



AGENDA OF THE PERSONNEL COMMITTEE

TUESDAY, JANUARY 7, 2020, 4:30 PM

CITY HALL, ROOM 207

AMENDED

Immediately following Finance, which begins at 4:30 p.m.

A. Roll Call.

- I. Members: Ald. Bill Galvin, Chair, Ald. Kathy Lefebvre, Vice Chair, Ald. Barbara Dorff, Ald. Veronica Corpus-Dax

B. Approval of the Agenda.

C. Approval of Minutes.

- I. Approval of the minutes from December 10, 2019.

D. Regular Business.

- I. Consideration with possible action on request to fill the following replacement positions and all subsequent vacancies resulting from internal transfers.
 - a. Custodian I - Police
 - b. Parking Enforcement Officer - Public Works
2. Consideration with possible action on the Grievance filed by Officer Jeffrey Brann regarding the Personnel File Entry Report issued December 17, 2018.

The Committee may convene in closed session pursuant to § 19.85(1)(a), Wis. Stats., for the purpose of deliberating concerning a case which was the subject of any judicial or quasi-judicial trial or hearing before that governmental body. The Committee may, thereafter, reconvene in open session pursuant to § 19.85(2), Wis. Stats. to report any actions taken during closed session and to consider all other matters on the agenda.

3. Consideration with possible action on an intergovernmental agreement with the Green Bay Area Public School District to permit off-duty police officers to use City of Green Bay Police Department uniforms and equipment.

E. Informational.

1. Report of routine personnel actions for regular employees.
2. Next meeting date: January 28, 2020

F. Public Hearings.

G. Adjournment.

- 1) THIS MEETING IS RECORDED: THE VIDEO OF THIS MEETING AND MINUTES ARE AVAILABLE ONLINE AT www.greenbaywi.gov
- 2) ACCESSIBILITY: Any person wishing to attend who requires special accommodation because of a disability, should contact the City Safety Manager at 920-448-3125 at least 48 hours before the scheduled meeting time so that arrangements can be made.
- 3) QUORUM: Please take notice that a majority or quorum of the Common Council will attend this Personnel Committee meeting and will constitute a meeting of the Common Council for purposes of discussion and information gathering relative to this agenda.
- 4) REPRESENTATION: The party requesting the communication, or their representative, should be present at this meeting.



Report to the
Personnel Committee
of the City of Green Bay

MEETING DATE

January 7, 2020

PREPARED BY

AGENDA ITEM # D.I.

Consideration with possible action on request to fill the following replacement positions and all subsequent vacancies resulting from internal transfers.

- a. Custodian I - Police
- b. Parking Enforcement Officer - Public Works

BACKGROUND

RECOMMENDATION

FISCAL IMPACT

ATTACHMENTS

1. Request to Fill Memo 01.07.2020
2. Custodian I J Nieft 1.7.20
3. Parking Enforcement Officer - Mischo 01.17.20

MEMORANDUM



Human Resources Department

To: Personnel Committee
Joe Faulds, Human Resources Director

From: Sarah Fidler
Human Resources Generalist

Re: Request to Fill Vacant Positions

Date: January 7, 2020

The Human Resources Department is requesting authorization to fill the following replacement positions approved as part of the 2019 budget and all subsequent vacancies resulting from internal transfers. The justification reports are attached.

- Custodian I – Replacement position due to the retirement of John Niefert effective February 3, 2020. Salary range: \$16.02 - \$18.85 per hour.
- Parking Enforcement Officer - Replacement position due to the retirement of Linda Mischo effective January 17, 2020. Salary range: \$16.02 - \$18.85 per hour.

**Position Fill Request
Justification Report
12/18/19**

Position Title: Custodian I – Green Bay Police Department

1. **If this position is a replacement position, please indicate the reasons for the vacancy. If this is not a replacement position, please indicate the reasons for requesting the position.**

 X **Replacement Position** **Not a Replacement Position**

This position is a replacement resulting from the impending retirement of John Nieft, effective 2/3/20.

2. **Is this position included in the current budget? If not, please list how this position will be funded (grant, internship, etc.). Please list the salary range of the position.**

Yes. The wage range is \$16.02-\$18.85 per hour.

3. **Please list the functions and any special information regarding this position.**

The Custodian I position performs general custodial and light building maintenance for all Green Bay Police Department and Municipal Court buildings.

4. **Does the position generate revenue or reduce expenses? If so, provide an estimated amount.**

No

5. **Please explain why current staff is unable to absorb duties of this position.**

The Building Maintenance Division table of organization consists of 1 Building Maintenance Supervisor and 2 Custodian I positions. The current funded staff of 3 is responsible for the care and maintenance of 8 different sites consisting of over 82,000 square feet. We have 2 entities that rent space from us. Part of the lease agreements we have with them require the Police Department to supply all of the building maintenance and custodial needs. The staff is spread thin with only have 3 people and will not be able to complete all required duties with a staff of 2.

6. **If duties of position are presently being done, how are they done?**

The position is currently filled, but one Custodian I is retiring effective 2/3/20.

7. **What service would be reduced or eliminated if this position is not filled?**

All custodial duties would see an extreme reduction in timeliness of tasks being completed. Additional special projects could not be taken on if staffing level is reduced.

8. What are the alternative methods and costs of accomplishing the work?

Paying remaining Custodian I a minimum of 2 hours overtime per day just to complete basic tasks. Hire temporary help.

9. Are there union issues?

No.

10. Other supporting comments.

Position Justification Form

December 27, 2019

Position Title: **Parking Enforcement Attendant (PEO) – DPW-Parking Division**

- 1. If this position is a replacement position, please indicate the reasons for the vacancy. If this is not a replacement position, please indicate the reasons for requesting the position.**

 X **Replacement Position** **Not a Replacement Position**

This Parking Enforcement Officer vacancy is the result of the retirement of Linda Mischo. Linda will end her tenure with Parking Division and the City at the end of her regular work shift on Friday, January 17, 2020.

- 2. Is this position included in the current budget? If not, please list how this position will be funded (grant, internship, etc.). Please list the salary range of the position.**

This position is funded through the Parking Division's operating budget. Current wage is \$16.02 to \$18.85 per hour (\$33,322 to \$39,208 per year) plus the ability for increases above the control point based on performance/merit.

- 3. Please list the functions and any special information regarding this position.**

Parking Division provides well over 90% of the City's parking enforcement services. The remainder of parking enforcement is provided by Police Department as they can spare time. Currently there are five (5) Parking Division Parking Enforcement Officers for the entire City. Parking enforcement provided by Parking Division occurs Monday through Saturday.

- 4. Does the position generate revenue or reduce expenses? If so, provide an estimated amount.**

Parking Enforcement Officers generate parking citation revenue, which allows Parking Division to operate without funding from City tax levy revenue.

- 5. Please explain why current staff is unable to absorb duties of this position.**

See answers to 3 and 4 above. Full enforcement staffing is necessary to cover all enforcement zones, and generate the revenue that Parking Division needs to be financially independent from the City tax levy.

- 6. If duties of position are presently being done, how are they done?**

Without Parking Enforcement Officers, there is little to no parking enforcement activity in the City of Green Bay

- 7. What service would be reduced or eliminated if this position is not filled?**

Parking Division would continue to operate at its current level of parking enforcement for the City. But parking compliance/enforcement in the City and associated revenue would decrease. Insufficient revenue would require Parking Division to either eliminate services, or require assistance from the City's tax levy to remain financially solvent.

- 8. What are the alternative methods and costs of accomplishing the work?**

Privatization

9. Are there union issues?

No.

10. Other supporting comments.

The City attempted to privatize the (then) Parking Utility in 1998, and was met with significant resistance. After seeing what occurred with privatization of the City of Chicago parking system, Green Bay is not interested in dealing with the increased costs and problems of a privatized public parking system. Green bay's current parking system is functioning well.



Report to the
Personnel Committee
of the City of Green Bay

MEETING DATE

January 7, 2020

PREPARED BY

AGENDA ITEM # D.2.

Consideration with possible action on the Grievance filed by Officer Jeffrey Brann regarding the Personnel File Entry Report issued December 17, 2018.

The Committee may convene in closed session pursuant to § 19.85(1)(a), Wis. Stats., for the purpose of deliberating concerning a case which was the subject of any judicial or quasi-judicial trial or hearing before that governmental body. The Committee may, thereafter, reconvene in open session pursuant to § 19.85(2), Wis. Stats. to report any actions taken during closed session and to consider all other matters on the agenda.

BACKGROUND

RECOMMENDATION

FISCAL IMPACT

ATTACHMENTS

1. 6-21-19 City's Response to Brann's Step 3 Grievance
2. Brann Grievance
3. 12-04-2018 Initial Brann Personnel Entry for pursuit
4. 2-4-19 Chief Smith Step 1 Response
5. 3-22-19 Amended Brann Personnel File Entry
6. Jeff Brann Step 2 Response from HR Director - 4-25-19
7. 8-09-18 - Brann Oral Warning for Pursuit - Signed
8. Ex 1 Reference Map of incident locations
9. Ex 4 Original Grievance Paperwork submitted by Brann 1-21-19
10. Ex 5 Chief Response to Step 1 Grievance
11. Ex 6HR Director Faulds Step 2 Response - 4-25-19
12. Ex 7 Speed Calculations by Dave Hansen
13. Ex 15 Lt Engelbrecht Preliminary Determination for 8-2-18 Incident
14. Ex 19 Original Personnel File Entry with 4 violations
15. Ex 20 Modified Personnel File Entry with 2 violations
16. Ex 21 Pursuit Policies in effect at time of incidents
17. Ex 22 New GBPD Vehicle Pursuits Policy 2019
18. Ex 23 Brann Documentation of Oral Warning from 8-9-18
19. Ex 25 Preservation Email Brann to Warych

20. CONFIDENTIAL - Personnel Committee Report
21. CONFIDENTIAL - Ex 2 Personnel Committee Time Line
22. CONFIDENTIAL - Ex 16 Lt Engelbrecht Preliminary Determination for 9-20-I...
23. CONFIDENTIAL - Ex 24 Schilling Meyer Mahoney Kleemann Documentation of O...
24. CONFIDENTIAL - Ex 3 GBPD Professional Standards Pursuit Review
25. CONFIDENTIAL - Ex 17 GERP Report 18-208661
26. CONFIDENTIAL - Ex 18 GERP Report 18-210609
27. CONFIDENTIAL - Ex 26 Email Communications Regarding Brann and Meyer Disc...
28. Brann Final Brief
29. Personnel Committee - City's Dismissal Brief 12-13-19



*The City of Green Bay is a leader in employee health and wellness with its **Health | 1265** program and a goal to engage all employees in their own health and well-being*

June 21, 2019

Personnel Committee
City of Green Bay
100 N. Jefferson Street
Green Bay, WI 54301

RE: Grievance #2019-001 – Officer Jeff Brann

Dear Personnel Committee,

This correspondence is in response to the Step 3 Grievance #2019-001 submitted by Officer Jeff Brann through his representative, Attorney Carley Windorff. In addition, please see the enclosed documents for the Personnel Committee's consideration:

1. Officer Brann Personnel Entry for Pursuit Violation – 12/17/18
2. Chief Andrew Smith Step 1 Response – 02/04/19
3. Officer Brann Amended Personnel Entry for Pursuit Violation – 03/22/19
4. Human Resources Director Joe Faulds Step 2 Response – 04/25/19
5. Officer Brann Oral Warning for prior violation of Vehicle Pursuit Policy – 08/09/18

The City requests that the following action be taken by the Personnel Committee (1) Dismissal due to the City and Officer Brann's agreement on March 22, 2019; (2) Dismissal due to untimeliness; or (3) Denial based on no contract violation and the discipline administered to Officer Brann is appropriate based on Officer Brann's conduct.

I. THE GRIEVANCE SHALL BE DISMISSED BECAUSE OFFICER BRANN REACHED AN AGREEMENT WITH THE POLICE DEPARTMENT TO RESOLVE HIS GRIEVANCE.

Officer Brann and his Union Representatives reached an agreement with the City to settle his grievance by reducing his four policy violations to two policy violations and, therefore, his grievance has been resolved and the matter shall be dismissed.

On December 17, 2018 Officer Brann received a Personnel File Entry for violations of four policies: (1) Policy 307 – Vehicle Pursuits; (2) Policy 308 Office Response to Calls; (3) Policy 320 Standards of Conduct; and (4) Policy 320.5.7 Efficiency. (See attached Personnel Entry). Officer Brann filed a grievance with Chief Smith on January 21, 2019 which was denied by Chief Smith on February 4, 2019. (See attached Chief's Step 1 Response).

After Chief Smith denied Officer Brann's grievance, Union Representatives met with Commander Warych to discuss potential resolutions to his grievance. Commander Warych met with Officer Brann on two occasions to discuss the resolution of his grievance. Specifically, On March 22, 2019

Officer Brann met with Commander Warych and Commander Warych explained the status of his grievance. The City, Union, and Officer Brann agreed to modify his discipline from four violations to two violations. Officer Brann understood that the amendment made by the Police Department to reduce his four violations down to two violations would ultimately resolve his grievance and he would be unable to take his grievance to Step 2 of the grievance procedure.

Subsequently, the amended Personnel File Entry was placed in Officer Brann's personnel file and the original Personnel File Entry from December 17, 2018 was removed. Officer Brann and his Union Representative, Matt Knutson, watched as the original personnel file entry was electronically removed from his file. These actions by Officer Brann and his Union Representative represented to the City that Officer Brann was satisfied with the outcome of the grievance.

As such, Officer Brann is precluded from having his grievance heard in front of the Personnel Committee because he has already reached an agreement to resolve his grievance to his satisfaction. Therefore, the Personnel Committee shall dismiss this grievance because an agreement has been reached between the City, the Union, and Officer Brann.

II. OFFICER BRANN HAS WAIVED HIS RIGHT TO FILE HIS GRIEVANCE WITH THE PERSONNEL COMMITTEE BECAUSE HE UNTIMELY FILED HIS GRIEVANCE WITH THE HUMAN RESOURCES DIRECTOR.

In the event that the Personnel Committee determines that Officer Brann did not reach an agreement to settle this matter, Officer Brann's grievance shall be dismissed because the untimely filing of his grievance at Step 2 with the Human Resources Director is deemed a waiver of his grievance.

The Agreement between the City of Green Bay and the Green Bay Professional Police Association ("Agreement") states:

3.4 COMPUTATION OF TIME. The days indicated at each step should be considered a maximum. Working days as used in this article shall mean Monday through Friday, excluding holidays. *The failure of the party to file or appeal the grievance in a timely fashion as provided herein shall be deemed a waiver of the grievance.* The party who fails to receive a reply in a timely fashion shall have the right to automatically proceed to the next step of the grievance procedure. The time limits may be extended by mutual consent. (Emphasis added).

. . .

3.8.2 STEP TWO. If the grievance is not satisfactorily resolved at the first step, the grievant or the Union representative shall prepare a written grievance and present it to the Human Resources Director *within 15-working days* of the Chief of Police's response. The Human Resources Director shall review the grievance and shall respond in writing within 15-working days after receipt of the written grievance. (Emphasis added).

Pursuant to the Agreement, a grievant who fails to file or appeal the grievance in a timely fashion as

provided herein shall be deemed a waiver of the grievance. Here, Officer Brann received Chief Smith's response to his grievance on February 4, 2019. Officer Brann had 15 working days to file for Step 2 with the Human Resources Director which was February 25, 2019. Officer Brann failed to timely file his grievance for Step 2 with the Human Resources Director within the time allotted in the Agreement because he did not file for Step 2 until April 5, 2019. Since there was no mutual consent to extend the deadline, Officer Brann's grievance is untimely and has been waived. Therefore, the Personnel Committee shall dismiss Officer Brann's grievance as it has been waived pursuant to the Agreement.

III. IN THE ALTERNATIVE, OFFICER BRANN'S GRIEVANCE SHALL BE DENIED BECAUSE THE DISCIPLINE IS APPROPRIATE BASED ON OFFICER BRANN'S CONDUCT.

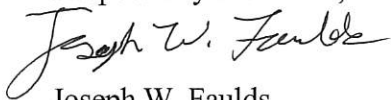
As stated above, the City argues that this grievance should be dismissed because it has been resolved or because it is untimely. In the alternative that the grievance is not dismissed, the City asks that the Personnel Committee deny the grievance because there is no contract violation and the discipline is appropriate based on Officer Brann's conduct.

In the event the Personnel Committee allows Officer Brann's grievance to move forward, the City argues that Officer Brann is grieving the original four policy violations that were administered to Officer Brann on December 17, 2018. The justification for the discipline is outlined in Chief Smith's Step 1 response to Officer Brann. (See attached Chief Smith Step 1 Response). The City argues that the discipline for four policy violations is justified and that a denial of Officer Brann's grievance on the merits would result in four policy violations for Officer Brann. Additionally, progressive discipline was followed for giving Officer Brann a Personnel Entry because he received an oral warning for similar conduct on August 2, 2018. (See attached Oral Warning Document).

The City does not believe a fact finding hearing is necessary because the material facts of what happened are not in dispute, but rather Officer Brann does not believe that the facts justify the discipline he received. Officer Brann does not dispute his driving from the video or that he was told multiple times to not pursue the vehicle. As such, a fact finding hearing is not necessary for the Personnel Committee to interpret the policy based on the material facts before it. As stated above, Chief Smith's response to Officer Brann outlines why Officer Brann's conduct rose to the level of four policy violations and why he was administered his discipline. Thus, the Personnel Committee is able to render its decision based on the documents submitted by the parties.

Overall, the grievance shall be dismissed because an agreement has been reached by both parties, the filing of the grievance has been untimely or, in the alternative, the Personnel Committee shall deny the grievance and uphold the progressive discipline administered by Chief Smith.

Respectfully submitted,



Joseph W. Faulds
Human Resources Director

Cc: Attorney Carley Windorff (via email only)

Green Bay Professional Police Association Contract Violation Information Form

Date of Occurrence: <u>12-17-18</u>	Grievance step - check one 1 ☒ 2 ☐ 3 ☐
Officer's Name/Rank: (If association as a whole write GBPPA) <u>Jeffrey G. Brown / Specialist II</u>	Division/Assignment: <u>Operations / Mid-Days K9</u>
This grievance alleges a violation of article <u>25</u> section <u>1,3</u> of the labor agreement and/or department policy pertaining to: <u>307, 308, 320,</u>	

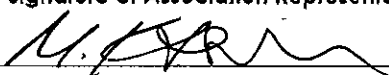
Description of Grievance - state all facts including time, place of incident, persons involved, etc.

See Attached:

- Grievance (pages 1-24)
- Modified Personnel File Entry Report (3 pages)
- Original Personnel File Entry Report (2 pages)
- Documentation of Oral Warning (1 page)

Relief Sought:

Removal of Personnel File Entry
Removal of Documentation of Oral Warning

Signature of Employee: <u>JEFF BRANN #100</u>	Signature of Association Representative: 	Date Filed: <u>1-21-19</u>
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Employer Representative Response:

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Employers representative signature	Title	Date Grievance received:	Date Answered

Matter resolved: Yes ☐ No ☐ If yes, How?

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Grievance of Personnel File Entry Report for Officer Jeffrey G Brann

Grievance 2019-001

Content of attachment:

1. Grievance
2. Summary of Written Documentation of Verbal Warning from August 9, 2018 (Errick Tucker)
 - a. Summary of Incident
 - b. Delivery of Discipline
 - c. Officer Concerns Over Discipline
 - d. Jury Instructions
3. Summary of Personnel File Entry Report from December 17, 2018 (Taniesha Tucker)
 - a. Summary of Incident
 - b. Delivery of Discipline
 - c. Officer Concerns Over Discipline
 - d. Excerpt from Wisconsin Statutes 346.03
 - e. Jury Instructions

1. Grievance

I intend to grieve the Personnel File Entry Report that was issued on December 17, 2018, which was in violation of 25.1 (Discipline rules and regulations), 25.3.1 and 25.3.3 (Internal Investigations) and alleged violations of the following policies:

Policy 307 – Vehicle Pursuits

Policy 308 – Officer Response to Calls

Policy 320 – Standards of Conduct

Policy 320.5.7 - Efficiency

2. Summary of Written Documentation of Verbal Warning from August 9, 2018

a. Summary of Incident:

On Thursday, August 2, 2018 I located a male that was wanted for a misdemeanor warrant according to CIB. The male was driving a vehicle on a City street at the time that I ran the license plate and the corresponding registered owner and I later discovered the warrant. After going out of my view and prior to me knowing of the warrant, the male had parked his vehicle and entered a business (El Ranchito). I did not know where the vehicle had gone, but located it shortly after. After locating the vehicle, I set up surveillance on the target vehicle and arranged for another patrol unit (Officer Clark) to start heading toward the area to assist. The male exited the store moments later and walked past his vehicle in an attempt to avoid police contact as he saw me watching the vehicle from a distance. I was not certain if this was the driver of the vehicle at this time due to the distance and not having previously observed the suspect's clothing. I began to drive in the opposite direction to see if the male would return to the target vehicle, keeping the male in sight with use of my mirrors, and the male turned around and returned to his vehicle as I began to drive away. I turned around to attempt contact with the male, but he quickly left the parking lot and entered traffic in his vehicle. I directed other officers that were responding to the area of the direction of travel of the target vehicle, waiting to attempt a traffic stop until I had sufficient cover officers. The male turned into an alley (1000 block E Walnut St, northbound) where I have been involved in numerous foot chases, suspects fleeing from vehicles and drug arrests over the years that I have patrolled this area. I believed the male was going to park his car in the alley and flee on foot, so I followed him into this alley to maintain visual contact with him instead of surveilling from a distance or trying to catch up to him on the other side of the block. The male continued to drive north through the alley, which is when I was able to confirm the license plate, broadcast the vehicle description

and possible suspect identity to other units. As the male exited this alley and turned east onto Cherry St. the vehicle spun its tires and accelerated rapidly, prior to me giving an audible and visual direction for the vehicle to stop from my fully marked patrol car. This was the first reckless action taken by the suspect vehicle, followed by going through a stop sign (Cherry St / N Clay St) without slowing or stopping. I activated my emergency lights and siren to give visual and audible direction for the suspect vehicle to pull over and also to warn civilians in the area of the reckless driver. I slowed for the stop sign and proceeded with due regard. I provided the suspect driver with time to process my visual and audible order to pull over. The vehicle accelerated to a speed that I estimated to be about 70 miles per hour and was pulling away from me. There were no other vehicles on the street and no pedestrians on the sidewalk at the time of the incident. Lt Engelbrecht asked over the air for the reason for the pursuit. I explained that the reason was for a Division of Corrections warrant and the pursuit was terminated. I immediately pulled over, deactivated my lights and siren and advised dispatch of my location (N Baird St between Cherry St and E Walnut St). The vehicle was last seen by Officer Clark. The total length of time that the vehicle fled from me was about 12 seconds, about a half mile or 3-4 City blocks.

The suspect vehicle was located abandoned 10 minutes after the pursuit termination. The driver, Errick Tucker, was located six minutes later leaving the area on foot, from the area of the residence where his domestic violence incident took place, and I took him into custody without further incident. Tucker provided a post Miranda statement to police following the incident where he said that he observed an officer watching him as he left the El Ranchito store. He saw the officer follow him into the alley where he then thought the drug place he was going to was about to get raided so he got out of there and the officer followed him out to Cherry St. Tucker said that he observed the officer cut his red and blue lights off and slow down a bit, then saw two of them (officers) so he called his girl to say he was going to jail. Tucker parked at Walgreens thinking that police would be there soon. Something then told Tucker, "Man just go" so he went to go to the house. At the end of the statement Tucker said that he made sure all the lights were green and blew his horn the entire time because he didn't want to hit anyone. Tucker stated that he did not go through any red lights while being chased, but that he did go through a red light at Mason St and Baird St when no officer was behind him.

b. Delivery of Discipline

Lt Engelbrecht spoke with me the following day in the Lieutenant's office and said that he was concerned that my incident had been in violation of the pursuit policy. I explained that I did not disagree that the pursuit should have been terminated and that I did not plan to continue to pursue the vehicle further than I had as the elements of the crime were established and the identity of the suspect was likely known or would be

able to be established through follow up interviews and investigation. Lt Engelbrecht said that I never should have activated my lights and siren when the vehicle left the alley and pulled away from me. I argued that I would not be able to charge the driver with fleeing if I had not made an attempt to pull the vehicle over, to which Lt Engelbrecht disagreed. I attempted to explain the elements of the offense that I needed to prove for the courts to charge and convict the suspect, but we were unable to agree at that point. I expressed that the driver's behavior turned the traffic stop attempt into a pursuit and that I had pulled over immediately upon the direction of a supervisor, and followed up the investigation by taking the male into custody without a further pursuit or use of force, which was the ideal outcome for a situation of this matter.

The total time that the vehicle fled while I was in pursuit was about 12 seconds, which included me turning on lights and siren, broadcasting the direction of travel, driving with due regard, answering Lt Engelbrecht's request for the reason for the pursuit, having the pursuit terminated and pulling over to stop pursuing. Also during this 12 seconds, I was considering the distance that responding units are from my location, what may lie ahead of the suspect vehicle, where the driver may be trying to go, other reasons for the driver fleeing (drugs/weapons), limitations of my patrol vehicle and environmental conditions. Lt Engelbrecht said he was not familiar with the pursuit phases and that he wanted to speak with a pursuit instructor. We also disagreed about civil liability and whether we believed civil liability was for the officer to attempt a traffic stop of the reckless driver that was fleeing, or to not attempt a traffic stop of a fleeing vehicle.

About a week later, on August 9, 2018, Lt Engelbrecht met with me again and issued a written documentation of an oral warning for the incident. I signed the document, stating that I fully understood that the above was an oral warning, and this was the documentation to prove above oral warning was given. I further spoke with Capt Florence and was told that this was not considered discipline and that the warning would be removed from my file in a year, but there was not a process to contest the entry into my file even if I disagreed with the outcome. I was advised by Lt Engelbrecht and Capt Florence that they did not wish to discourage my proactive police work with this written documentation. I was also told by Capt Florence that a Documentation of an Oral Warning is consistent with how similar matters involving pursuits are handled at shift level.

c. Officer Concerns Over Discipline

My concerns with the outcome of this matter, was that had the driver pulled over for my lights and siren, he would have been arrested for his division of corrections warrant and current domestic violence charges, and there would have been no discipline toward my actions. The time line that occurs in this incident is not clear as to when the traffic stop ends and a pursuit begins. The traffic stop begins as soon as the lights and siren are activated, as this is the first police action to direct the suspect to stop. The time that the suspect is able to process this direction from law enforcement and then make a

conscious decision to stop or flee occurs somewhere after this time and prior to termination of said pursuit. This "gray area" of pursuits is a challenge for law enforcement and is the scope of pursuit policy revisions across the county, and pursuits themselves are under constant discussion such as the initiation, continuation and termination phases of pursuits. Since the driver fled in this case, which was a felony level decision on behalf of the suspect, my attempted traffic stop suddenly became a policy violation as it is believed that the pursuit began as soon as I turned on my lights and siren.

The disposition with this incident is that the driver of the fleeing vehicle, Errick Tucker, was formally charged by the Brown County DA's office for the Felony offense of Vehicle Operator Flee/Elude Officer from this case.

I believe in this incident, the review of the totality of the circumstances would show that a large amount of information that cannot be quantified needed to be processed in a short amount of time. From the time that I first observed a male driving a vehicle on a public street (12:01 PM), discovering the warrant, locating the suspect vehicle, surveilling from a distance, working to formulate a plan for apprehension, discovering an attempt to evade law enforcement by abandoning his vehicle, confirming the suspect got back into his vehicle, advising dispatch of the situation, calling out directions when the car went mobile, activating lights and siren while relaying direction, vehicle and suspect description, reason for the traffic stop and the pursuit termination (12:06 PM) was less than five minutes. The time that my emergency lights and siren were activated to attempt the traffic stop to the time the pursuit was terminated was about 12 seconds with immediate termination upon supervisor direction. There was no property damage to suspect, law enforcement or civilian vehicles or property and no injuries to civilians, officers or suspect. During the approximate 12 seconds that lights and siren were activated and the suspect vehicle was observed by me (less as the vehicle turned onto Baird St out of my view), the suspect vehicle did not pass any pedestrians or other motor vehicles and did not cause any civilian to adjust their actions.

I have been involved with numerous court proceedings, including cases involving suspects charged with Flee / Elude an Officer. Also, as case agent, I have also observed and assisted the DA with voir dire (jury selection) and been present for jury instructions at case closure being read by Judges to the members of the jury with specific instructions on how to decide a defendant's guilt or innocence. These experiences have helped me on the street be able to provide a more thorough case to be turned over to the DA's office for more successful prosecution. I have received a commendation from the DA's office for court preparation and also received positive evaluations from supervisors during calls regarding thoroughness of cases that I have prepared and decisions made while handling calls in the field. I have also listened to defense attorney arguments that short officer pursuits should not be charged because the defendant didn't have time to process that the police wanted them to pull over, or never knew that the police were attempting to stop them or even behind them. After observing the

suspect's actions in this case, the follow up apprehension and suspect statement, it is clear that the suspect was fleeing to avoid apprehension, which is why it was formally charged out in circuit court.

d. Jury Instructions

The following contains the jury instructions that the Circuit Court Judge reads to the jury members after the closing arguments of a court case. These elements should be considered by officers when conducting police investigations and writing police reports, as the lack of inclusion of the elements should result in a suspect being found not guilty.

(Begin Jury Instructions)

2630 OPERATING A MOTOR VEHICLE TO FLEE OR IN AN ATTEMPT TO ELUDE AN OFFICER — § 346.04(3)

Statutory Definition of the Crime

Section 346.04(3) of the Wisconsin Statutes is violated by a person who operates a motor vehicle on a highway after receiving a visual or audible signal from a (traffic officer) (marked police vehicle) and knowingly (flees) (attempts to elude) any traffic officer

CHOOSE THE ALTERNATIVE SUPPORTED BY THE EVIDENCE. IF MORE THAN ONE ALTERNATIVE IS SUBMITTED, CONNECT THEM WITH "OR" AND SEE WIS-JI CRIMINAL 517, JURY AGREEMENT...

[by willful disregard of such signal so as to interfere with or endanger (the operation of the police vehicle) (the traffic officer) (other vehicles) (pedestrians)].

[by increasing the speed of the vehicle (in an attempt to elude) (to flee)].

[by extinguishing the lights of the vehicle (in an attempt to elude) (to flee)].

State's Burden of Proof

Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following two elements were present.

Elements of the Crime That the State Must Prove

1. The defendant operated a motor vehicle on a highway after receiving a (visual) (audible) signal from a (traffic officer) (marked police vehicle).

("Traffic officer" means every officer authorized by law to direct or regulate traffic or to make arrests for violation of traffic regulations.)

2. The defendant knowingly (fled) (attempted to elude) a traffic officer

[by willful disregard of the visual or audible signal so as to (interfere with) (endanger) (the operation of the police vehicle) (the traffic officer) (other vehicles) (pedestrians)].

[by increasing the speed of the vehicle (in an attempt to elude) (to flee)].

[by extinguishing the lights of the vehicle (in an attempt to elude) (to flee)].

Deciding About Knowledge

You cannot look into a person's mind to find knowledge. Knowledge must be found, if found at all, from the defendant's acts, words, and statements, if any, and from all the facts and circumstances in this case bearing upon knowledge.

Jury's Decision

If you are satisfied beyond a reasonable doubt that both elements of this offense have been proved, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

ADD THE FOLLOWING IF ONE OF THE MORE SERIOUS OFFENSES IDENTIFIED IN SEC. 346.17(3)(b),(c), OR (d) IS CHARGED AND THE EVIDENCE WOULD SUPPORT A FINDING THAT THE FACT INCREASING THE PENALTY WAS PRESENT:

[If you find the defendant guilty, you must answer the following question(s):

["Did the defendant's operating a vehicle (to flee) (in an attempt to elude) an officer result in[xii] (bodily harm to[xiii]) (damage to the property of[xiv]) another?"

("Bodily harm" means physical pain or injury, illness, or any impairment of physical condition.)]

["Did the defendant's operating a vehicle (to flee) (in an attempt to elude) an officer result in[xv] great bodily harm[xvi] to another?" "Great bodily harm" means serious bodily injury.]

["Did the defendant's operating a vehicle (to flee) (in an attempt to elude) an officer result in[xvii] death to another?"

Before you may answer "yes," you must be satisfied beyond a reasonable doubt that the answer to that question is "yes."].

(End Jury Instructions)

3. Summary Personnel File Entry Report from December 17, 2018

a. Summary of Incident

On Thursday, September 20, 2018 at about 12:18 PM DePere Police had requested assistance from Green Bay Police with a recently stolen vehicle, of which an MDT message had been sent out for. The vehicle had been taken from an elderly female that was at a vegetable stand in DePere. Her purse and cell phone were left in the vehicle as it was taken from her. DePere Police were tracking the vehicle using the Find my iPhone App since the phone was still in the vehicle. Officer D Greene located the vehicle with the location described by DePere PD on Deckner Ave at Henry St. Officer Greene advised that the vehicle was taking off from him. Officer Greene's squad camera shows the vehicle parked off the roadway on the northeast corner of Deckner and Henry St, then as the suspect sees Officer Greene slowing to her location, she is seen accelerating and squealing its tires as it jumps the curb (Fig 1), crosses westbound traffic, enters eastbound traffic and drives away from Officer Greene, which begins a pursuit. Lt Engelbrecht was the supervisor on the call and asked if there was any other reason for the pursuit other than it being a stolen vehicle. Lt Engelbrecht terminated the pursuit. The vehicle was last seen traveling south on Bader St from Newberry Ave. I was responding to the area from the East side Industrial Park and checked eastbound traffic from Bader St on E Mason St, and checked for the vehicle to be abandoned in nearby parking lots, but did not see the suspect vehicle. Minutes later it was later updated by DePere PD that the vehicle was pinging in the area of Bader St and Imperial Lane via GPS. Officer Clark and I drove toward this area. The vehicle was located by Officer Clark under a car port at 1070 Bader St, just north of Imperial Lane. Officer Clark advised over the radio that the vehicle nearly struck his squad car and that the vehicle was now fleeing northbound through the yards. As I drove west on Manitowoc Rd toward Bader St, I observed the vehicle cross Manitowoc Rd, traveling north. The driver had a hood pulled tightly around her face, appearing to be worn in a fashion to prevent identification by law enforcement. At the time, circumstantial evidence existed that the female may have been a runaway from Northwest Journey's, as she mentioned stealing a car and going to Chicago.

I heard Officer Clark ask Lt Engelbrecht over the air if he wanted us to pursue the stolen vehicle. I knew he was asking because the circumstances had changed after pursuit termination as she nearly struck Officer Clark's squad car, according to Officer Clark's radio transmissions. Lt Engelbrecht advised that we were not going to pursue the stolen vehicle. Officer E Meyer had advised over the radio that he was following the vehicle slowly and not pursuing. As I traveled west on August St, the suspect vehicle pulled out directly in front of my squad car and I followed it west to Lime Kiln Rd. I drove to the left of the suspect vehicle so as to try to get a glimpse of the suspect's face through her side driver door mirror, which is a technique used for identification purposes during my assignment in the Brown County Drug Task Force. I advised over the air that we were

not pursuing the suspect vehicle and that I believed she was going to get stuck in traffic, at which point we could box the vehicle in. The purpose of this was to attempt to recover the stolen vehicle, purse, cell phone and take the felony suspect into custody in the safest manner possible without the risks of a high speed pursuit, while also following a supervisor directive to not engage in a pursuit. As the female turned north onto Lime Kiln Rd, she slowed then rolled through the stop sign. Northbound traffic was stopped and I slowed and went through the stop sign, using due regard, as I followed the suspect vehicle. I was not pursuing the vehicle, but trying to maintain a safe distance to be able to attempt apprehension of the female if the vehicle was forced to stop by traffic, or if the felony suspect fled from the vehicle once stopped. The female met a green light on Lime Kiln Rd crossing E Mason St in the right lane, so no apprehension attempts were made as she continued through the intersection. I allowed the distance to increase between our vehicles so as not to make the driver believe she was being actively pursued. The vehicle then reached Main St and proceeded through the intersection, turning left (westbound) from the right turn lane. I originally thought the female had gone through a green light at this intersection but later found she had gone through a red light. Traffic was stopped in all directions as I approached the intersection, except for one small bus that appeared to be eastbound on Main St turning right (southbound) onto Lime Kiln Rd, which was not impacted by the suspect or officer vehicles. I slowed and proceeded through a red light, using due regard, to keep the stolen vehicle within my sight as I believed the vehicle would be caught in traffic shortly. I did not activate my emergency lights or siren when clearing this intersection as I believed that this action would cause the driver of the stolen vehicle to believe we were re-initiating the pursuit and cause her to drive more reckless. No civilian vehicles changed their actions or driving behavior based on my passing through the red light as all vehicles were stopped except for the turning small bus. The stolen vehicle changed lanes to go around civilian traffic that was driving at normal traffic speeds. I remained in the left northbound lane with civilian vehicles between the suspect vehicle and my marked patrol car, keeping sight of the suspect vehicle. As the suspect vehicle approached Deckner Ave, it was forced to stop at a red light. I pulled into the left turn lane at this intersection and waited for eastbound traffic to pass, then as the last eastbound vehicle passed in the right lane of traffic, I entered the left opposite lane of traffic to the left of the center median and activated my emergency lights as I passed the stolen vehicle, which was stopped at this time. I pulled in front of the vehicles that were stopped in front of the suspect vehicle and exited my patrol car, approaching the suspect vehicle with my gun drawn, ordering the driver to show her hands. The suspect vehicle backed up slightly, then drove to the right, sideways through traffic and jumped the curb of Capital Credit Union, entering the parking lot and then exiting the lot and traveling east on Deckner Ave. I continued to yell for the driver to stop and raised my left hand as a visual direction. I did not immediately return to my patrol vehicle, but observed the direction of the stolen car and broadcast it over the radio to other units that were in the area. Other patrol units followed after the stolen vehicle. Officer Kleeman's marked

squad car is first through the intersection to follow behind the suspect vehicle as it drove east on Deckner Ave from Main St. Officer Clark asked Lt Engelbrecht over the radio if we could deploy stop sticks if we were able to get in front of it. Lt Engelbrecht stated over the air, "No we are calling this right now" at 12:32:02 according to Officer Meyer's Coban video. This was the first direction for Lt Engelbrecht that patrol units were to discontinue attempts to take the suspect into custody. I did not follow after the suspect vehicle and pulled over to the right side of the street to observe the last direction of the suspect vehicle. I followed the order to discontinue my involvement. At 12:32:05, Lt Mahoney can be heard over the air saying, "792..." and at 12:32:15 Lt Engelbrecht states over the air, "OK all units we are pulling off of this right now. All Green Bay units are going 10-08." This was the second direction by Lt Engelbrecht that we were not supposed to take further law enforcement actions toward this vehicle. As this radio transmission comes across Officer Kleeman's squad car video, another marked Green Bay Police Dodge Charger, believed to be driven by Lt Mahoney, can be seen with emergency lights activated making a U-turn in the intersection of Deckner Ave and Bader St, then following after the suspect vehicle with emergency lights still activated. I could see the suspect vehicle continuing to drive away and two patrol units were still following behind, one with emergency lights still activated. I advised over the air at 12:32:23 that "12K is stopped at Deckner and Huth" and I stated the suspect vehicle was last seen heading eastbound on Deckner Ave, as no one else had updated this information. My stopped patrol vehicle can be seen in Officer Meyer's and Sgt Schilling's squad videos. Sergeant Schilling's voice at 12:32:34 can be heard shortly after telling officers "Shut it down up there." This was the third supervisor direction to stop law enforcement actions toward this vehicle. Then at 12:32:39 Sgt Schilling says, "Pull it over and just let it go" as the marked Dodge Charger continues to follow the suspect vehicle eastbound on Deckner Ave with emergency lights activated. This was the fourth direction by a supervisor over the radio to end police actions toward the stolen vehicle.

b. Delivery of Discipline

The week following the incident, I began to hear rumors at the police department that my name had been mentioned by Chief Smith in a detective roll call, saying that I was being investigated "upstairs" for a pursuit. I believed that this meant that I was part of an internal investigation. I contacted Union President Scanlan and asked if I was being investigated and he said that he would look into it. I was later told that there were no current investigations.

