

# Virginia State Crime Commission

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## Law Enforcement Emergency Response/Pursuits

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2010

# Law Enforcement Emergency Response/Pursuits

## *Executive Summary*

During the 2009 Session of the Virginia General Assembly, Senator Toddy Puller introduced Senate Bill 847 (SB 847) that sought to require emergency vehicles to stop at intersections before proceeding through a red light, if they are to maintain the statutory exemption from criminal prosecution for violating a traffic law.<sup>1</sup> The Senate Courts of Justice Committee referred, by letter, the bill to the Crime Commission for further study. The Crime Commission delayed acting on the bill referral in 2009 due to a pending civil lawsuit. The lawsuit was settled in early 2010, and the Crime Commission continued study of the bill. Additionally, the Crime Commission's Executive Committee added the related topic of law enforcement vehicular pursuits to the study.

Crime Commission staff utilized several methodologies to accomplish the study, including: completing a literature review and legal analysis, creating a Law Enforcement Work Group, reviewing current training standards and model policies, attending a pursuit training class, and disseminating an emergency response and vehicular pursuit survey to all Virginia law enforcement agencies.

Concern and attention about vehicular pursuits has received considerable attention since the mid-1990's. There are several reports and studies on pursuits from government agencies and professional organizations, such as the U.S. Department of Justice, Centers for Disease Control, and the International Association of Chiefs of Police (IACP). The studies are helpful in defining some of the concerns and areas of improvement available to decision makers. Some of these studies have limited geographic areas, limited sample sizes, or

problems with data that is not defined or collected consistently; however, findings from empirical studies are available to meaningfully assist policymakers in addressing pursuit policy.

In Virginia, there are four statutes that address emergency response and vehicular pursuits: §§ 46.2-920, 19.2-77, 46.2-817 and 46.2-921.1, but these statutes only regulate minimum requirements for law enforcement. There is no statutory requirement for Virginia law enforcement agencies to have an emergency response or pursuit policy. However, there are other states that regulate emergency responses and vehicular pursuits by requiring pursuit policies, use of emergency equipment, collection of pursuit data, or harsher punishment for eluding law enforcement.

Staff disseminated a law enforcement emergency response and pursuit survey to all Virginia law enforcement agencies. There were a number of findings that resulted from the analysis of vehicular pursuit data in Virginia during Calendar Year (CY) 2009. These findings are very consistent with other existing academic and government studies. Based on the data submitted from participating agencies, most pursuits:

- Last a median of 3 minutes;
- Travel a median of 1.9 miles;
- Involve automobiles (as opposed to trucks, SUVs, or motorcycles);
- Occur at night;
- Are initiated on dry road conditions;
- Are initiated in light traffic conditions;
- Are monitored by a supervisor;
- Do not involve any additional patrol units or outside agencies;
- Are initiated due to a traffic violation or criminal misdemeanor;
- Result in the arrest of the violator(s);
- Result in additional subsequent charges for the violator; and,
- Rarely result in injury or death to officers and violators.

As a result of the study effort, the Crime Commission endorsed the following recommendations:

- Amend Va. Code § 46.2-920 to require emergency vehicles to come to a complete stop at a “steady or flashing red signal, traffic light, stop sign, or device indicating moving traffic shall stop” or run their siren, and their lights as reasonably necessary and proceed through the stop.
- Require the Department of Criminal Justice Services (DCJS) to establish a model policy and pursuit and emergency response driver training for law enforcement officers assigned to vehicle patrol duties.
- Amend Va. Code § 46.2-817 to include vehicle forfeiture for felony violations of eluding.

## ***Background***

Concern and attention about vehicular pursuits has been recent; during the 1960’s and 1970’s the primary concern with vehicular pursuits was officer safety.<sup>2</sup> During the late 1990’s, pursuits become a national concern and many jurisdictions began to carefully review, and in some cases revise, their pursuit policies, due to concerns with civil lawsuits.<sup>3</sup> There have been two national studies focusing on pursuits: one by the U.S. Department of Justice, Pursuit Management Task Force, and another sponsored by the Centers for Disease Control and Prevention, focusing on fatalities. Additionally, the IACP has created a national pursuit database.

## **Pursuit Management Task Force Report**

In 1996, the Pursuit Management Task Force (PMTF) was created by the U.S.

Department of Justice to examine and define police practices and the role of technology in high-speed police pursuits.<sup>4</sup> Additionally, the group was to look at the “entire range of pursuit issues including preemption of pursuits, control of pursuits in progress, and termination of pursuits.”<sup>5</sup>

One of many issues the group studied was agency pursuit policies.<sup>6</sup> The group examined current procedures and policies from 419 responding agencies that submitted policies.<sup>7</sup> The group determined that policies tended to be one of three types: severely restrictive, officer discretion, or contain minimal standards.<sup>8</sup> One of the more interesting conclusions reached through the policy review was that although “policy, supervision, and training are all important to providing successful pursuit outcomes, they are not the sole answer to safe pursuits.”<sup>9</sup> Furthermore, the group stated that the “solution that actually stops fleeing vehicles lies in the potentially synergistic relationships between policy, law, supervision, training, and technology.”<sup>10</sup>

The group made six final recommendations as a result of the study; four of these recommendations are applicable to state policy makers:

1. Resources at regional and local levels should be allocated to the study and testing of viable pursuit termination, management, and prevention technologies;
2. Establish a model for collecting and establishing pursuit statistics;
3. States should adopt legislation that ensures that fleeing from a lawful attempt at detention/arrest in a motor vehicle is a serious crime with significant penalties; and,
4. Improve communications that would be beneficial in safely managing interagency or long-distance pursuits.<sup>11</sup>

While this study is helpful in understanding some of the issues involved with vehicular pursuits, it has some limitations. First, while it is a “national” study, it is limited to information and data collected from the western part of the country. Additionally, the overall response rate of the study was only 29% and is likely not generalizable to all U.S. law enforcement agencies.<sup>12</sup>

### Centers for Disease Control and Prevention: Pursuit Fatality Study

In 2004, a study was issued based on National Highway Traffic Safety Administration (NHTSA) data concerning deaths resulting from vehicular pursuits during a nine year period (1994-2002).<sup>13</sup> This report examined the data from NHSTA’s Fatality Analysis Reporting System (FARS) for the nine year period and stated that an average of between 260-325 persons were killed per year as a result of vehicular pursuits.<sup>14</sup> The total number of fatalities for the time period was 3,146; Of this amount, 2,055 fatalities were categorized by the report as “people in the fleeing vehicle” and 1,088 fatalities<sup>15</sup> were categorized by the report as “people not in the fleeing vehicle.”<sup>16</sup>

However, there are some problems with the FARS data. The authors note that the FARS data has “a specific field in which the investigating officer must respond to whether the crash was police pursuit-related or not.”<sup>17</sup> The problem with this data is that these numbers are based on the NHSTA definition of a pursuit,<sup>18</sup> which is open to some interpretation by reporting agencies, and may underreport actual pursuit-related fatalities.<sup>19</sup> Additionally, there is no mandatory national reporting system, which hampers NHSTA’s ability to collect accurate data on pursuit deaths.<sup>20</sup>

### IACP Police Pursuit Database

As a direct result of the PMTF, the IACP undertook the task of creating a national database to collect police pursuit information.<sup>21</sup> The primary purpose of the database is to provide information to law enforcement decision makers “that facilitates effective pursuit-related training and policy decisions.”<sup>22</sup> More specifically, the database is intended to be used to “identify and respond to training needs, reduce liability, dispel false information, and inform the public.”<sup>23</sup> The database tracks 28 “data elements” which include items such as: starting/termination date and time, initial violation, traffic/road conditions, and termination reason/method.<sup>24</sup>

The preliminary database included information detailing 2,239 pursuits, representing agencies from across the country.<sup>25</sup> Findings from the 2004 interim report highlighted that:

- 60% of all pursuits end in 3 minutes or less;
- 67% cover 3 miles or less;
- Suspects stop in 35% of pursuits;
- 1 in 5 pursuits are ended voluntarily by police;
- 95% of pursuits occur on dry roads;
- 76% of pursuits occur in urban areas;
- 99% of pursuits involve no injury to law enforcement or bystanders; and,
- 5% of pursuits were terminated by active police termination.<sup>26</sup>

In 2008, the IACP Police Pursuit Database interim report was updated.<sup>27</sup> The total number of pursuits included in the database increased to 7,737 pursuits.<sup>28</sup> The data was collected from February 2001 through May 2007. The following summarizes some of the significant findings:

- 42% of all pursuits were initiated based on traffic violations, 14% were suspected

DUIs, and only 8% were based on violent felonies;<sup>29</sup>

- 76% of pursuits ended without either property damage or injury, 9% ended with an injury (81% of those end in minor injury);<sup>30</sup>
- The average pursuit speed was 66 mph, with the fastest speed over 135 mph;<sup>31</sup>
- The most prevalent reason for pursuit termination, 35%, was the suspect stopping;<sup>32</sup> and,
- There was no termination method utilized (such as tire deflators or the PIT maneuver<sup>33</sup>) in the vast majority of pursuits, over 94%.<sup>34</sup>

Based on the updated data, the report's basic conclusion was that without "accurate, timely, consistent, and comprehensive collection and analysis" of police pursuits, law enforcement agencies will have difficulty making effective "street-level discretionary decisions."<sup>35</sup>

## Academic Literature

When examining the academic literature and other government reports, there is a relatively high convergence in findings relating to the basic characteristics of pursuits despite variations in the source, method, or time-frame of data collection. There are several consistent themes reflected in the literature. First, the vast majority of pursuits do not result in serious injury or death.<sup>36</sup> However, studies have revealed that about one-quarter to one-third of all pursuits result in an accident.<sup>37</sup> Additional studies have identified certain types of pursuits being at higher risk of resulting in accidents than others. For instance, higher risk pursuits typically occur at night-time,<sup>38</sup> involve felony pursuits versus non-felony pursuits,<sup>39</sup> or include

factors relating to weather conditions, number of police units involved, reason for the pursuit or road conditions.<sup>40</sup> Such variables all factor into a higher likelihood of an accident occurring as a result of a pursuit being initiated.

