



New Jersey State Legislature

SUPPLEMENT

To

ASSEMBLY TASK FORCE ON AUTO THEFT
Report and Recommendations

February 18, 1993

Assemblyman Monroe Jay Lustbader
Co-Chairman

Assemblywoman Marion Crecco

Assemblyman Paul DiGaetano

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New Jersey State Legislature


ASSEMBLY TASK FORCE
ON AUTO THEFT
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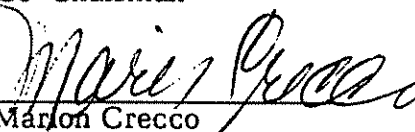
February 18, 1993

Honorable Garabed "Chuck" Haytaian, Speaker
General Assembly of New Jersey

Dear Mr. Speaker:

The undersigned members of the Assembly Auto Theft Task Force herewith respectfully submit their supplement to the report and recommendations required pursuant to Assembly Resolution No. 1.


Monroe Jay Lustbader
Co-Chairman


Marion Crecco


Paul DiGaetano

(Note: This report is a supplement to the Report and Recommendations of the Assembly Task Force on Auto Theft, and is a separate document.)

Supplemental Report
of the Republican Members
of the Assembly Task Force on Auto Theft

In addition to endorsing the *Report and Recommendations* of the Assembly Task Force on Auto Theft, issued on this date, the Republican members of the Task Force also endorse the following:

• **FINDING:** Law enforcement officers may be reluctant to aggressively pursue fleeing offenders because of the officers' possible liability for accidents caused by the offenders.

RECOMMENDATIONS: We endorse the Attorney General's State-wide guidelines for law enforcement officers concerning high-speed pursuits. The guidelines describe the manner and circumstances in which law enforcement officers may safely resort to high speed driving tactics in order to pursue and apprehend an offender, and strike a balance between the needs of law enforcement officers to apprehend offenders and the concerns of private citizens for their personal safety.

The Attorney General's guidelines were first issued in December, 1985, and are in the process of being revised. The revised guidelines are expected to be released in February, 1993.

In addition, we also endorse legislation which would provide that law enforcement officers and public entities would be immune from civil liability for injuries caused by a fleeing offender as long as the officer complied with the Attorney General's guidelines. This concept is embodied in A-2242.

APPENDIX

- I. Attorney General's State-wide Guidelines
Regarding High Speed Motor Vehicle Pursuits

- II. A-2242



State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE
25 MARKET STREET
CN 085
TRENTON, NEW JERSEY 08625
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IRWIN I. KIMMELMAN
ATTORNEY GENERAL

DONALD R. BELSOL
DIRECTOR

December 20, 1985

TO: ALL COUNTY PROSECUTORS
RE: STATEWIDE GUIDELINES REGARDING HIGH SPEED
MOTOR VEHICLE PURSUITS

Dear Prosecutor:

Enclosed please find a signed copy of the guidelines adopted by the Attorney General and the Prosecutors Association with respect to high speed chases. The guidelines are effective as of Monday, December 23, 1985. Implementation of these statewide guidelines will better ensure the safety of private citizens who share with law enforcement the use of our roads, streets and highways. By addressing these specific concerns and criteria in advance of an actual emergency, the guidelines will help to ensure that police officers are sensitive to the risks attendant any high speed chase. In this way, the guidelines should affirmatively aid law enforcement officers in making reasoned, intelligent responses to emergency situations as they arise.

I would appreciate your promptly bringing these guidelines to the attention of all law enforcement personnel within your jurisdiction.

Thank you for your anticipated cooperation in this important matter.

