

WISCONSIN LEGISLATIVE COUNCIL STAFF

LCRC  
FORM 2

AUG 31 1999

**RULES CLEARINGHOUSE**

Ronald Sklansky  
Director  
(608) 266-1946

Richard Sweet  
Assistant Director  
(608) 266-2982



David J. Stute, Director  
Legislative Council Staff  
(608) 266-1304

One E. Main St., Ste. 401  
P.O. Box 2536  
Madison, WI 53701-2536  
FAX: (608) 266-3830

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**CLEARINGHOUSE REPORT TO AGENCY**

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[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

**CLEARINGHOUSE RULE 99-115**

AN ORDER to create LES 1.03 (18m), 3.03 (7) (a) and (b) and 3.07, relating to police pursuit.

Submitted by **DEPARTMENT OF JUSTICE**

07-16-99 RECEIVED BY LEGISLATIVE COUNCIL.

08-13-99 REPORT SENT TO AGENCY.

RS:DD:rv

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES  NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES  NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES  NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached YES  NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES  NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES  NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

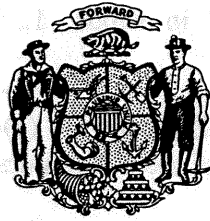
Comment Attached YES  NO

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## CLEARINGHOUSE RULE 99-115

### Comments

**[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]**

#### 2. Form, Style and Placement in Administrative Code

a. There is insufficient detail in the board's analysis concerning the content of the rule. In addition, the analysis fails to indicate whether the board, in promulgating the rule, cooperated with the Law Enforcement Pursuit Standards Council and the Advisory Curriculum Committee, as required under s. 165.85 (4) (cm) 2., Stats.

b. The treatment clauses of the rule are incorrectly worded. [See, generally, s. 1.04, Manual.] For example, SECTION 1 should read: "LES 1.03 (18m) is created to read:". SECTION 4 should read: "LES 3.07 is created to read:".

c. In s. LES 1.03 (18m), "Means" should not be capitalized.

d. Since s. LES 3.03 (7) already exists, proposed s. LES 3.03 (7) is inappropriately numbered. Based on what is perceived as the apparent intent of proposed s. LES 3.03 (7), it is suggested that current s. LES 3.03 (intro.) be renumbered s. LES 3.03 (1) and current subs. (1) to (12) of s. LES 3.03 be renumbered pars. (a) to (L). Thus, SECTION 2 of the rule would create s. LES 3.03 (2) and the treatment clause should read: "LES 3.03 (2) is created to read:". It appears that the introductory clause of new s. LES 3.03 (2) (a) should read:

For purposes of sub. (1) (g), a training guide entitled "Use Pursuit Guidelines" is approved by the board and shall include student performance objectives and the following model advisory

standards that may be used by any law enforcement agency to determine whether to initiate, continue or terminate police pursuit:

e. The inclusion of "(intro.)" in subds. 1., 2. and 3. of s. LES 3.03 (7) (a) is unnecessary.

f. It is suggested that in s. LES 3.03 (7) (a) 1. (intro.), "A" should replace "Any," "police" should modify "pursuit" and "of the police pursuit" should modify "subject."

g. In s. LES 3.03 (7) (a) 2., "police" should modify "pursuit" and "a law enforcement officer" should replace "officers."

h. In s. LES 3.07 (7) (a) 2. a., the use of the notation "(s)" should be avoided. For purposes of construction of administrative rules, the singular includes the plural and the plural includes the singular. [See ss. 227.27 (1) and 990.001 (1), Stats.] In subd. 2. b., the parentheses should be deleted and the phrase "per provisions of" should be replaced by the phrase "as provided in."

i. In s. LES 3.03 (7) (a) 3. (intro.), "a law enforcement officer" should replace "law enforcement officers," "a police pursuit" should replace "vehicle pursuits" and it appears that "will" should be replaced by "should."

j. In s. LES 3.03 (7) (b), reference to sub. (7) should be revised to account for the new numbering.

k. Section LES 3.07 should not be divided into a single subunit. [See s. 1.03, Manual.] The exception clause in the first sentence of s. LES 3.07 should read: ", except those who serve on a temporary or probationary basis,.". The use of "and/or" in s. LES 3.07 is inappropriate. [See s. 1.01 (9) (a), Manual.] The last sentence of s. LES 3.07 could be better stated.

