

**POLICE ACCOUNTABILITY BOARD
REGULAR MEETING SUPPLEMENTAL AGENDA PACKET
Wednesday, October 30, 2024
6:30 P.M.**

Board Members

John Moore III (Chair)
Kitty Calavita
Brent Blackaby
Alexander Mozes

Leah Wilson (Vice-Chair)
Juliet Leftwich
Joshua Cayetano
David Williams

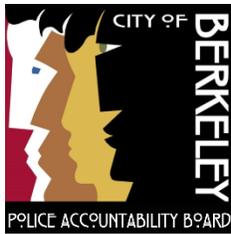
MEETING LOCATION

North Berkeley Senior Center
1901 Hearst Avenue
Berkeley, CA 94709
([Click here for Directions](#))

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Item 10.c.

Memorandum from the PAB Policy Subcommittee Titled “Vehicle Pursuit
Policy Update”



MEMORANDUM

Date: October 28, 2024
To: Honorable Members of the Police Accountability Board
From: PAB Policy Subcommittee¹
Subject: Vehicle Pursuit Policy Update

On October 9, 2024, Berkeley Police Department (BPD) announced that the new vehicle pursuit policy, Policy 307, will be in effect by early November 2024, pending the City Attorney's approval. BPD's intent is to have Policy 307's implementation date coincides with the full rollout of the new Automated License Plate Reader (ALPR) system.²

Policy 307 is based on the Lexipol template, which will replace General Order V-6.³ The PAB's governing Charter requires all policy revisions to be submitted to the PAB for review within 30 days of implementation and provides for a 60-day review period.⁴ The Subcommittee expects that 60-day deadline to begin once BPD officially informs the Board of Policy 307's implementation date.

In the spirit of the Charter, the Policy Subcommittee (Subcommittee) and BPD have jointly reviewed and revised Policy 307 for the last six months. Our joint review has been productive and collaborative, and is continuing, but a few policy differences remain unresolved. The purpose of this memo is to provide a preliminary overview of our policy discussions in order to update the Board, generate discussion, and solicit initial feedback.

Shared Understanding of the Danger of Vehicle Pursuits and Need for Objective Criteria in Vehicle Pursuit Policy

Police chases in densely populated neighborhoods are deadly. An award-winning investigation by the *San Francisco Chronicle* found that police pursuits nationwide kill nearly two people per day.⁵ Between 2017 and 2022, at least 3,366 people were killed as

¹ The PAB Policy Subcommittee consists of Board Members Joshua Cayetano and Juliet Leftwich, along with Public Member Kitt Saginor.

² BPD Policy 422 "Fixed Automated License Plate Readers:" https://berkeleyca.gov/sites/default/files/documents/RELEASE_20240301_T161429_Berkeley%20PD%20Policy%20Manual.pdf#Page=410

³ BPD Policy V-6 "Vehicle Pursuits:" <https://berkeleyca.gov/sites/default/files/2022-05/V-06%20Vehicle%20Pursuits%202010.pdf>

⁴ Berkeley City Charter Section 125(17)(a): [https://berkeley.municipal.codes/Charter/125\(17\)\(a\)](https://berkeley.municipal.codes/Charter/125(17)(a))

⁵ <https://www.sfchronicle.com/projects/2024/police-chases/>

a result of police pursuits and more than 52,600 people were injured. Of those killed, at least 551 were bystanders. People of color, especially Black and Latino people, were killed at vastly higher rates disproportionate to their share of the population compared to white people.⁶

The Subcommittee and BPD agree that a safe and effective vehicle pursuit policy requires objective criteria to guide officer decision-making and reduce the potential hazards of pursuits. We have revised 307.1 “Purpose and Scope” to reflect that understanding. See Appendix A.

307.1 Purpose and Scope

Vehicle pursuits are high-risk events that can cause serious injury or death to officers, suspects and innocent bystanders. The purpose of this policy is to reduce the potential hazards created by vehicle pursuits by establishing the objective criteria and clear decision-making process that must be followed by officers when deciding whether to initiate, continue, or terminate a pursuit.

Nothing in this policy prohibits the use of other tactics to apprehend suspects.