Very truly yours,

Donald R. Belsole
Director

C: Colonel Clinton L. Pagano, Superintendent,
New Jersey State Police
John G. Holl, Deputy Director
James F. Mulvihill, Assistant Director
Chief John C. Moody, President, New Jersey
State Association of Chiefs of Police
✓ Leo Culloo, Executive Secretary,
Police Training Commission

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STATEWIDE GUIDELINES ADOPTED BY THE NEW JERSEY
ATTORNEY GENERAL AND THE NEW JERSEY COUNTY
PROSECUTORS' ASSOCIATION REGARDING HIGH SPEED
MOTOR VEHICLE PURSUITS

INTRODUCTION

The following guidelines describe the manner and circumstances in which a law enforcement officer may safely and properly resort to the use of high speed driving tactics to pursue and ultimately to apprehend a suspected offender. These guidelines were developed as a result of the joint efforts of representative members of the New Jersey law enforcement community, including the Division of Criminal Justice, the County Prosecutors Association, the Police Training Commission and the New Jersey State Association of Chiefs of Police. The promulgation, dissemination and implementation of these statewide guidelines is necessary to safeguard the health and safety of the general public and to ensure continued public confidence in the high level of skill and professional competence now enjoyed by the New Jersey law enforcement community. By carefully delineating the criteria and factors which a law enforcement officer should consider before undertaking a potentially hazardous high speed chase or before erecting an emergency roadblock, these guidelines establish the parameters of a police officer's discretion. These guidelines are not intended to in any way hamper law enforcement officers from apprehending suspected offenders; nor should they have that effect, since law enforcement officers continue to be afforded a wide latitude of discretion in individual cases, and thus must continue to rely primarily on common sense. Thus, far from impeding law enforcement personnel

in the performance of their sworn duties, these guidelines are intended to make the officer's job easier. By highlighting the countervailing policy concerns and considerations in advance of an actual emergency, these criteria will provide meaningful guidance and will thus ultimately aid the officer in the difficult task of making a reasoned, split-second decision as to the most appropriate course of action in exigent circumstances where there is simply no opportunity for calm and casual deliberation. The Attorney General and the County Prosecutors, as chief law enforcement officers of the State and counties, respectively, in a joint effort to promote reasonable uniformity throughout the State have promulgated and adopted the following guidelines with respect to high speed motor vehicle pursuits and emergency motor vehicle responses for the guidance of all law enforcement authorities within this State.

Emergency vehicle operations are an inherent activity in the performance of duties of law enforcement officers. The promulgation of universal Guidelines concerning the manner in which these vehicles are to transverse the roadways of this State is necessary to avoid conflicts among the law enforcement agencies:

It is impossible to describe exactly how a law enforcement officer should pursue a fleeing violator of the law, or respond to a specific emergency call, except to state that it must be in accordance with existing law and with due regard for the safety of all persons. Each pursuit and emergency response has certain different and unique aspects. Accordingly, the

provisions set forth in these Guidelines are intended to assist law enforcement officers, when operating an authorized emergency vehicle, to determine what standard of care is reasonable, commensurate with the various circumstances under which the officer has a duty to perform and an obligation to enforce the law.

It is therefore extremely important that these Guidelines be properly disseminated to all appropriate personnel in conjunction with appropriate training. In the event a law enforcement agency shall promulgate Guidelines which are more restrictive than those contained herein, such Guidelines shall prevail with respect to their applicability to that agency's personnel.

I. High Speed Motor Vehicle Pursuit Policy

The definition of "high speed motor vehicle pursuit" is an active attempt by a law enforcement officer operating a motor vehicle and utilizing simultaneously all emergency equipment to apprehend one or more occupants of another moving vehicle when the driver of the fleeing vehicle is aware or should be aware of that attempt and is purposely, knowingly or recklessly resisting apprehension by maintaining or increasing his speed, ignoring the officer or attempting to elude the officer while driving at speeds in excess of the legal speed limit.

