

## Draft Review of Departmental General Order J04 on Pursuit Policy, etc.

From: Oakland Police Commissioner Riles, Chairperson of Community Policing Ad Hoc

To: Community Policing Ad Hoc

Re: Directed Review from the Oakland City Council

## INTRODUCTION:

On May 21 at a City Council meeting, with a vote of two excused and one abstaining, the Council passed with five ayes the following motion:

Subject: Directing The Oakland Police Commission To Propose Changes To OPD's Pursuit Policies From: Councilmember Jenkins And Reid Recommendation: Adopt A Resolution Directing The Oakland Police Commission To Propose Changes To The Following Oakland Police Department Policies: (1) Departmental General Order J04 On Pursuit Driving; (2) Special Orders 9192 And 9212 On Vehicle Pursuits; And (3) Training Bulletin III-B.9 On Pursuit Intervention Maneuver Techniques, For Submission To The City Council Pursuant To Section 604(B)(4) Of The Oakland City Charter

**"We have to be balanced with balancing public safety, with pedestrian safety, with the safety of our officers, with the safety of bystanders," Councilmember Jenkins said at the meeting. "We also have a huge perception issue that we have to tackle as elected leaders in this town that Oakland is open for crime."**

**The police commission is being asked to bring its report on police pursuits and proposed changes back to the City Council by Sept. 24.**

The matter had previously been approved for presentation to the Council by four ayes at the Council Public Safety Committee on May 14.

This policy review action was assigned to the Community Policing Ad Hoc Committee of the Police Commission by the Commission Chairperson, Marsha Peterson. Members of the Community Policing Ad Hoc, besides Commissioner Riles, include Commissioner Ricardo Garcia-Acosta, Commissioner Regina Jackson, Pastor Jacqueline Thompson, Jose Dorado, Mike Nisperos, Deacon Reginald Lyles, Sergeant. Alain Manguy, and Sergeant G. Urquiza.

This review will derive from four sources: (1) A reading of the document *Vehicle Pursuits: A Guide for Law Enforcement Executives on Managing the Associated Risks* which was compiled by both the Community Oriented Police Services (U.S. Department of Justice) and the Police Executive Research Forum published in 2023 and recommended to the Commission by both Governor Gavin Newsom and Sergeant G. Urquiza of OPD; (2) a public, in-the-community forum held on July 31 with a presentation from Sergeant G. Urquiza, Captain L. Ausmus, and Captain E. Perez-Angeles and with a second presentation from Joseph Micallef, Inspector

General Policy Analyst, presenting on “OPD Pursuit Policy: Comparisons to Similar Jurisdictions in California and Nationwide; this forum included questions from the Community Policing Ad Hoc committee members and questions from the audience present with answers; (3) discussion of the information gathered from sources (1) and (2) by the Community Policing Ad Hoc Committee members with inclusion in the discussion and comments from Professor Geoffrey P. Alpert of the University of South Carolina Department of Criminology and Criminal Justice and author of the book, *Police Pursuit Driving: Policy and Research* and who was the major "architect" of Oakland's policy; (4) readings of well researched media articles from The San Francisco Chronicle and The Oaklandside combined with common sense from the participants and contributors. In the in-the-community public forum there was verbal participation from residents, merchants, and other interested parties. Such persons also participated in written fashion outside of the forum. There were no discussions with crime perpetrators who had done crimes and driven away from the police nor with individual patrol officers who had seen crimes and had not pursued the perpetrators. There was hearsay from those participants in this review who did speak to people in these last two categories.

#### POLICY PRESENTATION:

The presentations from the forum will not be repeated here.

However, it is important to know that OPD's presentation began with an overview that stated the two balancing considerations that shape Oakland's pursuit policy:

- The primary consideration when deciding to engage in a pursuit is the protection of human life and the overall safety of the community.
- Vehicle pursuits are inherently dangerous, but at times, it may be necessary to apprehend individuals who are involved in dangerous criminal activity that harms the community, and who elect to attempt to evade apprehension by fleeing from law enforcement utilizing a vehicle.

There seems to be no debate on anyone's part that increased, more aggressive police pursuits put lives at risk. The headline of the Chronicle article was as follows: "Police chases are killing more and more Americans. With lax rules, it's no accident." The headline of the Oaklandside article was as follows: "Allowing for more Oakland police chases is 'signing death warrants,' expert says." It seems that the last review of OPD's pursuit policy came after the death of two residents: in June 2022 pursuits killed 28-year-old Lolomanaia Soakai and 44-year-old Augustin Coyote in October of 2022 whose family had no recourse because his truck was struck by the car that was attempting to escape. It is also noteworthy that the main thoroughfares where such pursuits almost always take place are in the neighborhoods most heavily populated by low-income people-of-color. These are the neighborhoods in the City with which OPD most needs improved trust and cooperation. The document, *Vehicular Pursuits: A Guide for Law Enforcement Executives on Managing the Associated Risks*, reflects this acknowledgment of the increased risk to injury and life: on page 34 it says, "Agencies must be cautious when adding crime categories to avoid undermining the intent of a restrictive policy."

