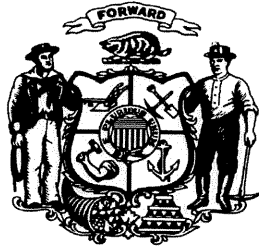


State of Wisconsin



GARY R. GEORGE
SENATOR

TO: Members, Senate Committee on Judiciary and Consumer Affairs and
Campaign Finance Reform

FROM: Dan Rossmiller, Clerk
Senate Committee on Judiciary and Consumer Affairs and
Campaign Finance Reform

RE: Referral of Clearinghouse Rule 99-115 to the
Senate Committee on Judiciary and Consumer Affairs

DATE: March 29, 2001

This memo serves as notification that 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, was referred to the Senate Committee on Judiciary and Consumer Affairs on March 28, 2001. The committee has thirty days in which to review this rule.

A copy of the rule is attached.



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

JAMES E. DOYLE
ATTORNEY GENERAL

Burnetta L. Bridge
Deputy Attorney General

Division of Law Enforcement Services
Training and Standards Bureau

123 West Washington Avenue
P.O. Box 7070
Madison, WI 53707-7070
608/266-8800
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V/TTY 608/267-8902

March 23, 2001

Honorable Fred Risser
President, State of Wisconsin Senate
Room 22, South
State Capitol
P.O. Box 7882
Madison, WI 53707-7882

Dear Senator Risser:

Enclosed for your assignment for committee review are proposed administrative rules of the Law Enforcement Standards Board.

Should you need additional information, please contact me at the following address:

Dennis Hanson, Director
Training and Standards Bureau
Wisconsin Department of Justice
123 West Washington Avenue
P.O. Box 7070
Madison, WI 53707-7070

Telephone: 608/266-7864

Sincerely,

Dennis Hanson, Director
Training and Standards Bureau

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) and 3.07(intro.) relating to model standards for law enforcement vehicular pursuits and for related training.

Analysis Prepared By The Training And Standards Bureau, Wisconsin Department of Justice:

For the proposal of the board to renumber and 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 a law enforcement agency to guide its officers' decisions 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.

The law enforcement standards board promulgates proposed rules in cooperation with the pursuit standards council pursuant to s. 165.85 (4)(cm)2. Stats. The council consists of seven members appointed by the Attorney General pursuant to s. 15.257(3) Stats.

In addition, proposed rules establish curricula related to police pursuit standards, guidelines and driving techniques for basic and annual training of law enforcement officers. Curricula were recommended to the board by the advisory curriculum committee established by s. 165.85(3)(d) Stats. and in cooperation with the board pursuant to s. 165.85 (4)(cm)2.b. Stats.

Regulatory Flexibility Analysis:

The proposed rules do not affect small businesses.

Explanation Of Need For Proposed Rules:

The Law Enforcement Standards Board is required by s. 165.85(4)(cm)2.a. Stats., to "Establish model standards that could be used by any law enforcement agency to determine whether to initiate or continue police pursuit, to establish police pursuit driving techniques employed by that agency and to inform its officers of its written guidelines...." It is also required by s. 165.85(4)(cm)2.b. Stats., to "...establish the (law enforcement officer) preparatory program and annual recertification training curricula...relating to pursuit standards, guidelines and driving techniques."

Proposed Rule Modification Resulting From Testimony Received At Public Hearings and Identification Of Persons Who appeared Or Registered At Public Hearings

The Board amended its proposed rule pertaining to initiation of pursuits from results of three public hearings.

It amended "initiation of pursuits" from:

INITIATION OF PURSUITS. 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;
- b. The subject, if allowed to escape, is likely to cause injury or death to a person or persons.

to:

INITIATION OF PURSUITS. Any law enforcement officer in an authorized vehicle may initiate a pursuit when the subject is attempting to avoid apprehension.

The Board conducted an initial public hearing on August 17, 1999, at Fond du Lac. The hearing was attended by 67 persons.

Speaking to provide information:

Sheriff Steve Fitzgerald, Dodge County Sheriff's Office (and Chairman of the Attorney General's Pursuit Standards Council)
Loralee Brummund, Wisconsin State Patrol

Speaking against proposed rules:

Sheriff Eric Runass, Rock County Sheriff's Office
Sheriff Orval Quamme, Jefferson County Sheriff's Office
(in behalf of the Badger State Sheriffs' Association)
Chief Howard Thiede, Grafton Police Department
Mike Davel, Port Washington Police Department
Captain Randy Tylke, Milwaukee County Sheriff's Office
Chief Deputy Jim Knowles, Ozaukee County Sheriff's Office
Chief John Roelandts, Tn of Oconomowoc Police Department
King Riffel
Sheriff Pat Fox, Waushara County Sheriff's Office
Chief Randy Boeldt, Elkhart Lake Police Department
Fred Goetz, Grafton Police Department
Commander Tom Gehl, Rock County Sheriff's Office
Paul Clarke, North Fond du Lac Police Department
Roger La Bombard, Marinette Police Department
Chief Leslie Sharrock, Waukesha Police Department
Brian Rahn, Wisconsin State Patrol

The Board also conducted a public hearing on August 18, 1999, at EauClaire. It was attended by 44 persons.