A. When to Pursue

Generally, police officers shall make every responsible effort to apprehend a fleeing vehicle. Therefore, a pursuit may be initiated whenever a law violator refuses to stop and uses his

vehicle to flee. The pursuit should always be tempered with common sense and the officer should be aware of the degree of hazard to which he exposes himself and others. The decision to conduct such a pursuit should depend upon the seriousness of the threat that the violator presents to other persons or to society in general; hence the objective of the pursuit must be to apprehend a violator, and the purpose of the apprehension must be to bring the perpetrator to trial. N.J.S.A. 39:4-91, which sets forth the standards of right of way for emergency vehicles, states in part:

This section shall not relieve the driver of any authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall it protect the driver from the consequences of his reckless disregard for the safety of others.

A police officer, prior to initiating a pursuit involving excessive emergency speed and emergency driving tactics or techniques, should consider the following:

1. The nature of the violation.
2. The likelihood of successful apprehension.
3. The hazard created by the high speed pursuit.
4. The volume, type, speed and direction of the traffic.
5. The nature of the area, whether residential, commercial, school zone, open highway, etc.
6. The population density.
7. Familiarity with the roads.
8. The weather and road conditions; i.e., the width and curves of the roadway; stopping and sight distances.
9. The officer's driving skills and condition of the police vehicle.

B. Nature of Pursuits

The following circumstances are offered as guidelines to be used in considering when and whether a pursuit should be commenced.

1. Non-hazardous violations such as motor vehicle equipment defects, inspection overdues, and registration violations, never warrant prolonged pursuit or the operation of a motor vehicle at excessive speeds. The risk exceeds the necessity for immediate apprehension.
2. Completed violations. Where the danger has passed, i.e., failure to obey a stop sign, a traffic signal, improper passing, or any other non-continual violation, a prolonged pursuit of a motor vehicle at excessive speeds is seldom warranted, particularly when it may cause a greater risk than the violator intended. The responsible discretion of the police officer is relied on very heavily to justify his decision to pursue or not to pursue.
3. Indictable violations and continuing hazardous violations. Pursuit is often necessary to make an apprehension of one suspected of the commission of an indictable offense. In such instances, serious potential for bodily harm or property loss may occur in the event that apprehension does not occur immediately. For example, in kidnapping, destruction or abandonment of critical contraband or evidence, commercial theft, burglaries or the flight of a first or second degree offender, the need to apprehend is paramount but must be weighed against the dangers involved to other highway users, pedestrians, the officer in pursuit and the suspect.

C. Factors to be Considered During Pursuit

1. Officers shall use discretion as to when emergency lights and sirens are to be activated prior to commencing a pursuit. The distance between the violator and the officer should be narrowed as much as possible to avoid alerting the subject to police presence before the officer is in a position to safely stop or pursue the vehicle. During the period, consideration should be given to the use of the radio to alert other patrols that a stop is going to be attempted so that they can begin to move to a position which will enable a quick response in the event a pursuit is initiated.

2. Upon the commencement of a pursuit, the use of emergency lights, siren and headlights IS MANDATORY.
3. Once a pursuit has been initiated the primary unit must notify communications and give as much of the following information as is known:
 - a. Direction of travel, designation and location of roadway.
 - b. Identification of the suspect vehicle, year, make, model, color and license number and other identifying characteristics.
 - c. Number and direction of occupants.
 - d. Violation requiring the pursuit.
 - e. The speed of the pursued vehicle.
 - f. Other information that may be helpful in terminating the pursuit or resolving the incident.

D. Pursuit Tactics

No more than two police vehicles (primary unit and back up unit) shall become actively involved in a pursuit unless otherwise specifically directed by a superior officer. Other officers should be alerted to the pursuit, its progress and location. Police vehicles other than the primary and secondary units should not travel in line together (caravanning) unless specifically authorized by a superior officer supervising the pursuing units.

1. All other patrol units shall stay clear of the pursuit but remain alert to its progress and location through the continual use of communication by radio by the pursuing units.
2. The primary pursuit unit shall be responsible for not only announcing the initiation of the pursuit but advising communications of all pertinent

information concerning the pursuit. The primary pursuit unit is also responsible for the determination of the pursuit tactics and for the decision to abandon the pursuit unless relieved of that duty by a superior.