Sergeant G. Urquiza's presentation listed nineteen (19) risk factors that are to be weighted before initiating a pursuit and then continuously throughout the pursuit. These risk factors do not necessarily require the termination of the pursuit but they "shall be part of the officer's risk assessment" relating to initiating or continuing a pursuit. Those factors are as follows:

1. The volume of vehicular and pedestrian traffic in the area;
2. Traffic conditions;
3. Location of pursuit;
4. Safety of the public in the area of the pursuit (e.g., the presence of children, the elderly, or disabled, the proximity to hospital or school zones in the vicinity of the pursuit);
5. Safety of the pursuing officers;
6. Speeds of both officer and suspect vehicles;
7. Familiarity of the officer and supervisor with the area of the pursuit;
8. Road and weather conditions;
9. Time of day;
10. Quality of communications between the pursuing units, the Communications Section, and/or supervisor;
11. The performance capabilities of the police vehicle or the operation of the emergency lights and siren;
12. Availability of air or field support;
13. Whether the officer has a ride-along passenger with him/her;
14. Whether the suspect is known and can be apprehended at a later time;
15. Whether the suspect is known to be a juvenile;
16. When a non-suspect vehicle and/or pedestrian accident has occurred during a pursuit;
17. The safety of occupants in the fleeing vehicle;
18. The distance between the pursuit and fleeing vehicles is so great that further pursuit is futile; and
19. The pursued vehicle's location is no longer known.

It is argued by some that Oakland's policy is more restrictive than the pursuit policies in other communities; realizing the differences of circumstances in communities, this characterization is debatable. In his presentation Joseph Micallef, Inspector General Policy Analyst, compared Oakland's policy with those of four communities in California (San Jose, San Francisco, Fremont, and LA County) and four communities outside of California (Detroit, Mi; Washington, D.C.; Rochester, NY; and Atlanta, Ga.) based on similarities in homicide rates. Oakland is more permissive than Atlanta in terms of which crimes are authorized for pursuits. Oakland is comparatively permissive in the use of pursuit intervention methods and technologies. Oakland's requirement for the 'OK' from a supervisor, to initiate a pursuit and to pursue beyond a speed of fifty miles per hour, takes seconds. Although Oakland's pursuits dropped from 130 in 2022, to 85 in 2023, and to 38 YTD in 2024, the average speed was 58.63 mph (2022), 60.04 mph (2023), and 65.60 mph (2024 YTD).

San Francisco's change in pursuit policy was accomplished by a ballot measure (Measure E); this maybe the source of the politics around pursuit policy in the Bay Area.

The Community Police Ad Hoc Committee did receive comment on pursuit policy from EmpowerOak, an organization founded by former Councilmember and Mayoral candidate, Loren Taylor, that questioned the requirement for Oakland officers to consider nineteen (19) risk factors. This communication questioned the value of having a police commission and criticized the paper work that burdens Oakland police officers as they deal with achieving the reform changes required by the Courts as a result of the Negotiated Settlement Agreement. It is hoped that the looseness of management and oversight that resulted in the dastardly behavior of the Riders and that resulted in the scandals that followed will not be forgotten in the 'heat' of politics. And, it is hoped that the 81% voter approval for the latest iteration of the Police Commission (Measure S1) be remembered. EmpowerOak was heard. Yes, the Oakland Police officers are faced with a great deal of scrutiny.

It was argued that the criminals exploit the rules imposed on police. And "that's why criminals can get away with burglary, car theft, and reckless driving." Page 16 of *Vehicular Pursuits: A Guide for Law Enforcement Executives on Managing the Associated Risks* says "Research suggests that if the police did not chase offenders, there would be no significant increase in the number of suspects who flee. Additional research suggests that agencies with more restrictive pursuit policies do not have higher crime rates." After that specific examples are given in that document. Professor Alpert presented the Ad Hoc Committee a copy of a study done by the New York University School of Law titled *Measuring the Costs and Benefits Associated with Vehicle Pursuit Policies in Roanoke City and Roanoke County, VA*. This document concluded that "These findings suggest that restrictive vehicle pursuit policies have district effects depending on the local context." And, that "Moreover, these policies have the potential to increase the overall effectiveness of the police by minimizing low level, socially costly arrests." It was noted in the Community Ad Hoc Committee discussion that almost no police agency in California chases criminal escapees who are on motorcycles and there has not been a significant, measurable increase in criminals escaping on motorcycles.