Upon later speaking with Lt Jody Buth on an unrelated matter in Lt Buth's office, I was told by Lt Buth that the Chief was upset about a pursuit that I was involved in and that I needed to be careful. After confirming that it was Officer Greene's pursuit that was being referred to, I explained that I hadn't been involved in the pursuit, but attempted an apprehension in which the suspect got away. I was told that even if I wasn't in a pursuit, I could get jammed up for committing traffic violations. Lt Buth said that Chief

Smith had lost four friends to pursuits, so he was passionate about the matter. Following this meeting, I continued to ask if there was an investigation going on, but no one could tell me if there was. I was never part of a debrief regarding this incident.

Disciplinary meeting

On Monday, December 17, 2018, following my 10:30 AM roll call, I was told by Capt Florence to come into the Lieutenant's office. As I entered the room, I saw Lt Strouf and Officer Knutson were also in the room. Capt Florence advised me that this was a disciplinary meeting. Capt Florence began speaking about an incident, so I clarified that he was speaking about this pursuit. Capt Florence provided a Personnel File Entry Report to Lt Strouf, Officer Knutson and me. I was told that I could feel free to look at it. This was my first disciplinary meeting that I had ever been a part of, so I was caught off-guard and wasn't sure what the process was. I was told that Lt Strouf was a witness for Capt Florence and that I had the right to have Officer Knutson there as my union representative. I wanted union representation to have as a reference for the process in case I had questions.

I read the report that Capt Florence had handed me and I thought that it sounded horrible and that it was not consistent with my policing style, morals or ethics. My initial thought was that the verbiage used did not accurately match what I recalled had happened during the pursuit. What I first noticed was that the actions of the driver were left out or minimized, which were critical to the decisions that were made during the incident, such as, "the stolen vehicle was located parked by Officer Clark. Officer Clark attempts to make contact, but the vehicle drives away." From my recollection, Officer Clark located the vehicle and the vehicle backed out of a car port and nearly struck his squad car, then fled through the yards northbound on Bader St. As I continued to read the report, I saw the repeated use of the term, "High rate of speed". Capt Florence said that he had a video cued up of the incident. I expressed that I had never seen a video of the incident and Capt Florence seemed surprised that I had never seen the video. Capt Florence brought up the video through the GERP report so we could all watch it together. Capt Florence said, "I want to start out by saying that even though I was not the investigator of this whole deal, it was all done by upstairs, this is kind of a first for me. Normally I issue these type of things when I do the investigation myself." Capt Florence said, "These were the policy violations that were determined from upstairs. But with that said, quite frankly, after seeing the video, the video from Officer Meyer, I can't really disagree with some of what they're saying. So, I just wanted to lay this out there that while this is not my work I also have to agree with some of it." Capt Florence then briefed the incident to Officer Knutson. We then watched the video together. Following the complete viewing of Officer Meyer's video, I asked to watch it again. Capt Florence said, "I know that there's thoughts in your mind that because the lights and sirens aren't activated that you're not in pursuit. I think they were looking at what the driver of the vehicle was thinking. So if she looks in her rear view mirror and

sees a squad car on her tail at a speed higher than the posted speed limit. I don't have a speedometer or odometer on there to find out how fast you are going, but just by a visual it looks like you were going faster than the 25 or 35 mile per hour speed limit." I asked Capt Florence what the speed limit was on Main Street in the section of the video. Capt Florence said that he had been off the road for a while but he thought that it was 30 or 35, but that would have to be double checked.

Upon viewing the video on Main Street where the Personnel File stated, "Officer Brann is following the suspect vehicle at a high rate of speed and in close proximity," I asked Capt Florence if he agreed that this was a high rate of speed. Capt Florence said, "I know the video can be deceiving, but it looks like it. Plus with the acceleration of the engine in the background. I would say high rate of speed or higher than the posted speed limit." I explained that I did not see that this was a high rate of speed and also said that the engine was not mine, but of the squad that was catching up. I was driving a Ford Crown Victoria squad car, and the engine that could be heard in the video was a Dodge Charger engine. I expressed that reading the documentation of the Personnel File entry without watching the video made me sound horrible and was inaccurate. I showed examples of where my speeds were being compared to stopped vehicles. Capt Florence said, "As I mentioned, this was what was drafted and was assigned out by Commander Ebel at the time. There are processes in place, just because, I guess I'm just going to leave it at that. I'm not, this is difficult for me at this point to do a 'let's make a deal' and start changing things as it's already been approved." As I could quickly pick out inconsistencies and false information in the personnel file entry, I feared this was some sort of attack against me or some sort of retaliation.

I explained that I had never been in a situation like this, so I wanted to speak with Matt before I signed the Personnel File Entry Report. Capt Florence said that he knew that I went on vacation for a few weeks after the day of the discipline hearing and said that he wanted to "get this behind us sooner, rather than waiting since Sept 24, which is unfortunate. I don't think it should have waited that long, but that's how long it took to get to me."

I asked who prepared the personnel file entry report and Capt Florence said that it was "a lot of cut and paste based on the investigative file that I got. But a lot of it was my terminology, my wording as well as the investigation file paperwork that I have." Specifically, the "High rate of speed" terminology according to Capt Florence, was said to come from the "investigative paperwork. If I recall." Officer Knutson asked Captain Florence, "I guess my only question is, if Balza or Lt Opperman or whoever did the internal, why did they not prepare the file entry report?" Capt Florence responded, "That's a darn good question. Basically, here it is. Prepare a personnel file entry." It was said that this was the discipline instructed to give by Commander Ebel.

I expressed my concern with the first disagreement between myself and Lt Engelbrecht and said that because of that disagreement, which I could not argue because it was not considered discipline, that it led into this incident which is now considered progressive discipline. I further brought up the inconsistencies based on my first and second

viewing of the squad camera video, that the narrative of the personnel file entry was not accurate with what was shown in the squad video. I expressed that I still went through the intersections with due regard. Captain Florence responded, "That's all fine and dandy. I understand that other vehicles stopped because of the suspect vehicle." Capt Florence brought up a hypothetical situation that if someone had gone through the red light and struck a City vehicle, that the City has the deep pockets and police officers have deep pockets so that's the concern that we have as the City. I asked if Capt Florence believed that I passed through intersections with due regard and he responded, "That depends on anyone's interpretation of due regard. You didn't even appear to slow down for the stop sign and stop light. You didn't have your emergency equipment on. That's the biggest thing right there."

c. Officer Concerns Over Discipline

Following the discipline meeting with Capt Florence, I met with Commander Ebel, as I had observed that the discipline had been signed off by him prior to the disciplinary meeting. Commander Ebel agreed with the discipline and I expressed my concern that I felt the verbiage used was inaccurate, to which he disagreed. Commander Ebel said that something like this happened again, that the Chief was going to take my dog away. I asked Commander Ebel to pull up the video, which we watched together. I asked if the "High rates of speed" appeared accurate, to which he agreed to remove the language and change it to "speed above the legal speed limit." I disagreed and said that my speed was being compared to stopped and slowing vehicles at some points, but was not going to argue the issue any further at that point. Commander Ebel printed and signed the modified Personnel File Entry Report and brought it to Capt Florence, whom removed the old entry which was to be shredded and replaced it with the new one.

The investigation with possible discipline of me was discussed in Detective roll call prior to informing me that there were any concerns over the incident. When asked by Union President Scanlan if there was an internal investigation, it was said that there was not. During the discipline hearing with Capt Florence, he said that he received his information from the internal investigation "upstairs".

I had not had the opportunity to speak with any supervisor about the incident or been advised that an investigation was taking place so I could discuss any issues or justify my actions prior to the discipline hearing. I was never included in an incident debrief regarding this incident.

Capt Florence could not tell me who actually wrote the complaint, admittedly cutting and pasting the complaint into a Personnel File Entry Report and signing off on it.

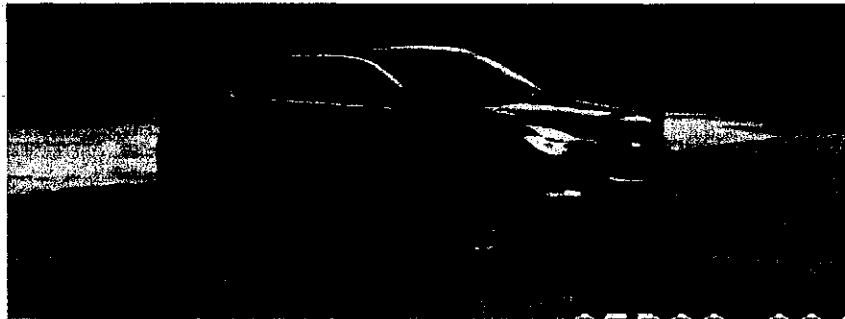
Some of the grandiose verbiage used to vilify the acts that I performed were removed and altered by Commander Ebel after the discipline was issued, following my concern that the verbiage used was excessive and damaging to my character, and provided an inconsistent description of the events that took place and the video evidence, which would be placed in my permanent file with no record of the video evidence to dispute it. Had I not expressed my concern immediately, this verbiage would not have been changed and would be included in my permanent disciplinary file.

Captain Florence said that he didn't write the narrative, but cut and pasted it into a discipline form and agreed with most of it, not stating which portions he did not agree with.

The efficiency policy is listed as being violated, but the basis for the violation was not explained in the disciplinary hearing or on the personnel file entry.

Officer Greene located the suspect vehicle and it immediately fled from him, driving over a curb and squealing its tires. The reason for the pursuit was based on the stolen vehicle status and was later terminated. These circumstances were very similar to my first discussion with Lt Engelbrecht and Capt Florence, which resulted in a Documentation of Oral Warning, which I could not grieve at the time because it was not considered discipline. During the investigation of this pursuit, there were no warnings, documentation of oral warnings or any discipline for Officer Greene that was similar to what I received on August 9, 2018, where the circumstances were nearly identical and I was told that my written documentation of an oral warning was standard practice.

Fig 1. Suspect vehicle fleeing Officer Greene by jumping curb



Facts and factors were left out of the discipline report that could explain and justify the actions that were taken during the incident and debrief if one had been conducted, such as:

- i. The victim was described as elderly, a very vulnerable citizen, as are children. It was later found that the victim was only 56 years old.

- ii. The vehicle had been stolen in the direct presence of the victim, which was later documented as being traumatic to the victim.
- iii. The reliance of GPS position of the stolen vehicle was solely based on the victim's cellular telephone being in the vehicle. Had the suspect discarded the cellular telephone after realizing police kept discovering her location, the phone powered down or battery died, it would have been more difficult to locate the vehicle and suspect or caused the suspect to steal another vehicle and victimize another citizen.
- iv. The victim's cellular telephone was in the possession of the suspect. Cellular telephones contain personal information such as names, phone numbers, addresses, family photographs and electronic banking information. The loss of this property can be extremely traumatizing to a victim.
- v. The identification of the suspect was only circumstantial at the time of the pursuit and subsequent apprehension attempt.

The discipline report states, "At Lime Kiln Rd at Main St, the stolen vehicle is traveling in the right turn lane followed by Officer Brann a continued high rate of speed." "Several civilian vehicles are in the area and forced to stop." This statement would lead one to believe that the actions that I took with my squad car forced civilians to change their driving behavior and increased the risk of danger. All vehicles shown in the video are stopped prior to my entering the intersection, with the exclusion of a small bus that was turning and not impacted, and no vehicles changed driving behavior based on my operation of my squad car. The only stopped vehicles were stopped for red traffic signals. I slowed for the intersection and passed through with due regard, as can be seen in the squad video. The below image (Fig 2) shows my squad car in the intersection with no other vehicles in this large, highly visible intersection. It also shows that I am not in close proximity of the stolen vehicle, as it is not even visible in the image (Fig. 2).

Fig. 2



The discipline report states, "Officer Brann enters into on-coming traffic without emergency lights or siren activated, then travels around traffic that is stopped in an effort to block the stolen vehicle." The report neglects to say that I entered oncoming traffic after all eastbound traffic cleared my path, was approaching a red light with green turn arrow for east and westbound Main St at Deckner Ave, and had activated my emergency lights prior to entering the intersection as I became parallel to the stolen vehicle so as not to advertise my intentions or cause the suspect vehicle to flee. The report leads one to believe that I did not activate emergency lights until I entered the intersection. See below image (Fig. 3).

Fig. 3



The discipline report states that I was in pursuit of the suspect vehicle, even though my squad did not have emergency lights or siren activated when behind the suspect vehicle. Following the direction from Lt Engelbrecht, "OK. All units we are pulling off of this right now. All Green Bay units are going 10-08", I discontinued all attempts to take the suspect into custody. I had not been involved in the initial pursuit that Officer Greene was part of, so I had never been terminated from the pursuit since I was not involved. I never re-initiated a pursuit or exhibited driving behavior indicative of a being actively involved in a pursuit. I immediately discontinued any involvement once directed by Lt Engelbrecht that all units were to pull off.

According to the squad camera audio from Officer Meyer's squad, officers had broadcast over the air about five different times with updates with locations and officer intentions to attempt to box the vehicle in when it was stopped in traffic. None of the radio transmissions were followed by Lt Engelbrecht advising that we should not attempt to make an apprehension, but only that we were not going to pursue the vehicle. There was ample time between radio transmissions for any supervisor or shift commander to state to discontinue efforts of apprehension. These radio transmissions occurred as follows:

12:29:29 "We are not pursuing, we are going slow" –Officer Meyer

12:29:56 "We are not going to pursue it. " – Lt Engelbrecht

"She is going to get caught in traffic at Lime Kiln and Mason." –Brann

12:30:25 "We are not pursuing, just following." – Brann

12:30:28 "If she gets caught in traffic, try to box her in. – Brann

12:30:39 "She will probably get caught in traffic at Main and Newberry." – Brann

12:30:50 "We are still westbound on Main coming up to Deckner." – Brann

12:31:06 "Try to block her in at this intersection." – Brann

According to the report completed by Lt Engelbrecht following his directions to terminate pursuit and for all Green Bay units to go 10-08, "I (Lt Engelbrecht) traveled to the area of Prebble High School and while I was EB on Deckner Ave. by the main entrance to Prebble, I saw a blue Chev Equinox traveling the opposite direction at a very high rate of speed. I would estimate that the vehicle was traveling at around 60 mph. As the car passed me, it appeared that the lone occupant was a female driver. I did not turn around immediately as I did not want the driver to think they were still being pursued. The vehicle got to Bader and I could see in my mirrors that it activated its brakes and came to an abrupt stop and then went north on Danz Ave. I turned around and then went northbound on Danz Ave. and pulled to the side of the road and watched the vehicle. It continued north on Danz Ave. and appeared to now be behind traffic and driving with the flow of traffic by the time it was around University Ave. That is the last location where I saw the vehicle."

The decision by Lt Engelbrecht to turn around and follow the suspect vehicle after the suspect vehicle passes him, after his own termination of the pursuit and all efforts of Green Bay units to attempt to apprehend the suspect, is consistent with my attempts to observe the vehicle without making the driver feel as if they were being actively pursued prior to his directive to end police involvement. My actions, however, were done before the directives to stop. The fact that Lt Engelbrecht was within sight of the vehicle, and the last Green Bay Police official to see the suspect vehicle, shows that Lt Engelbrecht disregarded his own direction of all Green Bay Police units to go 10-08 from the incident. The squad car video from Lt Engelbrecht's supervisor car was not included or added to this report.

Per Lt Mahoney's report, at the time of the incident Lt Mahoney was working a side job at Preble High School in full uniform and in a fully marked Green Bay Police Department squad car. Lt Mahoney heard officers call out with the stolen vehicle and the subsequent pursuit. Lt Mahoney heard the pursuit was called off by Lt Engelbrecht. Lt Mahoney heard dispatch tell officers where the car was pinging and heard Officer Clark had located the car and that it almost hit him and took off again. Lt Mahoney heard officers believed the vehicle would get caught in traffic at Main St and Deckner Ave,

then that the vehicle had gone through a parking lot and was east on Deckner Ave, towards Preble High School. In an attempt to deter the driver from driving toward the school, Lt Mahoney turned his emergency lights on at Deckner Ave and Bader St, but the vehicle drove toward Lt Mahoney, forcing Lt Mahoney to put his car in reverse and accelerate in order to keep from getting hit head on. The vehicle missed Lt Mahoney's squad by about 5-10 feet and continued east on Deckner Ave past Preble High School. Lt Mahoney states in his narrative, "I did not pursue. I last saw the vehicle about ¼ mile east of Preble High School on Deckner Ave."

In Officer Kleeman's dash camera video, the suspect vehicle is first seen as Officer Kleeman crosses the intersection of Deckner Ave eastbound over Main St when the suspect vehicle flees my apprehension attempt. Officer Kleeman was faced with a red light and passed through the intersection without emergency lights or siren activated (Fig. 4). This red light violation was not addressed during the review of this pursuit, no discussion occurred with Officer Kleeman and no discipline was deemed necessary. Lt Engelbrecht denies Officer Clark's request to get in front of the vehicle and attempt to deploy stop sticks, stating, "No, we are calling this right now." This order occurs as the stolen vehicle is approaching Lt Mahoney's position at Deckner Ave and Bader St. Contrary to the report written by Lt Mahoney, Lt Mahoney then turns on the vehicle and follows after with his emergency lights activated as Lt Engelbrecht states, "OK. All units we are pulling off of this right now. All Green Bay units are going 10-08." In Officer Kleeman's video, Lt Mahoney can still be seen following after the stolen vehicle with emergency lights activated (Fig. 5). My voice can be heard over the radio saying that I was stopped at Deckner and Huth, which was blocks away from the suspect vehicle, and I gave the last direction that I saw the suspect vehicle headed (shown in Officer Meyer's squad video). Continued in Officer Kleeman's squad video, Sgt Schilling can then be heard stating, "Shut it down up there." Five seconds later, Sgt Schilling reiterates, "Pull it over. Just let it go." Lt Mahoney's squad is still shown with emergency lights on following after the suspect vehicle, then going over the crest of the hill and out of sight (Fig. 6). From the time that Lt Engelbrecht cancels all Green Bay units to the time that Lt Mahoney is going over the hill with emergency lights still activated is about 35 seconds. When Officer Kleeman drives over the crest of the hill, Lt Mahoney's emergency lights are off as he is continuing eastbound on Deckner Ave. It cannot be seen when the emergency lights are shut off. There was no dash camera video from Lt Mahoney's squad car added to this report.

Fig. 4 Kleeman image through red light with no emergency lights at Main St / Deckner Ave.



Fig. 5 Mahoney squad with lights on following suspect vehicle after termination by Lt Engelbrecht.



Fig. 6 Lt Mahoney squad with lights on following after suspect vehicle after two orders from Lt Engelbrecht and two orders from Sgt Schilling to discontinue.



It is possible that based on the radio transmissions of Sgt Schilling saying, "Shut it down up there. Pull it over. Just let it go." immediately after I announce my position that I had stopped and direction the vehicle was last headed, that it could be perceived over the radio that I was the officer still pursuing the stolen vehicle, which was shown to be Lt Mahoney per Officer Kleeman's video. This should have been discovered during the internal investigation over this pursuit.

I had never been involved in the pursuit when Officer Green attempted the traffic stop and initiated the pursuit. I had broadcast my intentions of boxing the car in when it was caught in traffic over the air multiple times. Each time I broadcast my intentions, I could have been told to stand down by a supervisor, but was not. I was aware that we were not going to pursue the vehicle and my intentions were never to re-initiate a pursuit, but to attempt an apprehension of the suspect at a time that I thought was the most safe and provided the suspect with ample time to make a rational decision after the initial pursuit, which was when the suspect vehicle was stationary at the red light with limited chance to accelerate quickly.

During the time that I followed behind the vehicle, it is possible that I was in excess of the posted speed limit, but I was not in pursuit. I was attempting to get into a position to apprehend a suspect that had committed a felony (see above jury instructions for fleeing an officer) and was currently committing another felony of Operating a Motor Vehicle Without Owner's Consent (see jury instructions below). According to the exemptions listed below under WI Statutes Chapter 346.03, the requirement for use of emergency lights and siren is exempt if the officer is responding to a call which the officer reasonably believes involves a felony in progress and the officer reasonably believes:

1. Knowledge of the officer's presence may endanger the safety of a victim or other person.
2. Knowledge of the officer's presence may cause the suspected violator to evade apprehension.
3. Knowledge of the officer's presence may cause the suspected violator to destroy evidence of a suspected felony or may otherwise result in the loss of evidence of a suspected felony.
4. Knowledge of the officer's presence may cause the suspected violator to cease the commission of a suspected felony before the officer obtains sufficient evidence to establish grounds for arrest.

In this instance, I believed that activating my emergency lights and siren would cause the suspect to believe the pursuit was being re-initiated and then increase speed,

evasive maneuvers and aggressive techniques that would put the public at a heightened danger which may result in a high speed crash. The suspect could also attempt to hide the vehicle, as she had exhibited by parking underneath the carport before Officer Clark located the vehicle and attempted the first apprehension.

d. Excerpt from WI Statutes **346.03**

346.03 Applicability of rules of the road to authorized emergency vehicles.

(1) The operator of an authorized emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected violator of the law, when responding to but not upon returning from a fire alarm, when transporting an organ for human transplantation, or when transporting medical personnel for the purpose of performing human organ harvesting or transplantation immediately after the transportation, may exercise the privileges set forth in this section, but subject to the conditions stated in subs. (2) to (5m).

(2) The operator of an authorized emergency vehicle may:

(a) Stop, stand or park, irrespective of the provisions of this chapter;

(b) Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;

(c) Exceed the speed limit;

(d) Disregard regulations governing direction of movement or turning in specified directions.

(2m) Notwithstanding s. 346.94 (20), a law enforcement officer, a fire fighter, or emergency medical personnel may open and leave open any door of an authorized emergency vehicle when the vehicle is stopped, standing, or parked and the person is performing official duties.

(3) The exemptions granted by sub. (2) (b), (c) and (d) apply only when the operator of the emergency vehicle is giving a visual signal by means of at least one flashing, oscillating, or rotating red light, except that the visual signal given by a police vehicle may be by means of a blue light and a red light which are flashing, oscillating, or rotating, and also an audible signal by means of a siren or exhaust whistle, except as otherwise provided in sub. (4) or (4m).

(4) Except as provided in sub. (4m), a law enforcement officer operating a police vehicle shall otherwise comply with the requirements of sub. (3) relative to the giving of audible and visual signals but may exceed the speed limit without giving audible and visual signal under the following circumstances:

(a) If the officer is obtaining evidence of a speed violation.

(b) If the officer is responding to a call which the officer reasonably believes involves a felony in progress and the officer reasonably believes any of the following:

1. Knowledge of the officer's presence may endanger the safety of a victim or other person.

2. Knowledge of the officer's presence may cause the suspected violator to evade apprehension.

3. Knowledge of the officer's presence may cause the suspected violator to destroy evidence of a suspected felony or may otherwise result in the loss of evidence of a suspected felony.

4. Knowledge of the officer's presence may cause the suspected violator to cease the commission of a suspected felony before the officer obtains sufficient evidence to establish grounds for arrest.

(4m) A law enforcement officer operating a police vehicle that is a bicycle is not required to comply with the requirements of sub. (3) relative to the giving of audible and visual signals.

(5) The exemptions granted the operator of an authorized emergency vehicle by this section do not relieve such operator from the duty to drive or ride with due regard under the circumstances for the safety of all persons nor do they protect such operator from the consequences of his or her reckless disregard for the safety of others.

(5m) The privileges granted under this section apply to the operator of an authorized emergency vehicle under s. 340.01 (3) (dg) or (dh) only if the operator has successfully completed a safety and training course in emergency vehicle operation that is taken at a technical college under ch. 38 or that is approved by the department and only if the vehicle being operated is plainly marked, in a manner prescribed by the department, to identify it as an authorized emergency vehicle under s. 340.01 (3) (dg) or (dh).

(6) Every law enforcement agency that uses authorized emergency vehicles shall provide written guidelines for its officers and employees regarding exceeding speed limits under the circumstances specified in sub. (4) and when otherwise in pursuit of actual or suspected violators. The guidelines shall consider, among other factors, road conditions, density of population, severity of crime and necessity of pursuit by vehicle. The guidelines are not subject to requirements for rules under ch. 227. Each law enforcement agency shall review its written guidelines by June 30 of each even-numbered year and, if considered appropriate by the law enforcement agency, shall revise those guidelines.

History: 1983 a. 56; 1985 a. 82, 143; 1987 a. 126; 1995 a. 36; 1997 a. 88; 2007 a. 20; 2011 a. 184; 2015 a. 102.

Sub. (5) limits the exercise of privileges granted by sub. (2). *City of Madison v. Polenska*, 143 Wis. 2d 525, 421 N.W.2d 862 (Ct. App. 1988).

An officer who decides to engage in pursuit is immune from liability for the decision under s. 893.80, but may be subject to liability under sub. (5) for negligently operating a motor vehicle during the chase. A city that has adopted a policy that complies with sub.

(6) is immune from liability for injuries resulting from high speed chases. A policy that considered the severity of the crime only in terms of when to strike a vehicle or use road blocks did not comply with sub. (6). *Estate of Cavanaugh v. Andrade*, 202 Wis. 2d 290, 550 N.W.2d 103 (1996), 94-0192.

In order to comply with this section and lawfully proceed through a red stop signal, an authorized emergency vehicle must slow down as may be necessary for safe operation, have given both a visual and an audible signal, and have proceeded with due regard under the circumstances for the safety of all persons. *Brown v. Acuity, A Mutual Insurance Company*, 2013 WI 60, 348 Wis. 2d 603, 833 N.W.2d 96, 11-0583.

Reading compliance with subs. (2) (b) and (3) as meeting the due regard standard of sub. (5) ignores the language of sub. (5). Sub. (5) explicitly states that the duty of due regard exists notwithstanding the other exemptions or privileges in this section. The duty of "due regard under the circumstances" is a ministerial duty for purposes of determining immunity under s. 893.80. *Legue v. City of Racine*, 2014 WI 92, 357 Wis. 2d 250, 849 N.W.2d 837, 12-2499.

A private ambulance that is an authorized emergency vehicle usually kept in a given county pursuant to s. 340.01 (3) (i) may not avail itself of the provisions of sub. (2) when proceeding unsolicited to the scene of an accident or medical emergency in an adjacent county. 77 Atty. Gen. 214.

A claim of excessive force in the course of making a seizure of the person is properly analyzed under the 4th amendment's objective reasonableness standard. A police officer's attempt to terminate a dangerous high-speed car chase that threatens the lives of innocent bystanders does not violate the 4th amendment, even when it places the fleeing motorist at risk of serious injury or death. *Scott v. Harris*, 550 U.S. 372, 127 S. Ct. 1769, 167 L. Ed. 2d 686 (2007).

Police civil liability and the law of high speed pursuit. Zevitz, 70 MLR 237 (1987).

e. Jury Instructions

The following contains the jury instructions that the Circuit Court Judge reads to the jury members after the closing arguments of a court case. These elements should be considered by officers when conducting police investigations and writing police reports, as the lack of inclusion of the elements should result in a suspect being found not guilty.

(Begin Jury Instructions)

1465 DRIVING OR OPERATING A VEHICLE WITHOUT THE OWNER'S CONSENT ? § 943.23(3)

Statutory Definition of the Crime

Driving or operating a vehicle without the owner's consent, as defined in § 943.23(3) of the Criminal Code of Wisconsin, is committed by one who intentionally drives or operates any vehicle without the consent of the owner.

State's Burden of Proof

Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following two elements were present.

Elements of the Crime That the State Must Prove

1. The defendant intentionally (drove) (operated) a vehicle without the consent of the owner.

["Drive" means to exercise physical control over the speed and direction of a vehicle while it is in motion.]

["Operate" means the physical manipulation or activation of any of the controls of a vehicle necessary to put it into motion.]

[A person (drives) (operates) without consent even though the owner consented to the original taking if the person (drives) (operates) the vehicle in a manner that goes beyond the scope of the use authorized or permitted by the owner.]

2. The defendant knew that the owner of the vehicle did not consent to (driving) (operating) the vehicle.

Deciding About Intent and Knowledge

You cannot look into a person's mind to find intent and knowledge. Intent and knowledge must be found, if found at all, from the defendant's acts, words, and statements, if any, and from all the facts and circumstances in this case bearing upon intent and knowledge.

Jury's Decision

If you are satisfied beyond a reasonable doubt that both elements of this offense have been proved, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

IF THERE IS EVIDENCE OF THE AFFIRMATIVE DEFENSE UNDER SUB. (3m), ADD THE MATERIAL FROM WIS JI-CRIMINAL 1465A.

(End Jury Instructions)

Green Bay Police Department

PERSONNEL FILE ENTRY REPORT

Date: 12 04 18	In the matter of: Vehicle Pursuit - Green Bay Police Department case number 18-210609
Officer Name(s): Officer Jeff Brann	
Details: On 09 20 18 at 12:18pm, DePere PD notified the Green Bay PD, via the Communication Center, that they were tracking a stolen vehicle by phone in Green Bay's jurisdiction. An in depth review of the facts are as follows: That vehicle is located by an officer who initiates a pursuit. That pursuit is immediately terminated by Lt Engelbrecht. A few moments later, the stolen vehicle was located parked by Officer Clark. Officer Clark attempts to make contact, but the vehicle drives away. Officer Brann, who was approaching Officer Clark as a backup, comes across the stolen vehicle leaving the scene at a high rate of speed and begins to follow it. Officer Brann follows the stolen vehicle that is still increasing its speed. Officer Brann follows the vehicle onto NB Lime Kiln Rd, failing to stop for the stop sign at August St at Lime Kiln Rd and without emergency lights or siren activated. Officer Clark asks Lt Engelbrecht if he still wants them to pursue the stolen vehicle, which Lt Engelbrecht clearly states not to pursue. Officer Brann continues to follow the stolen vehicle without emergency lights or siren activated and at a speed above the legal speed limit of 25mph. At Lime Kiln Rd at Main St, the stolen vehicle is traveling in the right turn lane followed by Officer Brann at a continued high rate of speed. The stolen vehicle then turns left onto WB Main St, followed by Officer Brann, without stopping for a red traffic signal and without activating the emergency lights or siren. Several civilian vehicles are in the area and forced to stop. Officer Brann states on the radio, "We are not pursuing. We are just following in case she gets caught in traffic and try to box her in." The video evidence from Officer Meyer's squad camera contradicts that statement as Officer Brann is following the suspect vehicle at a speed greater than the posted limit of 30 mph. At Main St at Deckner Av, the stolen vehicle is approaching stopped traffic. Officer Brann enters into on-coming traffic without emergency lights or siren activated, then travels around traffic that is stopped in an effort to block the stolen vehicle. Officer Brann activates his emergency lights and exits his squad. He then approaches the stolen vehicle with his handgun drawn and pointing it at the driver of the stolen vehicle while ordering her to get her "Hands up!" Several stopped civilian vehicles and operators are caught in a potential crossfire situation. The operator of the stolen vehicle is able to escape through the stopped vehicles and leaves EB on Deckner Av. Officer Brann returns to his squad, shuts off his emergency lights, and follows the vehicle EB on Deckner Av. Officer Clark informs Lt Engelbrecht that there may be a possibility of getting stop stick deployed on the vehicle. Lt Engelbrecht orders this pursuit terminated and moments later repeats his order to terminate. Officer Brann then pulls over to the side of the road at Deckner at Huth St and stops following the stolen vehicle. On 08 02 18, Officer Brann was issued a Documentation of an Oral Warning for initiating a pursuit without sufficient criteria for a vehicle pursuit under GBPD department policy. By the actions of the 09 20 18 pursuit, Officer Brann is in violation of the following Green Bay Police Department Policies: POLICY 307 - VEHICLE PURSUITS 307.3.2 When to Terminate a Pursuit (a) When directed to terminate the pursuit by a supervisor. (f) The hazards to uninvolved bystanders or motorists. (g) When the identity of the offender is known and it does not reasonably appear that the need for immediate capture outweighs the risks associated with continuing the pursuit, officers should strongly consider discontinuing the pursuit and apprehending the offender at a later time (Wis. Stat. § 346.175(3)(a)). POLICY 308 - OFFICER RESPONSE TO CALLS 308.4 Responsibilities of the Responding Officer Officers shall exercise sound judgment and care with due regard for life and property when responding to an emergency call. Officers shall reduce speed at all street intersections to such a degree that they shall have complete control of the vehicle.	

During a call involving an emergency response, after giving a visual and audible siren or exhaust whistle, officers may (Wis. Stat. § 346.03):

- a. Disregard regulations governing stopping, parking or standing when using a red or red and blue flashing, oscillating or rotating light.
- b. Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation.
- c. Exceed any speed limits provided this does not endanger life or property.
- d. Disregard regulations governing direction of movement or turning in specified directions.

POLICY 320 STANDARDS OF CONDUCT

320.5.1 Laws, Rules, and Orders

(b) Disobedience of any legal directive or order issued by any department member of a higher rank.

(c) Violation of federal, state, local or administrative laws, rules or regulations.

320.5.7 Efficiency

(b) Unsatisfactory work performance including, but not limited to, failure, incompetence, inefficiency or delay in performing and/or carrying out proper orders, work assignments or the instructions of supervisors without a reasonable and bona fide excuse.

Report Prepared By (name and rank) :

Captain B. Florence

UNIT / SHIFT COMMANDER'S REVIEW AND RECOMMENDATION

Additional Details:

Unit or Shift Commander Reviewing (name and rank):

REVIEWED BY DIVISION COMMANDER

Approved ?

☐ Yes ☐ No ☐ Modified

Approved By

Division Commander Comments

OFFICER INFORMED OF INCIDENT AS OUTLINED IN DETAILS		
Date Informed	Informed By: (signature)	Officer Signature
ACTIONS		
Date:	Copy sent to Chief ☐	
Date:	Copy placed in Personnel File ☐	
DISCIPLINE		
Date:	Chief's Interview with Officer ☐	
Date:	Chief issues written reprimand ☐	
Date:	Copy of written reprimand must be sent to: ☐ Personnel File ☐ Personnel Manager ☐ Union President ☐ Union Attorney	
Date:	Police and Fire Commission notified in suspension cases ☐	
Date:	Officer Relieved from duty by: (name and rank)	
COMMENDATIONS		
Date:	Recommended for Department Commendation ☐	
Date:	Letter sent by Chief ☐	
Date:	Referred to Awards Committee ☐	



TITLETOWN USA

Department of Police

Andrew Smith
Chief of Police

Date: February 4, 2019

Reference: Grievance 2019-001

President Scanlan,

This letter is in reference to the mentioned grievance and the City's intention of denying said grievance.

I would like to clear up some confusion that seems to be part of the grievance. First there was no formal internal investigation into this pursuit. An after-action review is done on all pursuits including this one. During the after action it was found that officer Brann's actions clearly show that he is pursuing the vehicle in question after orders not to pursue. Furthermore he pursued the vehicle without emergency lights and siren putting the public and officers at greater risk. This was not merely "following" at a safe distance to apprehend the driver as is being portrayed by Officer Brann.