Second, pursuits are generally very short in distance and time.<sup>41</sup> Third, most pursuits result in the apprehension of the suspect.<sup>42</sup> Fourth, while most pursuits are initiated due to traffic or minor infractions, many result in more serious charges.<sup>43</sup> And, finally, other research focuses on characteristics of the officers or suspects involved in pursuits. For instance, younger officers were found to be more likely to have negative outcomes than officers who were older or with more years of service.<sup>44</sup> Other studies have focused on offender characteristics citing youth, driving under the influence, status of driver's license and previous chase experience as being factors in determining likelihood of fleeing from officers in a vehicle.<sup>45</sup>

In sum, based on a review by Lum and Fachner of all the available studies, they conclude that there is enough empirical data for agencies to begin making policy decisions regarding pursuits, but that there is a strong need for "evidence based practices," founded on continued review and collection of pursuit data.<sup>46</sup>

### *Summary of Literature Review*

Overall, there are studies that provide a basic understanding of pursuits nationwide. The problem with some reports, such as the IACP database and PMTF, is the sample size of the data is very limited which makes it difficult to draw generally applicable conclusions. Another difficulty is highlighted by the Centers for Disease Control study, where inconsistent interpretation of data requirements and data collection, again prevent the application of general conclusions. However, there is a fairly consistent body of empirical research that can provide agencies with a good understanding of

issues surrounding pursuits, which may be useful in addressing policy deficiencies or improvements.

## Model Policies and Accreditation

Under current Virginia law, law enforcement agencies are not required to have a pursuit or emergency response policy. If agencies wish to adopt a policy, IACP has a model policy available, as well as a policy directive available from DCJS. Finally, there are two accreditation bodies that law enforcement agencies may consider, which require agencies to have written policies relating to emergency calls and pursuits. A description of each is provided in this section.

### *IACP Model Policy*

The IACP developed a model policy that covers each of the accreditation requirements set by the Commission on Accreditation for Law Enforcement (CALEA).<sup>47</sup> This policy provides the following definition for vehicular pursuit: “(a)n active attempt by an officer in an authorized emergency vehicle to apprehend a fleeing suspect who is actively attempting to elude the police.” The policy also outlines that the decision to initiate a pursuit must be based on “the immediate danger to the officer and the public created by the pursuit is less than the immediate or potential danger to the public should the suspect remain at large.”<sup>48</sup> Also, this policy outlines the responsibilities of the supervisor, dispatcher, and pursuing officer, as well as pursuit tactics, inter-jurisdictional pursuits, termination, and written reporting.<sup>49</sup>

### *DCJS General Directive 2-9*

The DCJS General Directive 2-9 addresses a policy for both emergency responses and pursuits.<sup>50</sup> The emergency response section

defines emergency calls as either “Code 1 where preservation of life is a consideration,<sup>51</sup> or “Code 2” for calls other than the preservation of life.<sup>52</sup> The directive permits officer-initiated calls.<sup>53</sup> Additionally, the directive notes that responses must be compliant with Va. Code § 46.2-920, which outlines the requirements for when, and under what circumstances, emergency vehicles may disregard traffic regulations.<sup>54</sup> The pursuit section provides three potential policy approaches to use: restrictive,<sup>55</sup> less restrictive,<sup>56</sup> or decision matrix.<sup>57</sup> Agencies may adopt one of the three options for creating their pursuit policies. As discussed in the PMTF report, the three examples in General Directive 2-9 are similar to the three general types of pursuit polices identified in the report.<sup>58</sup>

### *Accreditation*

All Virginia law enforcement agencies may acquire accreditation from either CALEA or the Virginia Law Enforcement Professional Standards Commission (VLEPSC). As part of their accreditation process, CALEA requires agencies to meet Accreditation Standard 41.2.1, requiring a written policy that “establishes procedures for responding to routine and emergency calls, and includes guidelines for the use of authorized emergency equipment.”<sup>59</sup> The pursuit standard requires a written policy that covers the following: evaluating the circumstances, initiating officer’s responsibilities, designating secondary unit’s responsibilities, roles of “marked, unmarked, or other types of police vehicle involvement in the pursuit,” assigning dispatcher’s responsibilities, describing supervisor’s responsibilities specifying when to terminate pursuit, engaging in inter- and intra-jurisdictional pursuits, and requiring a written report and an administrative review of each pursuit.<sup>60</sup>

The VLEPSC,<sup>61</sup> which is administered by DCJS, requires a written policy for emergency responses for law enforcement agency

accreditation.<sup>62</sup> The VLEPSC accreditation program standards manual requires a written directive for vehicular pursuits that covers: evaluating the circumstances; initiating officer's responsibilities; secondary officer(s) responsibilities; dispatcher's and supervisor's responsibilities; forcible stopping/roadblock; inter-jurisdictional and intra-jurisdictional pursuits; when to terminate pursuits; and, procedures for administrative review of pursuits.<sup>63</sup>

## Training

Currently, DCJS mandates that all Virginia law enforcement officers complete "Emergency Vehicle Operator's Course" (EVOC) training, during basic academy training.<sup>64</sup> Typically, this class involves about 40 hours of training, which includes classroom instruction and practical driving exercises. The training covers responding to emergency calls and the following topics with regard to pursuits:

- Factors applicable to initiating a pursuit;
- Identifying hazards in emergency or pursuit driving;
- Factors that influence the termination of a pursuit; and,
- Legal considerations (Virginia Code, case law, and local policy).

At this time, however, there is no required follow-up or in-service training for emergency or pursuit driving.

In order to gain a better understanding of the vehicular training provided to law enforcement officers, staff observed the pursuit portion of EVOC training at the Northern Virginia Criminal Justice Academy (NVCJA). Specifically, staff observed the trainees going through the practical pursuit driving exercises. The NVCJA recently opened its new, state-of-the-art EVOC facility in December of 2010, which will provide training in an "urban driving

environment," as well as actual controlled intersections.<sup>65</sup>

## Technology

As part of the background research, staff was invited to participate in the National Institute of Justice's (NIJ) Pursuit Technical Work Group (Pursuit TWG), which was held during the fall of 2010. This group is comprised of law enforcement representatives from around the country, which meet on an annual basis to discuss emerging issues and solutions for high speed police pursuits. Members heard several presentations regarding available technology for ending pursuits, synergistic approaches to handling high-speed pursuits, and live product demonstrations from a variety of vendors. The Pursuit TWG also developed recommendations and new priorities for future study by NIJ that included the following items:

- Operational deployment of "The Grabber;"
- Use of Radio Frequency ID (EZPass);
- Legal barriers for OnStar to stop vehicles;
- Vehicle Taser by StarChase;
- Inviting a representative from the National Highway Traffic Safety Administration as a member of the group;
- IntelliDrive Dedicated Short Range Communication;
- Vehicle tracking other than GPS;
- Update 1996 PMTF report and review recommendations;
- Control of intersection traffic signals;
- Review of StopStick database on pursuit data; and,
- Intersection warnings to drivers of emergency situations.

Among one of the presenters was OnStar, which provides a variety of services for owners of GM vehicles. Currently, OnStar is available in over 30 GM vehicles and has approximately 5.8 million subscribers. Most relevant to the issue of pursuits are OnStar's Stolen Vehicle Assistance services. OnStar uses GPS technology to

pinpoint the exact location of stolen vehicles and can then work with law enforcement to recover the vehicle using their Stolen Vehicle Slowdown and Remote Ignition Interlock systems. These features are included with a subscription to OnStar with model year 2009 and newer vehicles. As reported by OnStar, they provide approximately 400 notifications per month to law enforcement on stolen vehicles. As of October 2010, they have performed 1,400 successful Remote Ignition Blocks and 70 Stolen Vehicle Slowdown deployments.

Additionally, during the summer of 2010, staff met with representatives of StarChase and attended a live demonstration of StarChase's Pursuit Management System real-time vehicle tagging and tracking. This system deploys a GPS tagging and tracking device to a vehicle in pursuit by law enforcement. This allows the officer to end the pursuit immediately while monitoring the GPS location of the vehicle so the suspect can be apprehended at a later time.

## ***Legal Analysis***

### **Constitutional Law**

Constitutional law intersects with vehicular pursuits almost exclusively in situations where an injured (or deceased) suspect is suing a law enforcement agency for a violation of his civil rights, typically in a case of excessive force.<sup>66</sup> Until recently, if a suspect was injured as a result of police action during a pursuit, he would file a federal § 1983 lawsuit against the agency for a violation of his 4th amendment rights.<sup>67</sup> The U.S. Supreme Court adopted a test to determine the reasonableness of force used against a fleeing suspect in Tennessee v. Garner.<sup>68</sup> Garner outlines a three part test to determine Fourth Amendment reasonableness, where the:

- Suspect must pose an immediate threat of serious physical harm to the officer or the public;
- Deadly force must have been necessary to prevent escape; and,
- Suspect is given warning, if feasible.<sup>69</sup>

Typically, this test is applied, as it was in Garner, where police use a firearm to prevent the escape of a suspect. Recently, the U.S. Supreme Court created an extension of its use of force Fourth Amendment reasonableness test to vehicular pursuits.<sup>70</sup> In Scott v. Harris, the police executed a PIT maneuver, which terminated the pursuit and left the suspect a paraplegic.<sup>71</sup> The Court held that “[a] police officer’s attempt to terminate a dangerous high-speed car chase that threatens the lives of innocent bystanders does not violate the Fourth Amendment, even when it places the fleeing motorist at risk of serious injury or death.”<sup>72</sup> It is not clear how this new holding will be applied in the future, but one commenter stated the decision made “it harder for plaintiffs to recover for harms suffered in high-speed chases under an alternative theory, that the police used excessive force.”<sup>73</sup> Generally, Scott will only apply in federal civil law suits, and will not affect suits filed under violations of state law or department policies.

### **Virginia Law**

Under Virginia law there are four statutes that typically apply to vehicular pursuits or emergency responses: Va. Code §§ 46.2-920, 46.2-817, 19.2-77, and 46.2-921.1.

