

**COUNTY OF MONROE  
OFFICE OF THE SHERIFF  
ROCHESTER, NEW YORK**

<b>GENERAL ORDER</b> POLICE BUREAU	<b>DATE OF ISSUE</b> September 17, 2024	<b>EFFECTIVE DATE</b> September 17, 2024	<b>No.</b> 007-24
<b>SUBJECT: GENERAL ORDER</b>  Emergency Driving		<b>DISTRIBUTION</b>  Police Bureau Personnel	<b>AMENDS</b>
<b>Reference: NYSLEAP 32.4, 40.2, 42.1, 43.1, 43.4, Graham v Connor 490 US 386 (1989). Tennessee v. Garner : 471 U.S. 1 (1985)</b>			<b>RESCINDS</b>  007-12

**Purpose:** To establish procedure and provide guidelines for the operation of a police vehicle during emergency responses and pursuit driving.

\* **Policy:** This policy acknowledges that vehicle pursuits are a use of force in an attempt to seize a person and as such are subject to the objective reasonableness standards of the Fourth Amendment as identified in case law established in *Graham v. Connor* (1989). MCSO remains committed to prioritizing public safety and the safety of our deputies, and constantly re-evaluating the necessity and risks associated with each pursuit. By adhering to these guidelines, and applying both the risk management techniques and the checks and balances contained within this policy, we strive to maintain the trust of the community we serve while upholding the highest standards of professional conduct and accountability. Further, we acknowledge that the use of physical roadblocks used to terminate a pursuit can be considered a use of deadly physical force in certain situations. As with any use of force, members shall be guided by NYSPL Article 35, MBGO 33 and applicable case law.

NYS V&T Law exempts authorized emergency vehicles involved in emergency operations from some restrictions of the V&T Law. This exemption, however, will not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor will such provisions protect the driver from the consequences of their reckless disregard for the safety of others (V & T §1104-4 e).

**i. Definitions**

A. **Emergency Operation:** The operation or parking of an authorized emergency vehicle, as defined by Section 101 of the NYS V&T Law, when such vehicle is engaged in transporting a sick and/or injured person, transporting prisoners, pursuing an actual or suspected violator of the law or responding to, or working or assisting at the scene of an accident, disaster, police call, alarm of fire, actual or potential release of hazardous materials or other emergency. Emergency operation will not include returning from such service (V&T §114-b).

\* B. **Emergency Response:** When a member responds to a call for a possible life-threatening situation or in-progress crime where there is an articulable need for an expedited response.

C. **Exigent Circumstance:** Circumstances as they apply to a pursuit that would cause a reasonable person to believe that pursuit, or other relevant prompt action, is necessary to prevent imminent physical harm to law enforcement personnel or other persons, or some other significant consequence frustrating legitimate law enforcement efforts.

- D. Pursuit: The attempted apprehension by a police officer while operating an emergency equipped police vehicle, of occupant(s) of another motor vehicle, whose operator fails to comply with a lawful directive to stop.
- E. Terminate: To immediately stop or cease the pursuit or emergency response by turning off emergency equipment and returning to non-emergency driving operation by all personnel involved in the pursuit.
- \* F. *Graham v. Connor*, 490 US 386 (1989): In *Graham v. Connor* the US Supreme Court stated that whether force is reasonable requires a careful balancing of the nature of the intrusion on the suspect's liberty against the countervailing governmental interest at stake. In short, what did the officer do (or what was the nature of the intrusion on the suspect's liberty) and why did the officer do it (or what was the governmental interest at stake)? The *Graham* factors act like a checklist of possible justifications for using force. They are not a complete list and all of the factors may not apply in every case. The *Graham* factors are:
  1. The severity of the crime at issue
  2. Whether the suspect poses an immediate threat
  3. Whether the suspect is actively resisting
  4. Whether the suspect is trying to evade arrest by flight.