ALPR Alerts and Vehicle Pursuits in Berkeley

BPD and the Subcommittee agree that GO V-6’s threshold standard⁷ is substantively good policy. Some other jurisdictions mistakenly: (1) give too much discretion to officers to initiate pursuits; and (2) allow pursuits for traffic infractions and non-violent misdemeanors. Those “looser” pursuit policies inevitably lead to more police chases through city streets, result in more collisions, more property damage, more financial liability, more injuries, and more deaths.⁸

The Subcommittee is concerned that the new ALPR system will lead to more police pursuits in Berkeley. Within the first few weeks of the ALPR pilot program rollout, BPD received a Flock alert about a stolen vehicle and initiated a vehicle pursuit after the fleeing suspect sideswiped a police car and allegedly attempted to ram another. The pursuit ended with a crash near Mills College. The pursuing officer was injured, the driver and passenger were taken to the hospital, and a driver in another vehicle suffered several broken bones.⁹ The stolen vehicle was severely damaged and three other vehicles were damaged.¹⁰

⁶ <https://www.sfchronicle.com/projects/2024/police-chases/>

⁷ BPD Policy V-6 “Vehicle Pursuits” Section 20(a)-(c)

⁸ <https://portal.cops.usdoj.gov/resourcecenter/content.ashx/cops-r1134-pub.pdf> , pg. 28.

⁹ <https://www.berkeleyside.org/2024/10/16/police-pursuit-from-berkeley-to-oakland-ends-with-4-hospitalized-2-arrests>; <https://www.berkeleyscanner.com/2024/10/17/traffic-safety/berkeley-police-chase-stolen-car-flock-hit-driver-arrested/>.

¹⁰ The Subcommittee does not have enough information to evaluate whether that specific incident was within policy.

ALPRs present a unique challenge for writing pursuit policy. We forecast that the most common type of ALPR hit is a stolen vehicle report. Berkeley's policy prohibits pursuits to recover stolen property. It makes little sense to pursue stolen vehicles when an injured bystander or property damage is just as likely as an apprehension. BPD Policy states that:

A vehicle pursuit may only be initiated when there is reasonable suspicion to detain, or probable cause to arrest, a suspect in a fleeing vehicle during any of the following situations:

- a) A violent crime involving serious bodily injury or serious bodily harm.
- b) A violent crime involving the use of a deadly weapon against a person.
- c) A credible threat of serious bodily injury, serious bodily harm, or use of a deadly weapon against a person. G-0 V-6(20).

Although the language seems clear, it allows enough interpretive wiggle room to justify a pursuit of a fleeing driver on the basis that *reckless driving*—a misdemeanor—presents a credible threat of serious bodily injury to another driver or pedestrian. It also does not instruct officers to distinguish between incidental contact with vehicles (not a violent crime) with intentional attempts to ram people (a violent crime). A pursuit policy requires a clear bright line, based on the suspected crime and risk to the community, that instructs officers when they are authorized to pursue a suspect.¹¹

We will be focusing on the relationship between Policy 307 and the ALPR system as our work with BPD continues.

Limiting Pursuit Intervention Tactics in Berkeley

Police chases begin with the ultimate goal of safely apprehending the suspect. Police departments use a variety of intervention techniques to end pursuits—some can be safely used in densely-populated neighborhoods and others are too dangerous to be permitted in a city like Berkeley.

The most dangerous and deadly intervention tactic is the “precision immobilization technique” or PIT maneuver.¹² Police execute a PIT maneuver by ramming the back of a vehicle to turn it sideways abruptly, causing the driver to lose control and stop.¹³ Jurisdictions across the state and country have banned the use of PIT and other ramming maneuvers in their neighborhood, including San Francisco and San Diego. Others, like Los Angeles County, limit the maneuver to 35 miles per hour.

¹¹ <https://portal.cops.usdoj.gov/resourcecenter/content.ashx/cops-r1134-pub.pdf>, pg. 30.

¹² <https://www.sfchronicle.com/projects/2024/police-pursuits-pit/>

¹³ For an example of an unsafe PIT maneuver, see https://www.youtube.com/watch?v=1qz_JXNPQFw&ab_channel=WorldWidePoliceInsight at 15:10 – 15:25. For a successful PIT maneuver, see https://www.youtube.com/watch?v=K3ArXO60HCY&ab_channel=KCALNews.

The Subcommittee's position is that PIT maneuvers and ramming should not be authorized intervention tactics in Berkeley. BPD can use a variety of less dangerous techniques to track and stop fleeing vehicles, including Vehicle Containment Technique (VCT), tire deflation devices (similar to spike strips), and setting up roadblocks. However, there is very limited data on the use of PIT maneuvers in Berkeley and on the safety and efficacy of other intervention tactics.