This pursuit was terminated by LT Engelbrecht at 12:22:32 PM when Officer D Greene was told to terminate which he did at Bader ST and Newberry AVE. The vehicle was later found by Officer Clark and fled from him as well. Officer E Meyer traveling south bound of Bader ST approaching Vine ST and observes the vehicle. Officer Meyer activates his overhead light bar and calls out that the vehicle is west on Vine ST and north on Ricky DR. Officer Meyer extinguishes his light bar as he turns onto Ricky DR. says that he is not pursuing, we are going slow, this is at 12:29:29 PM. At 12:29:56 PM Lt Engelbrecht says over the radio very clearly that we are not going to pursue it. This statement is an order from a superior officer that "we" meaning officers from the Green Bay Police Department are not going to pursue this vehicle. The vehicle turns west bound onto August ST in front of Officer Brann's vehicle. The vehicle continues to Line Kiln RD turning right without stopping for the stop sign. Officer Brann also fails to stop for the stop sign and the same for Officer Meyer. Officer Brann's speed has been estimated by the city traffic engineer at 43.8 mph on August ST, 18 mph over the speed limit. The vehicle continues north on Lime Kiln RD to Main ST which is a full phase red light. The vehicle turns left from the Line Kiln RD onto Main ST from the right traffic lane against the red light, Office Brann follows without emergency light activated. Officer Meyer turns his light bar on to clear the intersection and shuts it off again traveling west on Main ST. Officer Brann's squad reaches a peak speed of 54.8 mph as calculated by the city traffic engineer in a 30 mph zone.

At no time since Officer Meyer activated his emergency lights on Bader ST was there not a squad car directly behind or in close proximity that the driver would think that she was not being pursued. Clearly the driver still believed that she was being pursued based on this fact. The driver had fled two previous attempts to get her to stop, once by Officer Greene and once by Officer Clark. Lt Engelbrecht terminated the pursuit

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World Wide Web <http://www.ci.green-bay.wi.us/>



Department of Police

Andrew Smith
Chief of Police

and confirmed his termination when asked 12:29:56 PM. Officer Brann chose to continue rather than pulling to the side of the road and stopping.

Officer Brann feels targeted for some reason even saying that Commander Ebel said the Chief wanted to take his K9 away which is a misrepresentation of their conversation.

The counseling register will not be used for this personnel entry. Removal denied.

Sincerely,

Andrew J. Smith

307 South Adams Street wGreen Bay, WI. 54301-4582 w 920 448 3200 w Fax 920 448 3248 w Emergency 9-1-1

World Wide Web <http://www.ci.green-bay.wi.us/>

Green Bay Police Department

PERSONNEL FILE ENTRY REPORT

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- b. Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation.
- c. Exceed any speed limits provided this does not endanger life or property.
- d. Disregard regulations governing direction of movement or turning in specified directions.

Report Prepared By (name and rank) :

Captain B. Florence, Cmdr. Ebel, and edited by Cmdr. Kevin Warych on 03-04-19

UNIT / SHIFT COMMANDER'S REVIEW AND RECOMMENDATION

Additional Details:

Unit or Shift Commander Reviewing (name and rank):

REVIEWED BY DIVISION COMMANDER

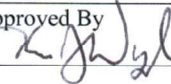
Approved ?

☐ Yes

☐ No

☒ Modified

Approved By



Kevin J Warych

Division Commander Comments

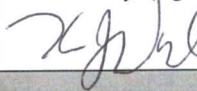
In conferring with GBPPA Association members, Scanlan and Biller, we modified the above entry on 03/04/19..Cmdr. Warych

OFFICER INFORMED OF INCIDENT AS OUTLINED IN DETAILS

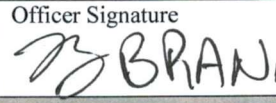
Date Informed

3/22/19
3/7/19 kdw

Informed By: (signature)

 Kevin J Warych

Officer Signature

 BRANN #100

ACTIONS

Date:

3/22/19
3/7/19 kdw

Copy sent to Chief

☒

Date:

3/22/19
3/7/19 kdw

Copy placed in Personnel File

☒

DISCIPLINE

Date:

Chief's Interview with Officer

☐

Date:

Chief issues written reprimand

☐

Date:

3/22/19
3/7/19 kdw

Copy of written reprimand must be sent to:

☒ Personnel File☐ Personnel Manager☒ Union President☐ Union Attorney

Date:

Police and Fire Commission notified in suspension cases

☐

Date:

Officer Relieved from duty by: (name and rank)

COMMENDATIONS

Date:

Recommended for Department Commendation

☐

Date:

Letter sent by Chief

☐

Date:

Referred to Awards Committee

☐



*The City of Green Bay is a leader in employee health and wellness with its **Health | 1265** program and a goal to engage all employees in their own health and well-being*

April 25, 2019

Officer Jeffrey Brann
Green Bay Police Department
307 S. Adams Street
Green Bay, WI 54301

Sent via email: jeffbr@greenbaywi.gov

RE: Step 2 – Grievance Response (2019-001)

Dear Officer Brann,

On April 5, 2019 you met with me to discuss your grievance and concerns you had with the discipline that you were administered. You handed me the grievance documents that were originally filed with Chief Andrew Smith and Chief Smith's response on February 4, 2019. I explained that I was unsure of the timeliness of filing your grievance for the second step and that I would review it, but my determination may be that it is untimely.

After speaking with you, President Phil Scanlan, Detective Brad Biller, Commander Kevin Warych, and reviewing the recording from the March 22, 2019 meeting you had with Commander Warych, I have reached the determination that this grievance has been resolved and that you are unable to present your grievance to me at the second step of the grievance procedure.

The timeline of events is as follows:

- On December 17, 2018 you received a Personnel File Entry for violations of four policies: (1) Policy 307 – Vehicle Pursuits; (2) Policy 308 Office Response to Calls; (3) Policy 320 Standards of Conduct; and (4) Policy 320.5.7 Efficiency.
- You timely filed a grievance with Chief Smith on January 21, 2019. Chief Smith denied your grievance on February 4, 2019.
- After Chief Smith denied your grievance, Union Representatives met with Commander Warych to discuss potential resolutions to your grievance. The Union Representatives and Commander Warych reached an agreement to amend your Personnel File Entry.
- In March, Commander Warych met with you on two occasions to discuss the resolution to your grievance and that the Personnel File Entry will be amended from four violations to two violations.

- On March 22, 2019 you met with Commander Warych and he explained the status of your grievance and you understood the status of your grievance. At that meeting the amended Personnel File Entry was placed in your personnel file and the original Personnel File Entry that was in your personnel file from December 17, 2018 was removed from your file. You and your Union Representative, Matt Knutson, watched as the original personnel file entry was electronically removed from your file.
- On April 5, 2019 you filed your grievance documents with me and stated that your discipline was imposed on March 22, 2019.

After reviewing this timeline, I have reached the conclusion that both your filing of the grievance with me is untimely and that your grievance has been resolved. The grievance filed for Step 2 is untimely because the 15 working days deadline to file for Step 2 expired on February 25, 2019 and you did not file any documents with me on or before February 25, 2019.

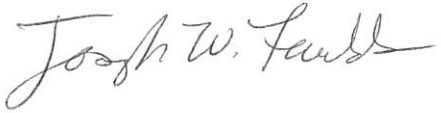
Moreover, the actions by you and your Union Representatives represented to the City that you were satisfied with the outcome of your grievance. During the 15 working day time period to file for Step 2, your Union Representatives and Commander Warych reached a resolution to your grievance by agreeing to amend your Personnel File Entry. The purpose for the meeting to occur within the 15 working day time period was to ensure that if you and the Union could not reach an agreement with the City, then you would have time to file documents for the Step 2 grievance. After the meeting with Commander Warych there was no indication from you or the Union that you were not satisfied with the agreement to amend your Personnel File Entry or that you would like to move onto Step 2 of the grievance procedure.

Furthermore, on March 22, 2019 you and your Union Representative, Matt Knutson, met with Commander Warych to discuss the modified Personnel File Entry. You explained that you did not necessarily agree with everything in the entry, but you were not refusing to sign the Personnel File Entry and you acknowledged that it will be put in your file. Commander Warych explained to you the status of your grievance and you understood that the amended Personnel File Entry was to settle the grievance. Moreover, you and your representative asked if you could submit a rebuttal to go along with the Personnel File Entry and it was explained that you can do that. Lastly, you insisted that you witness the electronic removal of the original December 17, 2018 Personnel File Entry from your file. You and your representative Matt Knutson then watched as the original Personnel File Entry was electronically removed from your file.

Overall, your actions in the meeting with Commander Warych and witnessing the removal of the original Personnel File Entry represents to the City that you understood your grievance was finalized and that you were satisfied with the outcome. As such, the amended Personnel File Entry on March 22, 2019 did not toll your grievance or create a new discipline for you to grieve, but instead, the acceptance of the amended Personnel File Entry finalized the January 21, 2019 grievance that you filed with Chief Smith.

Based on my review of the grievance, the grievance is untimely and, ultimately, has been resolved.

Respectfully submitted,

A handwritten signature in cursive script that reads "Joseph W. Faulds".

Joseph W. Faulds
Human Resources Director

Cc: Police Chief Andrew Smith (via email only)
Attorney Jon Cermele (via email only)
GBPPA Representative Phil Scanlan (via email only)

Documentation of Oral Warning

Employee Name: Officer J. Brann

Spoken to by: Lt. J. Engelbrecht

Date: 08-09-18

Details:

On Thursday August 2, 2018 at around 12:05pm Officer Brann was following a vehicle where the driver was suspected to have a DOC warrant. As Officer Brann caught up to the vehicle in an alley off of Cherry St., the driver accelerated rapidly and took off from Officer Brann, spinning its tires and creating thick black smoke from its exhaust. Officer Brann activated his emergency lights and siren, went after the vehicle and called out with it stating over the air that the vehicle was blowing stop signs. Officer Brann's details state that the vehicle was traveling at speeds "about 70mph in a residential neighborhood". He pursued the vehicle for about 0.5 miles, or about 3-4 city blocks. I asked over the radio what the warrant was for and he replied it was a DOC warrant. I then requested that the pursuit be terminated. A debrief was done with Officer Brann afterward. Officer Brann believed that since the driver began to flee prior to him activating his emergency equipment that his driving behavior was a danger to the public and he needed to make an attempt to stop it. It appeared clear after debriefing Officer Brann, reviewing his details and reviewing the radio transmissions from the COBAN video from Officer Clark's vehicle that the suspect's driving behavior was an attempt to flee from Officer Brann. This pursuit, though short in duration, was initiated without sufficient criteria for a vehicle pursuit under our departmental policy. It should be noted that Officer Brann was very receptive during the debrief and was very professional and courteous with me.

I fully understand that the above was an oral warning, and this is the documentation to prove above oral warning was given.

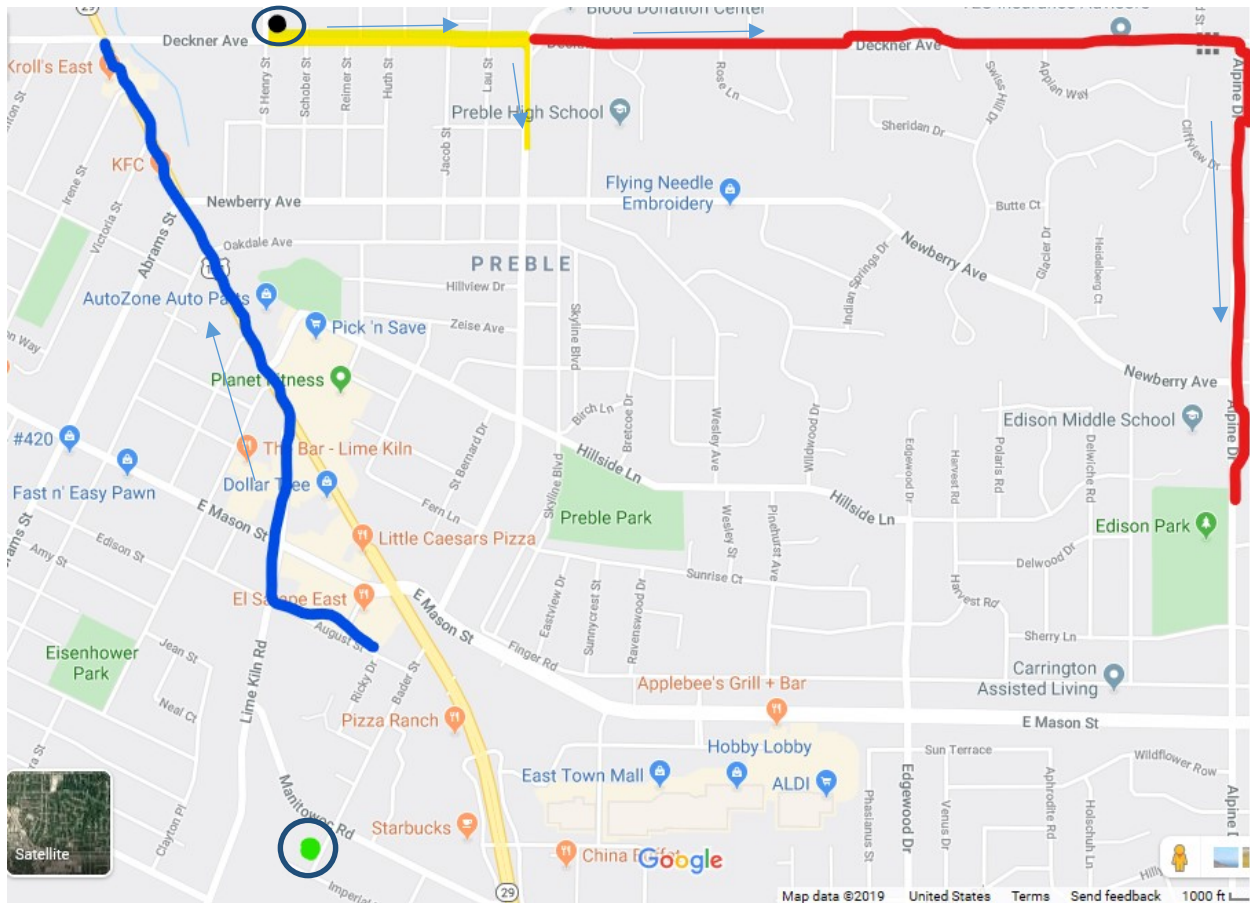

Employee Signature


Issuing Supervisor's Signature

Comments by Employee Regarding the Incident:

Reviewed by Captain: _____

This document will stay in the Counseling Register for a period of one year from date given, at which time it will be removed.



Everything contained on this map is on the East Side of the City of Green Bay, Brown County, WI.

Black dot at Deckner Ave and N Henry St is the location that Officer D Greene originally located the stolen vehicle and the beginning of the pursuit.

Yellow highlight from black dot beginning at Deckner Ave and N Henry St, east on Deckner Ave and south on Bader St is the route of D Greene's pursuit with emergency lights and siren activated. The end of the yellow line on Bader St is the approximate position of the end of the pursuit.

Green dot at Bader St and Imperial lane is where the stolen vehicle was located by Officer Clark. Vehicle fled through yards from Officer Clark's attempted apprehension and traveled north on Bader St and west on Vine St where it was located and followed by Officer Meyer west on Vine St, north on Ricky Dr to August St.

Blue line beginning at Ricky Dr and August St, traveling west on August St, north on Lime Kiln Rd, north on Main St to Deckner Ave is the route of Officer Brann's travel following the stolen vehicle. The blue line ends at Main St and Deckner Ave where Officer Brann attempted the apprehension of the suspect while stopped at a red light. Stolen vehicle fled east on Deckner Ave from Main St.

Red line beginning on Deckner Ave at Bader St, east on Deckner Ave to south on Alpine Dr to Edison Middle School / Edison Park is route of Lt Mahoney's travel while following after the suspect vehicle. The beginning of the red line at Deckner Ave at Bader St is the location that Lt Mahoney indicated in his report that he did not pursue.

Green Bay Professional Police Association
Contract Violation Information Form

Date of Occurrence: <u>12-17-18</u>	Grievance step - check one 1 ☒ 2 ☐ 3 ☐
Officer's Name/Rank: (if association as a whole write GBPPA) <u>Jeffrey G. Brown / Specialist II</u>	Division/Assignment: <u>Operations / Mid-Days K9</u>
This grievance alleges a violation of article <u>25</u> section <u>1,3</u> of the labor agreement and/or department policy pertaining to: <u>307, 308, 320,</u>	

Description of Grievance - state all facts including time, place of incident, persons involved, etc.

See Attached:

- Grievance (pages 1-24)
- Modified Personnel File Entry Report (3 pages)
- Original Personnel File Entry Report (2 pages)
- Documentation of Oral Warning (1 page)

Relief Sought:

Removal of Personnel File Entry
Removal of Documentation of Oral Warning

Signature of Employee: <u>JEFFREY G. BROWN #100</u>	Signature of Association Representative: <u>[Signature]</u>	Date Filed: <u>1-21-19</u>
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Employer Representative Response:

Employers representative signature	Title	Date Grievance received:	Date Answered
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Matter resolved: Yes ☐ No ☐ If yes, How?

Grievance of Personnel File Entry Report for Officer Jeffrey G Brann

Grievance 2019-001

Content of attachment:

1. Grievance
2. Summary of Written Documentation of Verbal Warning from August 9, 2018 (Errick Tucker)
 - a. Summary of Incident
 - b. Delivery of Discipline
 - c. Officer Concerns Over Discipline
 - d. Jury Instructions
3. Summary of Personnel File Entry Report from December 17, 2018 (Taniesha Tucker)
 - a. Summary of Incident
 - b. Delivery of Discipline
 - c. Officer Concerns Over Discipline
 - d. Excerpt from Wisconsin Statutes 346.03
 - e. Jury Instructions

1. Grievance

I intend to grieve the Personnel File Entry Report that was issued on December 17, 2018, which was in violation of 25.1 (Discipline rules and regulations), 25.3.1 and 25.3.3 (Internal Investigations) and alleged violations of the following policies:

Policy 307 – Vehicle Pursuits

Policy 308 – Officer Response to Calls

Policy 320 – Standards of Conduct

Policy 320.5.7 - Efficiency

2. Summary of Written Documentation of Verbal Warning from August 9, 2018

a. Summary of Incident:

On Thursday, August 2, 2018 I located a male that was wanted for a misdemeanor warrant according to CIB. The male was driving a vehicle on a City street at the time that I ran the license plate and the corresponding registered owner and I later discovered the warrant. After going out of my view and prior to me knowing of the warrant, the male had parked his vehicle and entered a business (El Ranchito). I did not know where the vehicle had gone, but located it shortly after. After locating the vehicle, I set up surveillance on the target vehicle and arranged for another patrol unit (Officer Clark) to start heading toward the area to assist. The male exited the store moments later and walked past his vehicle in an attempt to avoid police contact as he saw me watching the vehicle from a distance. I was not certain if this was the driver of the vehicle at this time due to the distance and not having previously observed the suspect's clothing. I began to drive in the opposite direction to see if the male would return to the target vehicle, keeping the male in sight with use of my mirrors, and the male turned around and returned to his vehicle as I began to drive away. I turned around to attempt contact with the male, but he quickly left the parking lot and entered traffic in his vehicle. I directed other officers that were responding to the area of the direction of travel of the target vehicle, waiting to attempt a traffic stop until I had sufficient cover officers. The male turned into an alley (1000 block E Walnut St, northbound) where I have been involved in numerous foot chases, suspects fleeing from vehicles and drug arrests over the years that I have patrolled this area. I believed the male was going to park his car in the alley and flee on foot, so I followed him into this alley to maintain visual contact with him instead of surveilling from a distance or trying to catch up to him on the other side of the block. The male continued to drive north through the alley, which is when I was able to confirm the license plate, broadcast the vehicle description

and possible suspect identity to other units. As the male exited this alley and turned east onto Cherry St. the vehicle spun its tires and accelerated rapidly, prior to me giving an audible and visual direction for the vehicle to stop from my fully marked patrol car. This was the first reckless action taken by the suspect vehicle, followed by going through a stop sign (Cherry St / N Clay St) without slowing or stopping. I activated my emergency lights and siren to give visual and audible direction for the suspect vehicle to pull over and also to warn civilians in the area of the reckless driver. I slowed for the stop sign and proceeded with due regard. I provided the suspect driver with time to process my visual and audible order to pull over. The vehicle accelerated to a speed that I estimated to be about 70 miles per hour and was pulling away from me. There were no other vehicles on the street and no pedestrians on the sidewalk at the time of the incident. Lt Engelbrecht asked over the air for the reason for the pursuit. I explained that the reason was for a Division of Corrections warrant and the pursuit was terminated. I immediately pulled over, deactivated my lights and siren and advised dispatch of my location (N Baird St between Cherry St and E Walnut St). The vehicle was last seen by Officer Clark. The total length of time that the vehicle fled from me was about 12 seconds, about a half mile or 3-4 City blocks.

The suspect vehicle was located abandoned 10 minutes after the pursuit termination. The driver, Errick Tucker, was located six minutes later leaving the area on foot, from the area of the residence where his domestic violence incident took place, and I took him into custody without further incident. Tucker provided a post Miranda statement to police following the incident where he said that he observed an officer watching him as he left the El Ranchito store. He saw the officer follow him into the alley where he then thought the drug place he was going to was about to get raided so he got out of there and the officer followed him out to Cherry St. Tucker said that he observed the officer cut his red and blue lights off and slow down a bit, then saw two of them (officers) so he called his girl to say he was going to jail. Tucker parked at Walgreens thinking that police would be there soon. Something then told Tucker, "Man just go" so he went to go to the house. At the end of the statement Tucker said that he made sure all the lights were green and blew his horn the entire time because he didn't want to hit anyone. Tucker stated that he did not go through any red lights while being chased, but that he did go through a red light at Mason St and Baird St when no officer was behind him.

b. Delivery of Discipline

Lt Engelbrecht spoke with me the following day in the Lieutenant's office and said that he was concerned that my incident had been in violation of the pursuit policy. I explained that I did not disagree that the pursuit should have been terminated and that I did not plan to continue to pursue the vehicle further than I had as the elements of the crime were established and the identity of the suspect was likely known or would be

able to be established through follow up interviews and investigation. Lt Engelbrecht said that I never should have activated my lights and siren when the vehicle left the alley and pulled away from me. I argued that I would not be able to charge the driver with fleeing if I had not made an attempt to pull the vehicle over, to which Lt Engelbrecht disagreed. I attempted to explain the elements of the offense that I needed to prove for the courts to charge and convict the suspect, but we were unable to agree at that point. I expressed that the driver's behavior turned the traffic stop attempt into a pursuit and that I had pulled over immediately upon the direction of a supervisor, and followed up the investigation by taking the male into custody without a further pursuit or use of force, which was the ideal outcome for a situation of this matter.

The total time that the vehicle fled while I was in pursuit was about 12 seconds, which included me turning on lights and siren, broadcasting the direction of travel, driving with due regard, answering Lt Engelbrecht's request for the reason for the pursuit, having the pursuit terminated and pulling over to stop pursuing. Also during this 12 seconds, I was considering the distance that responding units are from my location, what may lie ahead of the suspect vehicle, where the driver may be trying to go, other reasons for the driver fleeing (drugs/weapons), limitations of my patrol vehicle and environmental conditions. Lt Engelbrecht said he was not familiar with the pursuit phases and that he wanted to speak with a pursuit instructor. We also disagreed about civil liability and whether we believed civil liability was for the officer to attempt a traffic stop of the reckless driver that was fleeing, or to not attempt a traffic stop of a fleeing vehicle.

About a week later, on August 9, 2018, Lt Engelbrecht met with me again and issued a written documentation of an oral warning for the incident. I signed the document, stating that I fully understood that the above was an oral warning, and this was the documentation to prove above oral warning was given. I further spoke with Capt Florence and was told that this was not considered discipline and that the warning would be removed from my file in a year, but there was not a process to contest the entry into my file even if I disagreed with the outcome. I was advised by Lt Engelbrecht and Capt Florence that they did not wish to discourage my proactive police work with this written documentation. I was also told by Capt Florence that a Documentation of an Oral Warning is consistent with how similar matters involving pursuits are handled at shift level.

c. Officer Concerns Over Discipline

My concerns with the outcome of this matter, was that had the driver pulled over for my lights and siren, he would have been arrested for his division of corrections warrant and current domestic violence charges, and there would have been no discipline toward my actions. The time line that occurs in this incident is not clear as to when the traffic stop ends and a pursuit begins. The traffic stop begins as soon as the lights and siren are activated, as this is the first police action to direct the suspect to stop. The time that the suspect is able to process this direction from law enforcement and then make a

conscious decision to stop or flee occurs somewhere after this time and prior to termination of said pursuit. This "gray area" of pursuits is a challenge for law enforcement and is the scope of pursuit policy revisions across the county, and pursuits themselves are under constant discussion such as the initiation, continuation and termination phases of pursuits. Since the driver fled in this case, which was a felony level decision on behalf of the suspect, my attempted traffic stop suddenly became a policy violation as it is believed that the pursuit began as soon as I turned on my lights and siren.

The disposition with this incident is that the driver of the fleeing vehicle, Errick Tucker, was formally charged by the Brown County DA's office for the Felony offense of Vehicle Operator Flee/Elude Officer from this case.

I believe in this incident, the review of the totality of the circumstances would show that a large amount of information that cannot be quantified needed to be processed in a short amount of time. From the time that I first observed a male driving a vehicle on a public street (12:01 PM), discovering the warrant, locating the suspect vehicle, surveilling from a distance, working to formulate a plan for apprehension, discovering an attempt to evade law enforcement by abandoning his vehicle, confirming the suspect got back into his vehicle, advising dispatch of the situation, calling out directions when the car went mobile, activating lights and siren while relaying direction, vehicle and suspect description, reason for the traffic stop and the pursuit termination (12:06 PM) was less than five minutes. The time that my emergency lights and siren were activated to attempt the traffic stop to the time the pursuit was terminated was about 12 seconds with immediate termination upon supervisor direction. There was no property damage to suspect, law enforcement or civilian vehicles or property and no injuries to civilians, officers or suspect. During the approximate 12 seconds that lights and siren were activated and the suspect vehicle was observed by me (less as the vehicle turned onto Baird St out of my view), the suspect vehicle did not pass any pedestrians or other motor vehicles and did not cause any civilian to adjust their actions.

I have been involved with numerous court proceedings, including cases involving suspects charged with Flee / Elude an Officer. Also, as case agent, I have also observed and assisted the DA with voir dire (jury selection) and been present for jury instructions at case closure being read by Judges to the members of the jury with specific instructions on how to decide a defendant's guilt or innocence. These experiences have helped me on the street be able to provide a more thorough case to be turned over to the DA's office for more successful prosecution. I have received a commendation from the DA's office for court preparation and also received positive evaluations from supervisors during calls regarding thoroughness of cases that I have prepared and decisions made while handling calls in the field. I have also listened to defense attorney arguments that short officer pursuits should not be charged because the defendant didn't have time to process that the police wanted them to pull over, or never knew that the police were attempting to stop them or even behind them. After observing the

suspect's actions in this case, the follow up apprehension and suspect statement, it is clear that the suspect was fleeing to avoid apprehension, which is why it was formally charged out in circuit court.

d. Jury Instructions

The following contains the jury instructions that the Circuit Court Judge reads to the jury members after the closing arguments of a court case. These elements should be considered by officers when conducting police investigations and writing police reports, as the lack of inclusion of the elements should result in a suspect being found not guilty.

(Begin Jury Instructions)

2630 OPERATING A MOTOR VEHICLE TO FLEE OR IN AN ATTEMPT TO ELUDE AN OFFICER — § 346.04(3)

Statutory Definition of the Crime

Section 346.04(3) of the Wisconsin Statutes is violated by a person who operates a motor vehicle on a highway after receiving a visual or audible signal from a (traffic officer) (marked police vehicle) and knowingly (flees) (attempts to elude) any traffic officer

CHOOSE THE ALTERNATIVE SUPPORTED BY THE EVIDENCE. IF MORE THAN ONE ALTERNATIVE IS SUBMITTED, CONNECT THEM WITH "OR" AND SEE WIS-JI CRIMINAL 517, JURY AGREEMENT...

[by willful disregard of such signal so as to interfere with or endanger (the operation of the police vehicle) (the traffic officer) (other vehicles) (pedestrians)].

[by increasing the speed of the vehicle (in an attempt to elude) (to flee)].

[by extinguishing the lights of the vehicle (in an attempt to elude) (to flee)].

State's Burden of Proof

Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following two elements were present.

Elements of the Crime That the State Must Prove

1. The defendant operated a motor vehicle on a highway after receiving a (visual) (audible) signal from a (traffic officer) (marked police vehicle).

("Traffic officer" means every officer authorized by law to direct or regulate traffic or to make arrests for violation of traffic regulations.)

2. The defendant knowingly (fled) (attempted to elude) a traffic officer

[by willful disregard of the visual or audible signal so as to (interfere with) (endanger) (the operation of the police vehicle) (the traffic officer) (other vehicles) (pedestrians)].

[by increasing the speed of the vehicle (in an attempt to elude) (to flee)].

[by extinguishing the lights of the vehicle (in an attempt to elude) (to flee)].

Deciding About Knowledge

You cannot look into a person's mind to find knowledge. Knowledge must be found, if found at all, from the defendant's acts, words, and statements, if any, and from all the facts and circumstances in this case bearing upon knowledge.

Jury's Decision

If you are satisfied beyond a reasonable doubt that both elements of this offense have been proved, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

ADD THE FOLLOWING IF ONE OF THE MORE SERIOUS OFFENSES IDENTIFIED IN SEC. 346.17(3)(b),(c), OR (d) IS CHARGED AND THE EVIDENCE WOULD SUPPORT A FINDING THAT THE FACT INCREASING THE PENALTY WAS PRESENT:

[If you find the defendant guilty, you must answer the following question(s):

["Did the defendant's operating a vehicle (to flee) (in an attempt to elude) an officer result in[xii] (bodily harm to[xiii]) (damage to the property of[xiv]) another?"

("Bodily harm" means physical pain or injury, illness, or any impairment of physical condition.)]

["Did the defendant's operating a vehicle (to flee) (in an attempt to elude) an officer result in[xv] great bodily harm[xvi] to another?" "Great bodily harm" means serious bodily injury.]

["Did the defendant's operating a vehicle (to flee) (in an attempt to elude) an officer result in[xvii] death to another?"]

Before you may answer "yes," you must be satisfied beyond a reasonable doubt that the answer to that question is "yes."].

(End Jury Instructions)

3. Summary Personnel File Entry Report from December 17, 2018

a. Summary of Incident

On Thursday, September 20, 2018 at about 12:18 PM DePere Police had requested assistance from Green Bay Police with a recently stolen vehicle, of which an MDT message had been sent out for. The vehicle had been taken from an elderly female that was at a vegetable stand in DePere. Her purse and cell phone were left in the vehicle as it was taken from her. DePere Police were tracking the vehicle using the Find my iPhone App since the phone was still in the vehicle. Officer D Greene located the vehicle with the location described by DePere PD on Deckner Ave at Henry St. Officer Greene advised that the vehicle was taking off from him. Officer Greene's squad camera shows the vehicle parked off the roadway on the northeast corner of Deckner and Henry St, then as the suspect sees Officer Greene slowing to her location, she is seen accelerating and squealing its tires as it jumps the curb (Fig 1), crosses westbound traffic, enters eastbound traffic and drives away from Officer Greene, which begins a pursuit. Lt Engelbrecht was the supervisor on the call and asked if there was any other reason for the pursuit other than it being a stolen vehicle. Lt Engelbrecht terminated the pursuit. The vehicle was last seen traveling south on Bader St from Newberry Ave. I was responding to the area from the East side Industrial Park and checked eastbound traffic from Bader St on E Mason St, and checked for the vehicle to be abandoned in nearby parking lots, but did not see the suspect vehicle. Minutes later it was later updated by DePere PD that the vehicle was pinging in the area of Bader St and Imperial Lane via GPS. Officer Clark and I drove toward this area. The vehicle was located by Officer Clark under a car port at 1070 Bader St, just north of Imperial Lane. Officer Clark advised over the radio that the vehicle nearly struck his squad car and that the vehicle was now fleeing northbound through the yards. As I drove west on Manitowoc Rd toward Bader St, I observed the vehicle cross Manitowoc Rd, traveling north. The driver had a hood pulled tightly around her face, appearing to be worn in a fashion to prevent identification by law enforcement. At the time, circumstantial evidence existed that the female may have been a runaway from Northwest Journey's, as she mentioned stealing a car and going to Chicago.

I heard Officer Clark ask Lt Engelbrecht over the air if he wanted us to pursue the stolen vehicle. I knew he was asking because the circumstances had changed after pursuit termination as she nearly struck Officer Clark's squad car, according to Officer Clark's radio transmissions. Lt Engelbrecht advised that we were not going to pursue the stolen vehicle. Officer E Meyer had advised over the radio that he was following the vehicle slowly and not pursuing. As I traveled west on August St, the suspect vehicle pulled out directly in front of my squad car and I followed it west to Lime Kiln Rd. I drove to the left of the suspect vehicle so as to try to get a glimpse of the suspect's face through her side driver door mirror, which is a technique used for identification purposes during my assignment in the Brown County Drug Task Force. I advised over the air that we were

not pursuing the suspect vehicle and that I believed she was going to get stuck in traffic, at which point we could box the vehicle in. The purpose of this was to attempt to recover the stolen vehicle, purse, cell phone and take the felony suspect into custody in the safest manner possible without the risks of a high speed pursuit, while also following a supervisor directive to not engage in a pursuit. As the female turned north onto Lime Kiln Rd, she slowed then rolled through the stop sign. Northbound traffic was stopped and I slowed and went through the stop sign, using due regard, as I followed the suspect vehicle. I was not pursuing the vehicle, but trying to maintain a safe distance to be able to attempt apprehension of the female if the vehicle was forced to stop by traffic, or if the felony suspect fled from the vehicle once stopped. The female met a green light on Lime Kiln Rd crossing E Mason St in the right lane, so no apprehension attempts were made as she continued through the intersection. I allowed the distance to increase between our vehicles so as not to make the driver believe she was being actively pursued. The vehicle then reached Main St and proceeded through the intersection, turning left (westbound) from the right turn lane. I originally thought the female had gone through a green light at this intersection but later found she had gone through a red light. Traffic was stopped in all directions as I approached the intersection, except for one small bus that appeared to be eastbound on Main St turning right (southbound) onto Lime Kiln Rd, which was not impacted by the suspect or officer vehicles. I slowed and proceeded through a red light, using due regard, to keep the stolen vehicle within my sight as I believed the vehicle would be caught in traffic shortly. I did not activate my emergency lights or siren when clearing this intersection as I believed that this action would cause the driver of the stolen vehicle to believe we were re-initiating the pursuit and cause her to drive more reckless. No civilian vehicles changed their actions or driving behavior based on my passing through the red light as all vehicles were stopped except for the turning small bus. The stolen vehicle changed lanes to go around civilian traffic that was driving at normal traffic speeds. I remained in the left northbound lane with civilian vehicles between the suspect vehicle and my marked patrol car, keeping sight of the suspect vehicle. As the suspect vehicle approached Deckner Ave, it was forced to stop at a red light. I pulled into the left turn lane at this intersection and waited for eastbound traffic to pass, then as the last eastbound vehicle passed in the right lane of traffic, I entered the left opposite lane of traffic to the left of the center median and activated my emergency lights as I passed the stolen vehicle, which was stopped at this time. I pulled in front of the vehicles that were stopped in front of the suspect vehicle and exited my patrol car, approaching the suspect vehicle with my gun drawn, ordering the driver to show her hands. The suspect vehicle backed up slightly, then drove to the right, sideways through traffic and jumped the curb of Capital Credit Union, entering the parking lot and then exiting the lot and traveling east on Deckner Ave. I continued to yell for the driver to stop and raised my left hand as a visual direction. I did not immediately return to my patrol vehicle, but observed the direction of the stolen car and broadcast it over the radio to other units that were in the area. Other patrol units followed after the stolen vehicle. Officer Kleeman's marked

squad car is first through the intersection to follow behind the suspect vehicle as it drove east on Deckner Ave from Main St. Officer Clark asked Lt Engelbrecht over the radio if we could deploy stop sticks if we were able to get in front of it. Lt Engelbrecht stated over the air, "No we are calling this right now" at 12:32:02 according to Officer Meyer's Coban video. This was the first direction for Lt Engelbrecht that patrol units were to discontinue attempts to take the suspect into custody. I did not follow after the suspect vehicle and pulled over to the right side of the street to observe the last direction of the suspect vehicle. I followed the order to discontinue my involvement. At 12:32:05, Lt Mahoney can be heard over the air saying, "792..." and at 12:32:15 Lt Engelbrecht states over the air, "OK all units we are pulling off of this right now. All Green Bay units are going 10-08." This was the second direction by Lt Engelbrecht that we were not supposed to take further law enforcement actions toward this vehicle. As this radio transmission comes across Officer Kleeman's squad car video, another marked Green Bay Police Dodge Charger, believed to be driven by Lt Mahoney, can be seen with emergency lights activated making a U-turn in the intersection of Deckner Ave and Bader St, then following after the suspect vehicle with emergency lights still activated. I could see the suspect vehicle continuing to drive away and two patrol units were still following behind, one with emergency lights still activated. I advised over the air at 12:32:23 that "12K is stopped at Deckner and Huth" and I stated the suspect vehicle was last seen heading eastbound on Deckner Ave, as no one else had updated this information. My stopped patrol vehicle can be seen in Officer Meyer's and Sgt Schilling's squad videos. Sergeant Schilling's voice at 12:32:34 can be heard shortly after telling officers "Shut it down up there." This was the third supervisor direction to stop law enforcement actions toward this vehicle. Then at 12:32:39 Sgt Schilling says, "Pull it over and just let it go" as the marked Dodge Charger continues to follow the suspect vehicle eastbound on Deckner Ave with emergency lights activated. This was the fourth direction by a supervisor over the radio to end police actions toward the stolen vehicle.

b. Delivery of Discipline

The week following the incident, I began to hear rumors at the police department that my name had been mentioned by Chief Smith in a detective roll call, saying that I was being investigated "upstairs" for a pursuit. I believed that this meant that I was part of an internal investigation. I contacted Union President Scanlan and asked if I was being investigated and he said that he would look into it. I was later told that there were no current investigations.

