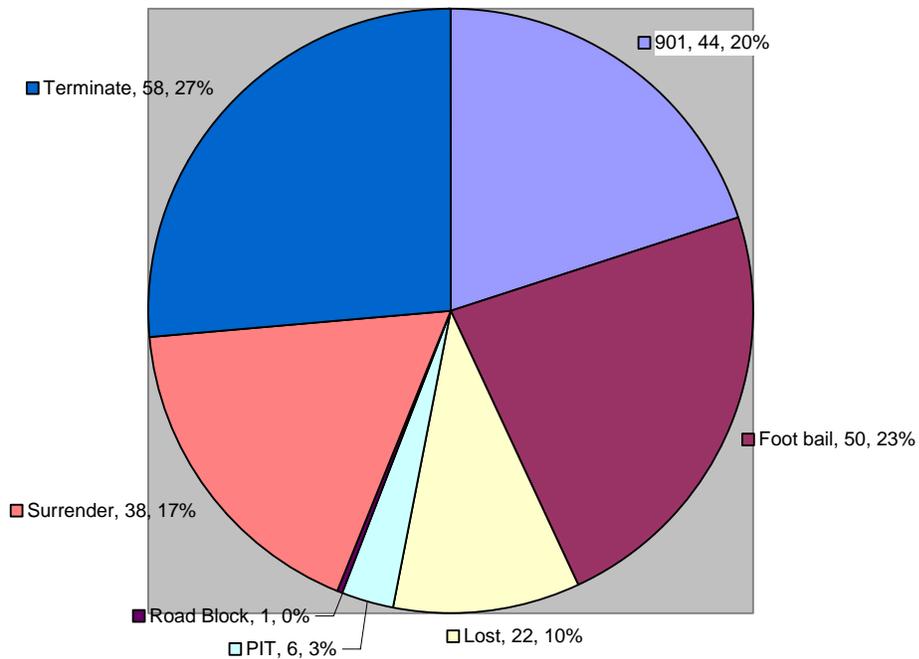
2011	46	48%	50	52%
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There is a higher percentage of pursuits with a collision this year. However, even though the percentage is higher, the Department is on pace to have 79 pursuits involving a collision for the year which is slightly fewer than in 2010. The Department is on pace to have 165 total pursuits in 2011 which would represent approximately a 25% reduction.

Pursuit Terminations

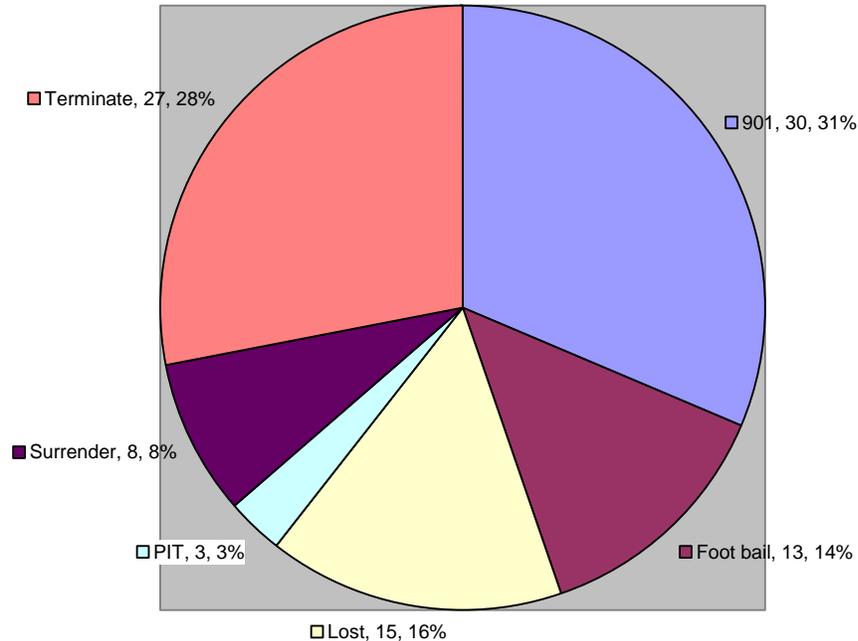
Another factor in analyzing pursuits is how they are ending. The following charts account for how all of the pursuits have ended during the review period:²

2010 Pursuits - How ended



² As used in the charts, "Terminate" means the agency chose to abort the pursuit; 901 is a vehicle collision that disabled the suspect vehicle

2011 Pursuits- How ended



It is clear that vehicle collisions are a very common result of vehicle pursuits. Many of the pursuits that end in a foot bail also have a collision because the suspects often bail from the car while it is in motion and the unattended car often strikes something before coming to rest. It is also clear that less than one in five pursuits will end with the suspect simply pulling over at one point.