#### *Va. Code § 46.2-920*

Generally, Va. Code § 46.2-920 provides exemptions from criminal prosecution of traffic laws for drivers of emergency vehicles “when such vehicle is being used in the performance of public services, *and* when such vehicle is operated under emergency conditions.”<sup>74</sup> Emergency conditions are not specifically

defined, however, law enforcement officers must be in “the chase or apprehension of violators of the law or persons charged with or suspected of any such violation” or “in response to an emergency call.”<sup>75</sup> Specifically, drivers of these vehicles, including any “law-enforcement vehicle operated by or under the direction of a federal, state, or local law-enforcement officer,” are exempt from certain traffic regulations and may:

- Disregard speed limits;
- Move through posted stops if the speed of the vehicle is sufficiently reduced to enable it to pass;
- Park or stop notwithstanding the other provisions of this chapter;
- Disregard regulations governing a direction of movement of vehicles turning in specified directions;
- Move around or pass another vehicle at any intersection;
- Pass or overtake stopped or slow-moving vehicles on the left, in a no-passing zone or by crossing the highway center line, on the way to an emergency; and,
- Pass or overtake stopped or slow-moving vehicles by going off the paved or main traveled portion of the roadway on the right.<sup>76</sup>

Law enforcement officers are required to exercise these exemptions “while having due regard for safety of persons and property.”<sup>77</sup> Additionally, the exemptions only apply when the operator of the emergency vehicle “displays a flashing, blinking, or alternating emergency light or lights;” and, “sounds a siren, exhaust whistle, or air horn designed to give automatically intermittent signals, as may be reasonably necessary.”<sup>78</sup> Also, the vehicle must be covered by standard motor vehicle liability insurance or a certificate of self insurance.<sup>79</sup> Furthermore, law enforcement officers will lose these exemptions from criminal prosecution for “conduct constituting reckless disregard of the safety of persons and property.”<sup>80</sup>

In addition to exemptions for criminal prosecution, the statute also has civil liability implications. At the end of subsection B, the statute states that “nothing in this section shall release the operator of any such vehicle from civil liability for failure to use reasonable care in such operation,”<sup>81</sup> although the Virginia Supreme Court has held that “one will not be held negligent *per se* for the specific acts authorized under the statute.”<sup>82</sup>

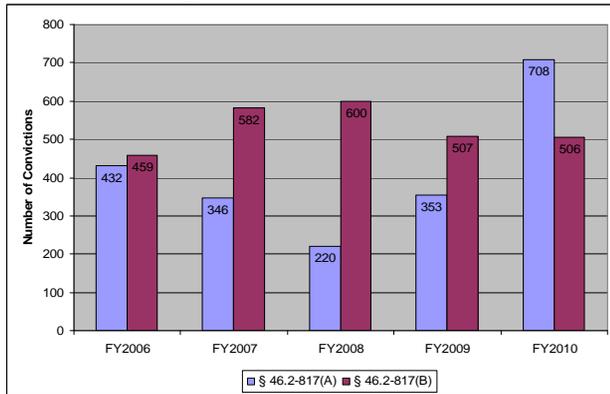
#### *Emergency Vehicle Exemptions from Other States*

There are at least 43 states that provide exemptions to traffic laws for emergency vehicles, similar to Va. Code § 46.2-920.<sup>83</sup> Fourteen of these states require the use of both lights and sirens to obtain the exemptions,<sup>84</sup> while 29 states require either the lights or sirens operating to obtain the exemptions.<sup>85</sup> Only one state, Massachusetts, requires emergency vehicles to make a complete stop at a controlled intersection,<sup>86</sup> while at least 29 states require the officer to slow down or exercise due care when moving through a controlled intersection.<sup>87</sup>

#### *Va. Code § 46.2-817*

The penalty for eluding or fleeing law enforcement is set forth in Va. Code § 46.2-820. If a person ignores a signal and drives in “wanton or willful” disregard of that signal, he can be subject to a Class 2 misdemeanor.<sup>88</sup> The penalty is increased to a Class 6 felony if the defendant drives in such way as to “interfere with or endanger” the operation of a law enforcement vehicle.<sup>89</sup> And finally, if a law enforcement officer is killed as a “proximate result of the pursuit,” the defendant can be charged and punished with a Class 4 felony.<sup>90</sup> Additionally, a defendant’s driver’s license may be suspended for a conviction of this section for either 30 or 90 days.<sup>91</sup> Figure 1 illustrates the total number of misdemeanor and felony eluding convictions for FY06 to FY10.

**Figure 1: Total Misdemeanor and Felony Eluding Convictions, FY06-FY10**



Source: Virginia Criminal Sentencing Commission, Court Automated Information System, Circuit and General District Courts.

*\*Note: Figures account for convictions where eluding is the primary offense. Also, circuit court data is not complete as there is limited data from the cities of Alexandria and Virginia Beach and the counties of Fairfax and Prince William.*

### *Eluding/Fleeing Penalties from Other States*

Nearly every state penalizes eluding or fleeing from police, similar to Va. Code § 46.2-817, with graduated penalties for more serious or dangerous acts.<sup>92</sup> There are eight states where the initial penalty is a felony.<sup>93</sup> Additionally, four states specifically link a conviction of eluding (or fleeing) with vehicle forfeiture.<sup>94</sup>

### *Va. Code §§ 19.2-77 and 46.2-921.1*

Law enforcement officers in Virginia are permitted to cross jurisdictional lines to make warrantless arrests. More specifically, if an officer is in pursuit of a suspect he may “pursue such person anywhere in the Commonwealth and, when actually in close pursuit, may arrest him wherever he is found.”<sup>95</sup> Motorists also have a duty to yield the right of way to emergency vehicles; failure to do so may be punished as a Class 1 misdemeanor.<sup>96</sup>

## 50 State Surveys

Staff also surveyed the other 49 states’ laws for statutory mandates concerning emergency responses and vehicular pursuits. Specifically, staff searched other states’ laws concerning pursuit policies. There are 16 states that have at least some requirements, in statute, concerning pursuits/emergency responses. Georgia, Maine, Mississippi, New Hampshire, Ohio, and Wisconsin require that all law enforcement agencies must have a written pursuit policy, but not mandate specific policies.<sup>97</sup> Connecticut, Minnesota, Nebraska, New Mexico, Pennsylvania, Rhode Island, Utah, and Washington all require law enforcement agencies to adopt written pursuit policies, with specified minimum standards.<sup>98</sup> California has minimum standards for pursuit policies that are discretionary; if adopted, the locality is provided civil immunity.<sup>99</sup> There are eight states that require either introductory academy or in-service training on pursuits.<sup>100</sup> And California, Pennsylvania, and Wisconsin all have statewide mandatory reporting and collection systems for pursuits.<sup>101</sup>

## **Law Enforcement Work Group and Survey Findings**

### Law Enforcement Work Group

In order for Crime Commission staff to obtain a full understanding of the issues surrounding pursuits, staff requested help from practitioners and individuals familiar with the subject. Specifically, staff invited representatives from the following areas to participate in the Law Enforcement Work Group: representatives from both police departments and sheriff’s offices, Virginia State Police, legislators, DCJS staff, regional criminal justice academy personnel, and Commonwealth’s Attorneys.<sup>102</sup> One meeting was held in June of 2010, and as a

result of the meeting, the following informal suggestions were made:

- The Work Group did not endorse changing Va. Code § 46.2-920 to require either stopping at a controlled intersections or using both lights and sirens.
- The Work Group endorsed the concept of requiring vehicle forfeiture for a felony violation of the eluding law enforcement statute, Va. Code § 46.2-817.
- The Work Group also endorsed the concept of having DCJS promulgate a pursuit policy.
- It was observed by many law enforcement participants that there was an overall lack of training on vehicular pursuits and emergency responses for law enforcement beyond initial driving training.

Additionally, staff distributed a draft copy of the law enforcement emergency response survey to all Law Enforcement Work Group members for them to review and provide feedback.

### Law Enforcement Emergency Response and Pursuit Survey

Recognizing that a pursuit may occur in any given locality, Crime Commission staff distributed surveys to all Virginia law enforcement agencies listed in the DCJS directory. The surveys gathered information on agency demographics, policies and procedures for emergency response to calls for service and vehicular pursuits, relevant training provided to officers and deputies, and data for all pursuits reported in CY09.<sup>103</sup>

Historically, Crime Commission staff only surveys the 134 agencies representing the Virginia State Police, Sheriff's Offices with

primary law enforcement, and City/County Police Departments. These are the agencies that serve the vast majority of Virginia's population. With this figure in mind, there was an 81% (109 of 134 agencies) response rate. However, as previously mentioned, since pursuits may occur all over the state, staff also surveyed other agencies such as town police departments, college/university police departments and other law enforcement agencies not typically sampled. Therefore, a total of 156 agencies responded to the survey and, as such, this total serves as the base response number.

The diversity of Virginia's law enforcement agencies and the populations they serve must be emphasized. For instance, the total number of sworn law enforcement officers in an agency can range from 1 to over 1,800; the jurisdictions and populations served can range from very small to state-wide; and, the total number of calls for service can range from under 100 per year to over 400,000 per year.

### *Emergency Response to Calls for Service*

The first section of the survey specifically dealt with law enforcement emergency response to calls for service. These are calls that are not pursuit-related. Ninety-one percent (139 of 153) of agencies reported having a written policy for when officers should activate emergency vehicle equipment.<sup>104</sup> When examining who is primarily responsible for assignment of response codes to calls for service, 59% (91 of 153) of agencies indicated that patrol officers are *primarily* responsible for the initial assignment of response codes to calls for service.<sup>105</sup> Other agencies indicated dispatchers, supervisors or a combination of all of the above are, or can be, responsible. Specifically, 30% (46 of 153) indicated dispatchers were primarily responsible, 3% (5 of 153) indicated supervisors were primarily responsible, and 7% (11 of 153) indicated a combination of patrol officers, dispatchers, and/or supervisors were primarily responsible.

The survey also attempted to determine how many traffic accidents resulted from an officer or deputy responding to a call for service or officer-initiated activity (not pursuit-related) in CY09. A total of 149 agencies responded to this request with 75 agencies reporting that there were no accidents occurring as a result of responding to calls for service or officer-initiated activity. Based on the data submitted by the remaining 74 agencies, a total of 1,972 traffic accidents were reported that occurred as a result of an officer or deputy responding to a call for service or self-initiated activity. Of the 1,972 traffic accidents reported, 1,182 accidents involved property damage only; 158 involved injuries to law enforcement personnel; 96 resulted in injuries to uninvolved persons; 1 resulted in the death of a police officer; and 6 resulted in the death of uninvolved persons in CY09. The remaining reported traffic accidents were not broken into categories and therefore it was not possible to determine whether any property damage, injuries or deaths resulted.

Finally, involvement of agencies in litigation resulting from an officer's or deputy's response to a call for service was examined. Such litigation was specifically directed at responses to calls for service as opposed to being pursuit-related or related to actions occurring after an officer or deputy has arrived on the scene. Very few agencies reported being involved in litigation, with 8% (13 of 156) reporting involvement in new or continuing lawsuits resulting from an officer's response to a call for service. These agencies reported having anywhere from 1 to 10 new or continuing lawsuits during CY09. Three agencies indicated that they had lost or settled litigation resulting from an officer's response to a call for service during CY09.

### *Vehicular Pursuit Policies*

The survey helped to identify various elements of existing vehicular pursuit policies across Virginia's law enforcement agencies. The vast majority of agencies, 95% (148 of 156), reported having a written policy for vehicular pursuits. Many agencies, 71% (110 of 154), had a formal definition of a vehicular pursuit. Although the definitions varied from agency-to-agency, most of the definitions adhered closely to the IACP definition described earlier.