Professor Albert also noted the exceptional, current safety record of Oakland police pursuits, compared to the records of other jurisdictions. That is not to say that there were no collisions. And it is noted that 26% of these pursuits end in arrest. However, considering that there are a number of alternative means for identifying and apprehending criminal perpetrators that have not been fully explored in Oakland or that have not been expanded to their most expeditious degree, the balancing of the risk to life with the opportunity for apprehension is thereby not fully actualized; vehicular pursuit is not the sole means to accomplish apprehension.

#### RECOMMENDATION:

**The Commission recommends** no change in the two priorities, the balance between which, shape the pursuit policies. All sources, including the Oakland City Council, expressed the appropriateness of balancing the shaping of police pursuit policy between these two priorities.

**The Commission recommends** the continued weighing of the nineteen (19) risk factors outlined above to initiate and continue a pursuit. It is noted that more streets have been narrowed with restaurant street furniture, bus lanes, and bike lanes; there are scooters, skateboards, motorcycles, and motorized chairs on our streets; and, all too often, those persons using these vehicles are playing music loud or wearing headphones such that they are likely to hear police sirens too late. All of this is not even to speak of the apparent increase in aggressive, rude, risky driving on our streets that seems to have appeared after the end of the pandemic. The Highway Patrol statistics quoted by the Governor came at a time prior to the start of the school year; there are now more young people on the street coming to and from school. And, even without driving at pursuit speeds, regular drivers must be careful of car doors opening into narrowed driving lanes and be careful of street disrepair.

**The Commission recommends** that pursuits continue to require the ‘OK’ of a supervisor. Oakland patrol officers are younger than in previous years and most likely less familiar with Oakland streets. Nineteen (19) risk factors are a lot of judgments to make in the heat of the moment; so, the thoughts and judgments of a more seasoned superior makes a lot of sense.

**The Commission does not recommend** a change in the requirement that a pursuit only be initiated “when there is reasonable suspicion to believe a person committed a violent forcible crime and/or a crime involving a firearm, or probable cause that the person is in possession of a firearm.” It has been argued that this restriction encourages criminality; page 16 of *Vehicular Pursuits* calls that a myth. However, “street accounts,” without evidentiary solidity, should not be totally discounted; neither should lives be put at greater risk on that account.

**Therefore, the Commission recommends** that the Public Safety Committee of the Council take more leadership in encouraging and supporting OPD to seek alternative means of tracking crime perpetrators in those categories that fall outside of those where perpetrators are suspected of committing a violent forcible crime and/or a crime involving a firearm. OPD has already

considered the StarChase system (GPS darts) and found it wanting. OPD is interested in fixed wing manned and drone systems that are able to stay aloft longer and more frequently than the helicopters. Officers have also used the Tesla Sentry Mode that through multiple cameras records activity all around the car. Some merchants have volunteered to place cameras on the outside of their establishments and have them networked so that perpetrators vehicles could be tracked. Neighborhood Councils have also volunteered to participate in such networked-camera vehicle tracking. Such systems, with the nips and tucks of the Privacy Commission, would have the added advantage of building trust between OPD and the community.

**Finally, the Commission recommends** that the Council Public Safety Committee take every opportunity to pierce the many misperceptions about crime and criminality; and educate our public in Oakland about evidence based and fact-based truths. Rather than using Statewide or National averages for the effectiveness of staffing or tactics, the Commission recommends that the Council Public Safety Committee use analyses and studies specific to the context of Oakland with its broader view of crime reduction that goes beyond simply arrests. Three of the last few Police Chiefs have said that Oakland will never be able to arrest its way to lower crime rates. Crime erupts out of neighborhoods in distress and out of folks coming out of prisons and jails unable to get a job and unprepared to reenter our communities. Vice President Kamala Harris instituted a program called Back On Track to reduce this recidivism. More than thirty (30) years ago Oakland initiated Community Crime Prevention Councils but never fully implemented them; not at all in the neighborhoods most in need of such a program...these are the neighborhoods which repeatedly and consistently demand calls-for-service from OPD. A fully implemented Crime Prevention Council could reduce calls-for-service. MACRO in the Fire Department and the numerous programs in the Department of Violence Prevention such as Violence Interrupters and Ceasefire also are in need of attention from the Public Safety Committee. The Commission urges the Public Safety Committee of the Council to 'step up' and play the role that only it can play.