- If the Board is interested, the Subcommittee can solicit opinions from outside law enforcement professionals and community experts to speak to the use of PIT maneuvers and other intervention techniques in city streets.

Increasing Pursuit Data Collection and Transparency

Collecting, analyzing, and sharing pursuit data is essential to crafting a successful pursuit policy. GO V-6 did not set forth a systematic audit of vehicle pursuits. Currently, BPD collects and reports pursuit data as required under state law. The report—California Highway Patrol (CHP) Form 187A¹⁴—contains basic data like the county location of the pursuit, the reason for the pursuit, whether any injuries were sustained as a result of the pursuit, the result of the pursuit, and demographic data of the suspect. To understand how vehicle pursuits have operated in Berkeley, the Subcommittee was required to submit a Public Records Act request to CHP and, in response, we only received three out of eleven years of the requested 187A forms. Our lack of access to pursuit data in Berkeley has slowed the Subcommittee's work significantly.

The Subcommittee has made a number of recommendations to BPD to increase pursuit data collection and transparency, including:

1. Requiring the Chief to conduct an annual internal audit of vehicle pursuits and submitting her findings in BPD's annual report to City Council, similar to the reporting requirements in Berkeley's Controlled Equipment Ordinance. See Berkeley Municipal Code 2.100.¹⁵
2. Requiring officers to activate their body-worn camera when they initiate or join a pursuit. See Policy 425.7 Body Worn Cameras —Activation of the Body Worn Camera¹⁶
3. Collecting additional pursuit data like the specific pursuit path through the City of Berkeley in order to track the collision rates in differently populated neighborhoods.
4. Adding the collected data on vehicle pursuits to the Transparency Hub—which already tracks stops, arrests, and calls for service.

¹⁴ California Highway Patrol Form 187(a) "Allied Vehicle Pursuit Report:"

<https://www.chp.ca.gov/Documents/Chp187A.pdf>

¹⁵ Berkeley Municipal Code 2.100 "Police Equipment and Community Safety Ordinance:"

<https://berkeley.municipal.codes/BMC/2.100>

¹⁶ BPD Policy 425 "Body Worn Cameras:"

https://berkeleyca.gov/sites/default/files/documents/RELEASE_20240301_T161429_Berkeley%20PD%20Policy%20Manual.pdf

5. Sharing with the PAB the 187A forms from 2013-2020 that the CHP did not provide to the Subcommittee.

The topics discussed above are not exhaustive. The Subcommittee and BPD continue to discuss revisions to the definition of "pursuit" to allow greater flexibility to "follow" or "trail" suspects and the availability of air support.

BPD has asked the Subcommittee to consider supporting a change to 1982 City Council Resolution (No. 51,408), which prohibits BPD use of helicopters during pursuits. The Subcommittee has agreed to consider additional information from BPD, but is not prepared to weigh in until we have researched the issue.

Appendix A – Vehicle Pursuit Policy Draft Language

(1) 307.1 Purpose and Scope

GO V-6	Lexipol Draft
<p>The purpose of this Order is to set forth the responsibilities of all police personnel who are involved in any phase of a vehicle pursuit, and establish the objective standards that must be used by an officer to decide whether to initiate, continue, or terminate a pursuit. The policy set forth in this Order is intended to reduce potential hazards to the public and to pursuing officers generated by police pursuits of fleeing suspects while maximizing the opportunity for apprehension.</p>	<p>This policy provides guidelines for vehicle pursuits in order to protect the safety of involved officers, the public, and fleeing suspects.</p>

BPD & PAB Final Draft
<p>Vehicle pursuits are high-risk events that can cause serious injury or death to officers, suspects and innocent bystanders. The purpose of this policy is to reduce the potential hazards created by vehicle pursuits by establishing the objective criteria and clear decision-making process that must be followed by officers when deciding whether to initiate, continue, or terminate a pursuit.</p> <p>Nothing in this policy prohibits the use of other tactics to apprehend suspects.</p>

(2) 307.1.1 Vehicle Pursuit Definition

GO V-6 & Lexipol/CHP/BPD Final Draft	PAB 10/24 Revision
<p>An event involving one or more law enforcement officers attempting to apprehend a suspect, who is attempting to avoid arrest while</p>	<p>An event involving one or more law enforcement officers attempting to apprehend a suspect, who is attempting to avoid arrest while operating</p>

operating a motor vehicle by using high-speed driving or other evasive tactics, such as driving off a highway, turning suddenly, or driving in a legal manner but willfully failing to yield to an officer's signal to stop.	or riding as a passenger in a motor vehicle by using high-speed driving or other evasive tactics, such as driving off a highway or turning suddenly.
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(3) 307.3.1 When to Initiate a Pursuit