The types of offenses for which pursuits are permitted varied amongst the agencies. In general, there are three types of general policies an agency can fall under: Very restrictive, restrictive, or less restrictive.<sup>106</sup> Based on survey responses:

- 15% (23 of 156) of agencies had a very restrictive policy;
- 43% (67 of 156) of agencies had a restrictive policy; and,
- 42% (66 of 156) of agencies had a less restrictive policy.

Most agencies, 86% (130 of 151), indicated that they have specific criteria for when pursuits must be terminated. Criteria are fairly consistent across all agencies. For example, policies may include a very general clause calling for termination when the risks of the pursuit outweigh the benefits of suspect apprehension or may include very specific factors such as weather, traffic, pedestrians, road conditions, presence of a supervisor, equipment or mechanical failure of officer's vehicle, or when an officer/deputy is not in full control of his emotions. Sixty-four percent (96 of 151) of responding agencies' policies reference the advisability, in some instances, of terminating a pursuit once the suspect is identified. Fifteen of these 96 agencies call for such termination in all cases. Many agencies, 87% (131 of 151), permit unmarked patrol units to be involved in pursuits; however, 98 of these agencies permit

such involvement only until that unit is relieved by a marked unit.

Most agencies, 89% (132 of 149), also permit officers or deputies to pursue violators who elude on motorcycles. Some agencies will specify certain restriction though. For instance, some policies prohibit the use of tire deflators on motorcycles. Finally, only 10% (15 of 151) of agencies reported routinely utilizing helicopters or fixed winged aircraft to assist in pursuits.

### *Pursuit Interventions and Alternatives*

There are many different types of interventions permitted by agencies to terminate a pursuit. Tire deflators are by far the most popular, with 67% (104 of 156) of agencies permitting their use. Figure 2 illustrates the types of interventions that agencies reported were permitted.<sup>107</sup>

**Figure 2: Type of Interventions Permitted to Terminate Vehicular Pursuits**

<b>Type of Intervention</b>	<b>Number</b>	<b>Percent</b>
Tire deflators	104	67%
Running/rolling roadblock	67	43%
Roadblocks*	62	40%
Plate identification	36	23%
Channelization	27	17%
PIT maneuver	21	13%
Ramming*	14	9%
Use of firearms*	14	9%
Caravanning	10	6%
Electrical system deactivation	3	2%
Remote engine disabler	2	1%
GPS technology	1	1%

Source: Virginia State Crime Commission, Law Enforcement Emergency Response Survey, 2010

\*Note: These agencies indicated that this intervention must be authorized by a shift commander and/or are only to be used when deadly force is justified.

### *Multi-jurisdictional Vehicular Pursuits*

The vast majority of agencies, 95% (144 of 151), reported having some ability to communicate with other jurisdictions during a pursuit. However, many also reported that such communication was limited. Limitations included the ability to only communicate with immediate surrounding jurisdictions, dispatchers having to complete a time-consuming radio “patch” in order for communication to take place, and interoperability issues arising between different radio systems and frequencies. Some agencies reported difficulty in even ensuring consistent communication *within* their jurisdiction due to variables such as terrain (e.g., mountainous regions). There were some reported improvements in radio communications, however, with some agencies or clusters of jurisdictions having the ability to be assigned to a mutual aid channel or a regional pursuit network.

Seventy percent (106 of 151) of agencies reported having a written policy addressing communication with other jurisdictions during a pursuit. At least 14 agencies adhere to a multi-jurisdictional or regional pursuit policy. The vast majority of agencies reported having a written policy addressing pursuits that originate in their jurisdiction that go into another jurisdiction and vice-versa. Specifically, 89% (132 of 149) of agencies have a written policy that addresses pursuits originating in *their* jurisdiction going into another jurisdiction, and 77% (115 of 149) of agencies have a written policy that addresses pursuits originating in *another* jurisdiction that come into their jurisdiction. However, very few agencies, 13% (20 of 149), reported having a formal memorandum of understanding with another jurisdiction regarding pursuit protocol between the two agencies.

### *Pursuit Investigation and Litigation*

Most agencies conduct some type of follow-up after a vehicular pursuit occurs, with 91% (135 of 149) of agencies conducting some type of evaluation to determine adherence to agency pursuit policy. The type of follow-up evaluation varies widely, with agencies often utilizing multiple follow-up mechanisms, for example:

- Informal supervisory review (n=46);
- Formal report required by pursuing officers addressing pursuit (n=117);
- Formal supervisory review (n=108);
- Internal investigation initiated in all pursuits (n=15);
- Internal investigation initiated only in pursuits resulting from inappropriate action or resulting in accident or injury (n=39);
- Evaluation program in place, separate from internal affairs process (n=33); and,
- Internal Review Board (n=16).

Only three agencies reported being involved in litigation resulting from a vehicular pursuit. Two of these agencies reported having one new or continuing lawsuit during CY09. No agencies reported that they had lost or settled litigation resulting from a vehicular pursuit in CY09.

### *Training*

The significant amount of time law enforcement officers spend driving during their shift must be emphasized. Based on 104 agencies with useable data, officers and deputies logged a median of approximately 18,300 miles per year on patrol vehicles. The distances logged ranged from 100 to 55,000 miles per officer, per year. With this in mind, the survey specifically sought to determine the amount and type of continuing classroom and practical (hands-on) training provided to officers and deputies beyond what is provided in the basic academy.

Around half of all agencies, 52% (79 of 152), reported that officers or deputies received some type of continuing classroom education related to vehicular pursuits during CY09. This type of training is typically an “in-house” review of pursuit policy during roll call. Other agencies reported having all sworn personnel complete a course offered by a risk management group or insurance company, with some training provided on-line.

Even fewer agencies, 36% (54 of 151), reported that officers or deputies received some type of practical emergency vehicle handling during CY09. For agencies that did report such training, some reported that officers completed a general advanced skills and technical driving course. Other agencies reported that officers completed more specific courses focusing on handling 4-wheel drive vehicles or high performance vehicles (e.g., Dodge Chargers) or administering the PIT maneuver. Less than one-quarter of agencies, 22% (27 of 124), reported that they *required* their officers or deputies to complete practical driving courses above and beyond basic training requirements. However, for these agencies, such requirements are typically only for officers or deputies who are found “at fault” for a preventable accident.

### *Vehicular Pursuit Data Findings*

As mentioned earlier, Virginia does not have a state-wide vehicular pursuit database. As such, staff requested records on all reported pursuits from all law enforcement agencies for CY09. Agencies were asked to either submit their inter-agency pursuit report forms or complete a standardized form created by Crime Commission staff.<sup>108</sup> Due to this approach, there was a vast difference in the amount and type of information collected by each agency. However, to the best of staff’s knowledge, this is the first time a state-wide study on this data has been attempted. As such, a far better preliminary understanding of

vehicular pursuits occurring across the Commonwealth was achieved.

Survey findings indicated that 59% (89 of 151) of responding agencies formally maintained data on vehicular pursuits. Ninety-one percent (142 of 156) of agencies responded to the request for CY09 pursuit data. Of the 142 agencies, 63% (89 of 142) reported having *at least* one vehicular pursuit initiated by their agency in CY09. The remaining 37% (53 of 142) reported having zero pursuits initiated by their agency.

*Total Number of Pursuits Reports (CY09)*

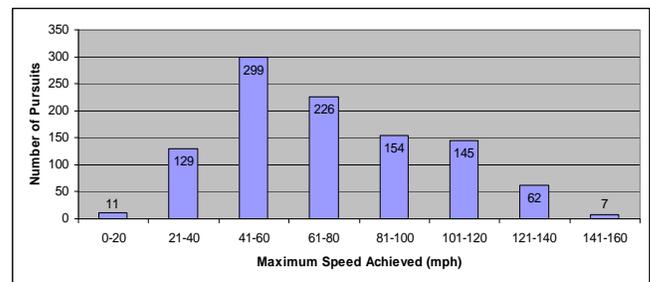
A total of 1,227 pursuits were reported by the 89 agencies in CY09.<sup>109</sup> The number of pursuits per year varied widely across the 89 agencies, ranging from 1 to 241 vehicular pursuits. Although there were 1,227 pursuits reported, the number of base pursuits will vary throughout the report due to the fact that not all agencies completed or collected information on each question. For instance, some agencies only indicated the date a pursuit occurred, while others were extremely thorough in the amounts and quality of information collected. Since not all agencies replied and other agencies may have replied, but provided incomplete data, the 1,227 figure should be viewed as the *minimum* number of pursuits that occurred in Virginia during CY09.

*Length, Distance, and Speed of Pursuits*

The median length of pursuits based on 1,008 useable pursuit data rows/responses was 3 minutes.<sup>110</sup> The average length was 5 minutes. The length of pursuits ranged from less than 1 minute to almost 1 hour in duration. The median distance of pursuits based on 961 useable pursuit data rows/responses was 1.9 miles. The average distance travelled was 4 miles. The distance of pursuits ranged from less than 1 mile to over 50 miles. The median maximum speed achieved based on 1,033 useable pursuit data

rows/responses was 67 miles per hour. The average maximum speed achieved was 72 miles per hour. The maximum speed achieved ranged from 10 miles per hour to 156 miles per hour. The figure below illustrates the total number of vehicular pursuit broken into various categories of speed.

**Figure 3: Vehicular Pursuits and Maximum Speed Achieved**



Source: Virginia State Crime Commission, Vehicular Pursuit Data Analysis, CY09  
n=1,033 vehicular pursuits

*Time of Day*

Over half of all reported pursuits occurred at night. Based on 968 useable pursuit data rows/responses, 52% (504 of 968) of reported pursuits occurred at night, 30% (297 of 968) occurred during the daytime, and 17% (167 of 968) occurred at dusk.

*Traffic Conditions*

Over 75% of reported pursuits were initiated in light traffic conditions. Based on 565 useable pursuit data rows/responses, 77% (436 of 565) of reported pursuits were initiated in light traffic conditions, 20% (112 of 565) of reported pursuits were initiated in moderate traffic conditions, and 3% (17 of 565) were initiated in heavy traffic conditions.

*Road/Weather Conditions*

The vast majority of reported pursuits occurred on dry roadways. Based on 647 useable pursuit data rows/responses, 88% (569 of 647) of pursuits occurred on dry roadways, 11% (73 of 647) of pursuits occurred on wet roadways, and 1% (5 of 647) occurred on icy, snowy or foggy roadways.