3. In the event the primary pursuit unit is unable to proceed with the pursuit, the secondary unit will assume the role of the primary unit and request that another patrol become the secondary unit. If the fleeing vehicle is lost to the pursuing unit, then the primary pursuit vehicle shall cause the chase to be terminated and shall be responsible for providing all available information through radio communication that would assist in locating the object vehicle. Broadcasts to other patrols and surrounding police agencies and the coordination of any other search for the vehicle shall initially be the responsibility of the primary pursuit unit until relieved of that duty by a superior.

E. Use of Unmarked Vehicles

Pursuits in unmarked cars are discouraged.

However, officers operating unmarked vehicles which are equipped pursuant to the requirements of N.J.S.A. 39:4-91 may engage in pursuits when the fleeing vehicle represents an immediate or direct continuing threat to life and property. Whenever a marked vehicle becomes available to tail a pursuit initiated by an unmarked vehicle, then the unmarked vehicle should withdraw from the pursuit and serve in a support function for the marked vehicle.

F. Interjurisdictional Pursuit

Notification to another jurisdiction of a pursuit in progress is not a request to join the pursuit. The pursuing agency shall advise if and what assistance is

needed or whether they are making contact for notification only.

Pursuit initiated by a law enforcement agency of another jurisdiction shall continue to be controlled by the initiating unit, and units of the secondary jurisdiction shall be under the direction of the initiating unit during the progress of the pursuit.

G. Prohibited Tactics

1. As a general rule officers should not attempt to overtake or pass a fleeing suspect in a high speed chase. Generally the pursuing officer should keep a safe distance from the suspect and merely attempt to keep the suspect vehicle in sight until the suspect voluntarily stops.
2. There shall be no paralleling of pursuit vehicles along the route unless the pursuit passes through a patrol's assigned area. A patrol that is paralleling shall not join or interfere with a pursuit, and further, shall stop all pursuit-related activity at the boundary of its assigned area.
3. Officers may not halt or attempt to halt a suspect vehicle in a high speed pursuit by ramming or striking the suspect's vehicle with a police vehicle, nor shall there be any "heading off" of a suspect vehicle with a police vehicle.
4. Boxing in of a suspect vehicle because of the obvious safety hazards created to the life and property of the officers involved shall be allowed only with the approval of a superior officer supervising the pursuit.
5. The use of a roadblock must be authorized by a superior officer. Generally, a roadblock may be employed only when:
 - a. There is definite knowledge that the person or persons in the

fleeing vehicle is or are suspected of being wanted for a first or second degree crime, or

- b. The violator constitutes an immediate, continuing and serious hazard to life or property, and all other reasonable efforts to effect apprehension have failed.

Once a roadblock has been established and a vehicle(s) has been positioned in the roadway, there shall be adequate sight distance to see the roadblock, there shall be an avenue of escape, and no one shall remain in the vehicle(s).

At no time will a roadblock be established until all pursuing police vehicles are made aware of the roadblock and its location, and have acknowledged same.

The improvised roadblock generally consists of placing a vehicle or hastily erected barricade across some roadway at some distance ahead of the pursued vehicle to force the stop.

Each particular incident must be carefully evaluated. Hastily improvised roadblocks must be employed ONLY AS A LAST RESORT. Moreover, their use must be directly associated with the seriousness of the offense for which the suspect is wanted. Neither the frustration of the chase nor any motor vehicle violations committed by the suspect during the chase are relevant factors in determining whether to employ a roadblock.

E. Termination of Pursuit

The pursuing officer must, at all times, use his best judgment in evaluating and reevaluating the case to determine whether continuing the pursuit is justified.