GO V-6 & BPD Final Draft	PAB 10/24 Revision
<p>A vehicle pursuit may only be initiated when there is reasonable suspicion to detain, or probable cause to arrest, a suspect in a fleeing vehicle during any of the following situations:</p> <ul style="list-style-type: none"> a) A violent crime involving serious bodily injury or serious bodily harm. b) A violent crime involving the use of a deadly weapon against a person. c) A credible threat of serious bodily injury, serious bodily harm, or use of a deadly weapon against a person. 	<p>Option A:</p> <p>A vehicle pursuit may only be initiated when there is reasonable suspicion to detain, or probable cause to arrest, a suspect in a fleeing vehicle</p> <ol style="list-style-type: none"> 1. In connection with any of the following situations: <ul style="list-style-type: none"> a) A violent crime involving serious bodily injury or serious bodily harm or b) A violent crime involving the use of a deadly weapon against a person or c) A credible threat of serious bodily injury, serious bodily harm, or use of a deadly weapon against a person. <p>AND</p> <ol style="list-style-type: none"> 2. Failure to immediately apprehend the suspect presents an imminent threat to the public based on the suspect's criminal actions, not the danger created from the suspect's driving as they flee from police. <p>Option B.</p> <p>A vehicle pursuit may only be initiated when there is reasonable suspicion to detain, or probable cause to arrest, a suspect in a fleeing vehicle in connection with any of the following situations:</p>

	<ul style="list-style-type: none"> a. A violent crime involving serious bodily injury or serious bodily harm b. A violent crime involving the use of a deadly weapon against a person c. A credible threat of serious bodily injury, serious bodily harm, or use of a deadly weapon against a person. <p>For the purposes of this subsection, a vehicle is not considered a deadly weapon unless the operator is using the vehicle as a deadly weapon and no other reasonable means to avoid potential serious harm are immediately available to the officer.</p>
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(4) 307.8.1 Use of Firearms

Lexipol, BPD Final Draft	GO V-6, PAB Final Draft
<p>“Shots fired at or from a moving vehicle are rarely effective and involve considerations and risks in addition to the justification for the use of force. When feasible, officers should take reasonable steps to move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants. An officer should only discharge a firearm at a moving vehicle or its occupants when the officer reasonably believes there are no other reasonable means available to avert the imminent threat of the vehicle, or if deadly force other than the vehicle is directed at the officer or others (Government Code § 7286(b)).</p>	<p>The use of firearms in a pursuit is governed by Policy 300.4.3 “Shooting at or from moving vehicles” which states:</p> <p>Firearms shall not be discharged at a stationary or moving vehicle, the occupants of a vehicle, or the tires of a vehicle unless a person in the vehicle is imminently threatening an officer or another person present with deadly force. The moving vehicle alone does not presumptively constitute a threat that justifies the use of deadly force.</p>

Officers should not shoot at any part of a vehicle in an attempt to disable the vehicle.”	
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(5) 307.8.2 Intervention Standards
a. PIT/Ramming/Blocking

GO U-2; V-6	BPD Draft #1, #2 & PAB Final Draft
<p>V-6: The use of a police vehicle to block, ram, or use a PIT (pursuit intervention technique), or otherwise interfere with a fleeing vehicle, is authorized only in extreme circumstances as outlined in General Order U-2.</p> <p>U-2 (13): Officers shall not use police vehicles to ram or block other vehicles, persons, or moving objects in a manner that reasonably appears to constitute the use of lethal force, except in the following circumstances:</p> <ul style="list-style-type: none"> (a) When the officer reasonably believes that doing so is necessary to protect the officer or others from death or serious bodily injury, and, where feasible, some warning has been given. (b) To apprehend a suspected fleeing felon: <ul style="list-style-type: none"> (1) When necessary to prevent escape, and (2) When the officer has probable cause to believe that the suspected fleeing felon poses a significant threat of death or serious bodily injury to the officer or others, and (3) Where feasible, some warning has been given 	<p><u>The use of a police vehicle to PIT, ram, box in, or roadblock is not authorized.</u></p>

