

Update: changing laws and guidance around police pursuits

By Drew Brien

As many of you are aware, police pursuits have been a hot topic the last few years, and there have been a lot of changes in the rules due to multiple legislative efforts. However, police pursuits can still increase your agency's liability risk.

For example, if a police pursuit results in an accident that causes property damage or bodily injury to a third party, there could be, a) allegations of negligence on part of the officer during the pursuit, b) violations of your agency's pursuit policy, or c) negligent training to name a few. *(Not to mention the risk of joint and several liability if the fleeing suspect is the one that causes the accident.)*

In 2021, legislation was passed only allowing for a pursuit of criminals involved in serious violent crimes such as domestic violence, sex crimes, DUI, and vehicular assault; and only if the police officer had probable cause. What followed was a spike in crime, and efforts by criminals to elude law enforcement because officers could not pursue them unless there was probable cause that a serious violent crime had occurred.

In May 2023, a new law was signed by Governor Inslee that lowered the bar for police pursuits from "probable cause" to "reasonable suspicion." While this was helpful, it still limited when police officers could pursue a suspect who had committed a crime.

In March 2024, Initiative 2113 was passed which will amend the current police pursuit law ([RCW 10.116.060 Vehicular Pursuit](#)) to once again allow for police pursuit when there is reasonable suspicion a person has violated the law, not just for serious violent crimes. (This law will go into effect in June 2024.) During joint hearings on Initiative 2113, the WA Association of Sheriffs and Police Chiefs (WASPC) produced and referred to the following "**pursuit matrix**" after reviewing scholarly material from the NYU Policing Project, which informed the Police Executive Research Forum (PERF). See, [Police Executive Research Forum \(PERF\) / Community Oriented Policing Services \(COPS\) Vehicular Pursuits Report](#).

		RISK FACTORS	
		LOW	HIGH
CRIMINAL OFFENSE	Felonies involving physical harm to a person	May pursue if pursuit is not more dangerous than offense, continue to assess	May pursue if pursuit is not more dangerous than offense, continue to assess
	Any other felony offense and Mandatory Arrest Offenses	May pursue if pursuit is not more dangerous than offense, continue to assess	Pursuit not authorized
	Other criminal offenses	May pursue if pursuit is not more dangerous than offense and ONLY to determine if other factors are presents	Pursuit not authorized

(WASPC, 2024)

High Risk Factors <i>"including but not limited to"</i>	Low Risk Factors <i>"including but not limited to"</i>
<ul style="list-style-type: none"> • locations with a high density of intersecting streets such as in an urban area • use of an unmarked law enforcement vehicle as the primary vehicle in the pursuit • poor weather conditions • significant pedestrian traffic • congested vehicle traffic • speeds of at least twice the posted speed limit • nearby school zones • no supervisor is available 	<ul style="list-style-type: none"> • locations with a high density of intersecting streets such as in an urban area • use of an unmarked law enforcement vehicle as the primary vehicle in the pursuit • poor weather conditions • significant pedestrian traffic • congested vehicle traffic • speeds of at least twice the posted speed limit • nearby school zones • no supervisor is available

(WASPC, 2024)

Note: While this matrix is not "the law," it provides an easy-to-understand view of the law and is consistent with the concepts in the PERF Report for agencies that wish to expand their police pursuits beyond serious violent crimes once the law goes into effect in June.

What should you do:

Whether or not your police department will be changing its pursuit philosophy this June, it is imperative that each police department has and adheres to an established pursuit policy. Once your pursuit policy has been adopted, all officers should receive regular training to ensure a clear understanding of and compliance with the policy. Additionally, WCIA recommends against using unmarked patrol vehicles or motorcycles for pursuits.

While there will always be risk associated with police pursuits, WCIA is here to help members mitigate those risks. Your assigned Risk Management Representative is happy to discuss potential risks and any WCIA resources that may be available.

Upcoming Police Chiefs' Forum: Watch your email box for information on an upcoming Police Chiefs' Forum on June 25!

References

WASPC, W. A. (2024, March 6). GTWO: I-2113 Information and Pursuits "Matrix". Lacey, Washington.