A pursuit should be abandoned when:

1. Ordered by a superior officer to immediately terminate, or
2. The pursuing officer determines that the pursuit is not justified because the level of danger created by the pursuit begins to exceed the necessity of an immediate apprehension, or

3. Roadway and/or traffic conditions indicate the futility and the risk of a continued pursuit, or
4. The location of the pursued vehicle is no longer known to the pursuing units, or
5. The pursuing officer realizes or has reason to believe that the fleeing vehicle is operated by a juvenile who has merely committed a motor vehicle violation or a minor offense and the safety factors involved are obviously greater than the juvenile can cope with in a high speed chase.

CONCLUSION


As stated throughout, the primary goal of these Guidelines is to assist law enforcement officers in executing those daily duties inherent in their office with respect to the operation of their Authorized Law Enforcement Emergency Vehicles.

It is expected that each law enforcement officer who operates an Authorized Law Enforcement Emergency Vehicle become thoroughly familiar with these Guidelines as well as the applicable law as set forth in Title 39, the law pertaining to the use of force in law enforcement, (N.J.S.A. 2C:3-7) and the 1984 New Jersey Prosecutor's Manual, Chapter 18. Moreover, it is mandated that each law enforcement officer always put safety first, and ensure that whenever engaged in the operation of an Authorized Law Enforcement Emergency Vehicle, such operation is with reasonable due regard for the safety of the public whom he or she is sworn to protect.

EFFECTIVE DATE

These guidelines shall be effective as of Monday, December 23, 1985.

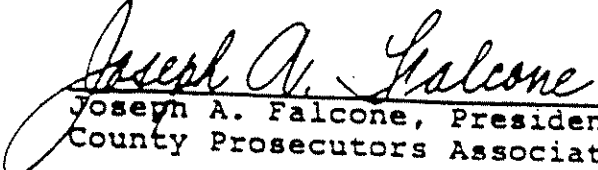
For the Attorney General
of New Jersey:



Donald R. Belsole, Director
Division of Criminal Justice

DATED: 20 Dec 85

For the County Prosecutors:



Joseph A. Falcone, President
County Prosecutors Association

DATED: Dec. 20, 1985

ASSEMBLY, No. 2242

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 8, 1993

By Assemblyman LUSTBADER, Assemblywoman OGDEN,
Assemblymen Bagger, Mikulak, Kelly, Penn,
Kavanaugh, Azzolina, Amone, Martin and
Assemblywoman J. Smith

1 AN ACT concerning law enforcement officers' liability for
2 injuries under certain circumstances and supplementing the
3 "New Jersey Tort Claims Act", N.J.S.59:1-1 et seq.
4

5 BE IT ENACTED by the Senate and General Assembly of the
6 State of New Jersey:

7 1. Neither a public entity nor a public employee is liable for
8 any injury caused by a person who is eluding or fleeing a law
9 enforcement officer, if the law enforcement officer complied
10 with the guidelines adopted by the Attorney General concerning
11 high speed motor vehicle pursuits.

12 2. This act shall take effect immediately.
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STATEMENT

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17 This bill would supplement the "New Jersey Tort Claims Act",
18 N.J.S.59:1-1 et seq., to clarify law enforcement officers'
19 liability for certain injuries occurring during automobile chases.
20 Currently, law enforcement officers may be reluctant to
21 aggressively pursue fleeing offenders because of the officers'
22 possible liability for accidents caused by the offenders.

23 The bill provides that an officer involved in a chase will not be
24 liable for injuries caused by the fleeing offender if the officer
25 acted in compliance with the Attorney General's State-wide
26 guidelines for law enforcement officers concerning high-speed
27 pursuits. These guidelines, which were first issued in 1985 and
28 are currently in the process of being revised, describe the manner
29 and circumstances in which law enforcement officers may safely
30 resort to high speed driving tactics in order to pursue and
31 apprehend an offender.
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37 Limits law enforcement officers' liability for certain injuries
occurring during high-speed chases.