Who is Terminating Pursuits?

Slightly less than 30% of pursuits are aborted by the Department. Ideally the officer involved in the pursuit will recognize when the pursuit has become too dangerous. If that officer does not recognize the danger then it is incumbent upon the supervisor to direct the officer to terminate the pursuit. When both of those levels fail, it becomes the responsibility of the watch commander to direct that action. The Department should consider termination directed by the commanders to be failures of subordinates to recognize the danger in the pursuit. To some degree, the Department should consider terminations directed by the sergeant to be a failure on the part of the officer to recognize the danger of the pursuit.

Pursuit terminations were directed at the various levels during the review period as follows:

	2010	2011
Involved Officer	15	13
Supervisor	30	11
Commander	7	3
Unknown	6	0

It should be noted that 2011 saw a significant increase in the percentage of pursuits aborted by the involved officer. I did note in several crime reports prepared by officers that they recognized the change in policy and they were terminating their pursuit in accord with that more restrictive change.

Are Officers Terminating the Pursuit when they Should?

It is difficult for officers actively involved in a pursuit to be objective about the danger of the pursuit and make a good decision about whether or not to abort the pursuit. The fact that it is difficult, however, should not mean that the officer is absolved of any responsibility for making that determination. It is also important for officers to provide sergeants with an accurate depiction of what is occurring in the pursuit because the supervisor is rarely in a position to visually monitor a pursuit. During my review of pursuits, I came across good examples and bad examples of officers aborting or not aborting pursuits.

Good Examples

10P-0161 30 Sep 10 – Officers were pursuing a stolen car E/B on International Blvd and self terminated when the suspect reached speeds over 70mph.

10P-0216 30 Dec 10 – Officer attempted a car stop for a traffic offense and the vehicle failed to yield. The license plate came back clear and the officer immediately aborted the pursuit. The crime report mentioned the change in policy that actually didn't take effect for two more days at that point.

11P-0005 14 Jan 11 – Officer attempted a car stop for a traffic offense and the vehicle failed to yield. The license plate came back clear and the officer immediately aborted the pursuit.

11P-0006 20 Jan 11 – Officer initiated a short pursuit for a traffic offense but cancelled even before the plate came back when the suspect drove on the wrong side of the road at high speeds.

11P-0014 2 Feb 11 – Officers initiated a pursuit of burglary suspects but backed off when the OPD helicopter began following the suspect. Officers were directed to where the suspects foot bailed and they were arrested.

11P-0053 22 Apr 11 – Officer initiated a short pursuit for a traffic offense but aborted immediately when the suspect drove on the wrong side of the road nearly causing a collision.

Problematic Pursuits

10P-0043 4 Apr 10 – Officers initiated a pursuit for auto theft. The suspect collided with another vehicle and according to the police report, intentionally ran it off the road. The suspect continued colliding with two more uninvolved vehicles before the sergeant directed them to abort the pursuit. The radio traffic did mention the three collisions but not the severity of the first which would likely have caused the sergeant to direct them to abort at that point.

10P-0057 16 Apr 10 – Officers recognized a probationer they wanted to search because he was on probation for gun offenses. A pursuit ensued and collisions occurred during the pursuit and even a captain was involved in the pursuit at one point. Eventually the suspect foot bailed and was captured and it turned out the car was stolen.

10P-0070 15 May 10 – An officer attempted to stop a car for a traffic violation. A pursuit ensued and the suspect drove onto a sidewalk and was involved in a collision. The officer followed the suspect onto the sidewalk and pedestrians had to jump out of the way of the cars. The pursuit continued but was ultimately terminated by the sergeant when the officer was not broadcasting enough information. The officer never broadcast any information about a collision or driving on a sidewalk. The pursuit occurred at noon in the Fruitvale area.