Upon later speaking with Lt Jody Buth on an unrelated matter in Lt Buth's office, I was told by Lt Buth that the Chief was upset about a pursuit that I was involved in and that I needed to be careful. After confirming that it was Officer Greene's pursuit that was being referred to, I explained that I hadn't been involved in the pursuit, but attempted an apprehension in which the suspect got away. I was told that even if I wasn't in a pursuit, I could get jammed up for committing traffic violations. Lt Buth said that Chief

Smith had lost four friends to pursuits, so he was passionate about the matter. Following this meeting, I continued to ask if there was an investigation going on, but no one could tell me if there was. I was never part of a debrief regarding this incident.

Disciplinary meeting

On Monday, December 17, 2018, following my 10:30 AM roll call, I was told by Capt Florence to come into the Lieutenant's office. As I entered the room, I saw Lt Strouf and Officer Knutson were also in the room. Capt Florence advised me that this was a disciplinary meeting. Capt Florence began speaking about an incident, so I clarified that he was speaking about this pursuit. Capt Florence provided a Personnel File Entry Report to Lt Strouf, Officer Knutson and me. I was told that I could feel free to look at it. This was my first disciplinary meeting that I had ever been a part of, so I was caught off-guard and wasn't sure what the process was. I was told that Lt Strouf was a witness for Capt Florence and that I had the right to have Officer Knutson there as my union representative. I wanted union representation to have as a reference for the process in case I had questions.

I read the report that Capt Florence had handed me and I thought that it sounded horrible and that it was not consistent with my policing style, morals or ethics. My initial thought was that the verbiage used did not accurately match what I recalled had happened during the pursuit. What I first noticed was that the actions of the driver were left out or minimized, which were critical to the decisions that were made during the incident, such as, "the stolen vehicle was located parked by Officer Clark. Officer Clark attempts to make contact, but the vehicle drives away." From my recollection, Officer Clark located the vehicle and the vehicle backed out of a car port and nearly struck his squad car, then fled through the yards northbound on Bader St. As I continued to read the report, I saw the repeated use of the term, "High rate of speed". Capt Florence said that he had a video cued up of the incident. I expressed that I had never seen a video of the incident and Capt Florence seemed surprised that I had never seen the video. Capt Florence brought up the video through the GERP report so we could all watch it together. Capt Florence said, "I want to start out by saying that even though I was not the investigator of this whole deal, it was all done by upstairs, this is kind of a first for me. Normally I issue these type of things when I do the investigation myself." Capt Florence said, "These were the policy violations that were determined from upstairs. But with that said, quite frankly, after seeing the video, the video from Officer Meyer, I can't really disagree with some of what they're saying. So, I just wanted to lay this out there that while this is not my work I also have to agree with some of it." Capt Florence then briefed the incident to Officer Knutson. We then watched the video together. Following the complete viewing of Officer Meyer's video, I asked to watch it again. Capt Florence said, "I know that there's thoughts in your mind that because the lights and sirens aren't activated that you're not in pursuit. I think they were looking at what the driver of the vehicle was thinking. So if she looks in her rear view mirror and

sees a squad car on her tail at a speed higher than the posted speed limit. I don't have a speedometer or odometer on there to find out how fast you are going, but just by a visual it looks like you were going faster than the 25 or 35 mile per hour speed limit." I asked Capt Florence what the speed limit was on Main Street in the section of the video. Capt Florence said that he had been off the road for a while but he thought that it was 30 or 35, but that would have to be double checked.

Upon viewing the video on Main Street where the Personnel File stated, "Officer Brann is following the suspect vehicle at a high rate of speed and in close proximity," I asked Capt Florence if he agreed that this was a high rate of speed. Capt Florence said, "I know the video can be deceiving, but it looks like it. Plus with the acceleration of the engine in the background. I would say high rate of speed or higher than the posted speed limit." I explained that I did not see that this was a high rate of speed and also said that the engine was not mine, but of the squad that was catching up. I was driving a Ford Crown Victoria squad car, and the engine that could be heard in the video was a Dodge Charger engine. I expressed that reading the documentation of the Personnel File entry without watching the video made me sound horrible and was inaccurate. I showed examples of where my speeds were being compared to stopped vehicles. Capt Florence said, "As I mentioned, this was what was drafted and was assigned out by Commander Ebel at the time. There are processes in place, just because, I guess I'm just going to leave it at that. I'm not, this is difficult for me at this point to do a 'let's make a deal' and start changing things as it's already been approved." As I could quickly pick out inconsistencies and false information in the personnel file entry, I feared this was some sort of attack against me or some sort of retaliation.

I explained that I had never been in a situation like this, so I wanted to speak with Matt before I signed the Personnel File Entry Report. Capt Florence said that he knew that I went on vacation for a few weeks after the day of the discipline hearing and said that he wanted to "get this behind us sooner, rather than waiting since Sept 24, which is unfortunate. I don't think it should have waited that long, but that's how long it took to get to me."

I asked who prepared the personnel file entry report and Capt Florence said that it was "a lot of cut and paste based on the investigative file that I got. But a lot of it was my terminology, my wording as well as the investigation file paperwork that I have." Specifically, the "High rate of speed" terminology according to Capt Florence, was said to come from the "investigative paperwork. If I recall." Officer Knutson asked Captain Florence, "I guess my only question is, if Balza or Lt Opperman or whoever did the internal, why did they not prepare the file entry report?" Capt Florence responded, "That's a darn good question. Basically, here it is. Prepare a personnel file entry." It was said that this was the discipline instructed to give by Commander Ebel.

I expressed my concern with the first disagreement between myself and Lt Engelbrecht and said that because of that disagreement, which I could not argue because it was not considered discipline, that it led into this incident which is now considered progressive discipline. I further brought up the inconsistencies based on my first and second

viewing of the squad camera video, that the narrative of the personnel file entry was not accurate with what was shown in the squad video. I expressed that I still went through the intersections with due regard. Captain Florence responded, "That's all fine and dandy. I understand that other vehicles stopped because of the suspect vehicle." Capt Florence brought up a hypothetical situation that if someone had gone through the red light and struck a City vehicle, that the City has the deep pockets and police officers have deep pockets so that's the concern that we have as the City. I asked if Capt Florence believed that I passed through intersections with due regard and he responded, "That depends on anyone's interpretation of due regard. You didn't even appear to slow down for the stop sign and stop light. You didn't have your emergency equipment on. That's the biggest thing right there."

c. Officer Concerns Over Discipline

Following the discipline meeting with Capt Florence, I met with Commander Ebel, as I had observed that the discipline had been signed off by him prior to the disciplinary meeting. Commander Ebel agreed with the discipline and I expressed my concern that I felt the verbiage used was inaccurate, to which he disagreed. Commander Ebel said that something like this happened again, that the Chief was going to take my dog away. I asked Commander Ebel to pull up the video, which we watched together. I asked if the "High rates of speed" appeared accurate, to which he agreed to remove the language and change it to "speed above the legal speed limit." I disagreed and said that my speed was being compared to stopped and slowing vehicles at some points, but was not going to argue the issue any further at that point. Commander Ebel printed and signed the modified Personnel File Entry Report and brought it to Capt Florence, whom removed the old entry which was to be shredded and replaced it with the new one.

The investigation with possible discipline of me was discussed in Detective roll call prior to informing me that there were any concerns over the incident. When asked by Union President Scanlan if there was an internal investigation, it was said that there was not. During the discipline hearing with Capt Florence, he said that he received his information from the internal investigation "upstairs".

I had not had the opportunity to speak with any supervisor about the incident or been advised that an investigation was taking place so I could discuss any issues or justify my actions prior to the discipline hearing. I was never included in an incident debrief regarding this incident.

Capt Florence could not tell me who actually wrote the complaint, admittedly cutting and pasting the complaint into a Personnel File Entry Report and signing off on it.

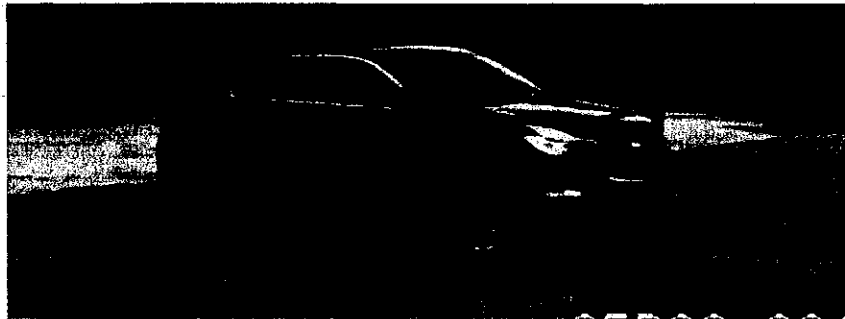
Some of the grandiose verbiage used to vilify the acts that I performed were removed and altered by Commander Ebel after the discipline was issued, following my concern that the verbiage used was excessive and damaging to my character, and provided an inconsistent description of the events that took place and the video evidence, which would be placed in my permanent file with no record of the video evidence to dispute it. Had I not expressed my concern immediately, this verbiage would not have been changed and would be included in my permanent disciplinary file.

Captain Florence said that he didn't write the narrative, but cut and pasted it into a discipline form and agreed with most of it, not stating which portions he did not agree with.

The efficiency policy is listed as being violated, but the basis for the violation was not explained in the disciplinary hearing or on the personnel file entry.

Officer Greene located the suspect vehicle and it immediately fled from him, driving over a curb and squealing its tires. The reason for the pursuit was based on the stolen vehicle status and was later terminated. These circumstances were very similar to my first discussion with Lt Engelbrecht and Capt Florence, which resulted in a Documentation of Oral Warning, which I could not grieve at the time because it was not considered discipline. During the investigation of this pursuit, there were no warnings, documentation of oral warnings or any discipline for Officer Greene that was similar to what I received on August 9, 2018, where the circumstances were nearly identical and I was told that my written documentation of an oral warning was standard practice.

Fig 1. Suspect vehicle fleeing Officer Greene by jumping curb



Facts and factors were left out of the discipline report that could explain and justify the actions that were taken during the incident and debrief if one had been conducted, such as:

- i. The victim was described as elderly, a very vulnerable citizen, as are children. It was later found that the victim was only 56 years old.

- ii. The vehicle had been stolen in the direct presence of the victim, which was later documented as being traumatic to the victim.
- iii. The reliance of GPS position of the stolen vehicle was solely based on the victim's cellular telephone being in the vehicle. Had the suspect discarded the cellular telephone after realizing police kept discovering her location, the phone powered down or battery died, it would have been more difficult to locate the vehicle and suspect or caused the suspect to steal another vehicle and victimize another citizen.
- iv. The victim's cellular telephone was in the possession of the suspect. Cellular telephones contain personal information such as names, phone numbers, addresses, family photographs and electronic banking information. The loss of this property can be extremely traumatizing to a victim.
- v. The identification of the suspect was only circumstantial at the time of the pursuit and subsequent apprehension attempt.

The discipline report states, "At Lime Kiln Rd at Main St, the stolen vehicle is traveling in the right turn lane followed by Officer Brann a continued high rate of speed." "Several civilian vehicles are in the area and forced to stop." This statement would lead one to believe that the actions that I took with my squad car forced civilians to change their driving behavior and increased the risk of danger. All vehicles shown in the video are stopped prior to my entering the intersection, with the exclusion of a small bus that was turning and not impacted, and no vehicles changed driving behavior based on my operation of my squad car. The only stopped vehicles were stopped for red traffic signals. I slowed for the intersection and passed through with due regard, as can be seen in the squad video. The below image (Fig 2) shows my squad car in the intersection with no other vehicles in this large, highly visible intersection. It also shows that I am not in close proximity of the stolen vehicle, as it is not even visible in the image (Fig. 2).

Fig. 2



The discipline report states, "Officer Brann enters into on-coming traffic without emergency lights or siren activated, then travels around traffic that is stopped in an effort to block the stolen vehicle." The report neglects to say that I entered oncoming traffic after all eastbound traffic cleared my path, was approaching a red light with green turn arrow for east and westbound Main St at Deckner Ave, and had activated my emergency lights prior to entering the intersection as I became parallel to the stolen vehicle so as not to advertise my intentions or cause the suspect vehicle to flee. The report leads one to believe that I did not activate emergency lights until I entered the intersection. See below image (Fig. 3).

Fig. 3



The discipline report states that I was in pursuit of the suspect vehicle, even though my squad did not have emergency lights or siren activated when behind the suspect vehicle. Following the direction from Lt Engelbrecht, "OK. All units we are pulling off of this right now. All Green Bay units are going 10-08", I discontinued all attempts to take the suspect into custody. I had not been involved in the initial pursuit that Officer Greene was part of, so I had never been terminated from the pursuit since I was not involved. I never re-initiated a pursuit or exhibited driving behavior indicative of a being actively involved in a pursuit. I immediately discontinued any involvement once directed by Lt Engelbrecht that all units were to pull off.

According to the squad camera audio from Officer Meyer's squad, officers had broadcast over the air about five different times with updates with locations and officer intentions to attempt to box the vehicle in when it was stopped in traffic. None of the radio transmissions were followed by Lt Engelbrecht advising that we should not attempt to make an apprehension, but only that we were not going to pursue the vehicle. There was ample time between radio transmissions for any supervisor or shift commander to state to discontinue efforts of apprehension. These radio transmissions occurred as follows:

12:29:29 "We are not pursuing, we are going slow" –Officer Meyer

12:29:56 "We are not going to pursue it. " – Lt Engelbrecht

"She is going to get caught in traffic at Lime Kiln and Mason." –Brann

12:30:25 "We are not pursuing, just following." – Brann

12:30:28 "If she gets caught in traffic, try to box her in. – Brann

12:30:39 "She will probably get caught in traffic at Main and Newberry." – Brann

12:30:50 "We are still westbound on Main coming up to Deckner." – Brann

12:31:06 "Try to block her in at this intersection." – Brann

According to the report completed by Lt Engelbrecht following his directions to terminate pursuit and for all Green Bay units to go 10-08, "I (Lt Engelbrecht) traveled to the area of Prebble High School and while I was EB on Deckner Ave. by the main entrance to Prebble, I saw a blue Chev Equinox traveling the opposite direction at a very high rate of speed. I would estimate that the vehicle was traveling at around 60 mph. As the car passed me, it appeared that the lone occupant was a female driver. I did not turn around immediately as I did not want the driver to think they were still being pursued. The vehicle got to Bader and I could see in my mirrors that it activated its brakes and came to an abrupt stop and then went north on Danz Ave. I turned around and then went northbound on Danz Ave. and pulled to the side of the road and watched the vehicle. It continued north on Danz Ave. and appeared to now be behind traffic and driving with the flow of traffic by the time it was around University Ave. That is the last location where I saw the vehicle."

The decision by Lt Engelbrecht to turn around and follow the suspect vehicle after the suspect vehicle passes him, after his own termination of the pursuit and all efforts of Green Bay units to attempt to apprehend the suspect, is consistent with my attempts to observe the vehicle without making the driver feel as if they were being actively pursued prior to his directive to end police involvement. My actions, however, were done before the directives to stop. The fact that Lt Engelbrecht was within sight of the vehicle, and the last Green Bay Police official to see the suspect vehicle, shows that Lt Engelbrecht disregarded his own direction of all Green Bay Police units to go 10-08 from the incident. The squad car video from Lt Engelbrecht's supervisor car was not included or added to this report.

Per Lt Mahoney's report, at the time of the incident Lt Mahoney was working a side job at Preble High School in full uniform and in a fully marked Green Bay Police Department squad car. Lt Mahoney heard officers call out with the stolen vehicle and the subsequent pursuit. Lt Mahoney heard the pursuit was called off by Lt Engelbrecht. Lt Mahoney heard dispatch tell officers where the car was pinging and heard Officer Clark had located the car and that it almost hit him and took off again. Lt Mahoney heard officers believed the vehicle would get caught in traffic at Main St and Deckner Ave,

then that the vehicle had gone through a parking lot and was east on Deckner Ave, towards Preble High School. In an attempt to deter the driver from driving toward the school, Lt Mahoney turned his emergency lights on at Deckner Ave and Bader St, but the vehicle drove toward Lt Mahoney, forcing Lt Mahoney to put his car in reverse and accelerate in order to keep from getting hit head on. The vehicle missed Lt Mahoney's squad by about 5-10 feet and continued east on Deckner Ave past Preble High School. Lt Mahoney states in his narrative, "I did not pursue. I last saw the vehicle about ¼ mile east of Preble High School on Deckner Ave."

In Officer Kleeman's dash camera video, the suspect vehicle is first seen as Officer Kleeman crosses the intersection of Deckner Ave eastbound over Main St when the suspect vehicle flees my apprehension attempt. Officer Kleeman was faced with a red light and passed through the intersection without emergency lights or siren activated (Fig. 4). This red light violation was not addressed during the review of this pursuit, no discussion occurred with Officer Kleeman and no discipline was deemed necessary. Lt Engelbrecht denies Officer Clark's request to get in front of the vehicle and attempt to deploy stop sticks, stating, "No, we are calling this right now." This order occurs as the stolen vehicle is approaching Lt Mahoney's position at Deckner Ave and Bader St. Contrary to the report written by Lt Mahoney, Lt Mahoney then turns on the vehicle and follows after with his emergency lights activated as Lt Engelbrecht states, "OK. All units we are pulling off of this right now. All Green Bay units are going 10-08." In Officer Kleeman's video, Lt Mahoney can still be seen following after the stolen vehicle with emergency lights activated (Fig. 5). My voice can be heard over the radio saying that I was stopped at Deckner and Huth, which was blocks away from the suspect vehicle, and I gave the last direction that I saw the suspect vehicle headed (shown in Officer Meyer's squad video). Continued in Officer Kleeman's squad video, Sgt Schilling can then be heard stating, "Shut it down up there." Five seconds later, Sgt Schilling reiterates, "Pull it over. Just let it go." Lt Mahoney's squad is still shown with emergency lights on following after the suspect vehicle, then going over the crest of the hill and out of sight (Fig. 6). From the time that Lt Engelbrecht cancels all Green Bay units to the time that Lt Mahoney is going over the hill with emergency lights still activated is about 35 seconds. When Officer Kleeman drives over the crest of the hill, Lt Mahoney's emergency lights are off as he is continuing eastbound on Deckner Ave. It cannot be seen when the emergency lights are shut off. There was no dash camera video from Lt Mahoney's squad car added to this report.

Fig. 4 Kleeman image through red light with no emergency lights at Main St / Deckner Ave.



Fig. 5 Mahoney squad with lights on following suspect vehicle after termination by Lt Engelbrecht.



Fig. 6 Lt Mahoney squad with lights on following after suspect vehicle after two orders from Lt Engelbrecht and two orders from Sgt Schilling to discontinue.



It is possible that based on the radio transmissions of Sgt Schilling saying, "Shut it down up there. Pull it over. Just let it go." immediately after I announce my position that I had stopped and direction the vehicle was last headed, that it could be perceived over the radio that I was the officer still pursuing the stolen vehicle, which was shown to be Lt Mahoney per Officer Kleeman's video. This should have been discovered during the internal investigation over this pursuit.

I had never been involved in the pursuit when Officer Green attempted the traffic stop and initiated the pursuit. I had broadcast my intentions of boxing the car in when it was caught in traffic over the air multiple times. Each time I broadcast my intentions, I could have been told to stand down by a supervisor, but was not. I was aware that we were not going to pursue the vehicle and my intentions were never to re-initiate a pursuit, but to attempt an apprehension of the suspect at a time that I thought was the most safe and provided the suspect with ample time to make a rational decision after the initial pursuit, which was when the suspect vehicle was stationary at the red light with limited chance to accelerate quickly.

During the time that I followed behind the vehicle, it is possible that I was in excess of the posted speed limit, but I was not in pursuit. I was attempting to get into a position to apprehend a suspect that had committed a felony (see above jury instructions for fleeing an officer) and was currently committing another felony of Operating a Motor Vehicle Without Owner's Consent (see jury instructions below). According to the exemptions listed below under WI Statutes Chapter 346.03, the requirement for use of emergency lights and siren is exempt if the officer is responding to a call which the officer reasonably believes involves a felony in progress and the officer reasonably believes:

1. Knowledge of the officer's presence may endanger the safety of a victim or other person.
2. Knowledge of the officer's presence may cause the suspected violator to evade apprehension.
3. Knowledge of the officer's presence may cause the suspected violator to destroy evidence of a suspected felony or may otherwise result in the loss of evidence of a suspected felony.
4. Knowledge of the officer's presence may cause the suspected violator to cease the commission of a suspected felony before the officer obtains sufficient evidence to establish grounds for arrest.

In this instance, I believed that activating my emergency lights and siren would cause the suspect to believe the pursuit was being re-initiated and then increase speed,

evasive maneuvers and aggressive techniques that would put the public at a heightened danger which may result in a high speed crash. The suspect could also attempt to hide the vehicle, as she had exhibited by parking underneath the carport before Officer Clark located the vehicle and attempted the first apprehension.

d. Excerpt from WI Statutes **346.03**

346.03 Applicability of rules of the road to authorized emergency vehicles.

(1) The operator of an authorized emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected violator of the law, when responding to but not upon returning from a fire alarm, when transporting an organ for human transplantation, or when transporting medical personnel for the purpose of performing human organ harvesting or transplantation immediately after the transportation, may exercise the privileges set forth in this section, but subject to the conditions stated in subs. (2) to (5m).

(2) The operator of an authorized emergency vehicle may:

(a) Stop, stand or park, irrespective of the provisions of this chapter;

(b) Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;

(c) Exceed the speed limit;

(d) Disregard regulations governing direction of movement or turning in specified directions.

(2m) Notwithstanding s. 346.94 (20), a law enforcement officer, a fire fighter, or emergency medical personnel may open and leave open any door of an authorized emergency vehicle when the vehicle is stopped, standing, or parked and the person is performing official duties.

(3) The exemptions granted by sub. (2) (b), (c) and (d) apply only when the operator of the emergency vehicle is giving a visual signal by means of at least one flashing, oscillating, or rotating red light, except that the visual signal given by a police vehicle may be by means of a blue light and a red light which are flashing, oscillating, or rotating, and also an audible signal by means of a siren or exhaust whistle, except as otherwise provided in sub. (4) or (4m).

(4) Except as provided in sub. (4m), a law enforcement officer operating a police vehicle shall otherwise comply with the requirements of sub. (3) relative to the giving of audible and visual signals but may exceed the speed limit without giving audible and visual signal under the following circumstances:

(a) If the officer is obtaining evidence of a speed violation.

(b) If the officer is responding to a call which the officer reasonably believes involves a felony in progress and the officer reasonably believes any of the following:

1. Knowledge of the officer's presence may endanger the safety of a victim or other person.

2. Knowledge of the officer's presence may cause the suspected violator to evade apprehension.

3. Knowledge of the officer's presence may cause the suspected violator to destroy evidence of a suspected felony or may otherwise result in the loss of evidence of a suspected felony.

4. Knowledge of the officer's presence may cause the suspected violator to cease the commission of a suspected felony before the officer obtains sufficient evidence to establish grounds for arrest.

(4m) A law enforcement officer operating a police vehicle that is a bicycle is not required to comply with the requirements of sub. (3) relative to the giving of audible and visual signals.

(5) The exemptions granted the operator of an authorized emergency vehicle by this section do not relieve such operator from the duty to drive or ride with due regard under the circumstances for the safety of all persons nor do they protect such operator from the consequences of his or her reckless disregard for the safety of others.

(5m) The privileges granted under this section apply to the operator of an authorized emergency vehicle under s. 340.01 (3) (dg) or (dh) only if the operator has successfully completed a safety and training course in emergency vehicle operation that is taken at a technical college under ch. 38 or that is approved by the department and only if the vehicle being operated is plainly marked, in a manner prescribed by the department, to identify it as an authorized emergency vehicle under s. 340.01 (3) (dg) or (dh).

(6) Every law enforcement agency that uses authorized emergency vehicles shall provide written guidelines for its officers and employees regarding exceeding speed limits under the circumstances specified in sub. (4) and when otherwise in pursuit of actual or suspected violators. The guidelines shall consider, among other factors, road conditions, density of population, severity of crime and necessity of pursuit by vehicle. The guidelines are not subject to requirements for rules under ch. 227. Each law enforcement agency shall review its written guidelines by June 30 of each even-numbered year and, if considered appropriate by the law enforcement agency, shall revise those guidelines.

History: 1983 a. 56; 1985 a. 82, 143; 1987 a. 126; 1995 a. 36; 1997 a. 88; 2007 a. 20; 2011 a. 184; 2015 a. 102.

Sub. (5) limits the exercise of privileges granted by sub. (2). *City of Madison v. Polenska*, 143 Wis. 2d 525, 421 N.W.2d 862 (Ct. App. 1988).

An officer who decides to engage in pursuit is immune from liability for the decision under s. 893.80, but may be subject to liability under sub. (5) for negligently operating a motor vehicle during the chase. A city that has adopted a policy that complies with sub.

(6) is immune from liability for injuries resulting from high speed chases. A policy that considered the severity of the crime only in terms of when to strike a vehicle or use road blocks did not comply with sub. (6). *Estate of Cavanaugh v. Andrade*, 202 Wis. 2d 290, 550 N.W.2d 103 (1996), 94-0192.

In order to comply with this section and lawfully proceed through a red stop signal, an authorized emergency vehicle must slow down as may be necessary for safe operation, have given both a visual and an audible signal, and have proceeded with due regard under the circumstances for the safety of all persons. *Brown v. Acuity, A Mutual Insurance Company*, 2013 WI 60, 348 Wis. 2d 603, 833 N.W.2d 96, 11-0583.

Reading compliance with subs. (2) (b) and (3) as meeting the due regard standard of sub. (5) ignores the language of sub. (5). Sub. (5) explicitly states that the duty of due regard exists notwithstanding the other exemptions or privileges in this section. The duty of "due regard under the circumstances" is a ministerial duty for purposes of determining immunity under s. 893.80. *Legue v. City of Racine*, 2014 WI 92, 357 Wis. 2d 250, 849 N.W.2d 837, 12-2499.

A private ambulance that is an authorized emergency vehicle usually kept in a given county pursuant to s. 340.01 (3) (i) may not avail itself of the provisions of sub. (2) when proceeding unsolicited to the scene of an accident or medical emergency in an adjacent county. 77 Atty. Gen. 214.

A claim of excessive force in the course of making a seizure of the person is properly analyzed under the 4th amendment's objective reasonableness standard. A police officer's attempt to terminate a dangerous high-speed car chase that threatens the lives of innocent bystanders does not violate the 4th amendment, even when it places the fleeing motorist at risk of serious injury or death. *Scott v. Harris*, 550 U.S. 372, 127 S. Ct. 1769, 167 L. Ed. 2d 686 (2007).

Police civil liability and the law of high speed pursuit. Zevitz, 70 MLR 237 (1987).

e. Jury Instructions

The following contains the jury instructions that the Circuit Court Judge reads to the jury members after the closing arguments of a court case. These elements should be considered by officers when conducting police investigations and writing police reports, as the lack of inclusion of the elements should result in a suspect being found not guilty.

(Begin Jury Instructions)

1465 DRIVING OR OPERATING A VEHICLE WITHOUT THE OWNER'S CONSENT ? § 943.23(3)

Statutory Definition of the Crime

Driving or operating a vehicle without the owner's consent, as defined in § 943.23(3) of the Criminal Code of Wisconsin, is committed by one who intentionally drives or operates any vehicle without the consent of the owner.

State's Burden of Proof

Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following two elements were present.

Elements of the Crime That the State Must Prove

1. The defendant intentionally (drove) (operated) a vehicle without the consent of the owner.

["Drive" means to exercise physical control over the speed and direction of a vehicle while it is in motion.]

["Operate" means the physical manipulation or activation of any of the controls of a vehicle necessary to put it into motion.]

[A person (drives) (operates) without consent even though the owner consented to the original taking if the person (drives) (operates) the vehicle in a manner that goes beyond the scope of the use authorized or permitted by the owner.]

2. The defendant knew that the owner of the vehicle did not consent to (driving) (operating) the vehicle.

Deciding About Intent and Knowledge

You cannot look into a person's mind to find intent and knowledge. Intent and knowledge must be found, if found at all, from the defendant's acts, words, and statements, if any, and from all the facts and circumstances in this case bearing upon intent and knowledge.

Jury's Decision

If you are satisfied beyond a reasonable doubt that both elements of this offense have been proved, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

IF THERE IS EVIDENCE OF THE AFFIRMATIVE DEFENSE UNDER SUB. (3m), ADD THE MATERIAL FROM WIS JI-CRIMINAL 1465A.

(End Jury Instructions)



Department of Police

Andrew Smith
Chief of Police

Date: February 4, 2019

Reference: Grievance 2019-001

President Scanlan,

This letter is in reference to the mentioned grievance and the City's intention of denying said grievance.

I would like to clear up some confusion that seems to be part of the grievance. First there was no formal internal investigation into this pursuit. An after-action review is done on all pursuits including this one. During the after action it was found that officer Brann's actions clearly show that he is pursuing the vehicle in question after orders not to pursue. Furthermore he pursued the vehicle without emergency lights and siren putting the public and officers at greater risk. This was not merely "following" at a safe distance to apprehend the driver as is being portrayed by Officer Brann.

This pursuit was terminated by LT Engelbrecht at 12:22:32 PM when Officer D Greene was told to terminate which he did at Bader ST and Newberry AVE. The vehicle was later found by Officer Clark and fled from him as well. Officer E Meyer traveling south bound of Bader ST approaching Vine ST and observes the vehicle. Officer Meyer activates his overhead light bar and calls out that the vehicle is west on Vine ST and north on Ricky DR. Officer Meyer extinguishes his light bar as he turns onto Ricky DR. says that he is not pursuing, we are going slow, this is at 12:29:29 PM. At 12:29:56 PM Lt Engelbrecht says over the radio very clearly that we are not going to pursue it. This statement is an order from a superior officer that "we" meaning officers from the Green Bay Police Department are not going to pursue this vehicle. The vehicle turns west bound onto August ST in front of Officer Brann's vehicle. The vehicle continues to Line Kiln RD turning right without stopping for the stop sign. Officer Brann also fails to stop for the stop sign and the same for Officer Meyer. Officer Brann's speed has been estimated by the city traffic engineer at 43.8 mph on August ST, 18 mph over the speed limit. The vehicle continues north on Lime Kiln RD to Main ST which is a full phase red light. The vehicle turns left from the Line Kiln RD onto Main ST from the right traffic lane against the red light. Office Brann follows without emergency light activated. Officer Meyer turns his light bar on to clear the intersection and shuts it off again traveling west on Main ST. Officer Brann's squad reaches a peak speed of 54.8 mph as calculated by the city traffic engineer in a 30 mph zone.

At no time since Officer Meyer activated his emergency lights on Bader ST was there not a squad car directly behind or in close proximity that the driver would think that she was not being pursued. Clearly the driver still believed that she was being pursued based on this fact. The driver had fled two previous attempts to get her to stop, once by Officer Greene and once by Officer Clark. Lt Engelbrecht terminated the pursuit

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Department of Police

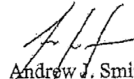
Andrew Smith
Chief of Police

and confirmed his termination when asked 12:29:56 PM. Officer Brann chose to continue rather than pulling to the side of the road and stopping.

Officer Brann feels targeted for some reason even saying that Commander Ebel said the Chief wanted to take his K9 away which is a misrepresentation of their conversation.

The counseling register will not be used for this personnel entry. Removal denied.

Sincerely,


Andrew J. Smith

307 South Adams Street w Green Bay, WI. 54301-4582 w 920 448 3200 w Fax 920 448 3248 w Emergency 9-1-1
World Wide Web <http://www.ci.green-bay.wi.us/>



*The City of Green Bay is a leader in employee health and wellness with its **Health | 1265** program and a goal to engage all employees in their own health and well-being*

April 25, 2019

Officer Jeffrey Brann
Green Bay Police Department
307 S. Adams Street
Green Bay, WI 54301

Sent via email: jeffbr@greenbaywi.gov

RE: Step 2 – Grievance Response (2019-001)

Dear Officer Brann,

On April 5, 2019 you met with me to discuss your grievance and concerns you had with the discipline that you were administered. You handed me the grievance documents that were originally filed with Chief Andrew Smith and Chief Smith's response on February 4, 2019. I explained that I was unsure of the timeliness of filing your grievance for the second step and that I would review it, but my determination may be that it is untimely.

After speaking with you, President Phil Scanlan, Detective Brad Biller, Commander Kevin Warych, and reviewing the recording from the March 22, 2019 meeting you had with Commander Warych, I have reached the determination that this grievance has been resolved and that you are unable to present your grievance to me at the second step of the grievance procedure.

The timeline of events is as follows:

- On December 17, 2018 you received a Personnel File Entry for violations of four policies: (1) Policy 307 – Vehicle Pursuits; (2) Policy 308 Office Response to Calls; (3) Policy 320 Standards of Conduct; and (4) Policy 320.5.7 Efficiency.
- You timely filed a grievance with Chief Smith on January 21, 2019. Chief Smith denied your grievance on February 4, 2019.
- After Chief Smith denied your grievance, Union Representatives met with Commander Warych to discuss potential resolutions to your grievance. The Union Representatives and Commander Warych reached an agreement to amend your Personnel File Entry.
- In March, Commander Warych met with you on two occasions to discuss the resolution to your grievance and that the Personnel File Entry will be amended from four violations to two violations.

- On March 22, 2019 you met with Commander Warych and he explained the status of your grievance and you understood the status of your grievance. At that meeting the amended Personnel File Entry was placed in your personnel file and the original Personnel File Entry that was in your personnel file from December 17, 2018 was removed from your file. You and your Union Representative, Matt Knutson, watched as the original personnel file entry was electronically removed from your file.
- On April 5, 2019 you filed your grievance documents with me and stated that your discipline was imposed on March 22, 2019.

After reviewing this timeline, I have reached the conclusion that both your filing of the grievance with me is untimely and that your grievance has been resolved. The grievance filed for Step 2 is untimely because the 15 working days deadline to file for Step 2 expired on February 25, 2019 and you did not file any documents with me on or before February 25, 2019.

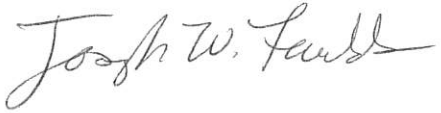
Moreover, the actions by you and your Union Representatives represented to the City that you were satisfied with the outcome of your grievance. During the 15 working day time period to file for Step 2, your Union Representatives and Commander Warych reached a resolution to your grievance by agreeing to amend your Personnel File Entry. The purpose for the meeting to occur within the 15 working day time period was to ensure that if you and the Union could not reach an agreement with the City, then you would have time to file documents for the Step 2 grievance. After the meeting with Commander Warych there was no indication from you or the Union that you were not satisfied with the agreement to amend your Personnel File Entry or that you would like to move onto Step 2 of the grievance procedure.

Furthermore, on March 22, 2019 you and your Union Representative, Matt Knutson, met with Commander Warych to discuss the modified Personnel File Entry. You explained that you did not necessarily agree with everything in the entry, but you were not refusing to sign the Personnel File Entry and you acknowledged that it will be put in your file. Commander Warych explained to you the status of your grievance and you understood that the amended Personnel File Entry was to settle the grievance. Moreover, you and your representative asked if you could submit a rebuttal to go along with the Personnel File Entry and it was explained that you can do that. Lastly, you insisted that you witness the electronic removal of the original December 17, 2018 Personnel File Entry from your file. You and your representative Matt Knutson then watched as the original Personnel File Entry was electronically removed from your file.

Overall, your actions in the meeting with Commander Warych and witnessing the removal of the original Personnel File Entry represents to the City that you understood your grievance was finalized and that you were satisfied with the outcome. As such, the amended Personnel File Entry on March 22, 2019 did not toll your grievance or create a new discipline for you to grieve, but instead, the acceptance of the amended Personnel File Entry finalized the January 21, 2019 grievance that you filed with Chief Smith.

Based on my review of the grievance, the grievance is untimely and, ultimately, has been resolved.

Respectfully submitted,

A handwritten signature in cursive script, reading "Joseph W. Faulds".

Joseph W. Faulds
Human Resources Director

Cc: Police Chief Andrew Smith (via email only)
Attorney Jon Cermele (via email only)
GBPPA Representative Phil Scanlan (via email only)

John Balza

From: Paul Ebel
Sent: Monday, August 12, 2019 10:29 AM
To: Lisa Wachowski; John Balza; Kevin Warych
Subject: FW: need a favor
Attachments: SPEED CALCS Lime Kiln at Main 180920.pdf

From: Dave Hansen
Sent: Monday, August 12, 2019 10:17 AM
To: Paul Ebel <PaulEb@greenbaywi.gov>
Cc: Brad Strouf <BradSt@greenbaywi.gov>
Subject: FW: need a favor

I believe this is the information you are looking for...

Dave

From: Dave Hansen
Sent: Thursday, January 31, 2019 5:00 PM
To: Paul Ebel
Subject: RE: need a favor

Paul,

See attached.

Dave

From: Paul Ebel
Sent: Wednesday, January 30, 2019 11:53 AM
To: Dave Hansen
Subject: Re: need a favor

And traveling down main st. Top speed would be nice.