*Type of Roadway/Area*

Staff attempted to gain an understanding of the types of roadways where most pursuits occur. However, as illustrated in the figure below, pursuits occur everywhere with a somewhat even distribution between suburban, rural, interstate and urban environments.

**Figure 4: Type of Roadway/Area of Pursuit**

<b>Roadway/Area Type</b>	<b>Number of Pursuits</b>	<b>Percent</b>
Suburban	176	20%
Interstate	155	17%
Rural	137	15%
Urban	127	14%
Residential	107	12%
Highway (not interstate)	89	10%
Commercial	64	7%
Combination of Areas	38	4%

Source: Virginia State Crime Commission, Vehicular Pursuit Data Analysis, CY09  
n=893 vehicular pursuits

*Type of Vehicle Driven by Violator*

Examining the type of vehicle driven by violators in reported pursuits, 64% (622 of 972) of pursuits involved automobiles, 23% (219 of 972) involved vans, pick-ups, or SUVs, 12% (121 of 972) involved motorcycles, and 1% involved other vehicles such as ATVs, mopeds, or tractor trailers.

*Involvement of Supervisors and Additional Units or Agencies*

Some agencies collect information on whether vehicular pursuits were monitored by a supervisor and whether any additional units or outside agencies were involved in a pursuit. Ninety-five percent (806 of 847) of reported pursuits were monitored by a supervisor. Sixty-one percent (576 of 950) of reported pursuits did not involve any additional units from the same agency and 83% (657 of 795) did not involve any additional outside agencies.

*Violator Arrests and Initial Violation*

The vast majority of violators were arrested. Specifically, 78% (868 of 1,114) of pursuits resulted in the arrest of the violator. When examining the initial violation of violators, 47% (531 of 1,132) of pursuits involved a traffic violation, 40% (457 of 1,132) of pursuits involved a criminal misdemeanor, and 13% (144 of 1,132) of pursuits involved a criminal felony. The most common traffic violations included non-reckless speeding or some form of defective equipment. The vast majority of criminal misdemeanors included reckless driving or suspected DUI offenses. The most common criminal felony offense was for stolen automobiles.

However, many violators received additional charges, above and beyond the initial violation, once apprehended. In other words, there is often a reason for why suspects eluded officers in the first place. As such, once the violator is apprehended officers often discover, for instance, that the violator has a suspended or revoked license, they are in possession of illicit drugs, they are intoxicated, the vehicle is stolen, or they have outstanding warrants.

*Violator Impairment*

At least 22% (275 of 1,227), or 1 in 5 pursuits, involved a violator who was impaired. Many agencies did not capture or submit information on this question so it is stressed that this figure is the minimum number of pursuits involving an impaired violator. Of the pursuits involving violator impairment:

- 81% (224 of 275) involved alcohol impairment;
- 7% (20 of 275) involved drug impairment;
- 7% (18 of 275) involved alcohol and drug impairment;
- 2% (5 of 275) involved mental illness/impairment; and,
- 1% (3 of 275) involved alcohol/drugs and mental illness or medical condition.

*Manner of Pursuit Termination or Intervention*

One-third of pursuits ended with the violator stopping voluntarily. Violators crashing vehicles with no outside interference, pursuits discontinued by officers or supervisor, violators stopping/wrecking vehicles and bailing on foot (subsequently caught) and violators successfully eluding accounted for 13-15% of all pursuits each. One percent of all reported pursuits resulted in an officer crashing his vehicle in some manner. Figure 5 illustrates the reported manner in which pursuits were terminated:

**Figure 5: Manner of Pursuit Termination**

<b>Manner of Pursuit Termination</b>	<b>Number of Pursuits</b>	<b>Percent</b>
Violator stopped voluntarily	338	33%
Violator crashed (no outside interference)	149	15%
Discontinued by officer or supervisor	140	14%
Violator stopped/wrecked vehicle, bailed on foot, subsequently caught	132	13%
Violator eluded	129	13%
Vehicle crashed (not specified who was involved)	56	5%
Violator vehicle stopped by police action	47	5%
Other (exited jurisdiction or vehicle disabled)	17	2%
Officer and violator both crashed	9	1%
Officer crashed	2	<1%
<b>Total</b>	<b>1,019</b>	<b>100%</b>

Source: Virginia State Crime Commission, Vehicular Pursuit Data Analysis, CY09  
n=1,019 vehicular pursuits

*Injuries and Deaths*

A minimum of 19 pursuits resulted in a minor injury to an officer or deputy. There were no reported serious injuries or fatalities to law enforcement officers in CY09. A minimum of 90 pursuits resulted in a minor injury to the violator. Eight pursuits resulted in a serious injury to the violator and 11 pursuits resulted in a fatality to the violator. A minimum of 14 pursuits resulted in a minor injury to a third (uninvolved) party. One pursuit resulted in serious injury to a third person; however, there were no fatalities of uninvolved persons reported in CY09. It must be stressed that many agencies did not collect or submit information on these fields. Therefore, the numbers presented are indicative of the *minimum* number of injuries and deaths resulting from pursuits in CY09.

### *Vehicle and Property Damage*

A minimum of 66 pursuits resulted in damage to a law enforcement vehicle and a minimum of 283 pursuits resulted in damage to a violator vehicle. A minimum of 138 pursuits resulted in damage to an uninvolved vehicle or property. Similar to the information collected on injuries and deaths, most agencies did not collect or submit information relating to vehicle and property damage. As such, the numbers presented are indicative of the *minimum* number of vehicle and amount of property damage resulting from pursuits in CY09.

### *Summary of Pursuit Data Findings*

There are a number of findings that resulted from the analysis of vehicular pursuit data in Virginia. These findings are very consistent with other existing academic and government studies.<sup>111</sup> Based on the data submitted from 89 agencies, most pursuits:

- Last a median of 3 minutes;
- Travel a median of 1.9 miles;
- Involve automobiles (as opposed to trucks, SUVs, or motorcycles);
- Occur at night;
- Are initiated on dry road conditions;
- Are initiated in light traffic conditions;
- Are monitored by a supervisor;
- Do not involve any additional patrol units or outside agencies;
- Are initiated due to a traffic violation or criminal misdemeanor;
- Result in the arrest of the violator(s);
- Result in additional subsequent charges for the violator; and,
- Rarely result in injury or death to officers and violators.

### **Conclusion**

Law enforcement vehicular pursuits have gained increased attention since the 1990's; Virginia is no exception. The foremost problem facing policymakers with regard to emergency response and pursuit driving is the availability of studies or data upon which to make informed decisions. Some of data and information available is limited in depth and geographic area, but there are enough studies for policymakers to make empirical decisions regarding pursuits. Only 16 states regulate pursuits in statute, while over 40 states provide some requirement for use of emergency warning devices when law enforcement is responding to a call or in pursuit.

The survey provided a snapshot of law enforcement vehicular pursuits in Virginia from CY09, reviewing information from 156 agencies. Information was obtained concerning response to emergency calls and engaging in pursuits, including statistics on over 1,200 pursuits from 89 agencies. Considering the liability and safety risks posed by pursuits and emergency response driving, it is surprising that only 52% of agencies indicated that their officers engaged in training related to emergency/pursuit driving, beyond initial EVOC training.

Based on the limited nature of pursuit and emergency response training, concern for the safety of others from vehicular pursuits, and the need to punish those who flee law enforcement, the Crime Commission made three recommendations:

**Recommendation 1:** Amend Va. Code § 46.2-920 of the Virginia Code to require emergency vehicles to come to a complete stop at a “steady or flashing red signal, traffic light, stop sign, or device indicating moving traffic shall stop” or run their siren, and their lights as reasonably necessary and proceed through the stop.

Senator Toddy Puller introduced Senate Bill 762 during the 2011 General Session of the Virginia General Assembly, based on the Crime Commission recommendation. The bill was passed by the Virginia Senate as introduced, and amended by the Virginia House of Delegates,<sup>112</sup> and signed by the Governor.<sup>113</sup>

**Recommendation 2:** Require DCJS to establish pursuit and emergency response driver training for law enforcement officers assigned to vehicle patrol duties.

Senator Janet Howell introduced Senate Bill 944,<sup>114</sup> based on the Crime Commission recommendation. The bill passed the Senate of Virginia as introduced. In the Virginia House of Delegates the bill was amended<sup>115</sup> and signed by the Governor.<sup>116</sup>

**Recommendation 3:** Increase penalties for Va. Code § 46.2-817, felony eluding police, to include vehicle forfeiture.

Delegate Manoli Loupassi introduced House Bill 1403,<sup>117</sup> which was replaced by the recommendation of the Crime Commission in a substitute to his original bill. The bill passed the Virginia House of Delegates, but was passed by indefinitely by the Senate Courts of Justice Committee.

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<sup>1</sup> S.B. 847 Va. General Assemb. (2009).

<sup>2</sup> Geoffrey P. Alpert William C. Smith, Police Pursuits after Scott v. Harris, Far From Ideal?, Ideas in Policing p. 22008 available at, <http://www.deadlyforce.com/Scott%20v%20Harris%20-%20Police%20Foundation.pdf>.

<sup>3</sup> *Id.* at 3.

<sup>4</sup> Pursuit Management Task Force Report, U.S. Department of Justice, Office of Justice Programs (1998).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 5.

<sup>7</sup> *Id.* Please note that the agencies surveyed were from the western half of the U.S.

<sup>8</sup> *Id.* at 5. Severely restrictive; polices allow for only “pursuing only felons, serious or assaultive

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misdemeanants, and those whose conduct was such a danger to the public that the anticipated hazards of pursuit were outweighed by the danger posed by allowing the conduct to continue,” officer discretion; are policies that generally focus on “criteria that officers must consider in initiating or continuing a pursuit, but do not restrict pursuits to specific types or classifications of crime,” and minimum standards; these types of polices provide minimum/no guidance or no restrictions at all, and functionally give the officer complete discretion.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 7.

<sup>11</sup> *Id.* at 62-5.

<sup>12</sup> *Id.* at 10.

<sup>13</sup> F P Rivara and C D Mack, Motor vehicle crash deaths related to police pursuits in the United States, Injury Prevention, 10, 93-95 (2004) available at <http://injuryprevention.bmj.com/content/10/2/93.full.html#related-urls>.

<sup>14</sup> *Id.*

<sup>15</sup> This number is broken down as follows: 946 were persons “uninvolved” in the pursuit, 102 were “non motorists,” and 40 were law enforcement officers involved in the pursuit.

<sup>16</sup> *Id.*

<sup>17</sup> The FARS Analytical Reference Guide states “If at least one driver in a crash has a “Driver-Related Factor” of high speed chase with police in pursuit (37) then that crash is considered a police pursuit crash and all fatalities in that crash are considered “fatalities in crashes involving police in pursuit.”