10P-0086 31 May 10 – Officers initiated a pursuit of a stolen car. There was poor radio communication throughout the pursuit and it ended after the suspect rammed a police car, causing injury to an officer and then collided with an uninvolved vehicle causing major injury to two citizens and two people in the suspect car.

10P-0113 23 Jul 10 – Officers attempted a car stop for a traffic offense. The juvenile suspect fled, crashing into a street sign and two parked cars during the pursuit. The suspect eventually foot bailed and was arrested. The officers did not broadcast any of the collisions during the pursuit.

10P-0151 19 Sep 10 – Officers initiated a five minute pursuit for a traffic offense and a significant portion of the pursuit occurred while the suspect had a flat tire. One police car drove over railroad tracks causing damage to the police car. One police car “bumped” the suspect vehicle after a PIT maneuver was done on it.

10P-0183 24 Oct 10 – Officers initiated a pursuit for a traffic violation and the supervisor had to ask five times what the want was. The officer had a lot of difficulty in broadcasting any information about the pursuit and as the sergeant ordered them to terminate the suspect was involved in a collision. The supervisor made a SNF entry about doing a poor job broadcasting critical information.

11P-0048 9 Apr 11 – Officers pursued a suspect for a traffic offense and went the wrong way on the one way portion of Macarthur Blvd resulting in a major head on collision.

11P-0061 9 Apr 11 – The same officer from 11P-0048, during his next shift, attempted to stop a vehicle for a traffic violation and a pursuit ensued. The officer stated he believed it was an unreported stolen car but is not able to articulate why. The pursuit ended when the suspect collided with a fence and a fire hydrant.

11P-0075 31 May 11 – Officers saw a suspect throw an unknown object from a vehicle and then attempted a stop and a pursuit ensued. Eventually the suspect foot bailed into a park and two police cars drove into the park. Both police cars were involved in collisions in the park, one with a park bench and one with a fence. Both police cars were removed from service.

There may have been extenuating circumstances not present in the pursuit packets that may made the above pursuits seem more reasonable. However, none of these pursuits made it to a review board. This is not an exhaustive list of the good or bad pursuits but the pattern and ratio is pretty consistent amongst the population. I also noted that a disproportionate number of the problematic pursuits were in 2010 as opposed to 2011. It is possible that the more restrictive policy implemented this year is having the desired effect in encouraging officers to reserve pursuits for more serious offenses only.

The PIT Maneuver

During the review period the Department successfully ended pursuits using the PIT maneuver nine times. I did not track the numbers of failed PIT maneuvers but there were not many mentioned in all of the other reports. During those nine PIT maneuvers, four of them resulted in collisions with objects other than just the two involved cars. All of the maneuvers caused at least some paint transfer damage to the police cars. Only two of the maneuvers caused enough damage to the police car to necessitate its removal from service. Six of the maneuvers resulted in moderate to major damage to the suspect vehicle either from the contact with the police car or a collision with an uninvolved object. No injuries were sustained by any party in any of the maneuvers.

The maneuver is largely successful when implemented but nearly half of the time it results in collisions with other cars or objects. Four of the maneuvers were performed in pursuits initiated for only a traffic offense. All of the maneuvers in 2011 occurred during pursuits initiated for a firearm offense which presents questions of whether it is tactically sound to perform this type maneuver on a vehicle with suspects known to be armed.

Recommendation 5: The Department should conduct PIT training each time vehicle operations are done in CPT. Members not meeting proficiency with this requirement shall not attempt the maneuver in the field.

What is Being Accomplished with these Pursuits?

Since such a large percentage of OPD's pursuits are initiated for minor traffic offenses or auto theft, it is important to determine if those pursuits are resulting in arrests for offenses more serious than the crime for which they were initiated.