Sent via the Samsung Galaxy S9, an AT&T 4G LTE smartphone

----- Original message -----

From: Dave Hansen <daveha@greenbaywi.gov>
Date: 1/30/19 8:56 AM (GMT-06:00)
To: Paul Ebel <PaulEb@greenbaywi.gov>
Subject: RE: need a favor

So you only want the speed of the Crown Vic PD vehicle as it turns left into and through the Lime Kiln & Main intersection?

Dave

From: Paul Ebel
Sent: Monday, January 28, 2019 2:01 AM
To: Dave Hansen
Subject: need a favor

Dave

The attached video is of a pursuit that we had. I am interested in how fast the squad that is in front of the video is going in Lime Kin and Main st. The squad is a crown vic and does not have the lights on until the end. Starts at about 57 seconds into the video.

Thanks
Paul

Speed Calculations

COBAN dash cam video observations from Sep 20, 2018 pursuit on Lime Kiln Rd at Main St, Green Bay, WI

Prepared by: David Hansen, P.E., PTOE

Location	Description	Minute ¹	Second ¹	Time ¹ (sec)	Distance ² (ft)	Speed ³ (mph)
1a	August St at Ricky Dr (E of int.)	0	52.967	0.981	63	43.8
1b	August St at Ricky Dr (W of int.)	0	53.948			
2a	August St at Diane St	0	59.005	10.268	630	41.8
2b	August St at Lime Kiln Rd	0	69.273			
3a	Lime Kiln Rd at August St (N side)	0	70.898	7.663	404	35.9
3b	Lime Kiln Rd at E Mason St (S side)	0	78.561			
4a	Lime Kiln Rd at NP sign (just before braking at Main St)	0	90.455	6.347	317	34.1
4b	Lime Kiln Rd at Main St (over S xwalk)	0	96.802			
5a	Main St just N of Lime Kiln Rd (2nd pavt mkg)	0	101.368	17.286	1390	54.8
5b	Main St at Oakdale St	0	118.654			
6a	Main St at Abrams St (over N xwalk)	0	124.846	11.249	848	51.4
6b	Main St approaching Deckner Ave (just prior to braking)	0	136.095			

Notes:

¹ Time and calculations were observed using VLC media player software, which is capable of frame-by-frame display while noting time to the thousandth of a second for each frame.

² Calculated using ArcGIS 10.2 using 2017 aerial imagery from the Brown County Planning Department.

³ Speeds based on observation locations selected based on fixed pavement points found on the aerial image, on the COBAN video, and on Google Earth. Observation location is where fixed pavement met the front of vehicle hood in the video.

**GREEN BAY POLICE DEPARTMENT
NARRATIVE SHEET**

GBPD CR-4

08/07/19 - 1:01 PM

On Thursday August 2, 2018 at 12:05pm I was assigned as a road supervisor, 181a, in full police uniform and driving an unmarked supervisor SUV. Officer Brann (12C3K) stated over the radio that he was watching a male party with a warrant in the area of El Ranchito in the 200 blk of S. Webster Ave. and asked for another officer to assist him. He also stated that he thought the male subject was going to run on foot. Officer T. Clark (1C3K) stated he was about one block away and was going to assist him. A few moments later I heard Officer Brann state over the air that the suspect vehicle was now northbound on Webster Ave. at Walnut St. and that he was now pulling into the alley behind 1015 E. Walnut St.

As I was driving toward Officer Brann's location, he stated over the air that the driver was taking off in his vehicle eastbound on Cherry St. He stated that the driver had taken off before he had even turned on his emergency lights and was "blowing stop signs". I could hear that Officer Brann had his siren activated as he gave out the physical description of the suspect and said that they were coming up to Baird St. I got on the air and asked Officer Brann what the warrant was for on the male and he replied it was a "DOC warrant." I immediately told him to terminate the pursuit. He acknowledged and both he and Officer Clark began looking around the area in the last known direction of the pursuit but did not locate the vehicle. Witnesses apparently stated that the male had blown a number of other stop signs.

I met with Officer Brann a few minutes later and as we began to talk, another Officer stated that they located the suspect vehicle off of August St. near Schoen St. The suspect, later identified as Errick W. Tucker 03-31-88, had a misdemeanor DOC warrant as well as an apprehension request out of our department for DVO offenses and we were advised he lives at 810 Limekiln Rd. Officers went to this area and as Officer Brann and I arrived, Officer Clark observed a male walking down August St. east of Limekiln Rd at a very fast pace. Officers converged on the male's location and it was in fact Tucker and he was taken into custody without incident.

I met once again with Officer Brann to do a debriefing on the pursuit. I asked him to walk me through what had taken place. He stated that he saw a Tucker acting suspiciously by El Ranchito and when he ran Tucker's plate, he saw that he had a warrant. Tucker left in his vehicle toward Walnut St. and Officer Brann had to turn around to get behind him. Tucker then pulled into the alley behind 1015 E. Walnut St. Officer Brann told me that Tucker then exited the alley onto Cherry St. and when he did, he punched it and his wheels were spinning as he turned east onto Cherry St. at a high rate of speed. Officer Brann stated he turned on his lights and siren and he exited the alleyway onto Cherry St. and at this time, Tucker was about a ½ block east of him at the intersection of

**Page 1 of 2
Pursuit**

CASE # Brann

Lt. J. Engelbrecht #320

**GREEN BAY POLICE DEPARTMENT
NARRATIVE SHEET**

GBPD CR-4

08/07/19 - 1:01 PM

Cherry St. / N. Clay St. He continued after Tucker eastbound about for about three blocks with his emergency equipment activated. Tucker blew numerous stop signs including the stop sign at Cherry St. / N. Baird St. as he then turned south on Baird St. It was at this point that he said he heard me terminate the pursuit and he turned off his emergency equipment. He stated to me that had I not terminated the pursuit, he was planning on terminating it shortly after he turned onto Baird St. I asked about COBAN video and his squad car is not equipped with COBAN.

I went back and drove over the route of the pursuit. Officer Brann confirmed with me that the length of the pursuit was 0.5 miles. It lasted approximately 3-4 city blocks. There was not any vehicle or pedestrian traffic when I drove the route, however it should be noted that the pavement was wet from a light rain. Although this pursuit was short in nature, it should be reviewed further to examine compliance with our pursuit policies.

Green Bay Police Department
PERSONNEL FILE ENTRY REPORT

Date: 12 04 18	In the matter of: Vehicle Pursuit - Green Bay Police Department case number 18-210609
Officer Name(s): Officer Jeff Brann	
Details: On 09 20 18 at 12:18pm, DePere PD notified the Green Bay PD, via the Communication Center, that they were tracking a stolen vehicle by phone in Green Bay's jurisdiction. An in depth review of the facts are as follows: That vehicle is located by an officer who initiates a pursuit. That pursuit is immediately terminated by Lt Engelbrecht. A few moments later, the stolen vehicle was located parked by Officer Clark. Officer Clark attempts to make contact, but the vehicle drives away. Officer Brann, who was approaching Officer Clark as a backup, comes across the stolen vehicle leaving the scene at a high rate of speed and begins to follow it. Officer Brann follows the stolen vehicle that is still increasing its speed. Officer Brann follows the vehicle onto NB Lime Kiln Rd, failing to stop for the stop sign at August St at Lime Kiln Rd and without emergency lights or siren activated. Officer Clark asks Lt Engelbrecht if he still wants them to pursue the stolen vehicle, which Lt Engelbrecht clearly states not to pursue. Officer Brann continues to follow the stolen vehicle without emergency lights or siren activated and at a speed above the legal speed limit of 25mph. At Lime Kiln Rd at Main St, the stolen vehicle is traveling in the right turn lane followed by Officer Brann at a continued high rate of speed. The stolen vehicle then turns left onto WB Main St, followed by Officer Brann, without stopping for a red traffic signal and without activating the emergency lights or siren. Several civilian vehicles are in the area and forced to stop. Officer Brann states on the radio, "We are not pursuing. We are just following in case she gets caught in traffic and try to box her in." The video evidence from Officer Meyer's squad camera contradicts that statement as Officer Brann is following the suspect vehicle at a speed greater than the posted limit of 30 mph. At Main St at Deckner Av, the stolen vehicle is approaching stopped traffic. Officer Brann enters into on-coming traffic without emergency lights or siren activated, then travels around traffic that is stopped in an effort to block the stolen vehicle. Officer Brann activates his emergency lights and exits his squad. He then approaches the stolen vehicle with his handgun drawn and pointing it at the driver of the stolen vehicle while ordering her to get her "Hands up!" Several stopped civilian vehicles and operators are caught in a potential crossfire situation. The operator of the stolen vehicle is able to escape through the stopped vehicles and leaves EB on Deckner Av. Officer Brann returns to his squad, shuts off his emergency lights, and follows the vehicle EB on Deckner Av. Officer Clark informs Lt Engelbrecht that there may be a possibility of getting stop stick deployed on the vehicle. Lt Engelbrecht orders this pursuit terminated and moments later repeats his order to terminate. Officer Brann then pulls over to the side of the road at Deckner at Huth St and stops following the stolen vehicle. On 08 02 18, Officer Brann was issued a Documentation of an Oral Warning for initiating a pursuit without sufficient criteria for a vehicle pursuit under GBPD department policy. By the actions of the 09 20 18 pursuit, Officer Brann is in violation of the following Green Bay Police Department Policies: POLICY 307 - VEHICLE PURSUITS 307.3.2 When to Terminate a Pursuit (a) When directed to terminate the pursuit by a supervisor. (f) The hazards to uninvolved bystanders or motorists. (g) When the identity of the offender is known and it does not reasonably appear that the need for immediate capture outweighs the risks associated with continuing the pursuit, officers should strongly consider discontinuing the pursuit and apprehending the offender at a later time (Wis. Stat. § 346.175(3)(a)). POLICY 308 - OFFICER RESPONSE TO CALLS 308.4 Responsibilities of the Responding Officer Officers shall exercise sound judgment and care with due regard for life and property when responding to an emergency call. Officers shall reduce speed at all street intersections to such a degree that they shall have complete control of the vehicle.	

During a call involving an emergency response, after giving a visual and audible siren or exhaust whistle, officers may (Wis. Stat. § 346.03): - Disregard regulations governing stopping, parking or standing when using a red or red and blue flashing, oscillating or rotating light. - Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation. - Exceed any speed limits provided this does not endanger life or property. - Disregard regulations governing direction of movement or turning in specified directions.	
POLICY 320 STANDARDS OF CONDUCT 320.5.1 Laws, Rules, and Orders (b) Disobedience of any legal directive or order issued by any department member of a higher rank. (c) Violation of federal, state, local or administrative laws, rules or regulations.	
320.5.7 Efficiency (b) Unsatisfactory work performance including, but not limited to, failure, incompetence, inefficiency or delay in performing and/or carrying out proper orders, work assignments or the instructions of supervisors without a reasonable and bona fide excuse.	
Report Prepared By (name and rank) : Captain B. Florence	
UNIT / SHIFT COMMANDER'S REVIEW AND RECOMMENDATION Additional Details:	
Unit or Shift Commander Reviewing (name and rank):	
REVIEWED BY DIVISION COMMANDER	
Approved ? ☐ Yes ☐ No ☐ Modified	Approved By
Division Commander Comments	

OFFICER INFORMED OF INCIDENT AS OUTLINED IN DETAILS		
Date Informed	Informed By: (signature)	Officer Signature
ACTIONS		
Date:	Copy sent to Chief ☐	
Date:	Copy placed in Personnel File ☐	
DISCIPLINE		
Date:	Chief's Interview with Officer ☐	
Date:	Chief issues written reprimand ☐	
Date:	Copy of written reprimand must be sent to: ☐ Personnel File ☐ Personnel Manager ☐ Union President ☐ Union Attorney	
Date:	Police and Fire Commission notified in suspension cases ☐	
Date:	Officer Relieved from duty by: (name and rank)	
COMMENDATIONS		
Date:	Recommended for Department Commendation ☐	
Date:	Letter sent by Chief ☐	
Date:	Referred to Awards Committee ☐	

Green Bay Police Department
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During a call involving an emergency response, after giving a visual and audible siren or exhaust whistle, officers may (Wis. Stat. § 346.03):

- a. Disregard regulations governing stopping, parking or standing when using a red or red and blue flashing, oscillating or rotating light.
- b. Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation.
- c. Exceed any speed limits provided this does not endanger life or property.
- d. Disregard regulations governing direction of movement or turning in specified directions.

Report Prepared By (name and rank) :

Captain B. Florence, Cmdr. Ebel, and edited by Cmdr. Kevin Warych on 03-04-19

UNIT / SHIFT COMMANDER'S REVIEW AND RECOMMENDATION

Additional Details:

Unit or Shift Commander Reviewing (name and rank):

REVIEWED BY DIVISION COMMANDER

Approved ?

☐ Yes

☐ No

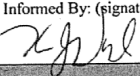
☒ Modified

Approved By

K. J. Warych Kevin J Warych

Division Commander Comments

In conferring with GBPPA Association members, Scanlan and Biller, we modified the above entry on 03/04/19..Cmdr. Warych

OFFICER INFORMED OF INCIDENT AS OUTLINED IN DETAILS		
Date Informed 3/22/19 kw	Informed By: (signature)  Kevin Jukrych	Officer Signature  BRANN #100
ACTIONS		
Date: 3/22/19 kw	Copy sent to Chief ☒	
Date: 3/22/19 kw	Copy placed in Personnel File ☒	
DISCIPLINE		
Date:	Chief's Interview with Officer ☐	
Date:	Chief issues written reprimand ☐	
Date: 3/22/19 kw	Copy of written reprimand must be sent to: ☒ Personnel File ☐ Personnel Manager ☒ Union President ☐ Union Attorney	
Date:	Police and Fire Commission notified in suspension cases ☐	
Date:	Officer Relieved from duty by: (name and rank)	
COMMENDATIONS		
Date:	Recommended for Department Commendation ☐	
Date:	Letter sent by Chief ☐	
Date:	Referred to Awards Committee ☐	

Vehicle Pursuits

307.1 PURPOSE AND SCOPE

Vehicle pursuits expose innocent citizens, law enforcement officers and fleeing violators to the risk of serious injury or death. The primary purpose of this policy is to provide officers with guidance in balancing the safety of the public and themselves against law enforcement's duty to apprehend violators of the law (Wis. Stat. § 346.03(6); Wis. Admin. Code LES § 3.07).

Another purpose of this policy is to minimize the potential for pursuit-related crashes. Vehicle pursuits require officers to exhibit a high degree of common sense and sound judgment. Officers must not forget that the immediate apprehension of a suspect is generally not more important than the safety of the public and pursuing officers.

See attachment: Inter agency pursuit agreement.pdf

See attachment: Vehicle Pursuits Procedures.pdf

307.1.1 PHILOSOPHY

Deciding whether to pursue a motor vehicle is a critical decision that must be made quickly and under difficult and unpredictable circumstances. In recognizing the risk to public safety created by vehicle pursuits, no officer or supervisor shall be criticized or disciplined for deciding not to engage in a vehicle pursuit due to the risk involved. This includes circumstances where department policy would permit the initiation or continuation of the pursuit. It is recognized that vehicle pursuits are not always predictable and decisions made pursuant to this policy will be evaluated according to the totality of the circumstances reasonably available at the time of the pursuit.

307.2 DEFINITIONS

Definitions related to this policy include:

Vehicle pursuit - An event involving one or more peace officers attempting to apprehend a suspect who is attempting to avoid arrest while operating a motor vehicle by using high speed or other evasive tactics, such as increasing the speed of the vehicle, extinguishing the lights of the vehicle, disregarding traffic warning signs, stop signs, red lights, driving off a roadway, turning suddenly or driving in a legal manner but willfully failing to yield to an officer's signal to stop (Wis. Stat. § 85.07(8)(a)).

Blocking or vehicle intercept - A slow-speed coordinated maneuver where two or more law enforcement vehicles simultaneously intercept and block the movement of a suspect vehicle, the driver of which may be unaware of the impending enforcement stop. The goal is containment and preventing a pursuit. Blocking is not a moving or stationary road block.

Boxing-in - A tactic designed to stop a violator's vehicle by surrounding it with law enforcement vehicles and then slowing all vehicles to a stop.

Green Bay Police Department

Green Bay PD Policy Manual

Vehicle Pursuits

Ramming - A non-trained deadly force technique in which abrupt and deliberate act of impacting a violator's vehicle with another vehicle to functionally damage or otherwise force the violator's vehicle to stop.

Roadblocks - A tactic designed to stop a violator's vehicle by intentionally placing a vehicle or other immovable object in the path of the violator's vehicle.

Closed Roadblocks-No alternate route provided. If the suspect does not voluntarily stop, they will crash with the great potential for injury and death to the suspect and others in the area. Use of a Closed Roadblock is considered "Deadly Force" and should only be implemented when use of deadly force would otherwise be justified.

Open Roadblock-The roadway is either not completely blocked, or leaves an alternate route (or run out lane) for the suspect vehicle to take. The intention is to provide a show of force to convince the suspect that escape is improbable, thereby inducing them to stop. Open roadblock is considered an intermediate use of force.

Tire deflation device, spikes or tack strips - A device that extends across the roadway and is designed to puncture the tires of the pursued vehicle.

Authorized Emergency Vehicles- A marked or unmarked police vehicle with emergency lights visible for 360 degrees, and an audible siren that is commonly used to perform the full functions of a patrol unit. For the purposes of the Green Bay Police Department Pursuit Policy, authorized emergency vehicles shall be limited to marked patrol vehicles, unmarked patrol vehicles, and motorcycles.

Unmarked Emergency Vehicle- Department vehicles equipped with emergency lights visible for 360 an audible siren. This vehicle does not display law enforcement degrees, and markings or City of Green Bay Police placards, and is commonly used in patrol.

Marked Patrol Vehicle-Department vehicles equipped with flashing, or oscillating red and blue lights (emergency lights) visible for 360 degrees, and audible siren. This vehicle displays law enforcement markings, or City of Green Bay Police placards and are commonly used in patrol.

Pursuit Intervention Technique (PIT)-A trained technique, which utilizes controlled contact between a police vehicle and a pursued vehicle, at low speeds, which is intended to cause the driver of the pursued vehicle to lose control of their vehicle.

Specialty Vehicles- Motorcycles, paddy wagons, pick-up trucks, non-pursuit rated sport utility trucks, SWAT vehicles, dive truck, investigative vehicle, Community Service Intern vehicles, or any other non-patrol operation vehicle.

Violent Felony-A crime classified as a felony, by the State of Wisconsin, that involves physical violence or the mention or implication of a weapon by the suspect.

Green Bay Police Department

Green Bay PD Policy Manual

Vehicle Pursuits

307.3 OFFICER RESPONSIBILITIES

It is the policy of this department that a vehicle pursuit shall be conducted with the visible signal of at least one flashing, oscillating or rotating red light, or a blue and red light, and also an audible signal by means of a siren or exhaust whistle activated on an authorized emergency vehicle (Wis. Stat. § 346.03(3)).

The following policy is established to provide officers with guidelines for driving with due regard and caution for the safety of all persons using the highway (Wis. Stat. § 346.03(5)).

All officers actively engaged in a vehicle pursuit must understand and practice the responsibility they have as the pursuit officer to terminate any pursuit that may pose a greater threat to the public than the need to apprehend the subject immediately.

307.3.1 WHEN TO INITIATE A PURSUIT

Green Bay Police Department officers may engage in vehicle pursuits of suspects that officers have probable cause to believe has committed is committing or is about to commit a violent felony, has a warrant for a violent felony or prior to initiation of a traffic stop the driver has demonstrated driving behaviors that would present a clear and immediate threat to the safety of the general public, and therefore the necessity of immediate apprehension outweighs the level of danger to the public created by the vehicle pursuit.

A few examples of violent felonies include, but are not limited to:

- Homicide or attempted homicide.
- Robbery where the suspect mentions or implies he/she has a weapon.
- 1st or 2nd degree Sexual assault.
- Physical assault on a law enforcement officer.
- Armed burglary.
- Kidnapping.

The following factors individually and collectively shall be considered in deciding whether to initiate or continue a pursuit (Wis. Stat. § 346.03(6)):

- (a) The importance of protecting the public and balancing the known offense and the apparent need for immediate capture against the risks to officers, innocent motorists and others.
- (b) The apparent nature of the fleeing suspect (e.g., whether the suspect represents a serious threat to public safety).
- (c) The safety of the public in the area of the pursuit, including the type of area, time of day, the amount of vehicular and pedestrian traffic (e.g., school zones) and the speed of the pursuit relative to these factors.

Green Bay Police Department

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- (d) The pursuing officer's familiarity with the area of the pursuit, the quality of communication between the pursuing units and the dispatcher/supervisor, and the driving capabilities of the pursuing officers under the conditions of the pursuit.
- (e) The weather, traffic and road conditions that unreasonably increase the danger of the pursuit when weighed against the risks resulting from the suspect's escape.
- (f) The performance capabilities of the vehicles used in the pursuit in relation to the speed and other conditions of the pursuit.
- (g) Other persons in or on the pursued vehicle (e.g., passengers, co-offenders and hostages).
- (h) The availability of other resources.
- (i) The police unit is carrying passengers other than on-duty police officers. Pursuits shall not be undertaken with a prisoner or a civilian in the pursuit vehicle. Officers are prohibited from dropping off passengers.

307.3.2 WHEN TO TERMINATE A PURSUIT

Pursuits should be discontinued whenever the totality of objective circumstances known or which ought to be known to the officer or supervisor during the pursuit indicates that the present risk of continuing the pursuit reasonably appears to outweigh the risk resulting from the suspect's escape (Wis. Admin. Code LES § 3.07(1)(c)).

Operating an emergency vehicle in a pursuit with emergency lights and siren does not relieve the operator of an authorized emergency vehicle of the duty to drive with due regard for the safety of all persons and does not protect the driver from the consequences of reckless disregard for the safety of others (Wis. Stat. § 346.03(5)).

The above factors on when to initiate a pursuit are expressly included herein and will apply equally to the decision to discontinue as well as the decision to initiate a pursuit. Officers and supervisors must objectively and continuously weigh the seriousness of the offense against the potential danger to innocent motorists, themselves and the public when electing to continue a pursuit. In the context of this policy, the term "terminate" shall be construed to mean to discontinue or to stop pursuing the fleeing vehicle.

In addition to the factors listed above, the following factors should be considered when deciding whether to terminate a pursuit:

- (a) When directed to terminate the pursuit by a supervisor.
- (b) The distance between the pursuing officers and the fleeing vehicle is so great that further pursuit would be futile or require the pursuit to continue for an unreasonable time or distance.
- (c) The pursued vehicle's location is no longer definitely known.

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- (d) The officer's pursuit vehicle sustains damage or a mechanical failure that renders it unsafe to drive.
- (e) The pursuit vehicle has an emergency equipment failure that causes the vehicle to no longer qualify for use in emergency operations (Wis. Stat. § 346.03(3)).
- (f) The hazards to uninvolved bystanders or motorists.
- (g) When the identity of the offender is known and it does not reasonably appear that the need for immediate capture outweighs the risks associated with continuing the pursuit, officers should strongly consider discontinuing the pursuit and apprehending the offender at a later time (Wis. Stat. § 346.175(3)(a)).
- (h) When it is necessary to stop to render aid to an injured person and no other officer is available to do so (Wis. Admin. Code LES § 3.07(1)(c)(5)).

307.3.3 SPEED GUIDELINES

The speed of a pursuit is a factor that should be evaluated on a continuing basis by the officer and supervisor. Vehicle speeds shall be taken into consideration to prevent endangering public safety, officer safety and the safety of the occupants of the fleeing vehicle (Wis. Stat. § 346.03(6)).

Should high vehicle speeds be reached during a pursuit, officers and supervisors shall also consider these factors when determining the reasonableness of the speed of the pursuit.

- (a) Pursuit speeds have become unreasonably unsafe for the surrounding conditions.
- (b) Pursuit speeds have exceeded the driving ability of the officer.
- (c) Pursuit speeds are beyond the capabilities of the pursuit vehicle, thus making its operation unsafe.

307.4 PURSUIT UNITS

Pursuit units shall be limited to four authorized emergency vehicles, unless more are authorized by a supervisor.

An officer or supervisor may request additional units to join a pursuit if, after assessing the factors outlined above, it appears that the number of officers involved would be insufficient to safely arrest the suspect. All other officers shall stay out of the pursuit but should remain alert to its progress and location.

Marked patrol vehicles should take lead for unmarked vehicles involved in a pursuit.

307.4.1 MOTORCYCLE OFFICERS

Officers operating motorcycles will only be allowed to initiate and continue in a pursuit with supervisory approval. Officers riding motorcycles will completely disengage from the pursuit upon the arrival of a marked/unmarked patrol vehicle. This will be on a case by case basis in the event that the offense is so egregious in nature that to let the offender continue to elude apprehension would cause further danger to the public.

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A marked patrol vehicle equipped with emergency overhead lighting should replace a police motorcycle as primary and/or secondary pursuit unit.

307.4.2 VEHICLES WITHOUT EMERGENCY EQUIPMENT

Vehicles not equipped with a red or blue emergency light and siren are prohibited from initiating or joining in any pursuit. Officers in such vehicles may provide support to pursuing units as long as the vehicle is operated in compliance with all traffic laws.

307.4.3 PRIMARY UNIT RESPONSIBILITIES

The initial pursuing officer will be designated as the primary pursuit unit and will be responsible for the conduct of the pursuit unless it is unable to remain reasonably close enough to the violator's vehicle. The primary responsibility of the officer initiating the pursuit is the apprehension of the suspect without unreasonable danger to him/herself or other persons.

The primary unit should notify the Communications Center, commencing with a request for priority radio traffic, that a vehicle pursuit has been initiated, and as soon as practicable, provide information including, but not limited to:

- (a) The reason for the pursuit.
- (b) The location and direction of travel.
- (c) The speed of the fleeing vehicle.
- (d) The description of the fleeing vehicle and license number, if known.
- (e) The number of occupants.
- (f) The identity or description of the known occupants.
- (g) The weather, road and traffic conditions.
- (h) The identity of other agencies involved in the pursuit.
- (i) Information concerning the use of firearms, threat of force, injuries, hostages or other unusual hazards.

Once a secondary unit joins a pursuit, the officer in the secondary unit shall be responsible for broadcasting the progress of the pursuit. Unless circumstances reasonably indicate otherwise, the primary unit should relinquish the responsibility of broadcasting the progress of the pursuit to a secondary unit or aircraft joining the pursuit to minimize distractions and allow the primary unit to concentrate foremost on safe pursuit tactics.

307.4.4 SECONDARY UNIT RESPONSIBILITIES

The second officer in the pursuit is responsible for:

- (a) Immediately notifying the dispatcher of his/her entry into the pursuit.

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- (b) Remaining at a safe distance behind the primary unit unless directed to assume the role of primary officer, or if the primary unit is unable to continue the pursuit.
- (c) Broadcasting the progress of the pursuit unless the situation indicates otherwise.
- (d) Serving as backup to the primary unit once the subject has been stopped.

307.4.5 SUPPORT UNITS

Officers that are not actively engaged in the pursuit, but are in close proximity to the pursuit route may assist by deploying stop sticks or blocking off intersections. Support units may also assist in the high risk vehicle stop or a perimeter at the termination of a pursuit. During an active pursuit, a unit will only be considered a "support unit" if they are ahead of the direction of pursuit travel.

Support units may drive in emergency mode, but must use Due Regard. Officers that are out of position, and attempting to catch up to the pursuit WILL NOT be considered support staff, and will be deemed in violation of this policy.

307.4.6 PURSUIT DRIVING TACTICS

The decision to use specific driving tactics requires the same assessment of considerations outlined in the factors to be considered concerning pursuit initiation and termination. The following are tactics for units involved in the pursuit:

- (a) Officers, considering their driving skills and vehicle performance capabilities, will space themselves from other involved vehicles such that they are able to see and avoid hazards or react safely to maneuvers by the fleeing vehicle.
- (b) Officers may proceed past a red or stop signal or stop sign but only after slowing down and using due regard as may be necessary for safe operation (Wis. Stat § 346.03(2)(a)).
- (c) Because intersections can present increased risks, the following tactics should be considered:
 - 1. Available units not directly involved in the pursuit may proceed safely to controlled intersections ahead of the pursuit in an effort to warn cross traffic.
 - 2. Pursuing units shall exercise due regard and slow down as may be necessary for safe operation when proceeding through controlled intersections.
- (d) As a general rule, officers should not pursue a vehicle driving the wrong way on a roadway, highway or freeway. In the event the pursued vehicle does so, the following tactics should be considered:
 - 1. Maintaining visual contact with the pursued vehicle by paralleling on the correct side of the roadway.
 - 2. Requesting other units to observe exits available to the suspect.

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- (e) Notifying the Wisconsin State Patrol or other law enforcement agency if it appears the pursuit may enter their jurisdiction.
- (f) Officers involved in a pursuit should not attempt to pass other units unless the situation indicates otherwise or they are requested to do so by the primary unit and a clear understanding of the maneuver process exists between the involved officers.

307.4.7 TACTICS/PROCEDURES FOR UNITS NOT INVOLVED IN THE PURSUIT

Officers are authorized to use emergency equipment at intersections along the pursuit path to clear intersections of vehicular and pedestrian traffic to protect the public. Officers should remain in their assigned area and should not become involved with the pursuit unless directed otherwise by a supervisor.

Non-pursuing personnel needed at the termination of the pursuit should respond in a non-emergency manner, observing the rules of the road, unless directed otherwise.

The primary unit, secondary units, and support units should be the only units operating under emergency conditions (emergency lights and siren) unless other units are assigned to the pursuit.

307.4.8 SPECIALTY AND UNMARKED PATROL VEHICLES

Officers operating unmarked patrol vehicles may initiate a pursuit but only until a marked patrol vehicle can take over as the primary unit continuing the pursuit. At which point the unmarked vehicle may continue as the secondary unit.

Specialty vehicles may support in a pursuit by positioning themselves for surveillance or deployment of stop sticks. Specialty vehicles shall not get directly involved in the pursuit without supervisory approval.

307.5 SUPERVISORY CONTROL AND RESPONSIBILITIES

It is the policy of this department that available supervisory control will be exercised over all vehicle pursuits involving officers from this department.

A supervisor will be responsible for the following:

- (a) Upon becoming aware of a pursuit, immediately notifying involved officers and the Communications Center of supervisory presence and ascertaining all reasonably available information to continuously assess the situation and risk factors associated with the pursuit in order to ensure that the pursuit is conducted within established department guidelines.
- (b) Engaging in the pursuit, when appropriate, to provide on-scene supervision.
- (c) Exercising management and control of the pursuit even if not engaged in it.
- (d) Ensuring that no more than the number of required law enforcement units needed are involved in the pursuit under the guidelines set forth in this policy.

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- (e) Directing that the pursuit be terminated if, in his/her judgment, it is not justified to continue the pursuit under the guidelines of this policy.
- (f) Ensuring that the proper radio channel is being used.
- (g) Ensuring that the officer are adequately broadcasting location, speed, direction and all due regard elements.
- (h) Ensuring the notification and/or coordination of outside agencies if the pursuit either leaves or is likely to leave the jurisdiction of this agency.
- (i) Control and manage GBPD units when a pursuit enters another jurisdiction.
- (j) Respond to the location where the pursuit ended.
- (k) Preparing a post-pursuit debrief and analysis of the pursuit for training purposes
- (l) Write a report
- (m) Make notification to Operations Captain

307.5.1 SHIFT COMMANDER RESPONSIBILITIES

Upon becoming aware that a pursuit has been initiated, the Shift Commander should monitor and continually assess the situation and ensure the pursuit is conducted within the guidelines and requirements of this policy.

The Shift Commander shall review all pertinent reports for content.

307.6 COMMUNICATIONS

If the pursuit is confined within the City limits, radio communications will be conducted on the primary channel unless instructed otherwise by a supervisor or communications dispatcher. If the pursuit leaves the jurisdiction of this department or such is imminent, involved units should, whenever available, switch radio communications to an emergency channel most accessible by participating agencies and units.

307.6.1 LOSS OF PURSUED VEHICLE

When the pursued vehicle is lost, the primary unit should broadcast pertinent information to assist other units in locating the vehicle. The primary unit will be responsible for coordinating any further search for either the pursued vehicle or suspects fleeing on foot.

307.7 INTERJURISDICTIONAL CONSIDERATIONS

The Brown County inter-agency pursuit agreement is to establish guidelines for the pursuit of vehicles by Brown County Law Enforcement agencies when one or more agencies are involved, and/or the pursuit crosses jurisdictional boundaries. This agreement provides an expectation of how each law enforcement agency will respond in the event that a pursuit enters another jurisdiction. This document is intended only to supplement individual agency pursuit policies and not supersede such policies.

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307.8 PURSUIT INTERVENTION

Pursuit intervention is an attempt to terminate the ability of a suspect to continue to flee in a motor vehicle through tactical application of technology, tire deflation devices, blocking, boxing-in, PIT, ramming or roadblock procedures.

307.8.1 WHEN USE IS AUTHORIZED

In deciding whether to use intervention tactics, officers/supervisors should balance the risk of allowing the pursuit to continue with the potential hazards arising from the use of each tactic to the public, the officers and persons in or on the pursued vehicle. With this in mind, the decision to use any intervention tactic should be reasonable in light of the circumstances apparent to the officer at the time of the decision.

307.8.2 USE OF FIREARMS

The use of firearms to disable a pursued vehicle is not generally an effective tactic and involves all the dangers associated with discharging firearms. Officers should not utilize firearms during an ongoing pursuit unless the conditions and circumstances meet the requirements authorizing the use of deadly force. Nothing in this section shall be construed to prohibit any officer from using a firearm to stop a suspect from using a vehicle as a deadly weapon.

307.8.3 INTERVENTION STANDARDS

Any pursuit intervention tactic, depending upon the conditions and circumstances under which it is used, may present dangers to the officers, the public or anyone in or on the vehicle being pursued. Certain applications of intervention tactics could reach the requirements of use of deadly force and are subject to the requirements for such use. Officers shall consider these facts and requirements prior to deciding how, when, where and if an intervention tactic should be employed.

- (a) Blocking or moving roadblock should only be considered in cases involving felony suspects or drivers who pose a threat to public safety, and when officers reasonably believe that attempting a conventional enforcement stop will likely result in the driver attempting to flee in the vehicle. Because of the potential risk involved, this technique should only be employed by officers who have received training in such tactics and after giving consideration to the following:
 - 1. The need to immediately stop the suspect vehicle or prevent it from leaving substantially outweighs the risk of injury or death to occupants of the suspect vehicle, officers or other members of the public.
 - 2. Employing the blocking maneuver does not unreasonably increase the risk to officer safety.
 - 3. The target vehicle is stopped or traveling at a low speed.
 - 4. At no time should civilian vehicles be used to deploy this technique.
 - 5. The suggested speed is not to exceed 45 mph unless deadly force requirements have been met.

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- (b) Only officers trained in the use of PIT are authorized to use this procedure. It is recognized that the vehicle dynamics of both the pursuing and fleeing vehicles can pose a danger to the public. Factors that should be included in the officers decision on where to implement a PIT maneuver should include the width and type of the roadway, proximity to intersections, parked cars, pedestrians, homes, businesses, and the like. All officers must understand that the speed at which a PIT maneuver is attempted is directly proportionate to these dangers. Because of these reasons, the suggested top speed should be approximately 45 mph, but it is understood that other circumstances may be in play to justify a PIT attempted at a higher speeds, such as the deadly force requirement being met.
- (c) Ramming a fleeing vehicle, is a non-trained deadly force technique and should be done only after other tactical means at the officer's disposal have been exhausted. This tactic should be reserved for situations where there does not appear to be another reasonable alternative method. When ramming is used as a means to stop a fleeing vehicle, the following factors should be present: (The Operations Captain will be notified immediately if this technique is used)
 - 1. The suspect is an actual or suspected felon who represent a serious threat to the public if not apprehended.
 - 2. The suspect is driving with willful or wanton disregard for the safety of other persons or is driving in a reckless and life-endangering manner. If there does not reasonably appear to be a present or immediately foreseeable serious threat to the public, the use of ramming is not authorized.
- (d) Tire deflation devices should be deployed only when it is reasonably apparent that only the pursued vehicle will be affected by their use. Prior to the deployment of spike strips, the officer shall notify pursuing units and the supervisor of the intent and location. Officers should carefully consider the limitations of such devices as well as the potential risk to officers, the public and occupants of the pursued vehicle. If the pursued vehicle is a motorcycle or moped this technique will not be used. If a vehicle transporting hazardous materials or a school bus transporting children, officers and supervisors should weigh the potential consequences against the need to immediately stop the vehicle. The suggested speed for use of a tire deflation device is approximately 25mph and over. No officer shall deploy a tire deflation device until they have been trained.
- (e) Because closed roadblocks involve a potential for serious injury or death to occupants of the pursued vehicle if the suspect does not stop, the intentional placement of roadblocks in the direct path of a pursued vehicle is generally discouraged and should not be deployed without prior approval of a supervisor, and only then under extraordinary conditions when all other reasonable intervention techniques have failed

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or reasonably appear ineffective and the need to immediately stop the pursued vehicle substantially outweighs the risk of injury or death to occupants of the pursued vehicle, officers or other members of the public.

307.8.4 CAPTURE OF SUSPECTS

Proper self-discipline and sound professional judgment are the keys to a successful conclusion of a pursuit and apprehension of evading suspects. Officers shall use only that amount of force that reasonably appears necessary under the circumstances to properly perform their lawful duties.

Unless relieved by a supervisor, the primary officer should coordinate efforts to apprehend the suspect following the pursuit. Officers should consider the safety of the public and the involved officers when formulating plans to contain and capture the suspect.