<sup>18</sup> Pursuit is defined as “an event that is initiated when a law enforcement officer, operating an authorized emergency vehicle, gives notice to stop (either through the use of visual or audible emergency signals or a combination of emergency devices) to a motorist who the officer is attempting to apprehend and that motorist fails to comply with the signal by either maintaining speed, increasing speed or taking other evasive action to elude the officer’s continued attempts to stop the motorist.”

<sup>19</sup> John Hill, High-speed police pursuits: dangers, dynamics, and risk reduction, The FBI Bulletin, July 2002, available at [http://findarticles.com/p/articles/mi\\_m2194/is\\_7\\_71/ai\\_89973554/?tag=content;col1](http://findarticles.com/p/articles/mi_m2194/is_7_71/ai_89973554/?tag=content;col1).

<sup>20</sup> *Id.*

<sup>21</sup> MANAGING POLICE PURSUITS: FINDINGS FOR THE IACP’S POLICE PURSUIT DATABASE, Winter (2004).

<sup>22</sup> *Id.* at 4.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 5. The list of data elements also includes: report/tracing number, average speed above limit, initiating officer age, supervisor monitored, officer years service, additional units, officer ID number, additional agencies, maximum pursuit speed, suspect sex, suspect race, suspect age, police intervention method, suspect licensed, road type, distance trailed, suspect impairment, light conditions, arrest/charges filed, injury (minor, serious, fatal), sex of initiating officer, property damage.

<sup>25</sup> *Id.* at 11.

<sup>26</sup> *Id.* at 2-10.

<sup>27</sup> Cynthia Lum and George Fachner, *Police Pursuits in an Age of Innovation and Reform: The IACP Police Pursuit Database*, September (2008).

<sup>28</sup> *Id.* at 44.

<sup>29</sup> *Id.* at 56.

<sup>30</sup> *Id.* at 57.

<sup>31</sup> *Id.* at 62.

<sup>32</sup> *Id.* at 65.

<sup>33</sup> The Pursuit Immobilization Technique or "PIT Maneuver" is described as "a driving technique designed to stop a fleeing motorist safely and quickly by hitting the fleeing car at a specific point on the vehicle, which throws the car into a spin and brings it to a stop." *Scott v. Harris*, 550 U.S. 372 (2007).

<sup>34</sup> *Id.* at 66.

<sup>35</sup> *Id.* at 74.

<sup>36</sup> Alpert, G.P., Questioning police pursuits in urban areas. *Journal of Police Science and Administration*, 15(4), 298 (1987); Alpert, G.P. & Dunham, R.G., Research on police pursuits: Applications for law enforcement. *American Journal of Police*, 7(2), 123-133 (1988); Alpert, G.P., Policing hot pursuits: The discovery of aleatory elements. *Journal of Criminal Law and Criminology*, 80(2), 521-539 (1989); Auten, J., *Police pursuit driving operations in Illinois: 1990*. Champaign, IL: Police Training Institute, University of Illinois (1991); California Highway Patrol., *California Highway Patrol Pursuit Study*. Sacramento, CA: California Highway Patrol (1983); Charles, M.T., Falcone, D.N., & Wells, E., *Police pursuit in pursuit of policy: The pursuit issue, legal and literature review, and an empirical study*. Washington, D.C.: AAA Foundation for Traffic Safety (1992); Oechsli, S, *Kentucky State Police Pursuit Study: 1989-1992*. Kentucky State Police, Frankfort, KY (1992); O'Keefe, J. J., *An empirical analysis of high speed police pursuits: the Houston Police Department experience*. Ann Arbor, MI: University of Michigan (1989).

<sup>37</sup> Alpert, G.P. & Dunham, R.G., Research on police pursuits: Applications for law enforcement. *American Journal of Police*, 7(2), 123- 133 (1988); American Civil Liberties Union Foundation of Southern California, *Not just isolated incidents: The epidemic of police pursuits in southern California*. Los Angeles, CA: American Civil Liberties Foundation of Southern California (1996); Bayless, K. and Osborne, R., *Pursuit Management Task Force Report*. Report supported by the National Law Enforcement and Corrections Technology Center for the National Institute of Justice (1998); California Highway Patrol., *California Highway Patrol Pursuit Study*. Sacramento, CA: California Highway Patrol (1983); Charles, M.T., Falcone, D.N., & Wells, E., *Police pursuit in pursuit of policy: The pursuit issue, legal and literature review, and an empirical study*. Washington, D.C.: AAA Foundation for Traffic Safety (1992); Crew, R. & Hart Jr., R. A., Assessing the value of police pursuit. *Policing: An International Journal of Police Strategies and Management*, 22(1), 58-73 (1999); Wells, E., & Falcone, D. N., Research on police pursuits: advantages of multiple data collection strategies, *Policing: An International Journal of Police Strategies and Management*, 20(4), 729-748 (1997).

<sup>38</sup> Payne, D. M., & Fenske, J.C., An analysis of the rates of accidents, injuries and fatalities under different light conditions: A Michigan emergency response study of state police pursuits. *Policing: An International Journal of Police Strategies and Management*, 20(2), 357- 373 (1997); Rivara, F. P., & Mack, C. D., Motor vehicle crash deaths related to police pursuits in the United States. *Injury Prevention*, 10(2), 93-95 (2004).

<sup>39</sup> California Highway Patrol., *California Highway Patrol Pursuit Study*. Sacramento, CA: California Highway Patrol (1983).

<sup>40</sup> Lucadamo, T, *Identifying the dimension of police pursuit*. Master's Thesis, University of Maryland (1994); Wells, E., & Falcone, D. N., Research on police pursuits: advantages of multiple data collection strategies, *Policing: An International Journal of Police Strategies and Management*, 20(4), 729-748 (1997).

<sup>41</sup> Charles, M.T., Falcone, D.N., & Wells, E., *Police pursuit in pursuit of policy: The pursuit issue, legal and literature review, and an empirical study*. Washington, D.C.: AAA Foundation for Traffic Safety (1992); O'Keefe, J. J., *An empirical analysis of high speed police pursuits: the Houston Police Department experience*. Ann Arbor, MI: University of Michigan (1989).

<sup>42</sup> Alpert, G.P. & Dunham, R.G., Research on police pursuits: Applications for law enforcement. *American Journal of Police*, 7(2), 123- 133 (1988); Alpert, G.P., Policing hot pursuits: The discovery of aleatory elements. *Journal of Criminal Law and Criminology*, 80(2), 521-539 (1989); Auten, J., *Police pursuit driving operations in Illinois: 1990*. Champaign, IL: Police Training Institute, University of Illinois (1991); California Highway Patrol., *California Highway Patrol Pursuit Study*. Sacramento, CA: California Highway Patrol (1983); O'Keefe, J. J., *An empirical analysis of high speed police pursuits: the Houston Police Department experience*. Ann Arbor, MI: University of Michigan (1989).

<sup>43</sup> Alpert, G.P., Questioning police pursuits in urban areas. *Journal of Police Science and Administration*, 15(4), 298 (1987); Alpert, G.P. & Dunham, R.G., Research on police pursuits: Applications for law enforcement. *American Journal of Police*, 7(2), 123-133 (1988); American Civil Liberties Union Foundation of Southern California, *Not just isolated incidents: The epidemic of police pursuits in southern California*. Los Angeles, CA: American Civil Liberties Foundation of Southern California (1996); Auten, J., *Police pursuit driving operations in Illinois: 1990*. Champaign, IL: Police Training Institute, University of Illinois (1991); Charles, M.T., Falcone, D.N., & Wells, E., *Police pursuit in pursuit of policy: The pursuit issue, legal and literature review, and an empirical study*. Washington, D.C.: AAA Foundation for Traffic Safety (1992); Fennessy, E.F., Hamilton, T., Joscelyn, K.B. & Merrit, J.S., *A study of the problem of hot pursuit*. Washington, D.C.: U.S. Department of Transportation (1970); Hannigan, M. J., Commissioner, *The evaluation of risk: Initial cause vs. final outcome in police pursuits*. California Highway Patrol (1995); Nugent, H., *Restrictive policies for high speed police pursuits*. Washington, D.C.: U.S. Department of Justice, National Institute of Justice (1990); Oechsli, S, *Kentucky State Police Pursuit Study: 1989-1992*. Kentucky State Police, Frankfort, KY(1992); O'Keefe, J. J., *An empirical analysis of high speed police pursuits: the Houston Police Department experience*. Ann Arbor, MI: University of Michigan (1989).

<sup>44</sup> Alpert, G.P., Policing hot pursuits: The discovery of aleatory elements. *Journal of Criminal Law and Criminology*, 80(2), 521-539 (1989); Dunham, R. G., & Alpert, G.P., Understanding the dynamics of officer age and gender in police pursuits. *American Journal of Police*, 10(3), 51-62 (1991); Lucadamo, T, *Identifying*

*the dimension of police pursuit*. Master's Thesis, University of Maryland (1994).

<sup>45</sup> Dunham, R.G., Alpert, G.P., Kenney, D.J., & Cromwell, P., High-speed pursuits: The offenders' perspective. *Criminal Justice and Behavior*, 25, 30-45 (1998); Fennessy, E.F., Hamilton, T., Joscelyn, K.B. & Merrit, J.S., *A study of the problem of hot pursuit*. Washington, D.C.: U.S. Department of Transportation (1970).

<sup>46</sup> See Lum and Fachner at note 28, p. 25.

<sup>47</sup> IACP Vehicular Pursuit policy, available at <http://www.theiacp.org/LinkClick.aspx?fileticket=pnMib083hyU%3d&tabid=392>.

<sup>48</sup> Additionally, the officer must consider: road and weather conditions, population density and traffic, capabilities of both the suspect's and pursuit car, and the seriousness of the offense. Id.

<sup>49</sup> Id. at 2-5.

<sup>50</sup> DCJS General Directive 2-9, available at <http://www.dcjs.virginia.gov/cple/sampleDirectives/index.cfm>.

<sup>51</sup> Id. at 10.

<sup>52</sup> Id.

<sup>53</sup> "When, in the opinion of the officer, an emergency is imminent or exists, or that activation of emergency warning devices is necessary to protect life or render the necessary enforcement, the department authorizes an emergency response." Id.

<sup>54</sup> There is a more complete discussion of the requirements in Va. Code § 46.2-920 in the preceding section, starting at page 12.

<sup>55</sup> "Restrictive" allows pursuits when an officer may pursue a vehicle only when he has probable cause to believe the suspect has committed or is attempting to commit a crime involving violence or the display or use of a firearm. Id. at 12.