Speaking to provide information:

Sergeant Tanya Conners, Wisconsin State Patrol

Speaking against proposed rules:

Douglas Notbohm, Wisconsin State Patrol
Sheriff Terry Dryden, Washburn County Sheriff's Office
(in behalf of the Wisconsin Sheriffs' and Deputy Sheriffs' Association)
Jeff Pettis, Eau Claire County Sheriff's Office
Richard Trende, Hudson Police Department
Jerry Matysik, Eau Claire Police Department
Sheriff Richard Galster, Jackson County Sheriff's Office
Chief Bob Breidenbach, Chetek Police Department
Sheriff Richard Pokema, Douglas County Sheriff's Office
Sheriff Bob Zebro, Dunn County Sheriff's Office
Chief John Augsburg, Washburn Police Department
Chief Joe Coughlin, Chippewa Falls Police Department
(in behalf of the Wisconsin Chiefs of Police Association)
Sheriff Scott Pedley, LaFayette County Sheriff's Office
Sheriff Dean Meyer, Rusk County Sheriff's Office
Captain Gary Schmidt, Vilas County Sheriff's Office
Chief Roger Laque, River Falls Police Department

A final public hearing was conducted on February 23, 2000, at Stevens Point. It was attended by 20 persons.

Speaking to provide information:

Tom Barton
(in behalf of ABATE of Wisconsin)

Speaking in favor of proposed rules:

Sheriff Orval Quamme, Jefferson County Sheriff's Office
(in behalf of the Badger State Sheriffs' Association)
Commander Tom Gehl, Rock County Sheriff's Office
Lt. William Bruckbauer, Sheboygan County Sheriffs' Office
Captain Gary Schmidt, Vilas County Sheriff's Office
Sgt. Jim Bamm, Menominee Falls Police Department

Response To Legislative Council Staff Recommendations

Recommendations of the Rules Clearinghouse of the Legislative Council Staff to the Standards Board were contained in Clearinghouse Rule 99-115 dated August 13, 1999. All recommendations of the Clearinghouse have been followed.

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

LES 1.03(18m) In this chapter, "police pursuit" has the meaning given in s. 85.07(8)(a), Stats.

SECTION 2. LES 3.07 is created to read:

LES 3.07 Law enforcement pursuit standards and related training. (1) Model standards for initiating, continuing and terminating police pursuit. The following model advisory standards may be used by any law enforcement agency to determine whether to initiate, continue or terminate police pursuit:

(a) 'Initiation of pursuits.' A law enforcement officer in an authorized vehicle may initiate a police pursuit when the subject of the police pursuit is attempting to avoid apprehension.

(b) 'Continuation of pursuits.' In determining whether or not to continue a police pursuit that has been justifiably initiated, a law enforcement officer should consider the following factors:

1. Whether continuation of the pursuit would likely create a danger to the public, officer or subject which is apparently greater than the value of apprehending the subject, 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.

2. Whether the vehicle's registration or the subject's identity 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.

(c) 'Termination of pursuits.' A law enforcement officer should terminate a police pursuit under any of the following conditions:

1. When a supervisor orders termination.

2. When the continuing distance between the pursuing and fleeing vehicles is such that further pursuit is futile.

3. When the location of the pursued vehicle is unknown.

4. When the officer's vehicle or emergency equipment malfunctions.

5. When it is necessary to stop to render aid to one or more injured persons and no other unit is available to do so.

(2) Model standards for police pursuit driving techniques. The following model advisory standards for police pursuit driving techniques may be used by any law enforcement agency. An officer engaged in a police pursuit should do all of the following:

- (a) Adhere to and apply all of the emergency vehicle driving techniques that the officer has been taught
- (b) Assess and reassess weather, roadway and traffic conditions throughout the duration of the pursuit and make changes in speed and following distance where appropriate
- (c) Consider and apply the officer's knowledge of the capabilities and limitations of his or her vehicle.
- (d) Consider and apply the officer's knowledge of his or her individual abilities and limitations.
- (e) Establish a position on the roadway and maintain sufficient maneuvering room to allow the officer to see and react to what may appear ahead.
- (f) Maintain visual contact with subject of the pursuit and be alert to clues as to what the subject may do next.
- (g) Be alert and prepared for road and traffic conditions that favor the subject of the pursuit.
- (h) Try to end the pursuit as quickly as possible, while considering safety and using maximum caution.
- (i) Remain alert for possible dangers, including the reactions of other drivers, and drive professionally, with good judgment and an awareness of the risks being taken.