307.9 REPORTING AND REVIEW REQUIREMENTS

All appropriate reports shall be completed to comply with local and state regulations (Wis. Stat. § 85.07(8)(b)).

- (a) The primary officer shall complete appropriate crime/arrest reports.
- (b) The primary officer or supervisor shall complete the appropriate pursuit report.
- (c) After first obtaining available information, the on-duty field supervisor shall promptly complete a Supervisor's Log or interoffice memorandum, briefly summarizing the pursuit to the Chief of Police or the authorized designee. This memo should minimally contain the following information:
 - 1. Date and time of pursuit
 - 2. Length of pursuit in distance and time
 - 3. Involved units and officers
 - 4. Initial reason and circumstances surrounding the pursuit
 - 5. Starting and termination points
 - 6. Alleged offense, charges filed or disposition: arrest, citation or other release
 - 7. Arrestee information should be provided if applicable
 - 8. Injuries and/or property damage
 - 9. Medical treatment
 - 10. The outcome of the pursuit
 - 11. Name of supervisor handling or at the scene
 - 12. A preliminary determination that the pursuit appears to be in compliance with this policy or that additional review and/or follow-up is warranted

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- (d) After receiving copies of reports, logs and other pertinent information, the Chief of Police or the authorized designee shall conduct or assign the completion of a post-pursuit review as appropriate to the circumstances.
- (e) At least annually, but no later than June 30th of every even-numbered year, the Chief of Police or the authorized designee shall direct a documented review and analysis of department vehicle pursuits to minimally include policy suitability, policy compliance, policy modification and training needs (Wis. Stat. § 346.03(6)).
- (f) The Records Manager shall compile and report information on vehicle pursuits engaged in during the previous 12 months to the Wisconsin State Patrol/Department of Transportation via WisDOJ WILENET system's Law Enforcement Pursuit Report. The report shall be filed no later than August 15th of each year and shall contain information on (Wis. Stat. § 85.07(8)(b)):
 - 1. The circumstances of the vehicle pursuit, including the distance, location and maximum speed.
 - 2. The reasons for initiating the vehicle pursuit.
 - 3. The outcome of the vehicle pursuit, including the number of deaths or great bodily injuries and an estimate of the value of any property damage.

307.9.1 REGULAR AND PERIODIC PURSUIT TRAINING

In addition to initial and supplementary training on pursuits, all certified sworn employees will participate, no less than biennially, in at least four hours of training addressing this policy, pursuit guidelines, driving techniques, new technology and the importance of vehicle safety and protecting the public at all times. Training will include recognition of the need to balance the known offense and the need for immediate capture against the risks to officers and others. At least four hours of the training curriculum will be based on the model standards promulgated by the Law Enforcement Standards Board (LESB) and shall be delivered by a LESB-certified Emergency Vehicle Operations and Control (EVOC) instructor (Wis. Stat. § 165.85(4)(bn)1m; Wis. Admin. Code LES § 3.07(4)). For purposes of LESB reporting obligations, the time period for annual training begins July 1st, and ends June 30th.

307.9.2 POLICY REVIEW

Certified members of this department shall certify in writing that they have received, read and understand this policy initially and upon any amendments (Wis. Stat. § 346.03(6)).

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307.1 PURPOSE AND SCOPE

Vehicle pursuits expose innocent citizens, law enforcement officers and fleeing violators to the risk of serious injury or death. The primary purpose of this policy is to provide officers with guidance in balancing the safety of the public and themselves against law enforcement's duty to apprehend violators of the law (Wis. Stat. § 346.03(6); Wis. Admin. Code LES § 3.07).

Another purpose of this policy is to minimize the potential for pursuit-related crashes. Vehicle pursuits require officers to exhibit a high degree of common sense and sound judgment. Officers must not forget that the immediate apprehension of a suspect is generally not more important than the safety of the public and pursuing officers.

See attachment: Inter agency pursuit agreement.pdf

See attachment: Vehicle Pursuits Procedures.pdf

307.1.1 PHILOSOPHY

Deciding whether to pursue a motor vehicle is a critical decision that must be made quickly and under difficult and unpredictable circumstances. In recognizing the risk to public safety created by vehicle pursuits, no officer or supervisor shall be criticized or disciplined for deciding not to engage in a vehicle pursuit due to the risk involved. This includes circumstances where department policy would permit the initiation or continuation of the pursuit. It is recognized that vehicle pursuits are not always predictable and decisions made pursuant to this policy will be evaluated according to the totality of the circumstances reasonably available at the time of the pursuit.

307.2 DEFINITIONS

Definitions related to this policy include:

Vehicle pursuit - An event involving one or more peace officers attempting to apprehend a suspect who is attempting to avoid arrest while operating a motor vehicle by using high speed or other evasive tactics, such as increasing the speed of the vehicle, extinguishing the lights of the vehicle, disregarding traffic warning signs, stop signs, red lights, driving off a roadway, turning suddenly or driving in a legal manner but willfully failing to yield to an officer's signal to stop (Wis. Stat. § 85.07(8)(a)).

Blocking or vehicle intercept - A slow-speed coordinated maneuver where two or more law enforcement vehicles simultaneously intercept and block the movement of a suspect vehicle, the driver of which may be unaware of the impending enforcement stop. The goal is containment and preventing a pursuit. Blocking is not a moving or stationary road block.

Boxing-in - A tactic designed to stop a violator's vehicle by surrounding it with law enforcement vehicles and then slowing all vehicles to a stop.

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Ramming - A non-trained deadly force technique in which abrupt and deliberate act of impacting a violator's vehicle with another vehicle to functionally damage or otherwise force the violator's vehicle to stop.

Roadblocks - A tactic designed to stop a violator's vehicle by intentionally placing a vehicle or other immovable object in the path of the violator's vehicle.

Closed Roadblocks-No alternate route provided. If the suspect does not voluntarily stop, they will crash with the great potential for injury and death to the suspect and others in the area. Use of a Closed Roadblock is considered "Deadly Force" and should only be implemented when use of deadly force would otherwise be justified.

Open Roadblock-The roadway is either not completely blocked, or leaves an alternate route (or run out lane) for the suspect vehicle to take. The intention is to provide a show of force to convince the suspect that escape is improbable, thereby inducing them to stop. Open roadblock is considered an intermediate use of force.

Tire deflation device, spikes or tack strips - A device that extends across the roadway and is designed to puncture the tires of the pursued vehicle.

Authorized Emergency Vehicles- A marked or unmarked police vehicle with emergency lights visible for 360 degrees, and an audible siren that is commonly used to perform the full functions of a patrol unit. For the purposes of the Green Bay Police Department Pursuit Policy, authorized emergency vehicles shall be limited to marked patrol vehicles, unmarked patrol vehicles, and motorcycles.

Unmarked Emergency Vehicle- .Department vehicles equipped with emergency lights visible for 360 an audible siren. This vehicle does not display law enforcement degrees, and markings or City of Green Bay Police placards, and is commonly used in patrol.

Marked Patrol Vehicle-Department vehicles equipped with flashing, or oscillating red and blue lights (emergency lights) visible for 360 degrees, and audible siren. This vehicle displays law enforcement markings, or City of Green Bay Police placards and are commonly used in patrol.

Pursuit Intervention Technique (PIT)-A trained technique, which utilizes controlled contact between a police vehicle and a pursued vehicle, at low speeds, which is intended to cause the driver of the pursued vehicle to lose control of their vehicle.

Specialty Vehicles- Motorcycles, paddy wagons, pick-up trucks, non-pursuit rated sport utility trucks, SWAT vehicles, dive truck, investigative vehicle, Community Service Intern vehicles, or any other non-patrol operation vehicle.

Violent Felony-A crime classified as a felony, by the State of Wisconsin, that involves physical violence or the mention or implication of a weapon by the suspect.

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307.3 OFFICER RESPONSIBILITIES

It is the policy of this department that a vehicle pursuit shall be conducted with the visible signal of at least one flashing, oscillating or rotating red light, or a blue and red light, and also an audible signal by means of a siren or exhaust whistle activated on an authorized emergency vehicle (Wis. Stat. § 346.03(3)).

The following policy is established to provide officers with guidelines for driving with due regard and caution for the safety of all persons using the highway (Wis. Stat. § 346.03(5)).

All officers actively engaged in a vehicle pursuit must understand and practice the responsibility they have as the pursuit officer to terminate any pursuit that may pose a greater threat to the public than the need to apprehend the subject immediately.

307.3.1 WHEN TO INITIATE A PURSUIT

Green Bay Police Department officers may engage in vehicle pursuits of suspects that officers have probable cause to believe has committed is committing or is about to commit a violent felony, has a warrant for a violent felony or prior to initiation of a traffic stop the driver has demonstrated driving behaviors that would present a clear and immediate threat to the safety of the general public, and therefore the necessity of immediate apprehension outweighs the level of danger to the public created by the vehicle pursuit.

A few examples of violent felonies include, but are not limited to:

- Homicide or attempted homicide.
- Robbery where the suspect mentions or implies he/she has a weapon.
- 1st or 2nd degree Sexual assault.
- Physical assault on a law enforcement officer.
- Armed burglary.
- Kidnapping.

The following factors individually and collectively shall be considered in deciding whether to initiate or continue a pursuit (Wis. Stat. § 346.03(6)):

- (a) The importance of protecting the public and balancing the known offense and the apparent need for immediate capture against the risks to officers, innocent motorists and others.
- (b) The apparent nature of the fleeing suspect (e.g., whether the suspect represents a serious threat to public safety).
- (c) The safety of the public in the area of the pursuit, including the type of area, time of day, the amount of vehicular and pedestrian traffic (e.g., school zones) and the speed of the pursuit relative to these factors.

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- (d) The pursuing officer's familiarity with the area of the pursuit, the quality of communication between the pursuing units and the dispatcher/supervisor, and the driving capabilities of the pursuing officers under the conditions of the pursuit.
- (e) The weather, traffic and road conditions that unreasonably increase the danger of the pursuit when weighed against the risks resulting from the suspect's escape.
- (f) The performance capabilities of the vehicles used in the pursuit in relation to the speed and other conditions of the pursuit.
- (g) Other persons in or on the pursued vehicle (e.g., passengers, co-offenders and hostages).
- (h) The availability of other resources.
- (i) The police unit is carrying passengers other than on-duty police officers. Pursuits shall not be undertaken with a prisoner or a civilian in the pursuit vehicle. Officers are prohibited from dropping off passengers.

307.3.2 WHEN TO TERMINATE A PURSUIT

Pursuits should be discontinued whenever the totality of objective circumstances known or which ought to be known to the officer or supervisor during the pursuit indicates that the present risk of continuing the pursuit reasonably appears to outweigh the risk resulting from the suspect's escape (Wis. Admin. Code LES § 3.07(1)(c)).

Operating an emergency vehicle in a pursuit with emergency lights and siren does not relieve the operator of an authorized emergency vehicle of the duty to drive with due regard for the safety of all persons and does not protect the driver from the consequences of reckless disregard for the safety of others (Wis. Stat. § 346.03(5)).

The above factors on when to initiate a pursuit are expressly included herein and will apply equally to the decision to discontinue as well as the decision to initiate a pursuit. Officers and supervisors must objectively and continuously weigh the seriousness of the offense against the potential danger to innocent motorists, themselves and the public when electing to continue a pursuit. In the context of this policy, the term "terminate" shall be construed to mean to discontinue or to stop pursuing the fleeing vehicle.

In addition to the factors listed above, the following factors should be considered when deciding whether to terminate a pursuit:

- (a) When directed to terminate the pursuit by a supervisor.
- (b) The distance between the pursuing officers and the fleeing vehicle is so great that further pursuit would be futile or require the pursuit to continue for an unreasonable time or distance.
- (c) The pursued vehicle's location is no longer definitely known.

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- (d) The officer's pursuit vehicle sustains damage or a mechanical failure that renders it unsafe to drive.
- (e) The pursuit vehicle has an emergency equipment failure that causes the vehicle to no longer qualify for use in emergency operations (Wis. Stat. § 346.03(3)).
- (f) The hazards to uninvolved bystanders or motorists.
- (g) When the identity of the offender is known and it does not reasonably appear that the need for immediate capture outweighs the risks associated with continuing the pursuit, officers should strongly consider discontinuing the pursuit and apprehending the offender at a later time (Wis. Stat. § 346.175(3)(a)).
- (h) When it is necessary to stop to render aid to an injured person and no other officer is available to do so (Wis. Admin. Code LES § 3.07(1)(c)(5)).

307.3.3 SPEED GUIDELINES

The speed of a pursuit is a factor that should be evaluated on a continuing basis by the officer and supervisor. Vehicle speeds shall be taken into consideration to prevent endangering public safety, officer safety and the safety of the occupants of the fleeing vehicle (Wis. Stat. § 346.03(6)).

Should high vehicle speeds be reached during a pursuit, officers and supervisors shall also consider these factors when determining the reasonableness of the speed of the pursuit.

- (a) Pursuit speeds have become unreasonably unsafe for the surrounding conditions.
- (b) Pursuit speeds have exceeded the driving ability of the officer.
- (c) Pursuit speeds are beyond the capabilities of the pursuit vehicle, thus making its operation unsafe.

307.4 PURSUIT UNITS

Pursuit units shall be limited to four authorized emergency vehicles, unless more are authorized by a supervisor.

An officer or supervisor may request additional units to join a pursuit if, after assessing the factors outlined above, it appears that the number of officers involved would be insufficient to safely arrest the suspect. All other officers shall stay out of the pursuit but should remain alert to its progress and location.

Marked patrol vehicles should take lead for unmarked vehicles involved in a pursuit.

307.4.1 MOTORCYCLE OFFICERS

Officers operating motorcycles will only be allowed to initiate and continue in a pursuit with supervisory approval. Officers riding motorcycles will completely disengage from the pursuit upon the arrival of a marked/unmarked patrol vehicle. This will be on a case by case basis in the event that the offense is so egregious in nature that to let the offender continue to elude apprehension would cause further danger to the public.

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A marked patrol vehicle equipped with emergency overhead lighting should replace a police motorcycle as primary and/or secondary pursuit unit.

307.4.2 VEHICLES WITHOUT EMERGENCY EQUIPMENT

Vehicles not equipped with a red or blue emergency light and siren are prohibited from initiating or joining in any pursuit. Officers in such vehicles may provide support to pursuing units as long as the vehicle is operated in compliance with all traffic laws.

307.4.3 PRIMARY UNIT RESPONSIBILITIES

The initial pursuing officer will be designated as the primary pursuit unit and will be responsible for the conduct of the pursuit unless it is unable to remain reasonably close enough to the violator's vehicle. The primary responsibility of the officer initiating the pursuit is the apprehension of the suspect without unreasonable danger to him/herself or other persons.

The primary unit should notify the Communications Center, commencing with a request for priority radio traffic, that a vehicle pursuit has been initiated, and as soon as practicable, provide information including, but not limited to:

- (a) The reason for the pursuit.
- (b) The location and direction of travel.
- (c) The speed of the fleeing vehicle.
- (d) The description of the fleeing vehicle and license number, if known.
- (e) The number of occupants.
- (f) The identity or description of the known occupants.
- (g) The weather, road and traffic conditions.
- (h) The identity of other agencies involved in the pursuit.
- (i) Information concerning the use of firearms, threat of force, injuries, hostages or other unusual hazards.

Once a secondary unit joins a pursuit, the officer in the secondary unit shall be responsible for broadcasting the progress of the pursuit. Unless circumstances reasonably indicate otherwise, the primary unit should relinquish the responsibility of broadcasting the progress of the pursuit to a secondary unit or aircraft joining the pursuit to minimize distractions and allow the primary unit to concentrate foremost on safe pursuit tactics.

307.4.4 SECONDARY UNIT RESPONSIBILITIES

The second officer in the pursuit is responsible for:

- (a) Immediately notifying the dispatcher of his/her entry into the pursuit.

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- (b) Remaining at a safe distance behind the primary unit unless directed to assume the role of primary officer, or if the primary unit is unable to continue the pursuit.
- (c) Broadcasting the progress of the pursuit unless the situation indicates otherwise.
- (d) Serving as backup to the primary unit once the subject has been stopped.

307.4.5 SUPPORT UNITS

Officers that are not actively engaged in the pursuit, but are in close proximity to the pursuit route may assist by deploying stop sticks or blocking off intersections. Support units may also assist in the high risk vehicle stop or a perimeter at the termination of a pursuit. During an active pursuit, a unit will only be considered a "support unit" if they are ahead of the direction of pursuit travel.

Support units may drive in emergency mode, but must use Due Regard. Officers that are out of position, and attempting to catch up to the pursuit WILL NOT be considered support staff, and will be deemed in violation of this policy.

307.4.6 PURSUIT DRIVING TACTICS

The decision to use specific driving tactics requires the same assessment of considerations outlined in the factors to be considered concerning pursuit initiation and termination. The following are tactics for units involved in the pursuit:

- (a) Officers, considering their driving skills and vehicle performance capabilities, will space themselves from other involved vehicles such that they are able to see and avoid hazards or react safely to maneuvers by the fleeing vehicle.
- (b) Officers may proceed past a red or stop signal or stop sign but only after slowing down and using due regard as may be necessary for safe operation (Wis. Stat § 346.03(2)(a)).
- (c) Because intersections can present increased risks, the following tactics should be considered:
 - 1. Available units not directly involved in the pursuit may proceed safely to controlled intersections ahead of the pursuit in an effort to warn cross traffic.
 - 2. Pursuing units shall exercise due regard and slow down as may be necessary for safe operation when proceeding through controlled intersections.
- (d) As a general rule, officers should not pursue a vehicle driving the wrong way on a roadway, highway or freeway. In the event the pursued vehicle does so, the following tactics should be considered:
 - 1. Maintaining visual contact with the pursued vehicle by paralleling on the correct side of the roadway.
 - 2. Requesting other units to observe exits available to the suspect.

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- (e) Notifying the Wisconsin State Patrol or other law enforcement agency if it appears the pursuit may enter their jurisdiction.
- (f) Officers involved in a pursuit should not attempt to pass other units unless the situation indicates otherwise or they are requested to do so by the primary unit and a clear understanding of the maneuver process exists between the involved officers.

307.4.7 TACTICS/PROCEDURES FOR UNITS NOT INVOLVED IN THE PURSUIT

Officers are authorized to use emergency equipment at intersections along the pursuit path to clear intersections of vehicular and pedestrian traffic to protect the public. Officers should remain in their assigned area and should not become involved with the pursuit unless directed otherwise by a supervisor.

Non-pursuing personnel needed at the termination of the pursuit should respond in a non-emergency manner, observing the rules of the road, unless directed otherwise.

The primary unit, secondary units, and support units should be the only units operating under emergency conditions (emergency lights and siren) unless other units are assigned to the pursuit.

307.4.8 SPECIALTY AND UNMARKED PATROL VEHICLES

Officers operating unmarked patrol vehicles may initiate a pursuit but only until a marked patrol vehicle can take over as the primary unit continuing the pursuit. At which point the unmarked vehicle may continue as the secondary unit.

Specialty vehicles may support in a pursuit by positioning themselves for surveillance or deployment of stop sticks. Specialty vehicles shall not get directly involved in the pursuit without supervisory approval.

307.5 SUPERVISORY CONTROL AND RESPONSIBILITIES

It is the policy of this department that available supervisory control will be exercised over all vehicle pursuits involving officers from this department.

A supervisor will be responsible for the following:

- (a) Upon becoming aware of a pursuit, immediately notifying involved officers and the Communications Center of supervisory presence and ascertaining all reasonably available information to continuously assess the situation and risk factors associated with the pursuit in order to ensure that the pursuit is conducted within established department guidelines.
- (b) Engaging in the pursuit, when appropriate, to provide on-scene supervision.
- (c) Exercising management and control of the pursuit even if not engaged in it.
- (d) Ensuring that no more than the number of required law enforcement units needed are involved in the pursuit under the guidelines set forth in this policy.

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- (e) Directing that the pursuit be terminated if, in his/her judgment, it is not justified to continue the pursuit under the guidelines of this policy.
- (f) Ensuring that the proper radio channel is being used.
- (g) Ensuring that the officer are adequately broadcasting location, speed, direction and all due regard elements.
- (h) Ensuring the notification and/or coordination of outside agencies if the pursuit either leaves or is likely to leave the jurisdiction of this agency.
- (i) Control and manage GBPD units when a pursuit enters another jurisdiction.
- (j) Respond to the location where the pursuit ended.
- (k) Preparing a post-pursuit debrief and analysis of the pursuit for training purposes
- (l) Write a report
- (m) Make notification to Operations Captain

307.5.1 SHIFT COMMANDER RESPONSIBILITIES

Upon becoming aware that a pursuit has been initiated, the Shift Commander should monitor and continually assess the situation and ensure the pursuit is conducted within the guidelines and requirements of this policy.

The Shift Commander shall review all pertinent reports for content.

307.6 COMMUNICATIONS

If the pursuit is confined within the City limits, radio communications will be conducted on the primary channel unless instructed otherwise by a supervisor or communications dispatcher. If the pursuit leaves the jurisdiction of this department or such is imminent, involved units should, whenever available, switch radio communications to an emergency channel most accessible by participating agencies and units.

307.6.1 LOSS OF PURSUED VEHICLE

When the pursued vehicle is lost, the primary unit should broadcast pertinent information to assist other units in locating the vehicle. The primary unit will be responsible for coordinating any further search for either the pursued vehicle or suspects fleeing on foot.

307.7 INTERJURISDICTIONAL CONSIDERATIONS

The Brown County inter-agency pursuit agreement is to establish guidelines for the pursuit of vehicles by Brown County Law Enforcement agencies when one or more agencies are involved, and/or the pursuit crosses jurisdictional boundaries. This agreement provides an expectation of how each law enforcement agency will respond in the event that a pursuit enters another jurisdiction. This document is intended only to supplement individual agency pursuit policies and not supersede such policies.

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307.8 PURSUIT INTERVENTION

Pursuit intervention is an attempt to terminate the ability of a suspect to continue to flee in a motor vehicle through tactical application of technology, tire deflation devices, blocking, boxing-in, PIT, ramming or roadblock procedures.

307.8.1 WHEN USE IS AUTHORIZED

In deciding whether to use intervention tactics, officers/supervisors should balance the risk of allowing the pursuit to continue with the potential hazards arising from the use of each tactic to the public, the officers and persons in or on the pursued vehicle. With this in mind, the decision to use any intervention tactic should be reasonable in light of the circumstances apparent to the officer at the time of the decision.

307.8.2 USE OF FIREARMS

The use of firearms to disable a pursued vehicle is not generally an effective tactic and involves all the dangers associated with discharging firearms. Officers should not utilize firearms during an ongoing pursuit unless the conditions and circumstances meet the requirements authorizing the use of deadly force. Nothing in this section shall be construed to prohibit any officer from using a firearm to stop a suspect from using a vehicle as a deadly weapon.

307.8.3 INTERVENTION STANDARDS

Any pursuit intervention tactic, depending upon the conditions and circumstances under which it is used, may present dangers to the officers, the public or anyone in or on the vehicle being pursued. Certain applications of intervention tactics could reach the requirements of use of deadly force and are subject to the requirements for such use. Officers shall consider these facts and requirements prior to deciding how, when, where and if an intervention tactic should be employed.

- (a) Blocking or moving roadblock should only be considered in cases involving felony suspects or drivers who pose a threat to public safety, and when officers reasonably believe that attempting a conventional enforcement stop will likely result in the driver attempting to flee in the vehicle. Because of the potential risk involved, this technique should only be employed by officers who have received training in such tactics and after giving consideration to the following:
 - 1. The need to immediately stop the suspect vehicle or prevent it from leaving substantially outweighs the risk of injury or death to occupants of the suspect vehicle, officers or other members of the public.
 - 2. Employing the blocking maneuver does not unreasonably increase the risk to officer safety.
 - 3. The target vehicle is stopped or traveling at a low speed.
 - 4. At no time should civilian vehicles be used to deploy this technique.
 - 5. The suggested speed is not to exceed 45 mph unless deadly force requirements have been met.

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- (b) Only officers trained in the use of PIT are authorized to use this procedure. It is recognized that the vehicle dynamics of both the pursuing and fleeing vehicles can pose a danger to the public. Factors that should be included in the officers decision on where to implement a PIT maneuver should include the width and type of the roadway, proximity to intersections, parked cars, pedestrians, homes, businesses, and the like. All officers must understand that the speed at which a PIT maneuver is attempted is directly proportionate to these dangers. Because of these reasons, the suggested top speed should be approximately 45 mph, but it is understood that other circumstances may be in play to justify a PIT attempted at a higher speeds, such as the deadly force requirement being met.
- (c) Ramming a fleeing vehicle, is a non-trained deadly force technique and should be done only after other tactical means at the officer's disposal have been exhausted. This tactic should be reserved for situations where there does not appear to be another reasonable alternative method. When ramming is used as a means to stop a fleeing vehicle, the following factors should be present: (The Operations Captain will be notified immediately if this technique is used)
 - 1. The suspect is an actual or suspected felon who represent a serious threat to the public if not apprehended.
 - 2. The suspect is driving with willful or wanton disregard for the safety of other persons or is driving in a reckless and life-endangering manner. If there does not reasonably appear to be a present or immediately foreseeable serious threat to the public, the use of ramming is not authorized.
- (d) Tire deflation devices should be deployed only when it is reasonably apparent that only the pursued vehicle will be affected by their use. Prior to the deployment of spike strips, the officer shall notify pursuing units and the supervisor of the intent and location. Officers should carefully consider the limitations of such devices as well as the potential risk to officers, the public and occupants of the pursued vehicle. If the pursued vehicle is a motorcycle or moped this technique will not be used. If a vehicle transporting hazardous materials or a school bus transporting children, officers and supervisors should weigh the potential consequences against the need to immediately stop the vehicle. The suggested speed for use of a tire deflation device is approximately 25mph and over. No officer shall deploy a tire deflation device until they have been trained.
- (e) Because closed roadblocks involve a potential for serious injury or death to occupants of the pursued vehicle if the suspect does not stop, the intentional placement of roadblocks in the direct path of a pursued vehicle is generally discouraged and should not be deployed without prior approval of a supervisor, and only then under extraordinary conditions when all other reasonable intervention techniques have failed

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or reasonably appear ineffective and the need to immediately stop the pursued vehicle substantially outweighs the risk of injury or death to occupants of the pursued vehicle, officers or other members of the public.

307.8.4 CAPTURE OF SUSPECTS

Proper self-discipline and sound professional judgment are the keys to a successful conclusion of a pursuit and apprehension of evading suspects. Officers shall use only that amount of force that reasonably appears necessary under the circumstances to properly perform their lawful duties.

Unless relieved by a supervisor, the primary officer should coordinate efforts to apprehend the suspect following the pursuit. Officers should consider the safety of the public and the involved officers when formulating plans to contain and capture the suspect.

307.9 REPORTING AND REVIEW REQUIREMENTS

All appropriate reports shall be completed to comply with local and state regulations (Wis. Stat. § 85.07(8)(b)).

- (a) The primary officer shall complete appropriate crime/arrest reports.
- (b) The primary officer or supervisor shall complete the appropriate pursuit report.
- (c) After first obtaining available information, the on-duty field supervisor shall promptly complete a Supervisor's Log or interoffice memorandum, briefly summarizing the pursuit to the Chief of Police or the authorized designee. This memo should minimally contain the following information:
 - 1. Date and time of pursuit
 - 2. Length of pursuit in distance and time
 - 3. Involved units and officers
 - 4. Initial reason and circumstances surrounding the pursuit
 - 5. Starting and termination points
 - 6. Alleged offense, charges filed or disposition: arrest, citation or other release
 - 7. Arrestee information should be provided if applicable
 - 8. Injuries and/or property damage
 - 9. Medical treatment
 - 10. The outcome of the pursuit
 - 11. Name of supervisor handling or at the scene
 - 12. A preliminary determination that the pursuit appears to be in compliance with this policy or that additional review and/or follow-up is warranted

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- (d) After receiving copies of reports, logs and other pertinent information, the Chief of Police or the authorized designee shall conduct or assign the completion of a post-pursuit review as appropriate to the circumstances.
- (e) At least annually, but no later than June 30th of every even-numbered year, the Chief of Police or the authorized designee shall direct a documented review and analysis of department vehicle pursuits to minimally include policy suitability, policy compliance, policy modification and training needs (Wis. Stat. § 346.03(6)).
- (f) The Records Manager shall compile and report information on vehicle pursuits engaged in during the previous 12 months to the Wisconsin State Patrol/Department of Transportation via WisDOJ WILENET system's Law Enforcement Pursuit Report. The report shall be filed no later than August 15th of each year and shall contain information on (Wis. Stat. § 85.07(8)(b)):
 - 1. The circumstances of the vehicle pursuit, including the distance, location and maximum speed.
 - 2. The reasons for initiating the vehicle pursuit.
 - 3. The outcome of the vehicle pursuit, including the number of deaths or great bodily injuries and an estimate of the value of any property damage.

307.9.1 REGULAR AND PERIODIC PURSUIT TRAINING

In addition to initial and supplementary training on pursuits, all certified sworn employees will participate, no less than biennially, in at least four hours of training addressing this policy, pursuit guidelines, driving techniques, new technology and the importance of vehicle safety and protecting the public at all times. Training will include recognition of the need to balance the known offense and the need for immediate capture against the risks to officers and others. At least four hours of the training curriculum will be based on the model standards promulgated by the Law Enforcement Standards Board (LESB) and shall be delivered by a LESB-certified Emergency Vehicle Operations and Control (EVOC) instructor (Wis. Stat. § 165.85(4)(bn)1m; Wis. Admin. Code LES § 3.07(4)). For purposes of LESB reporting obligations, the time period for annual training begins July 1st, and ends June 30th.

307.9.2 POLICY REVIEW

Certified members of this department shall certify in writing that they have received, read and understand this policy initially and upon any amendments (Wis. Stat. § 346.03(6)).

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307.1 PURPOSE AND SCOPE

Vehicle pursuits expose innocent citizens, law enforcement officers and fleeing violators to the risk of serious injury or death. The primary purpose of this policy is to provide officers with guidance in balancing the safety of the public and themselves against law enforcement's duty to apprehend violators of the law (Wis. Stat. § 346.03(6); Wis. Admin. Code LES § 3.07).

Another purpose of this policy is to minimize the potential for pursuit-related crashes. Vehicle pursuits require officers to exhibit a high degree of common sense and sound judgment. Officers must not forget that the immediate apprehension of a suspect is generally not more important than the safety of the public and pursuing officers.

[See attachment: Inter agency pursuit agreement.pdf](#)

[See attachment: Vehicle Pursuits Procedures.pdf](#)

307.1.1 PHILOSOPHY

Deciding whether to pursue a motor vehicle is a critical decision that must be made quickly and under difficult and unpredictable circumstances. In recognizing the risk to public safety created by vehicle pursuits, no officer or supervisor shall be criticized or disciplined for deciding not to engage in a vehicle pursuit due to the risk involved. This includes circumstances where department policy would permit the initiation or continuation of the pursuit. It is recognized that vehicle pursuits are not always predictable and decisions made pursuant to this policy will be evaluated according to the totality of the circumstances reasonably available at the time of the pursuit.

307.2 DEFINITIONS

Definitions related to this policy include:

Vehicle pursuit - An event involving one or more peace officers attempting to apprehend a suspect who is attempting to avoid arrest while operating a motor vehicle by using high speed or other evasive tactics, such as increasing the speed of the vehicle, extinguishing the lights of the vehicle, disregarding traffic warning signs, stop signs, red lights, driving off a roadway, turning suddenly or driving in a legal manner but willfully failing to yield to an officer's signal to stop (Wis. Stat. § 85.07(8)(a)).

Blocking or vehicle intercept - A slow-speed coordinated maneuver where two or more law enforcement vehicles simultaneously intercept and block the movement of a suspect vehicle, the driver of which may be unaware of the impending enforcement stop. The goal is containment and preventing a pursuit. Blocking is not a moving or stationary road block.

Boxing-in - A tactic designed to stop a violator's vehicle by surrounding it with law enforcement vehicles and then slowing all vehicles to a stop.

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Ramming - A non-trained deadly force technique in which abrupt and deliberate act of impacting a violator's vehicle with another vehicle to functionally damage or otherwise force the violator's vehicle to stop.

Roadblocks - A tactic designed to stop a violator's vehicle by intentionally placing a vehicle or other immovable object in the path of the violator's vehicle.

Closed Roadblocks-No alternate route provided. If the suspect does not voluntarily stop, they will crash with the great potential for injury and death to the suspect and others in the area. Use of a Closed Roadblock is considered "Deadly Force" and should only be implemented when use of deadly force would otherwise be justified.

Open Roadblock-The roadway is either not completely blocked, or leaves an alternate route (or run out lane) for the suspect vehicle to take. The intention is to provide a show of force to convince the suspect that escape is improbable, thereby inducing them to stop. Open roadblock is considered an intermediate use of force.

Tire deflation device, spikes or tack strips - A device that extends across the roadway and is designed to puncture the tires of the pursued vehicle.

Authorized Emergency Vehicles- A marked or unmarked police vehicle with emergency lights visible for 360 degrees, and an audible siren that is commonly used to perform the full functions of a patrol unit. For the purposes of the Green Bay Police Department Pursuit Policy, authorized emergency vehicles shall be limited to marked patrol vehicles, unmarked patrol vehicles, and motorcycles.

Unmarked Emergency Vehicle- .Department vehicles equipped with emergency lights visible for 360 an audible siren. This vehicle does not display law enforcement degrees, and markings or City of Green Bay Police placards, and is commonly used in patrol.

Marked Patrol Vehicle-Department vehicles equipped with flashing, or oscillating red and blue lights (emergency lights) visible for 360 degrees, and audible siren. This vehicle displays law enforcement markings, or City of Green Bay Police placards and are commonly used in patrol.

Pursuit Intervention Technique (PIT)-A trained technique, which utilizes controlled contact between a police vehicle and a pursued vehicle, at low speeds, which is intended to cause the driver of the pursued vehicle to lose control of their vehicle.

Specialty Vehicles- Motorcycles, paddy wagons, pick-up trucks, non-pursuit rated sport utility trucks, SWAT vehicles, dive truck, investigative vehicle, Community Service Intern vehicles, or any other non-patrol operation vehicle.

Violent Felony-A crime classified as a felony, by the State of Wisconsin, that involves physical violence or the mention or implication of a weapon by the suspect.

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307.3 OFFICER RESPONSIBILITIES

It is the policy of this department that a vehicle pursuit shall be conducted with the visible signal of at least one flashing, oscillating or rotating red light, or a blue and red light, and also an audible signal by means of a siren or exhaust whistle activated on an authorized emergency vehicle (Wis. Stat. § 346.03(3)).

The following policy is established to provide officers with guidelines for driving with due regard and caution for the safety of all persons using the highway (Wis. Stat. § 346.03(5)).

All officers actively engaged in a vehicle pursuit must understand and practice the responsibility they have as the pursuit officer to terminate any pursuit that may pose a greater threat to the public than the need to apprehend the subject immediately.

307.3.1 WHEN TO INITIATE A PURSUIT

Green Bay Police Department officers may engage in vehicle pursuits of suspects that officers have probable cause to believe has committed is committing or is about to commit a violent felony, has a warrant for a violent felony or prior to initiation of a traffic stop the driver has demonstrated driving behaviors that would present a clear and immediate threat to the safety of the general public, and therefore the necessity of immediate apprehension outweighs the level of danger to the public created by the vehicle pursuit.

A few examples of violent felonies include, but are not limited to:

- Homicide or attempted homicide.
- Robbery where the suspect mentions or implies he/she has a weapon.
- 1st or 2nd degree Sexual assault.
- Physical assault on a law enforcement officer.
- Armed burglary.
- Kidnapping.

The following factors individually and collectively shall be considered in deciding whether to initiate or continue a pursuit (Wis. Stat. § 346.03(6)):

- (a) (a) The importance of protecting the public and balancing the known offense and the apparent need for immediate capture against the risks to officers, innocent motorists and others.
- (b) The apparent nature of the fleeing suspect (e.g., whether the suspect represents a serious threat to public safety).
- (c) The safety of the public in the area of the pursuit, including the type of area, time of day, the amount of vehicular and pedestrian traffic (e.g., school zones) and the speed of the pursuit relative to these factors.
- (d) The pursuing officer's familiarity with the area of the pursuit, the quality of communication between the pursuing units and the dispatcher/supervisor, and the driving capabilities of the pursuing officers under the conditions of the pursuit.

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- (e) The weather, traffic and road conditions that unreasonably increase the danger of the pursuit when weighed against the risks resulting from the suspect's escape.
- (f) The performance capabilities of the vehicles used in the pursuit in relation to the speed and other conditions of the pursuit.
- (g) Other persons in or on the pursued vehicle (e.g., passengers, co-offenders and hostages).
- (h) The availability of other resources.
- (i) The police unit is carrying passengers other than on-duty police officers. Pursuits shall not be undertaken with a prisoner or a civilian in the pursuit vehicle. Officers are prohibited from dropping off passengers.

307.3.2 WHEN TO TERMINATE A PURSUIT

Pursuits should be discontinued whenever the totality of objective circumstances known or which ought to be known to the officer or supervisor during the pursuit indicates that the present risk of continuing the pursuit reasonably appears to outweigh the risk resulting from the suspect's escape (Wis. Admin. Code LES § 3.07(1)(c)).

Operating an emergency vehicle in a pursuit with emergency lights and siren does not relieve the operator of an authorized emergency vehicle of the duty to drive with due regard for the safety of all persons and does not protect the driver from the consequences of reckless disregard for the safety of others (Wis. Stat. § 346.03(5)).