Traffic Offenses:

During this review period, 139 pursuits were initiated for traffic offenses, primarily infractions. Of those 139 pursuits, 41 (29%) ended with some type of collision occurring during the pursuit. Two of those collisions involved injury to a person not involved in the pursuit. However, amount of property damage and injury are something subject to chance when a collision occurs. It is

clear that collisions and injury are a legitimate possibility when the pursuit is initiated for these offenses.

It has long been argued that people do not flee from the police simply because they don't want to get a ticket and that they must be fleeing for a more serious reason. To study this I looked at the pursuits where arrests occurred after the initiating offense was just a traffic offense. Of 139 pursuits initiated for traffic offenses, 75 (54%) resulted in some type of arrest. Those 75 arrests break down as follows regarding the final arrest charges:

Traffic charges only:	37
10851 arrests:	15
Firearm arrests:	10
Narcotics arrests:	8
Other felonies:	5

A total of 23 (17% of total traffic pursuits, 31% of traffic pursuits resulting in arrest) pursuits resulted in arrests for a firearm or for a felony arrest other than auto theft. If auto theft is included then 38 (27% of total traffic pursuits, 51% of traffic pursuits resulting in arrest) pursuits resulted in an offense for more than just a traffic offense. Since many traffic pursuits are aborted, it is unknown what type of arrests these pursuits may have yielded; however, based on these numbers, it appears people do flee from the police for just minor offenses.³

Auto Theft

During this review period, 82 pursuits were initiated for auto theft and 41 of those pursuits (50%) had at least one collision occur during the pursuit. It seems that the primary reason citizens report theft crimes to the police is that they would like their belongings returned. In our attempts at returning vehicles to their rightful owner we often accomplish this task at the expense of it being returned in a damaged condition. Twelve persons uninvolved in the pursuit were injured in those 41 collisions. Thirteen people in the fleeing car (including passengers) were injured in those collisions.

It has been argued that people who drive stolen cars are responsible for committing other crimes and that is a reason to pursue stolen cars. Of the 82 pursuits, 40 resulted in an arrest. The following is a breakdown of the arrest charges in those 40 pursuits⁴:

10851 only:	33
Firearm arrests:	3
Narcotics arrests:	2
Other felonies:	2

³ There were some pursuits initiated for traffic offenses where suspects threw objects from the fleeing car that were never located, even if the suspect was arrested. This may result in a more serious crime suspect being arrested for only traffic offenses.

⁴ Nearly all of the arrests also included traffic offenses for evading the police. These numbers represent only additional crimes discovered as a result of the pursuit.

It appears true that in some cases suspects driving stolen cars are involved in other more serious crimes but the Department was only able to confirm that in 18% of the pursuits where an arrest was made.

Half of all pursuits initiated for auto theft, which is a felony, have a collision occur during the pursuit. During slightly more than 18 months we have had 14 people injured in pursuits for auto theft or traffic offenses that were not involved in the pursuit until it collided with them. Of all the high risk activities police engage in, vehicle pursuits represent the most significant threat of injury or death to the general public. While officer involved shootings are generally believed to be the event with the highest risk management exposure, the Department has not shot an innocent bystander since March of 2006. That shooting did not result in a fatality. Yet since March 2006, six innocent people were killed in five different pursuits initiated by OPD. Because there are no accurate statistics kept, it is unknown how many innocent people were injured during that time period.

The Department cannot absolve itself of any responsibility for these deaths by saying that it was the suspect who chose to flee that actually caused those deaths. While technically correct, we need to be reminded that we are the ones charged with protecting the citizens of Oakland, not the suspect that flees. It is not reasonable to expect criminal suspects to make rational decisions while determining whether or not to flee from the police. It is incumbent upon the members of the Department to expect the worst, in terms of decision making and driving ability, on the part of those who we seek to arrest. Out of 115 pursuits initiated for traffic or auto theft offenses where arrests occurred, only 12 (10%) resulted in an arrest for a firearm offense. The numbers do not support continuing pursuits for non-violent offenses as a means of combating violent crime in Oakland.

Recommendation 6: The Department should consider modifying policy to allow pursuits only when the suspect is wanted for a violent felony. A good model for a pursuit policy is the current policy of the San Jose Police Department. That is discussed in more detail further along in this report.

Are Pursuits Being Properly Supervised, Reported and Managed?