## II. Policy

- \* A. Members will prioritize the safety of the public while also considering the urgency of the situation requiring an emergency response or pursuit. This involves balancing driving with due regard for the safety of all individuals and property around you, while also taking all reasonable actions necessary to address the emergency or pursuit effectively.
- \* B. Members will not continue a pursuit or emergency response if not in accordance with this order. Members must constantly evaluate the risks involved in continuing a pursuit or emergency response.
- \* C. Initiation of a pursuit based solely on an occupant's commission of a traffic infraction or violation is prohibited unless an exigent circumstance exists.
- \* D. When a pursuit is initiated, the pursuit shall not be continued if the risks associated with the pursuit outweigh the possible benefits as determined by a review of the following factors:
  1. The reasonableness as identified in *Graham V. Connor*, 490 US 386 (1989)
  2. Traffic density/pedestrian volume.
  3. Weather/road conditions.
  4. Speed involved.
  5. Time of day.
  6. Type of area (business vs. residential).
  7. Type of road.
  8. Type and condition of police vehicle.
  9. Availability of additional police vehicles to assist at the scene or to intercept pursued vehicle.
  10. Knowledge of the offender's identity and the opportunity to apprehend them at a later time should be weighed against the clear danger to the community if the suspect is not immediately apprehended.
  11. Danger caused by the operation of vehicle being pursued.

12. Condition of Deputy/member (new, inexperienced, deputy's situational awareness, out of county and/or out of radio communication range).
  - \* 13. The type of vehicle being pursued. Vehicles such as motorcycles, high occupancy vehicles and tanker trucks could possibly create an elevated risk.
- \* E. Marked police vehicles engaged in an emergency response, day or night, will utilize the emergency equipment. Only unmarked vehicles equipped with authorized emergency lights and siren will engage in an emergency response. Once the emergency response is terminated and when the use of lights and sirens are discontinued, members will respond in accordance with all traffic laws.
- F. Unmarked police vehicles not equipped with authorized emergency lights and siren will not undertake an emergency response. If dispatched to a high priority incident, they will respond in accordance with all traffic laws.
- \* Note: Officers operating unmarked vehicles, provided the vehicle is equipped with authorized emergency lights and siren, may engage in pursuit only until a marked vehicle has taken over. The unmarked vehicle will then withdraw from the pursuit.
- \* G. Only sworn members who are trained in Emergency Vehicle Operation will operate a vehicle in emergency response mode and will do so only when emergent circumstances warrant such a response. Only sworn Police Bureau members will engage in pursuit driving, or initiate a traffic stop.
- H. Members will not engage in an emergency response or pursuit driving while transporting non-departmental persons (prisoners, witnesses, parents of juveniles, etc.) unless:
1. The passenger is a ride-along observer who has signed a MB-36 Waiver of Responsibility Form.
  2. With approval of a Supervisor, when necessary to preserve life when a timely ambulance transport is not available.

### III. Procedure

- A. Emergency Response to Assignments
1. The responding members(s) and back-up units will have the discretion, based on the nature of the assignment, meeting the definitions in Section I and the criteria in Section II of this order, to respond to a call in an emergency response mode.
  - \* 2. When the dispatched member elects to respond in an emergency response mode, while in compliance with this order the ECD dispatcher will be notified verbally by the initial responding member stating they are "77"; additional responding deputies can utilize the MPS 77 button in the event they elect to respond Code 77.
  - \* 3. Members will monitor their vehicular speed, taking into consideration their safety and the safety of others and the factors listed in Section I and Section II of this order.
  4. Members will use extreme caution in operating police vehicles and come to a complete stop and assure safety prior to continuing at intersections where they do not have clear right-of-way.

5. Distance to the location of incident alone will not be a determining factor to engage in an emergency response.

**B. Pursuit Driving**

- \* 1. When initiating a pursuit a member must recognize they are initiating a use of force that could rise to a potential lethal level and that they must take ownership of that action.
2. When engaged in a motor vehicle pursuit, the pursuing member will immediately report same to the ECD dispatcher by stating the member has a pursuit and advise the following:
  - a. The member's assigned radio call number.
  - \* b. Reason for pursuit. Member will clearly articulate their reasonable suspicion and justification. Example: (*"I am pursuing a Robbery 1<sup>st</sup> suspect armed with a handgun"*)
  - c. Route, direction of travel and areas being approached (to be reported as frequently as safety permits).
  - d. Description of pursued vehicle and license plate number.
  - e. Number of occupant(s) and description.
  - f. Weapons involved, if any.
  - g. Speed of pursuit.
  - h. Operation of pursued vehicle, e.g., reckless, slow, etc.
  - \* i. Pedestrian traffic, weather and road conditions.
- \* 3. Members engaged in a pursuit must continuously monitor the above conditions and continuously update them over the radio as circumstances permit to ensure all involved are kept aware of any change in conditions and can adapt.
- \* 4. Members must be cognizant at all times during emergency or pursuit operation of the additional resources that may become involved. Members may need to alter their actions in response to the addition of these resources (K9, NYSP aviation, Stop Sticks or other agencies on a different channel).
5. ECD dispatcher, upon notification of a pursuit, will:
  - a. Clear the channel except for vehicles involved in the pursuit.
  - b. When possible, a tactical channel with a dispatcher will be utilized to aid communications when the pursuit moves through multiple jurisdictions. All other transmissions will be sent to a secondary channel.
  - c. Ensure that the appropriate supervisor is notified that a vehicle pursuit is in progress.
  - d. Initiate registration and criminal record searches as soon as possible and broadcast when time permits.