The above factors on when to initiate a pursuit are expressly included herein and will apply equally to the decision to discontinue as well as the decision to initiate a pursuit. Officers and supervisors must objectively and continuously weigh the seriousness of the offense against the potential danger to innocent motorists, themselves and the public when electing to continue a pursuit. In the context of this policy, the term "terminate" shall be construed to mean to discontinue or to stop pursuing the fleeing vehicle.

In addition to the factors listed above, the following factors should be considered when deciding whether to terminate a pursuit:

- (a) When directed to terminate the pursuit by a supervisor.
- (b) The distance between the pursuing officers and the fleeing vehicle is so great that further pursuit would be futile or require the pursuit to continue for an unreasonable time or distance.
- (c) The pursued vehicle's location is no longer definitely known.
- (d) The officer's pursuit vehicle sustains damage or a mechanical failure that renders it unsafe to drive.
- (e) The pursuit vehicle has an emergency equipment failure that causes the vehicle to no longer qualify for use in emergency operations (Wis. Stat. § 346.03(3)).

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- (f) The hazards to uninvolved bystanders or motorists.
- (g) When the identity of the offender is known and it does not reasonably appear that the need for immediate capture outweighs the risks associated with continuing the pursuit, officers should strongly consider discontinuing the pursuit and apprehending the offender at a later time (Wis. Stat. § 346.175(3)(a)).
- (h) When it is necessary to stop to render aid to an injured person and no other officer is available to do so (Wis. Admin. Code LES § 3.07(1)(c)(5)).

307.3.3 SPEED GUIDELINES

The speed of a pursuit is a factor that should be evaluated on a continuing basis by the officer and supervisor. Vehicle speeds shall be taken into consideration to prevent endangering public safety, officer safety and the safety of the occupants of the fleeing vehicle (Wis. Stat. § 346.03(6)).

Should high vehicle speeds be reached during a pursuit, officers and supervisors shall also consider these factors when determining the reasonableness of the speed of the pursuit.

- (a) Pursuit speeds have become unreasonably unsafe for the surrounding conditions.
- (b) Pursuit speeds have exceeded the driving ability of the officer.
- (c) Pursuit speeds are beyond the capabilities of the pursuit vehicle, thus making its operation unsafe.

307.4 PURSUIT UNITS

Pursuit units shall be limited to four authorized emergency vehicles, unless more are authorized by a supervisor.

An officer or supervisor may request additional units to join a pursuit if, after assessing the factors outlined above, it appears that the number of officers involved would be insufficient to safely arrest the suspect. All other officers shall stay out of the pursuit but should remain alert to its progress and location.

Marked patrol vehicles should take lead for unmarked vehicles involved in a pursuit.

307.4.1 MOTORCYCLE OFFICERS

Officers operating motorcycles will only be allowed to initiate and continue in a pursuit with supervisory approval. Officers riding motorcycles will completely disengage from the pursuit upon the arrival of a marked/unmarked patrol vehicle. This will be on a case by case basis in the event that the offense is so egregious in nature that to let the offender continue to elude apprehension would cause further danger to the public.

A marked patrol vehicle equipped with emergency overhead lighting should replace a police motorcycle as primary and/or secondary pursuit unit.

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307.4.2 VEHICLES WITHOUT EMERGENCY EQUIPMENT

Vehicles not equipped with a red or blue emergency light and siren are prohibited from initiating or joining in any pursuit. Officers in such vehicles may provide support to pursuing units as long as the vehicle is operated in compliance with all traffic laws.

307.4.3 PRIMARY UNIT RESPONSIBILITIES

The initial pursuing officer will be designated as the primary pursuit unit and will be responsible for the conduct of the pursuit unless it is unable to remain reasonably close enough to the violator's vehicle. The primary responsibility of the officer initiating the pursuit is the apprehension of the suspect without unreasonable danger to him/herself or other persons.

The primary unit should notify the Communications Center, commencing with a request for priority radio traffic, that a vehicle pursuit has been initiated, and as soon as practicable, provide information including, but not limited to:

- (a) The reason for the pursuit.
- (b) The location and direction of travel.
- (c) The speed of the fleeing vehicle.
- (d) The description of the fleeing vehicle and license number, if known.
- (e) The number of occupants.
- (f) The identity or description of the known occupants.
- (g) The weather, road and traffic conditions.
- (h) The identity of other agencies involved in the pursuit.
- (i) Information concerning the use of firearms, threat of force, injuries, hostages or other unusual hazards.

Once a secondary unit joins a pursuit, the officer in the secondary unit shall be responsible for broadcasting the progress of the pursuit. Unless circumstances reasonably indicate otherwise, the primary unit should relinquish the responsibility of broadcasting the progress of the pursuit to a secondary unit or aircraft joining the pursuit to minimize distractions and allow the primary unit to concentrate foremost on safe pursuit tactics.

307.4.4 SECONDARY UNIT RESPONSIBILITIES

The second officer in the pursuit is responsible for:

- (a) Immediately notifying the dispatcher of his/her entry into the pursuit.
- (b) Remaining at a safe distance behind the primary unit unless directed to assume the role of primary officer, or if the primary unit is unable to continue the pursuit.
- (c) Broadcasting the progress of the pursuit unless the situation indicates otherwise.

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- (d) Serving as backup to the primary unit once the subject has been stopped.

307.4.5 SUPPORT UNITS

Officers that are not actively engaged in the pursuit, but are in close proximity to the pursuit route may assist by deploying stop sticks or blocking off intersections. Support units may also assist in the high risk vehicle stop or a perimeter at the termination of a pursuit. During an active pursuit, a unit will only be considered a "support unit" if they are ahead of the direction of pursuit travel.

Support units may drive in emergency mode, but must use Due Regard. Officers that are out of position, and attempting to catch up to the pursuit WILL NOT be considered support staff, and will be deemed in violation of this policy.

307.4.6 PURSUIT DRIVING TACTICS

The decision to use specific driving tactics requires the same assessment of considerations outlined in the factors to be considered concerning pursuit initiation and termination. The following are tactics for units involved in the pursuit:

- (a) Officers, considering their driving skills and vehicle performance capabilities, will space themselves from other involved vehicles such that they are able to see and avoid hazards or react safely to maneuvers by the fleeing vehicle.
- (b) Officers may proceed past a red or stop signal or stop sign but only after slowing down and using due regard as may be necessary for safe operation (Wis. Stat § 346.03(2)(a)).
- (c) Because intersections can present increased risks, the following tactics should be considered:
 - 1. Available units not directly involved in the pursuit may proceed safely to controlled intersections ahead of the pursuit in an effort to warn cross traffic.
 - 2. Pursuing units shall exercise due regard and slow down as may be necessary for safe operation when proceeding through controlled intersections.
- (d) As a general rule, officers should not pursue a vehicle driving the wrong way on a roadway, highway or freeway. In the event the pursued vehicle does so, the following tactics should be considered:
 - 1. Maintaining visual contact with the pursued vehicle by paralleling on the correct side of the roadway.
 - 2. Requesting other units to observe exits available to the suspect.
- (e) Notifying the Wisconsin State Patrol or other law enforcement agency if it appears the pursuit may enter their jurisdiction.

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- (f) Officers involved in a pursuit should not attempt to pass other units unless the situation indicates otherwise or they are requested to do so by the primary unit and a clear understanding of the maneuver process exists between the involved officers.

307.4.7 TACTICS/PROCEDURES FOR UNITS NOT INVOLVED IN THE PURSUIT

Officers are authorized to use emergency equipment at intersections along the pursuit path to clear intersections of vehicular and pedestrian traffic to protect the public. Officers should remain in their assigned area and should not become involved with the pursuit unless directed otherwise by a supervisor.

Non-pursuing personnel needed at the termination of the pursuit should respond in a non-emergency manner, observing the rules of the road, unless directed otherwise.

The primary unit, secondary units, and support units should be the only units operating under emergency conditions (emergency lights and siren) unless other units are assigned to the pursuit.

307.4.8 SPECIALTY AND UNMARKED PATROL VEHICLES

Officers operating unmarked patrol vehicles may initiate a pursuit but only until a marked patrol vehicle can take over as the primary unit continuing the pursuit. At which point the unmarked vehicle may continue as the secondary unit.

Specialty vehicles may support in a pursuit by positioning themselves for surveillance or deployment of stop sticks. Specialty vehicles shall not get directly involved in the pursuit without supervisory approval.

307.5 SUPERVISORY CONTROL AND RESPONSIBILITIES

It is the policy of this department that available supervisory control will be exercised over all vehicle pursuits involving officers from this department.

A supervisor will be responsible for the following:

- (a) Upon becoming aware of a pursuit, immediately notifying involved officers and the Communications Center of supervisory presence and ascertaining all reasonably available information to continuously assess the situation and risk factors associated with the pursuit in order to ensure that the pursuit is conducted within established department guidelines.
- (b) Engaging in the pursuit, when appropriate, to provide on-scene supervision.
- (c) Exercising management and control of the pursuit even if not engaged in it.
- (d) Ensuring that no more than the number of required law enforcement units needed are involved in the pursuit under the guidelines set forth in this policy.
- (e) Directing that the pursuit be terminated if, in his/her judgment, it is not justified to continue the pursuit under the guidelines of this policy.
- (f) Ensuring that the proper radio channel is being used.

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- (g) Ensuring that the officer are adequately broadcasting location, speed, direction and all due regard elements.
- (h) Ensuring the notification and/or coordination of outside agencies if the pursuit either leaves or is likely to leave the jurisdiction of this agency.
- (i) Control and manage GBPD units when a pursuit enters another jurisdiction.
- (j) Respond to the location where the pursuit ended.
- (k) Preparing a post-pursuit debrief and analysis of the pursuit for training purposes
- (l) Write a report
- (m) Make notification to Operations Captain

307.5.1 SHIFT COMMANDER RESPONSIBILITIES

Upon becoming aware that a pursuit has been initiated, the Shift Commander should monitor and continually assess the situation and ensure the pursuit is conducted within the guidelines and requirements of this policy.

The Shift Commander shall review all pertinent reports for content.

307.6 COMMUNICATIONS

If the pursuit is confined within the City limits, radio communications will be conducted on the primary channel unless instructed otherwise by a supervisor or communications dispatcher. If the pursuit leaves the jurisdiction of this department or such is imminent, involved units should, whenever available, switch radio communications to an emergency channel most accessible by participating agencies and units.

307.6.1 LOSS OF PURSUED VEHICLE

When the pursued vehicle is lost, the primary unit should broadcast pertinent information to assist other units in locating the vehicle. The primary unit will be responsible for coordinating any further search for either the pursued vehicle or suspects fleeing on foot.

307.7 INTERJURISDICTIONAL CONSIDERATIONS

The Brown County inter-agency pursuit agreement is to establish guidelines for the pursuit of vehicles by Brown County Law Enforcement agencies when one or more agencies are involved, and/or the pursuit crosses jurisdictional boundaries. This agreement provides an expectation of how each law enforcement agency will respond in the event that a pursuit enters another jurisdiction. This document is intended only to supplement individual agency pursuit policies and not supersede such policies.

307.8 PURSUIT INTERVENTION

Pursuit intervention is an attempt to terminate the ability of a suspect to continue to flee in a motor vehicle through tactical application of technology, tire deflation devices, blocking, boxing-in, PIT, ramming or roadblock procedures.

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307.8.1 WHEN USE IS AUTHORIZED

In deciding whether to use intervention tactics, officers/supervisors should balance the risk of allowing the pursuit to continue with the potential hazards arising from the use of each tactic to the public, the officers and persons in or on the pursued vehicle. With this in mind, the decision to use any intervention tactic should be reasonable in light of the circumstances apparent to the officer at the time of the decision.

307.8.2 USE OF FIREARMS

The use of firearms to disable a pursued vehicle is not generally an effective tactic and involves all the dangers associated with discharging firearms. Officers should not utilize firearms during an ongoing pursuit unless the conditions and circumstances meet the requirements authorizing the use of deadly force. Nothing in this section shall be construed to prohibit any officer from using a firearm to stop a suspect from using a vehicle as a deadly weapon.

307.8.3 INTERVENTION STANDARDS

Any pursuit intervention tactic, depending upon the conditions and circumstances under which it is used, may present dangers to the officers, the public or anyone in or on the vehicle being pursued. Certain applications of intervention tactics could reach the requirements of use of deadly force and are subject to the requirements for such use. Officers shall consider these facts and requirements prior to deciding how, when, where and if an intervention tactic should be employed.

- (a) Blocking or moving roadblock should only be considered in cases involving felony suspects or drivers who pose a threat to public safety, and when officers reasonably believe that attempting a conventional enforcement stop will likely result in the driver attempting to flee in the vehicle. Because of the potential risk involved, this technique should only be employed by officers who have received training in such tactics and after giving consideration to the following:
 - 1. The need to immediately stop the suspect vehicle or prevent it from leaving substantially outweighs the risk of injury or death to occupants of the suspect vehicle, officers or other members of the public.
 - 2. Employing the blocking maneuver does not unreasonably increase the risk to officer safety.
 - 3. The target vehicle is stopped or traveling at a low speed.
 - 4. At no time should civilian vehicles be used to deploy this technique.
 - 5. The suggested speed is not to exceed 45 mph unless deadly force requirements have been met.
- (b) Only officers trained in the use of PIT are authorized to use this procedure. It is recognized that the vehicle dynamics of both the pursuing and fleeing vehicles can pose a danger to the public. Factors that should be included in the officers decision on where to implement a PIT maneuver should include the width and type of the roadway,

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proximity to intersections, parked cars, pedestrians, homes, businesses, and the like. All officers must understand that the speed at which a PIT maneuver is attempted is directly proportionate to these dangers. Because of these reasons, the suggested top speed should be approximately 45 mph, but it is understood that other circumstances may be in play to justify a PIT attempted at a higher speeds, such as the deadly force requirement being met.

- (c) Ramming a fleeing vehicle, is a non-trained deadly force technique and should be done only after other tactical means at the officer's disposal have been exhausted. This tactic should be reserved for situations where there does not appear to be another reasonable alternative method. When ramming is used as a means to stop a fleeing vehicle, the following factors should be present: (The Operations Captain will be notified immediately if this technique is used)
 - 1. The suspect is an actual or suspected felon who represent a serious threat to the public if not apprehended.
 - 2. The suspect is driving with willful or wanton disregard for the safety of other persons or is driving in a reckless and life-endangering manner. If there does not reasonably appear to be a present or immediately foreseeable serious threat to the public, the use of ramming is not authorized.
- (d) Tire deflation devices should be deployed only when it is reasonably apparent that only the pursued vehicle will be affected by their use. Prior to the deployment of spike strips, the officer shall notify pursuing units and the supervisor of the intent and location. Officers should carefully consider the limitations of such devices as well as the potential risk to officers, the public and occupants of the pursued vehicle. If the pursued vehicle is a motorcycle or moped this technique will not be used. If a vehicle transporting hazardous materials or a school bus transporting children, officers and supervisors should weigh the potential consequences against the need to immediately stop the vehicle. The suggested speed for use of a tire deflation device is approximately 25mph and over. No officer shall deploy a tire deflation device until they have been trained.
- (e) Because closed roadblocks involve a potential for serious injury or death to occupants of the pursued vehicle if the suspect does not stop, the intentional placement of roadblocks in the direct path of a pursued vehicle is generally discouraged and should not be deployed without prior approval of a supervisor, and only then under extraordinary conditions when all other reasonable intervention techniques have failed or reasonably appear ineffective and the need to immediately stop the pursued vehicle substantially outweighs the risk of injury or death to occupants of the pursued vehicle, officers or other members of the public.

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307.8.4 CAPTURE OF SUSPECTS

Proper self-discipline and sound professional judgment are the keys to a successful conclusion of a pursuit and apprehension of evading suspects. Officers shall use only that amount of force that reasonably appears necessary under the circumstances to properly perform their lawful duties.

Unless relieved by a supervisor, the primary officer should coordinate efforts to apprehend the suspect following the pursuit. Officers should consider the safety of the public and the involved officers when formulating plans to contain and capture the suspect.

307.9 REPORTING AND REVIEW REQUIREMENTS

All appropriate reports shall be completed to comply with local and state regulations (Wis. Stat. § 85.07(8)(b)).

- (a) The primary officer shall complete appropriate crime/arrest reports.
- (b) The primary officer or supervisor shall complete the appropriate pursuit report.
- (c) After first obtaining available information, the on-duty field supervisor shall promptly complete a Supervisor's Log or interoffice memorandum, briefly summarizing the pursuit to the Chief of Police or the authorized designee. This memo should minimally contain the following information:
 - 1. Date and time of pursuit
 - 2. Length of pursuit in distance and time
 - 3. Involved units and officers
 - 4. Initial reason and circumstances surrounding the pursuit
 - 5. Starting and termination points
 - 6. Alleged offense, charges filed or disposition: arrest, citation or other release
 - 7. Arrestee information should be provided if applicable
 - 8. Injuries and/or property damage
 - 9. Medical treatment
 - 10. The outcome of the pursuit
 - 11. Name of supervisor handling or at the scene
 - 12. A preliminary determination that the pursuit appears to be in compliance with this policy or that additional review and/or follow-up is warranted
- (d) After receiving copies of reports, logs and other pertinent information, the Chief of Police or the authorized designee shall conduct or assign the completion of a post-pursuit review as appropriate to the circumstances.
- (e) At least annually, but no later than June 30th of every even-numbered year, the Chief of Police or the authorized designee shall direct a documented review and analysis of

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department vehicle pursuits to minimally include policy suitability, policy compliance, policy modification and training needs (Wis. Stat. § 346.03(6)).

- (f) The Records Manager shall compile and report information on vehicle pursuits engaged in during the previous 12 months to the Wisconsin State Patrol/Department of Transportation via WisDOJ WILENET system's Law Enforcement Pursuit Report. The report shall be filed no later than August 15th of each year and shall contain information on (Wis. Stat. § 85.07(8)(b)):
 - 1. The circumstances of the vehicle pursuit, including the distance, location and maximum speed.
 - 2. The reasons for initiating the vehicle pursuit.
 - 3. The outcome of the vehicle pursuit, including the number of deaths or great bodily injuries and an estimate of the value of any property damage.

307.9.1 REGULAR AND PERIODIC PURSUIT TRAINING

In addition to initial and supplementary training on pursuits, all certified sworn employees will participate, no less than biennially, in at least four hours of training addressing this policy, pursuit guidelines, driving techniques, new technology and the importance of vehicle safety and protecting the public at all times. Training will include recognition of the need to balance the known offense and the need for immediate capture against the risks to officers and others. At least four hours of the training curriculum will be based on the model standards promulgated by the Law Enforcement Standards Board (LESB) and shall be delivered by a LESB-certified Emergency Vehicle Operations and Control (EVOC) instructor (Wis. Stat. § 165.85(4)(bn)1m; Wis. Admin. Code LES § 3.07(4)). For purposes of LESB reporting obligations, the time period for annual training begins July 1st, and ends June 30th.

307.9.2 POLICY REVIEW

Certified members of this department shall certify in writing that they have received, read and understand this policy initially and upon any amendments (Wis. Stat. § 346.03(6)).

Attachments

Inter agecny pursuit agreement.pdf

Brown County Law Enforcement Inter-Agency Pursuit Agreement

I. PURPOSE

The purpose of this agreement is to establish guidelines for the pursuit of vehicles by Brown County Law Enforcement agencies when one or more agencies are involved, and/or the pursuit crosses jurisdictional boundaries. This agreement provides an expectation of how each law enforcement agency will respond in the event that a pursuit enters another jurisdiction. This document is intended only to supplement individual agency pursuit policies and not supercede such policies. If any conflict between this agreement and an individual agency policy exists, all personnel are then expected to comply with their own agency policy on vehicle pursuits. It is agreed that any department can implement stricter pursuit standards, but not more permissive standards in cases where the pursuit enters another jurisdiction.

II. DEFINITIONS

The following definitions shall be applied to this document.

- A. Pursuit - An active attempt by a law enforcement officer, on duty, in an authorized marked law enforcement vehicle with emergency equipment activated to apprehend one or more occupants of a moving motor vehicle, providing the driver of such vehicle is aware of the attempt, and is resisting apprehension by maintaining or increasing speed, extinguishing headlights, or by other evasive action, or refusing to stop, or by ignoring the law enforcement officer's attempt to stop them.
- B. Primary Unit - A law enforcement officer in/on a authorized emergency vehicle (police unit) that initiates a pursuit, or a police unit that assumes control of a pursuit.
- C. Assisting Unit(s) - Police units that assist the primary unit in a pursuit, either by direct or indirect involvement.
- D. Supervisor or OIC - An on-duty person acting in the capacity of supervisor or the officer in charge (OIC). In jurisdictions where only one officer is on duty, that officer will be the OIC in that jurisdiction.
- E. Authorized Emergency Vehicle - A marked police vehicle equipped with one or more oscillating, rotating or flashing emergency lights and also equipped with emergency sirens.
- F. Open roadblock - The placement of vehicles or other objects on the roadway to impede or alter the normal flow of traffic. The roadway is either not completely blocked or an alternate "run out lane" is provided.

- G. Moving roadblock - A technique performed at low speeds by using four police vehicles to surround a moving suspect vehicle. The surrounding police vehicles gradually slow, bringing the suspect vehicle to a safe, gradual stop.
- H. Channeling - A technique used to divert a driver to a preferred stopping location that is less populated or less traveled, or one more conducive to a forcible stop.
- I. Tire Deflation Device - A device used by law enforcement officers to cause tire deflation by puncturing a pursued vehicle's tire thereby reducing or preventing further flight.
- J. Pursuit Intervention Technique (PIT) - Controlled contact between the patrol unit and the pursued vehicle at low speeds, intended to cause the operator of the pursued vehicle to lose control of his/her vehicle. This maneuver causes the suspect vehicle to spin, while the officer is able to maintain control of the police unit. PIT is a specific technical maneuver that requires advanced practical training prior to use.
- K. Force to Stop Techniques - Techniques such as closed roadblocks and ramming that give the suspect two options: surrender or crash. As such, the techniques are considered to be an application of deadly force.

III. PURSUIT POLICY

A. Initiation of Pursuit.

1. Any law enforcement officer in an authorized emergency vehicle may initiate a pursuit when the suspect 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 that involves an actual or threatened action that 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.
 - c. When an officer observes the operation of a motor vehicle, prior to the initiation of a pursuit, and evaluates that the continued operation of this vehicle would cause great bodily harm and/or immediate risk to the public.
 - d. When an officer believes the apprehension of a subject would be a benefit to the community because of the offenses committed. However, the pursuit shall not escalate as it would under

conditions of great bodily harm. The intent is to facilitate the apprehension of the pursued driver, but not at the expense of creating a greater danger to the public

- B. Law enforcement officers will adhere to all Wisconsin traffic statutes under Chapter 346, Rules of the Road, while operating an emergency vehicle, and will operate the police vehicle in a safe and responsible manner. Officer(s) operating an authorized emergency vehicle may perform actions contradictory to this chapter, but only as provided for under §346.03 Wisconsin Statutes. Officers will also follow other federal, state and local statutes, and department policies governing safe operation of motor vehicles, and will always operate an authorized emergency vehicle(s) under the Due Regard elements of the Wisconsin State Statutes.

C. Termination of Pursuit

1. Officers will terminate vehicle pursuits under any of the following conditions:
 - a. When, in the judgment of the officer, it is necessary to terminate the pursuit.
 - b. When ordered to do so by their supervisor or OIC.
 - c. When the continuing distance between the pursuing and fleeing vehicle is such that further pursuit is futile.
 - d. When the pursued vehicle's location is unknown.
 - e. When the officer's vehicle or emergency equipment malfunctions.
 - f. When it is necessary to stop to render aid to an injured person and no other police unit is immediately available to do so.
 - g. When the suspect's identity has been established to allow later apprehension, and there is no other immediate reason to apprehend.
2. Pursuits shall be discontinued when the officer(s) involved or supervisor assigned to monitor the pursuit objectively evaluates the above listed factors and feels the risk to the public safety outweigh the value of the apprehension of the subject being pursued.
3. When the pursuit is terminated, the Communications Center will be notified of the pursuit termination. Officers involved with the pursuit shall reduce their speed to conform to posted limits and turn off emergency

equipment. The officers may continue in the direction of the fleeing vehicle for a reasonable distance to ensure the fleeing vehicle has not created or caused traffic hazards or accidents.

IV. PURSUIT PROCEDURES

A. Evaluation Criteria to Continue the Pursuit.

1. In determining whether or not to continue the pursuit that has justifiably initiated, officer shall consider the following factors:
 - a. Whether conditions 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 the following:
 - i. Road conditions.
 - ii. Weather conditions
 - iii. Time of day and density of population, including presence of pedestrian or vehicular traffic.
 - iv. Severity of the crime.
 - v. Necessity of the pursuit.
 - b. The availability of other methods of apprehension.
 - c. The apparent age and ability of the pursued driver.
 - d. The manner in which the pursued driver is operating his/her vehicle.
 - e. The nature and apparent condition of the vehicles involved in the pursuit.
 - f. The limit of the officer's ability to operate their vehicle.
2. Officers may pursue a fleeing subject if the reason for the pursuit falls within the guidelines established in Section III (A)(1)(a-d). The officer's actions in initiating and/or continuing such a pursuit should not create a greater risk to the public than that posed by failing to apprehend the fleeing suspect.
3. Once a pursuit is initiated, surrounding law enforcement agency's supervisors will be notified by the Brown County Public Safety Communications Center (Center). The radio frequency to be used by the pursuing units will be based on radio channel availability in that initiating jurisdiction. Once the pursuit crosses jurisdiction boundaries, the assigned

radio channel of the initiating agency and the designated radio channel for assisting agencies will be patched together by the Center. Permission from each agency's supervisor will be requested prior to initiating a patch based upon that agency's radio activity (such as another major incident).

B. Communications Center Responsibilities

1. Upon receiving notification of the pursuit, Center personnel will restrict the radio channel for the use by the police units involved in the pursuit.
2. Notify the appropriate supervisor or OIC (if applicable) of the pursuit. The notification shall be done at the initiation and at the termination of the pursuit.
3. Notify the jurisdiction being entered, or about to be entered, of the pursuit. The notification will be completed on the primary radio channel.
4. Notify other police agencies in the immediate area that a pursuit is in progress and the reason for the pursuit.
5. Communications Center personnel shall assist in coordinating law enforcement resources for the pursuit.
6. Ensure that the primary police unit involved in the pursuit clearly states the reason for the pursuit as well as prompting continual updates from units involved in the pursuit.
7. Obtain the reason for any pursuit entering Brown County from police agencies outside this county. The reason for the pursuit shall be broadcast on the primary radio frequency.

C. Pursuing Officer Responsibilities

1. Evaluate the necessity of the pursuit before the actual initiation and during the pursuit. Evaluation criteria include adherence to agency policy for the initiation and continuation of the pursuit, including, but not limited to, road conditions, density of population, nature of the crime(s), weather conditions, and necessity of the pursuit.
2. Notify Communications Center that a pursuit is in progress, the reason for the pursuit, the location, direction, and description of vehicle pursued and as much other pertinent information as possible.
3. Continue to give updates on location, directions of travel and other information as it relates to the pursuit.

4. Respond to questions asked by telecommunications personnel and/or their Supervisor /OIC when practical.
5. Immediately notify when pursuit is terminated.

D. Assisting Officer Responsibilities

1. Officers assisting shall monitor radio channel being used to receive/send information regarding the pursuit. Radio discipline on the pursuit channel is critical and should be limited to radio traffic that is pertinent to the pursuit.
2. If possible, the second police unit directly involved in the pursuit should assume radio communication responsibility for the pursuit and relay information to other units and the Communications Center.
3. Officers not directly involved may assist with coordinating their resources to assist in stopping the pursuit as directed.
4. Be prepared to assume primary police unit duties if circumstances require.
5. Be prepared to assist in the event of accidents or incidents that happen during the course of the pursuit.

E. Supervisor Responsibilities

1. Assume overall control of the pursuit.
2. Monitor the progress of the pursuit to ensure compliance with policies and legal standards.
3. Order and coordinate additional police units to assist, or request other police agency assistance.
4. Ensure that unnecessary police units resume normal patrol duties.
5. Order termination of the pursuit if time, distance, road or other traffic conditions, or other circumstances warrant pursuit termination.
6. Assist the Communications Center with controlling radio communications during the pursuit.
7. Coordinate alternative tactics to induce or possibly force the fleeing vehicle to stop.

8. Conduct a follow-up review of the pursuit.

F. Pursuit into Another Jurisdiction

1. When a pursuit proceeds from one jurisdiction into another jurisdiction, the following procedures will apply:

- a. The primary pursuit vehicle may request assistance from the jurisdiction being entered. The request may include active pursuit assistance, or other intervention tactics.
- b. When the pursuit enters another jurisdiction, the supervisor or OIC of that jurisdiction shall notify the pursuing officer(s), or the Communications Center by phone or radio the specific circumstances in that community that may affect decisions on whether to terminate or continue the pursuit.
- c. The supervisor or OIC of the jurisdiction being entered may request termination of the pursuit. If the pursuit continues after receiving a request to terminate from the jurisdiction's law enforcement agency, the agency that continues the pursuit is responsible for any and all situations that arise from that pursuit.
- d. If the OIC or supervisor of the jurisdiction being entered requests termination of the pursuit and the originating agency continues the pursuit, the agency being entered will, when available, assign a squad car to trail the route of the pursuit (not to be directly involved) while in that jurisdiction. The purpose of the trailing squad is to assist with directions, locations and dispatching medical, emergency, or other police units until the pursuit leaves that jurisdiction.
- e). Authorized emergency vehicles directly involved in the pursuit shall be limited to no more than three police vehicles. Other police vehicles may follow close enough to immediately assist if the circumstances of the incident (armed suspects, multiple suspects) indicate the need for more than three officers. This does not apply to other police vehicles that may "parallel" the main pursuit route. Parallel routes are those routes that help place other law enforcement officers in positions or areas to assist units involved in the actual pursuit. Police units on "parallel" routes shall drive with due regard.
- f) Local agency policies will dictate when their officers assisting in a pursuit returns to their own jurisdiction.

- g) Other police vehicles will notify dispatch when they engage and disengage in the pursuit.
- 2. Pursuits entering Brown County from other jurisdictions will be required to inform the County, as well as any jurisdiction within the County that a pursuit has entered the County. Brown County Sheriff's Department will provide written notice to adjacent jurisdictions that any pursuits initiated by them that enter the County will be asked to provide information regarding assistance requested and the reason for the pursuit.
- 3. When any agency enters Brown County and is unable to communicate by radio, the agency being entered may become involved when there is an apparent need without being requested.

G. Pursuit Tactics and Techniques

- 1. Guidelines adopted by police agencies within Brown County for effective pursuit tactics and techniques will remain under authority of individual agencies.
- 2. The following rules shall apply when a pursuit enters another jurisdiction and the supervisor requests the deployment of these tactics.
 - a) Approval and coordination with the supervisor or OIC of the entered jurisdiction.
 - b) Deployment of tactic/technique will include the radio broadcast of the precise location.
 - c) Deploying officer will remove the system/obstruction from the roadway after the suspect vehicle has passed the location, or when the system/obstructions are no longer useful.
- 3. Road spike tactical system will comply with the above listed rules and require the following circumstances:
 - a) Straight and level roadway.
 - b) Adequate sight and stopping distance behind the area where the spikes are deployed.
 - c) Ability to safeguard non-target vehicles approaching spike location.
- 4. Roadblocks pose obvious dangers and shall not be employed unless the following conditions are met:

- a. Due regard elements previously outlined in Section IV (A) (1) (a-f) of this pursuit protocol are present.
- b. Notification is made of the precise location of the roadblock.
- c. Location is well lighted on straight and level roadway with no sight restrictions.
- d. If possible, other traffic should be diverted away from the location.
- e. All emergency lighting equipment is being used to illuminate the roadblock area to visually enable the suspect to see the roadblock and allow the suspect the opportunity to stop. In addition, flares, and other illumination equipment should be employed to further identify the presence of the roadblock, especially during hours of reduced visibility or darkness.
- f. The run out lane should be obvious.
- g. Roadblocks shall not be employed in such a manner that the driver of the fleeing vehicle cannot react or safely stop fleeing. Roadblocks shall be set to present an opportunity for the fleeing driver to make a decision to stop fleeing.

5. Force to Stop (Closed Roadblocks and Ramming)

- a. Other traffic must be diverted or stopped before reaching the roadblock area.
- b. The roadblock must be identified with emergency lighting to give warning.
- c. The suspect must have adequate sight distance and time to stop if he/she chooses to do so.
- d. Officers must communicate to ensure that their actions are coordinated and officers are not put at risk.

V. TRAINING AND DEBRIEFING

- A. Officer shall complete at least four (4) hours of training biennially from curricula based upon standards established by Statute, policies and the Wisconsin Law Enforcement Standards Board.

VI. APPENDIX

This agreement may be modified by and updated as required by Statute.

Effective date 05/10/11

Ashwaubenon Public Safety

Brown County Sheriff

Brown County District Attorney

Brown County Public Safety
Communications Center

Denmark Police

De Pere Police

Green Bay Police

Hobart/Lawrence Police

Oneida Nation Police

Pulaski Police

UWGB Public Safety

Wrightstown Police

Eric J. Dunninghoff
John R. Leung
John P. Zahorski
Paul Henry
R. K. Burns
Wesley Seidenwieser
James A. Arto
Randall D. Bani
Alm Van Bort
Keith R. [unclear]
Tom Mai
[unclear]

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VEHICLE PURSUITS PROCEDURES

I. Pursuit Intervention

A. Pursuit Intervention Technique (PIT).

1. This maneuver should not be attempted when only one officer is in a pursuit.
2. Absent formal certification, the use of PIT is deemed a dynamic application of force and may only be used to terminate a pursuit in circumstances where the use of deadly force is justified. With formal certification, the use of PIT is considered an intermediate use of force.
3. When the decision to use PIT has been made, the following factors apply:
 - a. PIT may not be used against sport utility vehicles with a narrow wheel base, motorcycles, mopeds, pick-up trucks with a higher center of gravity than the officers squad car, pick-up trucks with shells/toppers or campers or commercial motor vehicles unless deadly force requirements have been met.

B. Tire Deflation Devices.

1. Tire deflation devices should not be used on motorcycles. The suggested speed for use is approximately 25 mph and over.
2. Officers deploying tire deflation devices should do so from a position of relative safety, taking advantage of available cover and concealment.
3. Tire deflation devices should not be deployed if the deploying officers safety is in immediate jeopardy. Officers deploying tire deflation devices will complete a supplemental report including all pertinent facts surrounding the deployment.
4. Deploying officers should attempt to notify the pursuing officers prior to deployment.
5. Tire deflation devices may also be used to prevent a vehicle from being moved by a suspect attempting to flee a scene.
6. No officer shall deploy a tire deflation device until he/she has been trained.

C. Moving Roadblock (boxing-In).

When the decision to use a moving roadblock has been made, the following factors apply:

1. Usually, four police units are required: one to the front, one to the rear, and one on each side of the fleeing subject vehicle.
2. Communication among police units both before and during the application of this technique is essential.
3. This technique will not be used at speeds in excess of 45mph unless a supervisor had granted prior authorization, or if deadly force requirements have been met.

D. Open Road Blocks.

When the decision to use an open roadblock had been made, the following factors apply:

1. The roadblock should be set up on as straight and level stretch of roadway as possible and with adequate sight distance to give the suspect time to stop.
2. The roadway can be blocked by squads with emergency lights on, traffic cones, flares, and/or barricades.
3. The run-out lane should be obvious.

E. Closed Roadblocks.

In any incident when an officer uses a Ramming technique or Closed Roadblock, the Operations Commander will be notified immediately.

1. Other traffic must be diverted or stopped before reaching the roadblock area.
2. The roadblock must be identified with emergency lighting to give warning.
3. The suspect must have adequate sight distance and time to stop if they choose to do so.
4. Officers must communicate to ensure that their actions are coordinated and officers are not put at risk.
5. An officer may commandeer private vehicles and equipment to assist in the setting up of roadblocks. The officer must provide for the safety of private citizens whose vehicles or equipment is used.
6. A supervisor must approve a closed roadblock.

II. Inter-Jurisdictional Considerations.

- A. When acting in accordance with the provisions of this policy, officers may pursue vehicles into adjoining jurisdictions. In this event, the jurisdiction involved should be notified by the communications center of the pursuit, the reason for it, and whether direct assistance for the pursuit is requested.
- B. When a pursuit proceeds from one jurisdiction into another jurisdiction, the following procedures will apply: (NOTE: The guidelines established in this subsection are derived from the Brown County Law Enforcement Inter-Agency Pursuit Agreement).
 1. When the pursuit enters another jurisdiction, the supervisor of that jurisdiction will notify the pursuing officers or the communications center by phone or radio the specific circumstances in that community that may affect decisions on whether to terminate or continue the pursuit.
 - a. If the pursuit continues after receiving request for termination from the jurisdiction's law enforcement agency, the agency that continues the pursuit is responsible for any and all situations that arise from that pursuit.
 - b. Local agency policies will dictate when their officers assisting in a pursuit return to their own jurisdiction. Other police vehicles will notify dispatch when they engage or disengage in the pursuit.
 2. Pursuits entering Brown County from other jurisdictions will be required to inform the county, as well as any jurisdiction within the county that a pursuit has entered the county.
 3. When any agency enters Brown County and is unable to communicate by radio, the agency being entered may become involved when there is an apparent need without being requested.

C. Pursuits Entering Green Bay

1. If any agency enters the City of Green Bay while engaged in a pursuit, Green Bay Police Department Pursuit Policy will apply as the deciding factor for whether or not Green Bay officers will be actively engaged in the pursuit. It is the responsibility of **ALL** officers to obtain the reason for the pursuit and if assistance is being requested from dispatch prior to engaging to assist.