I already pointed out examples where I believe officers should have given more consideration to terminating pursuits. This section will seek to point out examples of how the supervision or reporting of pursuit incidents is lacking. Some of these issues are beyond the scope of the pursuit itself, such as cases where it appears arrests were made for the wrong crimes, or in some cases no crime. The following are some of the pursuit reports that highlight supervisory or management problems:

10P-0043 4 Apr 10 – This pursuit involved the suspect running a car off the road. The sergeant completing the pursuit report concluded that the officers should have terminated the pursuit at that point; however, he recommended the pursuit be in compliance. The chain of command agreed and it was never sent to a board. If the sergeant concluded they continued after they should have cancelled the pursuit then that would by definition be out of compliance with our policy.

10P-0088 4 Jun 10 – Officers attempted a stop for a traffic violation and a pursuit ensued. The suspect eventually foot bailed and was taken into custody and arrested for evading the police and for S/C 10851 when the officers believed the car was stolen but were unable to locate the owner to verify. A sergeant approved the arrest for the S/C crime. The OPD Report Writing Manual says to complete a S/C report when one or more of the elements of a crime can not be established. If the elements could not be established then probable cause could not have existed for the arrest making the arrest for that offense, unlawful. This incident was also reviewed by a lieutenant in the review process.

10P-0161 30 Sep 10 – Officers initiated a pursuit for a stolen car and then appropriately cancelled after the speeds became excessive. However, another officer was approaching from the opposite direction and saw the fleeing car pass him and he made a u-turn to get behind the car. A major rollover collision occurred and the officer wrote a supplemental report saying he pursued the car. Since the initial units had cancelled the pursuit the supervisors only did a level 3 investigation even though the documentation appears to show the additional officer was in pursuit at the time the collision occurred. From the way the supplemental is worded, it may be the officer meant to type “not in pursuit” and that may be the source of the confusion but this review process did not catch this major contradiction.

10P-0166 11 Oct 10 – A captain became involved in a pursuit driving an unmarked car. The suspect ultimately surrendered and was arrested. The captain was the only unit in the pursuit and charged the suspect with evading the police despite the fact the section requires the officer to be in a fully marked vehicle. Therefore, one of the elements of that offense did not exist and the arrest for that charge was unlawful.

10P-0175 20 Oct 10 – Officers pursued a vehicle wanted for a robbery but a supervisor terminated the pursuit due to excessive speed. Shortly thereafter other officers got behind the vehicle that was already speeding and followed it for a couple of blocks until a major collision occurred resulting in injuries. Only a level 3 investigation was completed despite the fact it appears other units were behind the suspect at the time of the collision.

10P-0185 26 Oct 10 – Officers initiated a pursuit for a car they believed to be stolen. Eventually a PIT maneuver was used to stop the car. The suspect was arrested for S/C 10851 even though the car wasn't reported stolen and they were able to verify he was the boyfriend of the registered owner of the car. As before, S/C reports are for reports where the elements cannot be established. The arrest for that charge appears unlawful and was approved by a sergeant.

11P-0041 8 Mar 11 – Officers received information from an untested informant that a suspect had a gun in a car. Officers attempted to stop the car and a pursuit ensued. The pursuit ended when the suspect collided with a fire hydrant and was taken into custody. An unloaded pistol-grip shotgun was recovered in the trunk of the car. The suspect was arrested for possession of a concealed weapon in a vehicle. An acting sergeant approved the arrest even though it is not unlawful to possess an unloaded shotgun in the trunk of a car.

11P-0061 9 Apr 11 – An officer attempted to stop a vehicle for a traffic violation and a pursuit ensued. The officer stated he believed it was an unreported stolen car but was not able to

articulate why this was so. The pursuit ended when the suspect collided with a fence and a fire hydrant. The reviewing commander believed the police report was inaccurate as to the officer's stated belief the car was stolen and the use of the siren during the pursuit. No referral to IAD was made. I have since referred this case to IAD.