# PROPOSED ORDER OF THE LAW ENFORCEMENT STANDARDS BOARD

## Creating administrative rules.

### Introduction:

The Law Enforcement Standards Board proposes an order to create LES 1.03(18m), LES 3.03(7)(a)(intro.) 1. (intro.) a. and b., 2. (intro.) a. and b. and 3. (intro.) a. through e., LES 3.03(7)(b) and LES 3.07 (title) (1).

### Analysis:

For the proposal of the board to create administrative rules:

Statutory Authority: 165.85(4)(cm)2.

Statutes Interpreted: 165.85(4)(cm)2.a. and b.

The following proposed rules create model, voluntary standards for law enforcement vehicular pursuits. They define pursuits; create advisory standards that could be used by any law enforcement agency to determine whether to initiate or continue pursuits; establish law enforcement pursuit driving techniques; and, establish requirements for informing officers of their department's guidelines under s. 346.03(6), Stats.

In addition, they establish curricula for basic and annual recertification training of law enforcement officers related to police pursuit standards, guidelines and driving techniques.

SECTION 1. Create LES 1.03(18m) to read:

LES 1.03(18m) "Police pursuit" Means an active attempt by a traffic officer in a police vehicle to apprehend one or more occupants of a moving motor vehicle, the operator of which is resisting apprehension by disregarding the officer's visual or audible signal to stop his or her vehicle, increasing the speed of the vehicle or extinguishing the lights of the vehicle.

SECTION 2. Create LES 3.03(7)(a) (intro.) 1. (intro.) a. and b., 2. (intro.) a. and b. and 3. (intro.) a. through e. to read:

LES 3.03(7)(a)(intro.) A training guide entitled "Use Pursuit Guidelines" shall be approved by the board for subsection (7) and shall include student performance objectives. It shall also include the following model, advisory standards that could be used by any law enforcement agency to determine whether to initiate or continue police pursuit:

1. 'Initiation of pursuits.' (intro.) Any law enforcement officer in an authorized vehicle may initiate a pursuit when the subject is attempting to avoid apprehension and any of the following situations are present:

- a. The subject has committed or is attempting to commit a crime which involves an actual or threatened action which an officer reasonably believes resulted in or could result in death or great bodily harm to a person or persons; or,
- b. The subject, if allowed to escape, is likely to cause injury or death to a person or persons.

2. 'Continuation of pursuits.' (intro.) In determining whether or not to continue a pursuit that has been justifiably initiated, officers should consider the following factors:

- a. Whether continuation of the pursuit would likely create a danger to the public, officer(s) or subject(s) which is apparently greater than the value of apprehending the subject(s), due to such factors as, but not limited to, road conditions, weather conditions, density of population, severity of the crime and necessity of pursuit by vehicle; and,
- b. Whether the vehicle's registration or violator's identification has been established so that later apprehension may be accomplished, and, in the officer's opinion, there is no apparent continuing need for immediate apprehension ~~not~~ as provided in provisions of s. 346.175, Stats.).

3. 'Termination of pursuits.' (intro.) Law enforcement officers will terminate vehicle pursuits under any of the following conditions:

- a. At any time a supervisor orders termination;
- b. When the continuing distance between the pursuing and fleeing vehicles is such that further pursuit is futile;
- c. When the pursued vehicle's location is unknown;
- d. When the officer's vehicle or emergency equipment malfunctions; or
- e. When it is necessary to stop to render aid to an injured person or persons, and no other unit is available to do so.

← SECTION 3. Create LES 3.03(7)(b) to read:

LES 3.03(7)(b) A training guide entitled "Use Emergency Vehicle Driving Techniques" shall be approved by the board for subsection (7) and shall include student performance objectives for police pursuit driving techniques.

SECTION 4. Create LES 3.07 (title) (1) to read:

LES 3.07 **Minimum standards for recertification training.** (1) Minimum standards for recertification training for law enforcement and tribal law enforcement officers shall require that law enforcement and tribal law enforcement officers, with exception of those who serve on a temporary or probationary basis, shall biennially complete at least 4 hours of training the curriculum of which shall include reference to employer's guidelines provided under s. 346.03(6) Stats. Training may also include achievement of student performance objectives from board approved training guides entitled "Use Pursuit Guidelines" and "Use Emergency Vehicle Driving Techniques" and/or review, for policy development, or applicable research and new technology and/or training to employ new technology