6. Supervisors Responsibilities
  - \* a. Immediately acknowledge the pursuit and assist with risk management assessment of the pursuit.
  - b. Notify surrounding police agencies if the pursuit may enter their jurisdiction.
  - \* c. A patrol command officer, responsible for the zone originating the pursuit (or nearest available supervisor) will assume Incident Command and coordinate resources of the MCSO and supporting agencies until the termination of the pursuit or clearance from the scene of the final stop of the pursued vehicle, until or unless relieved by a higher-ranking authority.
  - \* d. In an effort to de-escalate the situation supervisors will attempt to also employ alternate tactics that may increase the chances for apprehension under more favorable circumstances. These can be tactics such as the use of aerial observation and undercover vehicles to observe the offender without their knowledge, and using available law enforcement intelligence assets to determine who the offender may be and/or where they may be headed.
  - \* e. Any supervisor or command officer who becomes directly involved in a pursuit may remain engaged until it is operationally reasonable for them to disengage and then fulfill Incident Command responsibilities.
  - \* f. Continuously evaluate risks in continuing pursuit as outlined in Section II of this order. As a supervisor you also have a duty to intervene and terminate any pursuit where the risks to continue same outweighs the benefits.
  - \* g. Ensure initiating deputy completes the vehicle pursuit report.
  - \* h. Upload the ECD printout to the Vehicle Pursuit Report along with any other reports pertinent to the pursuit (CIR, MVA, UTT's, etc.) The completed package will be routed through the appropriate chain of command.
- \* 7. Termination of a pursuit may occur under any of the following conditions:
  - \* a. When circumstances develop taking into account the factors set forth in Section II of this order where continuing the pursuit may rise to the level of reckless disregard for the safety of a member or the public as determined by any involved unit based on the continued assessment of the conditions of the pursuit (Duty to Intervene according to NYS Law).
  - b. Under those circumstances wherein the offender can be identified and an arrest made at a later time without risk of creating an unreasonable danger to the public.
  - \* c. When so ordered by any uninvolved MCSO supervisor/command officer, regardless of the rank of the primary unit, based upon the totality of the circumstances of the pursuit.

- d. When the pursued vehicle's location is no longer known by pursuing members.

\* 8. Pursuit Tactics

- a. Motorcycles may engage in a pursuit only under the most critical and exigent circumstances where immediate apprehension is necessary to alleviate an eminent danger to public safety. As soon as a marked police car is available to assume the pursuit, the motorcycle will withdraw from active pursuit. Motorcycles will not engage in pursuit in inclement weather.

- b. Passing Primary Pursuit Vehicle: There shall be no attempt by members to pass the primary pursuing unit unless a request is made to do so by the primary pursuing unit or unless directed by a supervisor.

- \* c. Controlled Access Highways: Pursuit vehicles shall not pursue a vehicle the wrong way on a controlled access highway unless failing to do so would result in the loss of the pursued vehicle, AND the danger to public safety should the offender escape outweighs the increased risk to oncoming traffic and deputies. In any case, the following options are to be considered:

- i. Maintain visual contact with the suspect vehicle by paralleling it on the correct side of the highway.
- ii. Request assisting units to observe the exits available to the suspect vehicle.

- \* d. If a pursuit extends beyond the county limits, supervisors will request ECD notify local jurisdictions of the location and justification for the pursuit. Pursuing drivers and the supervisor will constantly evaluate the pursuit to determine if continuance of the pursuit is justified and/or if assistance from other police agencies is available. Involved units will terminate the pursuit if radio communication is not able to be maintained. Supervisors will exercise due care to not allow too many MCSO resources to leave Monroe County at one time.