11P-0088 18 Jul 11 – A lieutenant driving an unmarked SUV initiated a pursuit for a traffic offense that ended when the suspect collided with a pole. The suspect fled and was not caught. Only a level 3 investigation was completed despite there being a collision. The reviewing captain checked the in compliance box despite the pursuit being for traffic only and the lieutenant was operating an unmarked car.

I also observed many pursuit reports that were highly complimentary of officer's dedication and drive. The reports mentioned how deeply concerned the officers were for the well being of citizens. This type of comment should not be in these reports. The comments are not founded on anything. There is no test the officer takes to measure their level of dedication and I would hope that the officers are concerned with the well being of citizens of Oakland. These statements do little more than make the investigation seemed biased. Pursuit reports, just like IAD cases and Use of Force investigations should be impartial fact finding investigations, not solicitations of the supervisor's opinion about an officer's level of commitment.

Also, numerous pursuits involved officers from specialized units or commanders operating unmarked cars. In nearly all cases, there was no mention in the documentation or in any radio traffic of any attempt to relieve these units with marked cars as is required by the policy.

Hearing Boards

Department General Order J-4 Section XVI B states:

The Department Safety Committee Chairperson or designee shall convene the Departmental Safety Committee to review the following pursuit reports in accordance with the provisions of DGO G-4, Departmental Safety:

- 1. A pursuit resulting in injury and/ or property damage; and*
- 2. At the request of any supervisor, commander, or the Departmental Safety Coordinator, who has reviewed the Pursuit Report packet, to address Departmental training and/ or tactical issues.*

The only reference to pursuit reports in DGO G-4 is in Section III E and states:

The Committee shall review pursuit reports referred to it by the Chief of Police, in accordance with the procedures set forth in Special Order 4674.

Special Order 4674 is not available on the Department website and does not appear to exist anymore. The Publications Unit told me that this Special Order is not in their archives and that DGO G-4 is largely obsolete.

The Department Safety Coordinator told me that the Committee does not review all pursuits with non-injury collisions because the majority of collisions are minor so there is no need to review

them. Based on the fact that so few pursuits do go to a board I have no doubt he is correct about the practice of pursuits being held by the board. I was not able to locate anywhere in OPD policy that the policy was ever modified to what the current practice is. During this review period, three out of 315 pursuits went to the Department Safety Committee. One pursuit went to the Executive Force Review Board. A second pursuit was ruled out of compliance by the Executive Force Review Board when the Board was actually convened to review an officer involved shooting that occurred at the termination of a pursuit. That means a total of five pursuits (2%) were reviewed by some review board.

Recommendation 7: The Department should make its policy and practice of pursuit review boards consistent. I agree with the Department Safety Coordinator that it may not be necessary to hold a review board for every pursuit resulting in property damage; however, based upon my review, I am not confident in reviewing commander's decision making to determine which property damage pursuits would need to go to the board. Therefore, I recommend that we keep the current policy and simply adjust the practice to conform to the policy. Some cases are very straight forward and I am confident the review board can handle them in a timely manner so as to not take too much time for board members.

Marked Car Definitions

One thing that became clear during this review is that there is not a consistent way the Department defines what is a marked car or an unmarked car. The Department has also coined the term "semi-marked car." The Department currently has in its fleet several different styles of patrol vehicles including:

1. Fully marked car with a light bar – This is the standard patrol car assigned to the patrol function.
2. Fully marked car without a light bar - This is the same style car as above but instead of an overhead light bar, it has lights in the grill, on the side mirrors and in the top area of the windshield. These cars are assigned to mostly PSO or CRT functions and sometimes patrol sergeants. This is one of the styles of cars commonly referred to as "semi-marked."
3. Unmarked patrol car – This is a solid black patrol car, often with a prisoner cage, that has spotlights on side of the car and red and blue lights in the grill and the upper portion of the windshield. These are assigned to primarily CRT or GITF units. These cars are also commonly referred to as "semi-marked."
4. Unmarked CID style car – These cars are a solid color but not a typical police car color such as black or white. They have no prisoner cage or spotlights. They do have lights in the grill and on the upper portion of the windshield. These are assigned to CID investigators and non-patrol command officers. These cars are referred to as "unmarked" cars.
5. Patrol command vehicle – These vehicles are solid black Ford Expeditions. They do not have prisoner cages and some of them have spotlights. They have lights in the grill and

some of them have lights in the upper portion of the windshield. These are assigned to patrol commanders for the purpose of establishing a command post at a critical incident.