(3) Curriculum for preparatory training in police pursuit standards, guidelines and driving techniques. Preparatory law enforcement officer training under s. 165.85(4)(b)1., Stats., shall include all of the following:

- (a) At least 8 hours of classroom training in emergency vehicle operations.
- (b) At least 20 hours of behind the wheel training focusing on specific emergency maneuver skills and techniques.

(c) At least 4 hours of training in decision-making regarding police pursuits and the conduct of police pursuits, including all of the following subjects:

1. Initiating, continuing and terminating police pursuit under sub. (1).
2. Police pursuit driving techniques under sub (2).
3. Law enforcement agency pursuit guidelines established under s. 346.03(6), Stats..

(4) Curriculum for annual recertification training in police pursuit standards, guidelines and driving techniques. Law enforcement officer recertification training under s. 165.85(4)(bn), Stats., shall include at least 4 hours of training biennially in police pursuit standards, guidelines and driving techniques. This training shall include reference to law enforcement agency pursuit guidelines established under s. 346.03(6), Stats.. Training may also include review, for policy development, of applicable research and new technology or training in other subjects related to police pursuits as determined by sheriffs, chiefs of police or other commanding officers.

(5) Approved training manuals. Law enforcement officer training manuals entitled "Use Pursuit Guidelines" and "Use Emergency Vehicle Driving Techniques" are approved by the board. Preparatory law enforcement officer training under s. 165.85(4)(b)1., Stats., and recertification training under s. 165.85(4)(bn), Stats., may include achievement of student performance objectives for police pursuit standards, guidelines and driving techniques included in these approved manuals.

EFFECTIVE DATE: This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (intro.), stats.

FISCAL ESTIMATE FORM

1999 Session

ORIGINAL
 CORRECTED

UPDATED
 SUPPLEMENTAL

LRB #

INTRODUCTION #

Admin. Rule #

Subject

Administrative rules relating to law enforcement vehicular pursuit and to related training.

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation
- Decrease Existing Appropriation
- Create New Appropriation
- Increase Existing Revenues
- Decrease Existing Revenues

Increase Costs - May be possible to Absorb Within Agency's Budget Yes No

Decrease Costs

Local: No local government costs

- 1. Increase Costs
 Permissive Mandatory
- 2. Decrease Costs
 Permissive Mandatory

- 3. Increase Revenues
 Permissive Mandatory
- 4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
- Towns Villages Cities
 - Counties Others *in bill*
 - School Districts WTCS Districts

Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

20.455.(2)(j) and (ja)

Assumptions Used in Arriving at Fiscal Estimate:

Proposed rules of the Law Enforcement Standards Board establish voluntary pursuit standards. Law enforcement agencies are not required to comply with the standards or to amend their policies to conform with the standards.

The proposed rules establish a curriculum for biennial training related to vehicular pursuits. As instruction will qualify for inclusion in the annual 24-hour recertification training requirement for each law enforcement officer for which the Department of Justice reimburses expenses, it will not generate any additional training expenses.

The Department of Justice provides staff services for the Law Enforcement Standards Board under s. 165.86 Stats. The current expense of those services will neither increase nor decrease as a result of proposed administrative rules for vehicular pursuits and related training.

Long-Range Fiscal Implications:

Prepared By: / Phone # / Agency Name
Dennis Hanson/6-7864/DOJ

Authorized Signature / Telephone No.

John H. Richard

267-1932

Date
July 8, 1999

FISCAL ESTIMATE WORKSHEET

Detailed Estimate of Annual Fiscal Effect

1999 Session

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB #

Admin. Rule #

INTRODUCTION #

Subject

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

II. Annualized Costs:

Annualized Fiscal impact on State funds from:

A. State Costs by Category

Increased Costs

Decreased Costs

State Operations - Salaries and Fringes

\$

\$

-

(FTE Position Changes)

(

FTE)

(-

FTE)

State Operations - Other Costs

-

Local Assistance

-

Aids to Individuals or Organizations

-

TOTAL State Costs by Category

\$

\$

-

B. State Costs by Source of Funds

Increased Costs

Decreased Costs

GPR

\$

\$

-

FED

-

PRO/PRS

-

SEG/SEG-S

-

State Revenues Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)

Increased Rev.

Decreased Rev.

GPR Taxes

\$

\$

-

GPR Earned

-

FED

-

PRO/PRS

-

SEG/SEG-S

-

TOTAL State Revenues

\$

\$

-

NET ANNUALIZED FISCAL IMPACT

STATE

LOCAL

NET CHANGE IN COSTS

\$

\$

NET CHANGE IN REVENUES

\$

\$

Prepared By: / Phone # / Agency Name

Authorized Signature/Telephone No.

Date