- \* e. Traffic Control Devices: Extreme care will be used when passing traffic signs or signals. Police vehicles will stop to ensure that all vehicular and pedestrian traffic is aware of and yielding to the emergency vehicle before proceeding. When (2) or more emergency operated vehicles approach an intersection at the same time, from different directions the primary unit will have the right of way whenever possible.

\* 9. Intervention Tactics

Supervisors and command officers are encouraged to utilize pursuit resolution strategies and techniques (e.g. containment, choke points, guiding a suspect vehicle to a deployment area) to bring the pursuit to a successful and safe conclusion. Attempts to guide the path of the pursuit by blocking side streets, etc., should be made in order to guide the offender toward the tire deflation device, and away from high-risk areas.

\* Tire Deflation Device

The deployment of the tire deflation device (road spikes) by assisting units is acceptable and will be used when an uninvolved member is able to get ahead of the pursuit and deploy the device from a location of cover such as jersey barriers, guardrails, trees, etc. \*\*Parked police vehicles are not considered sufficient cover for the deployment of tire deflation devices. \*\*

1. Tire deflation devices will not be used to terminate the pursuit of a motorcycle or All-terrain vehicle (ATV).
2. Personnel using the tire deflation device will return the device to the proper storage/deployment ready condition, following training directives.
3. The tire deflation device will be inspected by the Zone Lieutenants during the monthly zone inspection.
- \* 4. Repairs to the device and the ordering of replacement parts will be coordinated through the E.V.O.C coordinator via Staff Services.

#### **IV. Pursuit initiated by another Jurisdiction**

- \* A. If requested by another jurisdiction and according to the MCSO policies for pursuit engagements, MCSO members may assist in a pursuit within the County limits provided all other provisions of this order are complied with. If the pursuit is not in accordance with this order, MCSO supervisors will notify the pursuing agency through ECD that they will not participate in the pursuit, unless exigent circumstances exist in which the non-participation by MCSO presents an officer or public safety risk (Lone officer, officer safety concerns, public safety concerns, etc.). When assistance by MCSO is not approved based on exigent circumstances, members may parallel the pursuit with the approval of a supervisor/command officer. Supervisors will also advise the pursuing agency of any known event(s) (e.g. parade or block party) that might be in imminent path of the pursuit. MCSO vehicles shall not leave the County limits while assisting another jurisdiction without permission of a Sheriff's Office supervisor.
- \* B. MCSO members may assist another agency with the deployment of the tire deflation device within the county limits with supervisor approval, regardless of whether or not MCSO patrols are participating in the pursuit. Members should make every effort to communicate to the pursuing units where and when the tire deflation device will be deployed.
  - \* 1. If MCSO members use the tire deflation device successfully for another jurisdiction, the MCSO supervisor will ensure that the appropriate MCSO report(s), including a Vehicle Pursuit Report and photographs of the spiked car are completed to accurately document the incident and ensure the provisions of this order were followed.
  - \* 2. In the event an uninvolved vehicle is inadvertently spiked, an incident report shall be completed by the supervisor responsible for the pursuit and tech photos will be taken of the uninvolved vehicle.

#### **V. Post Pursuit Reporting**

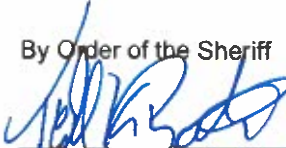
- A. Zone Commanding Officers will:
  1. Review all pursuit reports occurring in their area of command.

2. Ensure MB-003 Intra-Departmental Correspondence are completed, if necessary. Intra-Departmental Correspondence may be required by a supervisor upon direction of the Zone Commander.
3. Forward completed package to major of Operations for second review.

**B. Staff Services will:**

1. Conduct an annual documented analysis of all pursuit data incidents and to identify the following:
  - a. Reveal any patterns or trends that may indicate potential training needs.
  - b. Reveal any patterns or trends that may require policy modification.
  - c. Identify any trends or patterns that are revealed in the context of past evaluations and analysis.
2. Submit reports to the Major of Operations for appropriate action.

By Order of the Sheriff



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Todd K. Baxter