Recommendation 8: The Department should standardize the terminology for police vehicles. The term semi-marked is arbitrary and confusing. All of the above vehicles meet the requirements for emergency vehicles as defined in the vehicle code. However, in order to charge a suspect for evading the police, the officer must be driving a marked vehicle. The black “semi-marked” cars do not meet this requirement. This confusion also is likely a factor as to why units operating those cars do not relinquish pursuits to marked cars.

I further recommend that the Department cease purchasing marked cars without light bars. I asked several people why it was they were purchased that way in the first place and the most common answer I was able to get was that they looked cool. The best answer I got was that it was believed they could be used for arrest teams so that they could get slightly closer to a target before being recognized as a police car. I would argue this is a fallacy. The average suspect wanted by the Oakland Police is going to recognize a police car at a great distance whether or not it has a light bar, or is even marked for that matter. The average citizen driving around Oakland while an officer is trying to drive Code 3 is less likely to recognize the car without a light bar as an emergency vehicle and less likely to move out of its way.

Further refresher training should be done on the requirements of officers operating unmarked cars to relinquish pursuits to officers operating marked cars. This would include commanders operating in unmarked cars or especially sport utility vehicles which have a higher incidence of rollovers.

Siren Use

During this review I listened to audio recordings of many of these pursuits. I found that generally officers were using their siren throughout the pursuit. However, there were a few instances of it not being used and in some cases sergeants actually told the officer over the radio to use their siren. I also read training points in several reports that officers were counseled on their lack of use of the siren during the pursuit.

The recent policy change requiring sirens to be continually sounded during a pursuit should alleviate this problem.

Outside Agency Comparison

Generally speaking pursuit policies are consistent from agency to agency. One factor that is very agency specific is what type of offense the agency will permit a pursuit to be initiated for. The following chart shows the initiating requirements for various agencies in California:⁵

Agency	Initiating Requirement
San Francisco Police	Any offense the officer has reasonable cause to stop the vehicle for
Santa Ana Police	Any law violator

⁵ All of the policies have some language regarding weighing the seriousness of the offense against the danger created by the pursuit.

Long Beach Police	A felony crime or serious impairment or suspect driver
Los Angeles Police	Any felony or misdemeanor (other than misdemeanor evading or reckless driving)
Sacramento Police	Any offense the officer has reasonable suspicion to stop the vehicle for
San Diego Police	Any offense the officer has probable cause to stop the vehicle for
San Jose Police	A violent felon who poses a significant ongoing threat to public safety
Alameda County Sheriffs	Any offense the deputy has reasonable cause to stop the vehicle for
Fresno Police	Any offense the officer has reasonable suspicion to stop the vehicle for

OPD’s current policy is more restrictive than most of these agencies but less restrictive than Long Beach and San Jose. San Jose PD’s policy also contains what they term a “pre pursuit” phase. This is for the short period of time between when an officer attempts the car stop until the point where it is clear to the reasonable officer that the person is attempting to evade the officer. This pre-pursuit phase does not result in a pursuit report being completed if the officer terminates during this time. This is a well crafted policy and alleviates the issue of an officer being out of compliance for not cancelling a pursuit that doesn’t meet the restrictive criteria if the officer is legitimately trying to determine if the person is simply looking for a place to pull over.

Conclusion

This pursuit review has been the most comprehensive review of pursuits that I am aware of occurring in recent memory. What was discovered is that there are major problems with the tracking of pursuit files, and other concerns regarding the decision making of officers involved in pursuits. Additionally, the review process for pursuits is not catching or properly addressing risk management issues for the Department. All of these problems can be fixed with new systems, better training and in some cases holding people accountable for poor performance. The real issue the Department needs to consider is how much value is coming from these pursuits and whether that value is worth the tremendous cost in human lives and property damage that are sometimes a by-product of these pursuits. I would argue that the cost is nearly always too high and that the Department should focus less on what the law allows and more on what is the right thing to do for the safety of citizens in the community.