BPD Final Draft	Lexipol
<p>The PIT maneuver, Ramming, Boxing, and Roadblock intervention tactics shall only be used in extreme circumstances as outlined in the Use of Force Policy: i.e. when it is objectively reasonable, based on</p>	<p>Officers should consider these facts and requirements prior to deciding how, when, where, and if an intervention tactic should be employed.</p>



the totality of the circumstances, that the tactic is objectively necessary to,

- 1) defend against an imminent threat of death or serious bodily injury to the officer or another or
- 2) apprehend a suspected fleeing person for any felony that threatened or resulted in death or serious bodily injury, provided that the need to apprehend the fleeing person outweighs the risk to the officer, the public, the fleeing person and other persons in or on the pursued vehicle.

The PIT shall only be used when the following conditions are met:

1. The officer(s) have received training in the technique.
2. The speed of both the officer and the suspect vehicle is 35 miles per hour (mph) or less.
3. When feasible, the officer(s) have obtained supervisory approval to use the technique.
4. The need to immediately stop the suspect vehicle reasonably appears to outweigh the risks of injury or death to occupants of the suspect vehicle, officers, or other members of the public.
5. It reasonably appears the technique will terminate or prevent the pursuit.

Ramming shall only be used when the following conditions are met:

1. When feasible, the officer(s) have obtained supervisory approval to use the technique.
2. The need to immediately stop the suspect vehicle reasonably appears to substantially outweigh the risks of injury or death to occupants of the suspect vehicle, officers, or other members of the public.

(a) Blocking should only be used after giving consideration to the following:

1. The technique should only be used by officers who have received training in the technique.
2. The need to immediately stop the suspect vehicle or prevent it from leaving reasonably appears to outweigh the risks of injury or death to occupants of the suspect vehicle, officers, or other members of the public.
3. It reasonably appears the technique will contain or prevent the pursuit.

(b) The PIT should only be used after giving consideration to the following:

1. The technique should only be used by officers who have received training in the technique, including speed restrictions.
2. Supervisory approval should be obtained before using the technique.
3. The need to immediately stop the suspect vehicle reasonably appears to outweigh the risks of injury or death to occupants of the suspect vehicle, officers, or other members of the public.
4. It reasonably appears the technique will terminate or prevent the pursuit.

(c) Ramming a fleeing vehicle should only be done after giving consideration to the following:

1. Supervisory approval should be obtained before using the technique.
2. The need to immediately stop the suspect vehicle reasonably appears to substantially outweigh the risks of injury or death to occupants of the suspect vehicle, officers, or other members of the public.

3. It reasonably appears the technique will terminate or prevent the pursuit.
4. Ramming may be used only under circumstances when deadly force would be authorized.
5. Ramming may be used when all other reasonable alternatives have been exhausted or reasonably appear ineffective.

Boxing in a suspect vehicle during a pursuit shall only be used if the following conditions are met:

1. The officer(s) have received training in the technique.
2. If feasible, the officer(s) have obtained supervisory approval to use the technique.
3. The need to immediately stop the suspect vehicle reasonably appears to outweigh the risks of injury or death to occupants of the suspect vehicle, officers, or other members of the public.
4. It reasonably appears the technique will terminate or prevent the pursuit.

Roadblocks shall only be used if the following conditions are met:

1. The officer(s) have received training in their use.
2. If feasible, the officer(s) have obtained supervisory approval to use the technique.
3. The need to immediately stop the suspect vehicle reasonably appears to substantially outweigh the risks of injury or death to occupants of the suspect vehicle, officers, or other members of the public.
4. It reasonably appears the technique will terminate or prevent the pursuit. Roadblocks may be used only under circumstances when deadly force would be authorized.
5. Roadblocks may be used when all other reasonable alternatives have been exhausted or reasonably appear ineffective.

3. It reasonably appears the technique will terminate or prevent the pursuit.
4. Ramming may be used only under circumstances when deadly force would be authorized.
5. Ramming may be used when all other reasonable alternatives have been exhausted or reasonably appear ineffective.

(d) Before attempting to box a suspect vehicle during a pursuit the following should be considered:

1. The technique should only be used by officers who have received training in the technique.
2. Supervisory approval should be obtained before using the technique.
3. The need to immediately stop the suspect vehicle reasonably appears to outweigh the risks of injury or death to occupants of the suspect vehicle, officers, or other members of the public.
4. It reasonably appears the technique will terminate or prevent the pursuit.