<sup>56</sup> Permits a pursuit when the officer has a reasonable belief that either; "suspect presents an immediate threat to the safety of officers or citizens, suspect has committed or is attempting to commit a felony involving actual or threatened violence which may result in injury or death, or the necessity of immediate apprehension supersedes the danger created by the pursuit." Id.

<sup>57</sup> Requires an officer during a pursuit to continuously evaluate the risk to the pursuing officers, the suspect, and the public, and be prepared to end a pursuit when the risk factors so require. These factors include density of intersecting streets, weather, pedestrians, emotions of pursuing officer, and supervisory oversight. Id. at 13.

<sup>58</sup> In the PTMF report, the three general types of policies were identified as either severely restrictive, officer discretion, or minimum standards. Directive 2-9's three types of policies are not that different, although there is nothing comparable to minimum standards.

<sup>59</sup> CALEA Standard 41.2.1. The policy should at minimum a "classify calls for service as routine or emergency, "should designate when emergency lights and siren should be used and when traffic laws should be observed," and "should also address the responsibility of responding officers, dispatchers, and supervisors while responding to emergency calls."

<sup>60</sup> CALEA Standard 41.2.2. Vehicle Pursuit.

<sup>61</sup> There are 83 Virginia enforcement agencies with VLEPSC accreditation. *See*

<http://www.dcjs.virginia.gov/accred/agencies.cfm>

<sup>62</sup> Virginia Law Enforcement Accreditation Program Manual, OPR.01.01 6th Edition, 2010, *available at* <http://www.dcjs.virginia.gov/accred/documents/6th-EditionProgramManual-V4.pdf>.

<sup>63</sup> *Id.*

<sup>64</sup> Performance Outcomes, Training Objectives, Criteria and Lesson Plan Guides for Compulsory Minimum Training for Law Enforcement Officers, Section 8, Virginia Department of Criminal Justice Services, (last updated January 2011), *available at*: <http://www.dcjs.virginia.gov/standardsTraining/documents/performanceOutcomes/section8.pdf>.

<sup>65</sup>

<http://www.nvcja.org/BasicTraining/EmergencyVehicleOperation.aspx>.

<sup>66</sup> *Supra* at note 3.

<sup>67</sup> *Id.*

<sup>68</sup> J. Michael McGuinness, A Primer on North Carolina and Federal Use of Force Law: Trends in Fourth Amendment Doctrine, Qualified Immunity, and State Law Issues, 31 Campbell L. Rev. 431, 471 (2009).

<sup>69</sup> *Tennessee v. Garner*, 471 U.S. 1, 11-12 (1985).

<sup>70</sup> *Supra* at note 42. p 477.

<sup>71</sup> *Scott v. Harris*, 550 U.S. 372, 375 (2007).

<sup>72</sup> *Id.* at 386.

<sup>73</sup> Erwin Chemerinsky, *A Troubling Take on Excessive-Force Claims*, *Trial*, July 2007, at 74, 76.

<sup>74</sup> VA. CODE ANN. § 46.2-920 (West 2010).

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Id.* A recent legal opinion by the Virginia Attorney General has interpreted this section to indicate that emergency vehicles are not required to have both

lights and sirens on, but only when they deem it "reasonably necessary." 2010 WL 4791593 (Va. A.G. Nov. 15, 2010).

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Colby v. Boyden*, 241 Va. 125, 132, 400 S.E.2d 184, 188 (1991).

<sup>83</sup> ALA. CODE § 32-5A-7 (1975); ARIZ. REV. STAT. ANN. § 28-624 (2010); ARK. CODE ANN. § 27-37-202 (2010 West); CAL. VEH. CODE § 21055 (2010 West); COLO. REV. STAT. ANN. § 42-4-108 (2010 West); CONN. GEN. STAT. ANN. § 14-283 (2010 West); DEL. CODE ANN. tit. 21, § 4106 (2010 West); FLA. STAT. ANN. § 316.271 (West 2010); GA. CODE ANN. § 40-6-6 (2010 West); HAW. REV. STAT. ANN. § 291C-26 (2010 LexisNexis); IDAHO CODE ANN. § 49-623 (2010 West); 625 ILCS 5/11-205 (2010); IND. CODE ANN. § 9-19-5-3 (2010 West); KY. REV. STAT. ANN. § 189.940 (2010 West); LA. REV. STAT. ANN. § 32:24 (2010); ME. REV. STAT. ANN. tit. 29-A, § 2054 (2010); MD. CODE ANN., TRANSP. § 21-106 (2010 West); MASS. GEN. LAWS ANN. ch. 89, § 7B (West 2010); MICH. COMP. LAWS ANN. § 257.603 (2010 West); MINN. STAT. ANN. § 169.17 (West 2010); MISS. CODE ANN. § 63-3-517 (West 2010); MO. ANN. STAT. § 300.100 (2010 West); MONT. CODE ANN. § 61-9-401 (2010); NEB. REV. STAT. § 60-6,114 (2010); NEV. REV. STAT. ANN. § 484D.400 (2010 West); N.H. REV. STAT. ANN. § 265:8 (2010); N.J. STAT. ANN. § 39:3-69 (2010 West); N.M. STAT. ANN. § 66-3-843 (West 1978); N.Y. VEH. & TRAF. LAW § 1104 (McKinney 2010); N.C. GEN. STAT. ANN. § 20-156 (West 2010); N.D. CENT. CODE § 39-21-36 (2010); OHIO REV. CODE ANN. § 4511.24 (West 2010); OKLA. STAT. ANN. tit. 47, § 12-401 (West 2010); OR. REV. STAT. ANN. § 820.320 (West 2010); 75 PA. CONS. STAT. ANN. § 3105 (West 2010); R.I. GEN. LAWS § 31-12-7 (West 2010) and R.I. GEN. LAWS § 31-12-8 (West 2010); S.C. CODE ANN. § 56-5-760 (Law. Co-op. 2010); S.D. CODIFIED LAWS § 32-31-4 (Michie 2010); TENN. CODE ANN. § 55-8-108 (West 2010); TEX. TRANSP. CODE ANN. § 547.702 (Vernon 2010); UTAH CODE ANN. § 41-6a-212 (West 2010); VT. STAT. ANN. tit. 23, § 1015 (West 2010); WASH. REV. CODE ANN. § 46.61.035 (West 2010); W. VA. CODE ANN. § 17C-2-5 (West 2010); WIS. STAT. ANN. § 346.03 (West 2010); and, WYO. STAT. ANN. § 31-5-952 (West 2010).

<sup>84</sup> ALA. CODE § 32-5A-7 (1975); ARK. CODE ANN. § 27-37-202 (West 2010); COLO. REV. STAT. ANN. § 42-4-108 (West 2010); CONN. GEN. STAT. ANN. § 14-283 (West 2010); GA. CODE ANN. § 40-6-6 (West 2010); KY. REV. STAT. ANN. § 189.940 (2010 West); MINN. STAT. ANN. §

169.17 (West); MO. ANN. STAT. § 300.100 (West 2010); OHIO REV. CODE ANN. § 4511.24 (West 2010); 75 PA. CONS. STAT. ANN. § 3105 (West 2010); S.C. CODE ANN. § 56-5-760 (Law. Co-op. 2010); TENN. CODE ANN. § 55-8-108 (West 2010); UTAH CODE ANN. § 41-6a-212 (West 2010); WYO. STAT. ANN. § 31-5-952 (West 2010).

<sup>85</sup> ARIZ. REV. STAT. ANN. § 28-624 (2010); CAL. VEH. CODE § 21055 (2010 West); DEL. CODE ANN. tit. 21, § 4106 (West 2010); FLA. STAT. ANN. § 316.271 (West 2010); HAW. REV. STAT. ANN. § 291C-26 (LexisNexis 2010); IDAHO CODE ANN. § 49-623 (West 2010); 625 ILCS 5/11-205 (2010); IND. CODE ANN. § 9-19-5-3 (West 2010); LA. REV. STAT. ANN. § 32:24 (2010); ME. REV. STAT. ANN. tit. 29-A, § 2054 (2010); MD. CODE ANN., TRANSP. § 21-106 (West 2010); MASS. GEN. LAWS ANN. ch. 89, § 7B (West 2010); MICH. COMP. LAWS ANN. § 257.603 (West 2010); MISS. CODE ANN. § 63-3-517 (West 2010); MONT. CODE ANN. § 61-9-401 (2010); NEB. REV. STAT. § 60-6,114 (2010); NEV. REV. STAT. ANN. § 484D.400 (West 2010); N.H. REV. STAT. ANN. § 265:8 (2010); N.J. STAT. ANN. § 39:3-69 (West 2010); N.M. STAT. ANN. § 66-3-843 (West 1978); N.Y. VEH. & TRAF. LAW § 1104 (McKinney 2010); N.C. GEN. STAT. ANN. § 20-156 (West 2010); N.D. CENT. CODE § 39-21-36 (2010); OKLA. STAT. ANN. tit. 47, § 12-401 (West 2010); OR. REV. STAT. ANN. § 820.320 (West 2010); R.I. GEN. LAWS § 31-12-7 (West 2010) and R.I. GEN. LAWS § 31-12-8 (West 2010); S.D. CODIFIED LAWS § 32-31-4 (Michie 2010); TEX. TRANSP. CODE ANN. § 547.702 (Vernon 2010); VT. STAT. ANN. tit. 23, § 1015 (West 2010); WASH. REV. CODE ANN. § 46.61.035 (West 2010); W. VA. CODE ANN. § 17C-2-5 (West 2010); WIS. STAT. ANN. § 346.03 (West 2010).

<sup>86</sup> MASS. GEN. LAWS ANN. ch. 89, § 7B (West 2010).

<sup>87</sup> ALA. CODE § 32-5A-7 (1975); ARIZ. REV. STAT. ANN. § 28-624 (2010); ARK. CODE ANN. § 27-37-202 (West 2010); COLO. REV. STAT. ANN. § 42-4-108 (West 2010); CONN. GEN. STAT. ANN. § 14-283 (West 2010); DEL. CODE ANN. tit. 21, § 4106 (West 2010); GA. CODE ANN. § 40-6-6 (West 2010); HAW. REV. STAT. ANN. § 291C-26 (LexisNexis 2010); IDAHO CODE ANN. § 49-623 (West 2010); 625 ILCS 5/11-205 (2010); KY. REV. STAT. ANN. § 189.940 (West 2010); LA. REV. STAT. ANN. § 32:24 (2010); ME. REV. STAT. ANN. tit. 29-A, § 2054 (2010); MD. CODE ANN., TRANSP. § 21-106 (West 2010); MICH. COMP. LAWS ANN. § 257.603 (2010 West); MINN. STAT. ANN. § 169.17 (West); MISS. CODE ANN. § 63-3-517 (West); MO. ANN. STAT. § 300.100 (West 2010); NEB. REV. STAT. § 60-6,114 (2010) N.Y. VEH. & TRAF. LAW § 1104 (McKinney 2010); OR. REV. STAT. ANN. § 820.320 (West 2010); 75 PA. CONS. STAT. ANN. § 3105 (West

2010); S.C. CODE ANN. § 56-5-760 (Law. Co-op. 2010); TENN. CODE ANN. § 55-8-108 (West 2010); UTAH CODE ANN. § 41-6a-212 (West 2010); VT. STAT. ANN. tit. 23, § 1015 (West 2010); WASH. REV. CODE ANN. § 46.61.035 (West 2010); W. VA. CODE ANN. § 17C-2-5 (West 2010); WIS. STAT. ANN. § 346.03 (West 2010).

<sup>88</sup> VA. CODE ANN. § 46.2-817 (West 2010). There is an affirmative defense available “if the defendant shows he reasonably believed he was being pursued by a person other than a law-enforcement officer.” *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> ALA. CODE § 13A-10-52 (1975); ALASKA STAT. § 28.35.182 (Michie 2010); ARIZ. REV. STATE. ANN. § 28-622.01 (West 2010); ARK. CODE ANN. § 5-54-125 (Michie 2010); CAL. [VEHICLE] CODE § 2800.2 (West 2010); COLO. REV. STAT. ANN. § 18-9-116.5 and § 42-4-1413 (West 2010); CONN. GEN. STAT. ANN. § 14-223 (West 2010); DEL. CODE ANN. tit. X, § 1257 (2010); FLA. STAT. ANN. § 316.1935 (West 2010); GA. CODE ANN. § 40-6-395 (2010); IDAHO CODE § 49-1404 (Michie 2010); 625 ILL. COMP. STAT. ANN. 5/11-204 (West 2010); IND. CODE ANN. § 35-44-3-3 (West 2010); IOWA CODE ANN. § 321.279 (West 2010); KAN. U.C.C. ANN. 8-1568 (West 2010); KY. REV. STAT. ANN. § 520.095 (Michie 2010); KY. REV. STAT. ANN. § 520.100 (Michie 2010); ME. REV. STAT. ANN. TIT. X, § 2414 (West 2010); MD. CODE ANN., [TRANSPORTATION] § 21-904 (2010); MICH. STAT. ANN. § 750.479a (Michie 2010); MINN. STAT. ANN. § 609.487 (West 2010); MISS. CODE ANN. § 97-9-72 (2010); MISS. CODE ANN. § 575.150 (West 2010) MONT. CODE ANN. § 61-8-316 (2010); NEB. REV. STAT. ANN. § 28-905 (Michie 2010); NEV. REV. STAT. ANN. 484B.550 (Michie 2010); N.H. REV. STAT. ANN. § 2C:29-2 265:4 (2010); N.J. STAT. ANN. § 2C:29-2 (West 2010); N.M. STAT. ANN. § 30-22-1 (Michie 1978); N.Y. PENAL LAW § 270.35 (McKinney 2010), N.Y. PENAL LAW § 270.30 (McKinney 2010), N.Y. PENAL LAW § 270.25 (McKinney 2010); N.C. GEN. STATE. § 20-141.5 (2010); N.D. CENT. CODE. § 39-10-71 (2010); OHIO. REV. CODE ANN. § 2921.331 (West 2010); OKLA. STAT. ANN. tit. X, § 540A (West 2010); OR. REV. STAT. § 811.540 (2010); PA. STAT. ANN. tit. X, § 3733 (West 2010); R.I. GEN. LAWS § 31-27-4 (1956) and R.I. GEN. LAWS § 31-27-4.1 (1956); S.C. CODE ANN. § 16-9-320 (Law. Co-op. 1976); S.D. CODIFIED LAWS § 32-33-18 (Michie 2010); TENN. CODE ANN. § 39-16-603 (2010); TEX. TRANSPORTATION CODE ANN. § 545.421 (Vernon 2010) and TEX. PENAL CODE ANN § 38.04 (Vernon 2010); UTAH CODE ANN. § 23-20-24 (1953) and UTAH

CODE ANN. § 41-6a-210 (1953); VT. STAT. ANN. tit. X, § 1133 (2010); WASH. REV. CODE ANN. § 46.61.024 (West 2010); W. VA. CODE ANN. § 61-5-17 (Michie 2010); WIS. STAT. ANN. § 346.04 (West 2010); WYO. STAT. ANN. § 31-5-225 (Michie 1977).

<sup>93</sup> ARIZ. REV. STATE. ANN. § 28-622.01 (West 2010); FLA. STAT. ANN. § 316.1935 (West 2010); IND. CODE ANN § 35-44-3-3 (West 2010); MICH. STAT. ANN. § 750.479a (Michie 2010); MINN. STAT. ANN. § 609.487 (West 2010); OR. REV. STAT. § 811.540 (2010); TENN. CODE. ANN. § 39-16-603 (2010); WASH. REV. CODE ANN. § 46.61.024 (West 2010).

<sup>94</sup> FLA. STAT. ANN. § 316.1935 (West 2010); 625 ILL. COMP. STAT. ANN 5/11-204 (West 2010); R.I. GEN. LAWS § 31-27-4 (2010); UTAH CODE ANN. § 41-6a-210 (1953).

<sup>95</sup> VA. CODE ANN. § 19.2-77 (West 2010).

<sup>96</sup> VA. CODE ANN. § 46.2-921.1 (West 2010).

<sup>97</sup> GA. CODE ANN. § 35-1-14 (West 2010); ME. REV. STAT. ANN. tit. 25, § 2803-B (2010) (minimum standards are promulgated by their criminal justice board, and compliance is monitored); MISS. CODE. ANN. § 45-1-43 (West 2010); N.H. REV. STAT. ANN. § 265:8-a (2010), pursuit policy should conform to “accreditation” standards; OHIO REV. CODE ANN. § 2935.031 (2010); and WIS. STAT. ANN. § 346.03(4)(6) (West). Illinois requires its Training Standards Board to develop a model pursuit policy for agencies to use. 50 ILCS 705/7.5 (West 2010).

<sup>98</sup> CONN. GEN. STAT. ANN. § 14-283a (West 2010); MINN. STAT. ANN. § 626.8458 (West 2010); NEB. REV. STAT. § 29-211 (2010); N.M. STAT. ANN. § 29-20-4 (West 1978); 75 PA. CONS. STAT. ANN. § 6342 (West); R.I. GEN. LAWS § 31-27-4.2 (West); UTAH CODE ANN. § 41-6a-212(5) (West 2010), each agency to follow the administrative regulations found in Utah Admin. Code r. R728-503 which establishes minimum standards for pursuits; and, WASH. REV. CODE ANN. § 43.101.226 (West 2010).

<sup>99</sup> CAL. VEHICLE CODE § 17004.7 (West 2010).

<sup>100</sup> CAL. PENAL CODE § 13519.8 (West 2010); CONN. GEN. STAT. ANN. § 14-283a (West 2010); MINN. STAT. ANN. § 626.8458 (West 2010); NEB. REV. STAT. § 29-211 (2010); N.M. STAT. ANN. § 29-20-3 (West 1978); OR. REV. STAT. ANN. § 181.641 (West); and, UTAH CODE ANN. § 41-6a-212(5) (West 2010).

<sup>101</sup> CAL. VEH. CODE § 14602.1 (West); 75 PA. CONS. STAT. ANN. § 6344 (West), 75 PA. CONS. STAT. ANN. § 6343 (West); and, WIS. STAT. ANN. § 85.07(8) (West). Both Rhode Island and New Mexico require police to create a report for each pursuit.

<sup>102</sup> See page xi for the membership of the Law Enforcement Work Group.

<sup>103</sup> Survey available by request to the Crime Commission.

<sup>104</sup> While the total sample size for the overall survey is 156, each survey question is likely to have missing responses. Missing responses are excluded from the total (denominator) when calculating percentages, which allows the percentage of responses to sum to 100.

<sup>105</sup> Response codes vary from agency to agency. For purposes of this survey, a “Code 1” response is where a patrol unit activates emergency vehicle equipment in responding to a call for service; whereas, a “Code 2” response is where emergency vehicle equipment is not activated in responding to a call for service.

<sup>106</sup> *Supra* at note 9.

<sup>107</sup> Definitions for some of the interventions listed in table are as follows: (1) Plate identification refers to the termination of a pursuit after officer obtains the license plate number; (2) Channelization refers to controlling the point of access or egress by blocking alternative paths of travel; (3) Use of firearms can refer to an officer discharging a firearm at the vehicle’s tires or driver.

<sup>108</sup> Crime Commission Pursuit Data Form available by request to the Crime Commission.

<sup>109</sup> Since there is no state-wide definition of vehicular pursuits, one cannot be certain that all agencies are defining pursuits the same. However, when reading through the submitted reports and narratives, it appears that agencies are defining pursuits consistently.

<sup>110</sup> Median is often a better measure of central tendency when the data includes extreme outliers.

<sup>111</sup> *Supra* at notes 22, 37, 38, 42, 43, and 44.

<sup>112</sup> The House substitute altered the original requirement that the emergency vehicle must either stop at the controlled interaction or proceed through the intersection with the siren in operation to the following: “*The exemption granted under subdivision A 2 shall apply only when the operator of such emergency vehicle displays a flashing, blinking, or alternating emergency light or lights as provided in §§ 46.2-1022 and 46.2-1023 and either (a) sounds a siren, exhaust whistle, or air horn designed to give automatically intermittent signals or (b) slows the vehicle down to a speed reasonable for the existing conditions, yields right-of-way to the driver of another vehicle approaching or entering the intersection from another direction or, if required for safety, brings the vehicle to*

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*a complete stop before proceeding with due regard for the safety of persons and property.”*

<sup>113</sup> 2011 Va. Acts ch. 629.

<sup>114</sup> Delegate Delores McQuinn also introduced House Bill 2213, which was rolled into Senate Bill 944 in the Senate of Virginia.

<sup>115</sup> In the House the phrase “comply with” best practices was replaced with “embody current” best practices.

<sup>116</sup> 2011 Va. Acts ch. 635.

<sup>117</sup> Delegate Delores McQuinn also introduced House Bill 2211, which was rolled into House Bill 1403 in the Virginia House of Delegates.