2. When any agency enters the City of Green Bay while engaged in a pursuit, an officer shall use their discretion with regards to deploying stop sticks or blocking traffic if these actions can be done safely. The officers discretionary powers in this case will still be subject to the “Support Units” section located in section V.F of the Green Bay Police Department Pursuit Policy.
3. When any agency enters the City of Green Bay while engaged in a pursuit, and that pursuit does not meet Green Bay Police Department pursuit policy criteria, Green Bay Police will (if a unit is available) assign an authorized emergency vehicle to trail the route of the pursuit while it is within the Green Bay city limits per the Brown County Law Enforcement Inter-Agency Pursuit Agreement. The Green Bay vehicle may drive in emergency mode, but **WILL NOT** be directly engaged in the pursuit and will follow all due regard guidelines.

Documentation of Oral Warning

Employee Name: Officer J. Brann

Spoken to by: Lt. J. Engelbrecht

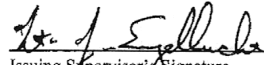
Date: 08-09-18

Details:

On Thursday August 2, 2018 at around 12:05pm Officer Brann was following a vehicle where the driver was suspected to have a DOC warrant. As Officer Brann caught up to the vehicle in an alley off of Cherry St., the driver accelerated rapidly and took off from Officer Brann, spinning its tires and creating thick black smoke from its exhaust. Officer Brann activated his emergency lights and siren, went after the vehicle and called out with it stating over the air that the vehicle was blowing stop signs. Officer Brann's details state that the vehicle was traveling at speeds "about 70mph in a residential neighborhood". He pursued the vehicle for about 0.5 miles, or about 3-4 city blocks. I asked over the radio what the warrant was for and he replied it was a DOC warrant. I then requested that the pursuit be terminated. A debrief was done with Officer Brann afterward. Officer Brann believed that since the driver began to flee prior to him activating his emergency equipment that his driving behavior was a danger to the public and he needed to make an attempt to stop it. It appeared clear after debriefing Officer Brann, reviewing his details and reviewing the radio transmissions from the COBAN video from Officer Clark's vehicle that the suspect's driving behavior was an attempt to flee from Officer Brann. This pursuit, though short in duration, was initiated without sufficient criteria for a vehicle pursuit under our departmental policy. It should be noted that Officer Brann was very receptive during the debrief and was very professional and courteous with me.

I fully understand that the above was an oral warning, and this is the documentation to prove above oral warning was given.


Employee Signature


Issuing Supervisor's Signature

Comments by Employee Regarding the Incident:

Reviewed by Captain: _____

This document will stay in the Counseling Register for a period of one year from date given, at which time it will be removed.

From: [Kevin Warych](#)
To: [Jeff Brann](#)
Subject: FW: Squad Coban / Getac Videos
Date: Friday, March 29, 2019 11:36:34 AM

I have asked Brad to do this...FYI

If you want to make files of the CD and put them in evidence, you have the ability. Please tell brad if you do

Im glad to help

From: Kevin Warych
Sent: Friday, March 29, 2019 11:19 AM
To: Brad Strouf <BradSt@greenbaywi.gov>
Subject: FW: Squad Coban / Getac Videos

Brad
can you please ensure all these videos in Coban and or Getec are marked as "Evidence." Also, I would like hard copies made of the videos and placed into evidence. I realize these are attached to a GERP report but this will ensure they are archived forever.

Thank you

Kevin

From: Jeff Brann
Sent: Thursday, March 28, 2019 8:09 PM
To: Kevin Warych <KevinWa@greenbaywi.gov>
Subject: Squad Coban / Getac Videos

Commander Warych,

Can you please make sure that the videos that are in cases 18-208661 and 18-210609, and any other videos used in my discipline are preserved?

18-208661 has two squad videos and 18-210609 has five squad videos.

Thank you,

Jeff Brann

CITY OF GREEN BAY PERSONNEL COMMITTEE

In the Matter of Personnel Entry Filed

Against

K9 Officer Jeff Brann

by

CITY OF GREEN BAY POLICE DEPARTMENT

BRIEF ON BEHALF OF OFFICER BRANN REGARDING THE TIMELINESS OF HIS STEP 2 GRIEVANCE

For the following reasons, Officer Brann respectfully requests that the Personnel Committee find that the City of Green Bay waived the time limits by continuing to negotiate and meet with Officer Brann on the policy violations recorded in the Personnel Entry, despite the issuance of the Chief's Step 1 Denial Letter dated February 4, 2019.

FACTUAL BACKGROUND

On Thursday, September 20, 2018, Officer Jeff Brann was on duty when Officer Dan Greene's pursuit of a juvenile (TT) occurred. *See* Ex. 18, GBPD Case No. 18-210609. Within the week, Lt Jody Buth advised Officer Brann that Chief Andrew Smith was upset about the pursuit and that Officer Brann needed to be careful, stating that the Chief had lost four friends due to pursuits and that he was passionate about the matter. Lt Buth said that he did not want to see Officer Brann get "jammed up." Officer Brann tells Lt Buth that he had not been involved in the pursuit portion of the incident.

On Monday, December 17, 2018, a Personnel File Entry Report (Ex 19) was issued to Officer Brann by Captain Brad Florence regarding the September 20, 2018 pursuit. *Also see* Ex. 8, "Dec 17, 2018 Audio from First Discipline Meeting with Capt Florence". The Personnel File Entry Report charged Officer Brann with violating four policies, specifically Policy 307 – Vehicle Pursuits; Policy 308 - Officer Response to Calls; Policy 320 – Standards of Conduct; and Policy

320.5.7 – Efficiency. Captain Florence indicated to Officer Brann in this meeting that the discipline was a result of an internal investigation from “upstairs” (Internal Affairs / Professional Standards Division) and that he “agreed with most of it.” The author was (and still is) unknown. After reviewing the document, Officer Brann informed Captain Florence and Commander Ebel that the information contained in the Personnel File Entry Report was not truthful and accurate. Commander Ebel warned Officer Brann that if an incident like this happens again, the chief would take his dog away, meaning removal from the K9 Unit. Modifications to terminology of speed were made in the personnel file entry by Commander Ebel. Captain Florence indicated that the investigation was now finalized and closed, and that no one else was being disciplined regarding the incident.

The departmental “review” of the September 20, 2018 incident deviated from the normal course of pursuit review – i.e., normally, all pursuits are reviewed by Lt. Brad Strouf. It is unclear as to why this particular incident was reviewed by an unknown author in Internal Affairs. Captain Florence reportedly did not author the document. Despite requests for such information, Officer Brann and counsel continue to be unclear as to who specifically authored the document that forms the basis for the Personnel Entry Report. The document is not signed and nowhere within the document does it indicate whom the author is. It is concerning that the Personnel File Entry Report was authored by an unknown party, contained false information, and continued to be revised and edited on several occasions after this date, according to GBPD records. Similarly, after review and comparison with all the actual case files and reports, the Personnel File Entry Report presents false information, inaccurate locations, non-chronological sequences of events, embellishments, minimizations and omissions, all to negatively skew the role of Officer Brann’s involvement to support the discipline. Officer Brann points the Personnel Committee to the fact that the pursuit review was last modified on **May 6, 2019, with a total of 23 revisions from the creation of the report.** This date was ***well past*** the dates the original four policy violations were alleged (Monday, December 17, 2018); ***well past*** the dates of Officer Brann grieving the discipline at the first step (Monday, January 21, 2019); well past the date of the final meeting between Commander Warych and Officer Brann (March 22, 2019); and even beyond the date HR Director Faulds issued his Step 2 denial letter (April 25, 2019). It is highly suspicious and concerning that department records demonstrate continued access to and revision of this document by unknown personnel well past

dates that the document should have been finalized so that they could be relied upon to form the basis of the policy violations alleged against Officer Brann. The continued revision of this document well past dates that it should have been finalized violates several provisions of the CBA that guarantee Officer Brann only be disciplined for cause; that require other officers and supervisors be truthful and accurate in their report writing; and requires that both employees and the department adhere to the policy manual for internal investigations, pursuit reviews, and other expectations of conduct. Officer Brann asserts that because the investigation has no integrity and violates not only the policy manual but the CBA, that the entire discipline process should be void.

On Monday, January 21, 2019, Officer Brann supplied his Grievance (Ex. 4) to Union Representative Matt Knutson. Following the filing of the grievance, Union President Scanlan advised Officer Brann that during a meeting to discuss the grievance, Chief Smith inferred that they were considering the issuance of traffic citations to Officer Brann from this incident, even though Captain Florence indicated in the December 17, 2019 meeting that the investigation was closed.

On Monday, February 4, 2019, Chief Andrew Smith issued a letter denying Officer Brann's grievance in a letter to Union President Scanlan. *See* Ex. 5, "Chief Response to Step 1 Grievance."

On Monday, March 4, 2019, following a vote on the matter, Union President Phil Scanlan advised Officer Brann that the Union would not be moving forward with Officer Brann's grievance. However, Officer Brann was advised that an updated personnel file (Ex 20) was going to be completed. Officer Brann was informed that Commander Warych would be meeting with him to review the Personnel File Entry. On this date, Officer Brann began attempts to arrange a meeting with Commander Warych to discuss the incident.

On Thursday, March 14, 2019, Officer Brann met with Commander Warych without union representation. The meeting was brief and cut short due to scheduling conflicts of Commander Warych. During this meeting, Commander Warych asked Officer Brann why he took the actions that he did during the incident. This was the first time that Officer Brann had been asked by any supervisor about the incident, from the time of the incident and all the way through the

investigation and discipline process, nearly six months after the incident occurred. Officer Brann asserts that this is in violation of “just cause” procedures as outlined in the Collective Bargaining Agreement and Wisconsin Statutes. In the meeting, Commander Warych told Officer Brann that he understood why Officer Brann was upset with the way his discipline was handled, saying that it was a mess and that he (Commander Warych) was not happy with how it went, either. Commander Warych emailed Officer Brann later that day to schedule a time to finish the conversation. In the email, Commander Warych stated, “I’m sorry I am booked. What does Monday look like for you or any day next week. I apologize for my schedule”.

On Tuesday, March 19, 2019, a second meeting occurred between Commander Warych and Officer Brann without union representation as a continuation from the March 14, 2019 meeting. Officer Brann showed Commander Warych video of the incident that was inconsistent with the assertions made in the Personnel File Entry Report. Following the video review, Commander Warych still said nothing would change with the discipline. Commander Warych explained that two charges were removed - the “efficiency” and “insubordination” charges. Commander Warych indicated he did not know why “efficiency” was ever listed on the discipline and said that he did not see clear “insubordination”, so he considered it as “tie goes to the officer” on that allegation and removed both charges. Officer Brann was informed that the removal of the two charges was done prior to Officer Brann’s meeting with Commander Warych.

With respect to the remaining two charges, Officer Brann explained that he was not involved in a pursuit per the statutory definition outlined in Wisconsin Statutes, with which Commander Warych agreed. Officer Brann questioned how he could be accused of violating the pursuit policy when he was not involved in a pursuit per statute. Commander Warych indicated that he was using the Merriam-Webster dictionary definition of pursuit for the discipline. Officer Brann asked if there was anything else he could say or do to contest the Revised Personnel File Entry and prevent it from going into his permanent record, especially given concerns that the document was not accurate. Commander Warych said that there was not. Commander Warych supplied a copy of the modified Personnel File Entry to Officer Brann to review and wanted Officer Brann to have it signed and returned by Friday, March 22, 2019.

On Friday, March 22, 2019, Officer Brann met with Commander Warych and Officer Matt Knutson (acting as witness, not a Union Representative to the meeting). *See* Ex 9, March 22, 2019 “Contact with Knutson and Brann”. Officer Brann had been told by Commander Warych to sign the modified personnel file entry with the two revised charges that was going to replace the original entry with four charges. Officer Brann was not part of any review process, negotiations, or the modification of the entry. Officer Brann advised that he did not agree with the discipline, but would sign to acknowledge receipt. Officer Brann indicated that he was not admitting any type of guilt or revoking any future legal processes, but did not want to refuse to sign the document for fear of being deemed insubordinate. Commander Warych indicated he understood Officer Brann’s frustrations about the way this discipline was administered. Because the discipline was formally finalized on this date, Officer Brann asserts that this date should be used for the timeliness consideration. Officer Brann asserts that Commander Warych’s continued refinement of the policy violations after the Chief’s letter is a constructive waiver of the time limits by the Police Department, and/or a mutual consent to skip the initial steps so that Officer Brann could proceed to Step 2.

On Friday, April 5, 2019, Officer Brann met with Human Resource Joe Faulds to find out if there was a way for an officer to continue with a grievance without union representation. Mr. Faulds advised that he believed a Step 2 grievance could be filed by an officer without union representation, but he would have to review the contract to be sure. Mr. Faulds asked Officer Brann if he was advising HR of the incident or formally filing the paperwork for the Step 2 grievance, stating that there were time limits within the process. To minimize delay in the process, documents were immediately supplied to Mr. Faulds by Officer Brann to file the Step 2 grievance with Human Resources. Officer Brann also expressed fears of retaliation to Mr. Faulds for Officer Brann exercising his rights to file a grievance.

On Thursday, April 25, 2019, HR Director Joe Faulds issues his Step 2 Denial Letter, indicating that it was his belief was that the grievance was not timely, and that the grievance had been resolved by the Union and Commander Warych, agreed upon by Officer Brann. Officer Brann now appeals that decision to the Personnel Committee in a Step 3 proceeding.

LEGAL ANALYSIS

The 2016-2019 Collective Bargaining Agreement between the Green Bay Professional Police Association and the City of Green Bay is the operative document governing this procedure. Specifically, Article 3 governs grievance procedures and disciplinary proceedings.

Officer Brann's grievance conforms to the requirements and definitions set forth in the CBA. Regarding Step One, the Union presented the grievance regarding conditions of employment in writing to the Chief within 25-working days after the Personnel File Entry was given to Officer Brann. *See* CBA 3.1. Officer Brann's grievance contains his name and position, "a clear and concise statement of the grievance, the relief sought, the date the incident or violation occurred and the signature of the grievant and the date." *Id.* 3.2. It is unclear who the Chief conferred with prior to issuing his February 4, 2019 letter, however the Chief indicates in his letter that he reviewed the documentation forming the basis for the policy violation allegations. *Id.* 3.3. The Chief's letter conforms to the time limits contemplated by 3.8.1.; i.e., he provided his response within 15-working days (indeed, on the 11th-working day) after being presented with Officer Brann's grievance.

If the grievance is not "satisfactorily resolved at the first step, the grievant or the Union representative shall prepare a written grievance and present it to the Human Resources Director within 15-working days of the Chief of Police's response. The Human Resources Director shall review the grievance and shall respond in writing within 15-working days after receipt of the written grievance." *Id.* at 3.8.2. It is HR Director Faulds' position that Officer Brann's request to move to Step Two of the grievance procedure was untimely, as it was not filed within 15-working days of the Chief of Police's response.

However, the activity that occurred between the Chief's February 4, 2019 letter and the finalization of the Personnel File Entry Report by Commander Warych on March 22, 2019 cannot be ignored.

(Indeed, HR Director Faulds denial letter also acknowledged that he believed the matter was resolved at the March 22, 2019 meeting. Mr. Faulds came to this conclusion without any apparent consideration of the legal ramifications of the gap in time between the February 4th letter and the March 22 meeting.) Officer Brann submitted the grievance to the GBPPA Union for a vote following the Chief's February 4, 2019 denial letter. When Officer Brann was informed that the Union would no longer be representing him on March 4, 2019, Officer Brann was also informed that he would be required to meet with Commander Warych to review the Personnel File Entry. Had the matter been considered closed on this date, and had no further activity occurred, it appears that Officer Brann would have had no further recourse pursuant to the grievance procedures outlined in the CBA, as the Union apparently did not see fit to give Officer Brann an opportunity to continue with his grievance independently prior to the expiration of the timelines. That, notably, is not the case here. Officer Brann respectfully requests that the Personnel Committee find that the meetings with Commander Warych extended the applicable time limits for Officer Brann to proceed with the grievance, and/or demonstrates that the city mutually consented to proceeding to the next step of the grievance procedure as outlined by the CBA.

The CBA specifically indicates in two separate sections that the days indicated at each step are working days (i.e., Monday through Friday, excluding holidays). *Id.* 3.4. "The party who fails to receive a reply in a timely fashion shall have the right to automatically proceed to the next step of the grievance procedure. *The time limits may be extended by mutual consent.*" *Id.* (emphasis added). The CBA also provides that "steps in the procedure may be waived by mutual agreement of the parties." *Id.* 3.7. Officer Brann asserts that Commander Warych's continued meetings and revisions regarding the policy violations in the Personnel Entry report extended the time limits as contemplated by the CBA, and/or waived the requirement that Officer Brann must start from Step 1 to contest the final two remaining charges.

Step Three provides that "[i]f [the] grievance is not resolved at the second step, the grievant or the Union representative shall present the written grievance to the Personnel Committee within 15-working days of the Human Resources Director's response." Officer Brann submitted his Step Three grievance on the 10th-working day following the March 22, 2019 meeting.

When interpreting the language of collective bargaining agreements, Wisconsin courts have held that “[w]here the terms of a contract are unambiguous, the contract must be given its plain and ordinary meaning and construed as it stands.” *Ford Motor Co. v. Lyons*, 137 Wis.2d 397, 460, 405 N.W.2d 354, 379 (Ct.App.1987). Here, the language of sections 3.4 and 3.7 of the CBA indicate that the time limits or steps in the procedure may be waived by mutual consent. What mutual consent means is somewhat ambiguous and not otherwise defined by the CBA. “[I]f the contract is ambiguous, parol evidence may be used to discern the parties’ intent.” *Energy Complexes, Inc. v. Eau Claire County*, 152 Wis.2d 453, 468, 449 N.W.2d 35, 41 (1989). The revisions conducted by Commander Warych of Officer Brann’s Personnel File Entry Report cannot be ignored. That conduct demonstrates that the city intended to reverse the finality of the original four policy violations, and should be construed either as a mutual waiver of the Step 2 time limits, OR as a waiver of the requirement that Officer Brann resend the same Step 1 Grievance regarding the final two charges back to the Chief. If Commander Warych’s revisions were not sanctioned by the Chief, or are somehow not construed as a waiver of the applicable steps and/or time limits, then the conduct is a clear violation of the grievance and discipline procedure outlined in the CBA, as it does not follow those procedures. Wisconsin Statutes prohibit the violation of a collective bargaining agreement by an employer. *Specifically*, Wis. Stat 111.70(3)(a)(5) states

It is a prohibited practice for a municipal employer individually or in concert with others [t]o violate any collective bargaining agreement previously agreed upon by the parties with respect to wages, hours and conditions of employment affecting public safety employees or transit employees, including an agreement to arbitrate questions arising as to the meaning or application of the terms of a collective bargaining agreement or to accept the terms of such arbitration award, where previously the parties have agreed to accept such award as final and binding upon them or to violate any collective bargaining agreement affecting general municipal employees, that was previously agreed upon by the parties with respect to wages.

Similarly, Wis. Stat. 111.06(1)(f) states “[i]t shall be an unfair labor practice for an employer individually or in concert with others [t]o violate the terms of a collective bargaining agreement.”

Either the department intended to 1) adhere to the CBA by mutually consenting to either extending the Step 2 time limits (because Commander Warych dropped two of the four charges after the Chief’s Step 1 denial letter) or waiving the re-initiation of a Step 1 procedure to contest the

remaining two charges following the March 22, 2019 meeting; or the department 2) ignored and thus violated the CBA by not following the grievance and disciplinary procedures.

CONCLUSION

Officer Brann respectfully requests that the Personnel Committee find that he has complied with all timeliness requirements of the Collective Bargaining Agreement, and calendar the matter for further proceedings to review and consider his Step 3 Grievance.

Dated this 13th day of December, 2019

Electronically signed by:
Carley N. Windorff
Counsel for Officer Brann
Bar No 1082284
Windorff Law LLC
PO Box 222
Kaukauna, WI 54130



*The City of Green Bay is a leader in employee health and wellness with its **Health | 1265** program and a goal to engage all employees in their own health and well-being*

December 13, 2019

Personnel Committee
City of Green Bay
100 N. Jefferson Street
Green Bay, WI 54301

RE: Grievance #2019-001 – Officer Jeff Brann

Dear Personnel Committee,

This correspondence is in response to the Committee's request to brief the issue of whether or not Officer Brann's grievance shall be dismissed. Except for the additional exhibit attached, this brief will reference exhibits that have already been submitted by the City in its earlier letter to the Committee.

ISSUE

Whether Officer Brann's grievance shall be dismissed because (1) Officer Brann had previously reached an agreement to resolve his grievance or (2) because Officer Brann failed to timely file for Step 2 of the grievance procedure.

FACTS

On December 17, 2018 Officer Brann received a Personnel File Entry for violations of four policies: (1) Policy 307 – Vehicle Pursuits; (2) Policy 308 Office Response to Calls; (3) Policy 320 Standards of Conduct; and (4) Policy 320.5.7 Efficiency. (See Personnel Entry). Officer Brann filed a grievance with Chief Smith on January 21, 2019 which was denied by Chief Smith on February 4, 2019. (See Chief's Step 1 Response).

Pursuant to the City and GBPPA Agreement, Article 3, Officer Brann had until February 25, 2019 to file for Step 2 of the grievance procedure. The Union and City agreed to extend the time to file to allow the Union time to discuss options to resolve the grievance at a Union meeting on February 27, 2019. On February 28, 2019 the Union President, Phil Scanlan, on behalf of Officer Brann, met with Commander Warych and they reached an agreement to resolve the grievance by reducing the four policy violations to two policy violations. After reaching the agreement, Commander Warych began drafting the amended Personnel Entry File to reflect the terms of the agreement between the Union and the City to resolve the grievance.

On March 4, 2019, the Union met with Officer Brann to review the agreement they reached with the City. Commander Warych followed-up with Officer Brann multiple times and explained the amended Personnel File Entry form to him. Officer Brann had questions and concerns with how the Personnel

File Entry form was drafted. Commander Warych made further revisions to the language in the Personnel File Entry form at Officer Brann's request.

On March 22, 2019, Officer Brann and his Union Representative, Matt Knutson, met with Commander Warych to sign the final amended Personnel File Entry form drafted in accordance to the agreement reached on February 28, 2019.¹ In that meeting, Officer Brann's Union Representative, Matt Knutson states, "My understanding was there was four policy violations upon initial issuance of that and then the date that you have here, the 4th of March...is that right? You modified that to two?" (Exhibit A p. 1) Commander Warych responded, "Yep. Yep...So I guess the only reason why we're here today is for Jeff to sign it, and then it will go into his personnel file just like this." (Exhibit A. p.1-2).

Next, there was a discussion about how Commander Warych believed the date for signing the finalized discipline letter was going to be March 4, but Officer Brann had more questions about it and wanted more time to review it. Officer Brann felt that the discipline entry was put into his file without his review of it. Commander Warych explained that he understands it appeared that way, but that was inadvertent. Nothing was put in Officer Brann's file until he reviewed the final discipline letter and signed off on it.

Officer Brann states that he does not agree with everything in the discipline letter and this discussion followed:

Commander Warych: You, by signing this, you are acknowledging the fact that you have accepted, not accepted, but you have, been informed that this personnel entry will be in your personnel file.

Officer Brann responds: "Okay. And it doesn't revoke any of my rights for any, um future complaints or anything like that or any legal aspect? It's not holding me that I'm agreeing to this then, correct?"

Commander Warych responds: You know, that's a question for the lawyers...I mean, you have pursued the grievance procedure, the grievance was settled after Step 1 before it went to the Human Resources Director, so that's my knowledge of it.

Officer Brann: Okay. And then the, the other thing, I have to follow up with this on my half, this modification, your understanding is, was part of the grievance process of settling of the grievance is that correct?

Commander Warych: Yes.

Officer Brann: Okay.

Commander Warych: Because my understanding is once you get to step 2, once the Chief gets it and the Chief makes a decision to approve or deny, um, if he denies, then the union has so many days to go present the grievance to the Human

¹ The audio of this meeting was given to the Committee to listen to its contents. The City attached the transcript and the City highlighted portions of the transcript that are relevant to the City's argument for dismissal.

Resources Director...

Officer Brann: Okay.

Commander Warych: ...but at that point, the union, this is what I am being told, the union owns the grievance, and they determine whether or not to take it to the Human Resources Director or not. They chose to talk about it and settle it, which was, this is the result of the settled, the settlement.

Officer Brann: Okay.

Commander Warych: Am I wrong?

Officer Knutson: You are correct.

Commander Warych: Okay.

Officer Brann: Are you aware of the Chief's denial or the rejection of the, of the grievance?

Commander Warych: Yes.

Officer Brann: Okay. Okay. Then I will sign.

...

Officer Brann: Okay. Thank you. Um, is there, so this, this in your mind in, in from what we're doing, this is done.

Commander Warych: Hopefully, we never have to talk about it ever again.

Officer Brann: Okay. Is, so as far as coming back to me, I'm not gonna be getting anything other than this letter in my file? They're not going to be modifying anything that I do, changing my position, sending me to training, or anything like that?

Commander Warych: Nope.

Officer Brann: Okay.

Commander Warych: There's no reason to.

Officer Brann: Okay.

Officer Knutson: If, there was something about a rebuttal that was mentioned, if, if Jeff chooses to submit a rebuttal, that will be attached to that form?

Officer Brann: Oh...

Commander Warych: Yeah, I don't...

Officer Brann: Just inherent of saying my portions of the concerns with the, with the write-up, that can be attached?

Commander Warych: There's, in my opinion, yeah, you can, yes.

Officer Brann: Okay.

Commander Warych: There's nothing to say that you can't. I've never seen that before but if you want to provide that, I have no problem with that.

Officer Knutson: Okay.

Officer Brann: Okay. I think that's it
(See Attached Exhibit A, p. 7-10).

Subsequently, the amended Personnel File Entry was placed in Officer Brann's personnel file and the original Personnel File Entry from December 17, 2018 was removed. Officer Brann and his Union Representative, Matt Knutson, watched as the original personnel file entry was electronically removed from his file.

ARGUMENT

I. THE GRIEVANCE SHALL BE DISMISSED BECAUSE OFFICER BRANN REACHED AN AGREEMENT WITH THE CITY TO RESOLVE HIS GRIEVANCE.

Officer Brann and his Union Representatives reached an agreement with the City to resolve his grievance by reducing his four policy violations to two policy violations and, therefore, his grievance has been resolved and the matter shall be dismissed.

On December 17, 2018 Officer Brann received a Personnel File Entry for violations of four policies. (See Personnel Entry). Officer Brann filed a grievance with Chief Smith on January 21, 2019 which was denied by Chief Smith on February 4, 2019. (See Chief's Step 1 Response).

Following Chief Smith's denial of Officer Brann's grievance, Union Representatives met with Commander Warych to discuss potential settlement and resolution of his grievance. The Union did so to preserve its legal obligation to represent its members. Ultimately, the Union represented to Commander Warych that the Union and Officer Brann would agree to settle and resolve the grievance by reducing his discipline from four policy violations to two policy violations. The City accepted this proposed settlement and accordingly, the grievance was resolved and settled on February 28, 2019.

After the agreement was reached, Commander Warych began drafting the amended Personnel File Entry form. Commander Warych met with Officer Brann on two occasions to discuss the amendment

of the Personnel File Entry form. Specifically, on March 22, 2019 Officer Brann and his Union Representative, Matt Knutson, met with Commander Warych to sign the final amended Personnel File Entry form. Commander Warych explained that this was part of the grievance procedure and that it was settled and resolved before it went to Step 2. The transcript of the meeting shows that Officer Brann understood that the agreement to reduce his four violations down to two violations resolved his grievance and his grievance was concluded.

Moreover, Officer Brann's Union Representative, Matt Knutson brought up the possibility of Officer Brann filing a rebuttal. The submission of a rebuttal is an option for any employee to supplement his or her employee's file to give his or her side of the story, but it does not change the decision made by the supervisor or extend the timeline to file for Step 2 of the grievance. Again from the transcript, Officer Brann states that he may submit a rebuttal to state his disagreement with the decision. He does not state he wants to continue with his grievance, that he rejects the amended Personnel File Entry or that he is intending to move to Step 2 of the grievance.

Subsequently, the amended Personnel File Entry form was placed in Officer Brann's personnel file and the original Personnel File Entry form from December 17, 2018 was removed. Officer Brann and his Union Representative, Matt Knutson, watched as the original personnel file entry was electronically removed from his file. These actions by Officer Brann and his Union Representative during and after the meeting represented to the City that Officer Brann was satisfied with the outcome of the grievance and the resolution of said grievance was acceptable.

As such, Officer Brann is precluded from having his grievance heard in front of the Personnel Committee because he has already reached an agreement to resolve his grievance. In addition, the resolution of Officer Brann's grievance renders his grievance issue moot and the Personnel Committee no longer has jurisdiction in this matter. Any decision otherwise would undermine the Union's authority to resolve grievances on behalf of its members. Likewise, allowing Officer Brann to continue to grieve this matter may prevent the City from finding alternative resolutions to future grievances outside the formal grievance procedure.

Therefore, the Personnel Committee shall dismiss this grievance because an agreement has been reached and executed between the City, the Union, and Officer Brann to resolve Officer Brann's grievance.

II. OFFICER BRANN HAS WAIVED HIS RIGHT TO FILE HIS GRIEVANCE WITH THE PERSONNEL COMMITTEE BECAUSE HE FAILED TO TIMELY FILE HIS GRIEVANCE WITH THE HUMAN RESOURCES DIRECTOR.

In the event that the Personnel Committee determines that Officer Brann did not reach an agreement to settle this matter, Officer Brann's grievance shall be dismissed because he failed to timely file his grievance at Step 2 with the Human Resources Director and therefore is deemed to have waived his grievance.

The Agreement between the City of Green Bay and the Green Bay Professional Police Association ("Agreement") states:

3.4 COMPUTATION OF TIME. The days indicated at each step should be considered a maximum. Working days as used in this article shall mean Monday through Friday, excluding holidays. *The failure of the party to file or appeal the grievance in a timely fashion as provided herein shall be deemed a waiver of the grievance.* The party who fails to receive a reply in a timely fashion shall have the right to automatically proceed to the next step of the grievance procedure. The time limits may be extended by mutual consent. (Emphasis added).

...

3.8.2 STEP TWO. If the grievance is not satisfactorily resolved at the first step, the grievant or the Union representative shall prepare a written grievance and present it to the Human Resources Director *within 15-working days* of the Chief of Police's response. The Human Resources Director shall review the grievance and shall respond in writing within 15-working days after receipt of the written grievance. (Emphasis added).

Pursuant to the Agreement, the failure to file or appeal a grievance in a timely fashion as provided herein shall be deemed a waiver of the grievance by the grievant. In this matter, Officer Brann received Chief Smith's response to his grievance on February 4, 2019. Officer Brann had 15 working days to file for Step 2 with the Human Resources Director which was February 25, 2019. The City and the Union agreed to extend the time to respond after February 25 because the Union wished to pursue settlement of the grievance and had a Union meeting on February 27. The City and the Union then reached an agreement to resolve the grievance on February 28, 2019. Even if the time to file with the Human Resources Director was extended to February 28, 2019, Officer Brann still failed to timely file his grievance for Step 2 with the Human Resources Director within the prescribed time as he did not file for Step 2 until April 5, 2019—over a month after the settlement agreement had been reached on February 28, 2019.

Similarly, there was no mutual consent to extend the filing deadline for Step 2 between the City and Officer Brann. Since there was no mutual consent—beyond the additional time initially agreed to in order to pursue an agreement—Officer Brann had until February 28, 2019 to file his appeal with the Human Resources Director. Instead of filing an appeal, a settlement and resolution was proposed by the Union and accepted by the City. Officer Brann failed to timely file his appeal to Step 2 and therefore, pursuant to the Agreement, his grievance shall be deemed waived.

Furthermore, Officer Brann argued to the Personnel Committee that the City tolled the amount of time to file his grievance when Commander Warych met with Officer Brann after February 28, 2019. As stated in the Agreement, the City is unable to toll time or extend a deadline unilaterally. There needs to be mutual consent between the Union and the City to extend a timeline and, in this case, there was no mutual consent to extend a timeline beyond the time needed for settlement which was reached on February 28, 2019. As stated above, there was no discussion in any meeting with the City—including the March 22, 2019 meeting—about extending a deadline to file with the Human Resources Director.

Additionally, Officer Brann's argument that the City tolled the time to file an appeal overlooks the importance of the agreement between the City and the Union on February 28, 2019. Officer Brann is

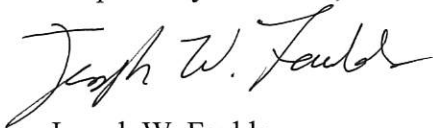
erroneously asking the Committee to focus on subsequent meetings with Officer Brann and Commander Warych to prove the City extended the time to file for Step 2. However, the only purpose of the subsequent meetings with Officer Brann and Commander Warych was to discuss the specific language in the Personnel File Entry form per the substantive agreement that had been reached between the Union on behalf of Officer Brann and the City on February 28, 2019. Officer Brann and Commander Warych had no authority to further modify the number of policy violations and could only focus on how the Personnel File Entry form would be written. This is a very common and accepted practice. Typically, the City and Union reach an agreement in substance, but still have to finalize the language of the applicable document subsequently. In this matter, the City and Union agreed to settle and resolve the grievance by reducing the four policy violations to two, but still had to work out the exact language describing the violations in the documentation. Any future meetings did not extend the time frame to file for the Step 2 grievance because the grievance and the substantive issues had mutually been settled and resolved.

As stated above, the Union has an obligation to represent its members. In representing Officer Brann, the Union reached a settlement agreement with the City on February 28, 2019. There is no evidence that shows that Officer Brann or the Union communicated or otherwise indicated that there was intent to extend a deadline to file for Step 2 of the grievance. In further, Officer Brann provides no evidence of mutual consent between the City and the Union to extend the timeframe to file for Step 2 of the grievance procedure, which is required by the Agreement.

CONCLUSION

For the reasoning stated above, the City respectfully asserts that the Personnel Committee shall dismiss the grievance because it has been mutually resolved or—in the alternative—because Officer Brann failed to timely file his grievance for Step 2 with the Human Resources Director.

Respectfully submitted,



Joseph W. Faulds
Human Resources Director

EXHIBIT A

Officer Brann Grievance – Audio Recording

March 22, 2019

Commander Warych: Um-hm.

Officer Brann: March 22nd.

Officer Knutson: This is regarding the personnel file entry report and, ah, (inaudible) dated the, ah, 12/04/18. All right. You handed me this, right? And, ah, is that just for me to review or is that my copy?

Commander Warych: Um, well, I, this was, this was the, this was the copy that I gave Jeff and...

Officer Knutson: Okay.

Commander Warych: ...originally.

Officer Knutson: Uh-huh.

Commander Warych: Um, and...

Officer Knutson: So that's...

Commander Warych: ...this was, this was in, to, to settle the grievance.

Officer Brann: Um-hm.

Commander Warych: So, um...

Officer Knutson: My understanding was there was four policy violations upon initial, ah, issuance of that and then on the date that you have here, the 4th of March...

Commander Warych: Um-hm.

Officer Knutson: ...is that right? You modified that to two?

Commander Warych: Yep. Yep.

Officer Knutson: Policy 307 and Policy 308.

Commander Warych: And this is the original, yes...

Officer Knutson: Okay.

Commander Warych: ...and that's correct. So I guess the only reason why we're here today is for Jeff to sign it, um, and then it will go into his personnel file, um, just like this.

Officer Brann: Okay.

Commander Warych: As soon as I sign, as soon as you sign it, you can make a copy of it, but then I'm gonna walk it right to Laura and then Laura is gonna put it right in your personnel file.

Officer Brann: Okay. For the dates that are in effect with this form here now, it, it, I know you had talked with the union guys on the 4th when you had this agreement on here. Am I notified today that this is in effect or what is, what is the date, like where does it say that I'm signing on today's date is the question because the, the date was filled in already on there when you had signed.

Commander Warych: We can, we can, we can make the date today.

Officer Brann: Okay. Okay.

Commander Warych: So as you see, I just, instead of the 4th, it will be effective today.

Officer Brann: Okay. Um, and then I was just gonna clarify too, when I had reviewed this, it had already had checked in here copy placed in personnel file. Is, is it in there now?

Commander Warych: It is not in there now.

Officer Brann: Okay, I gotcha. So this was...

Commander Warych: I filled, I, I filled that in on March 4th thinking that that's when we were gonna meet and you were gonna sign off on it...

Officer Brann: Okay.

Commander Warych: ...and you, that's when you indicated to me that you wanted to take some more time to review it...

Officer Brann: Yep.

Commander Warych: ...um, we met for a short period of time that one day and then we met the other day this week, um, and to review the whole incident and go through the video.

Officer Brann: Okay.

Commander Warych: But that, lesson learned on my part. I shouldn't have filled it in automatically thinking that that would be happening that way.

Officer Brann: Okay, yeah, I just...

Commander Warych: (inaudible)

Officer Brann: ...I didn't know cuz when I reviewed it, I'm like, when I saw the date that had been...

Commander Warych: Sure.

Officer Brann: ...before we met and then when I came in here to try to explain my side of it, I thought there was some kind of if I explained to you and show you what I did was not truthful and accurate within what the write-up is...

Commander Warych: It looks like I made the decision of already putting it in your personnel file before listening to you...

Officer Brann: Right.

Commander Warych: ...and for that, I apologize.

Officer Brann: Well, if I would've know that, honestly, I wouldn't have even wasted your time coming in here like that. I would have come in here...

Commander Warych: No...

Officer Brann: ...with, with Matt and signed off on it and...

Commander Warych: First of all, you never waste my time. That's a mistake on my part.

Officer Brann: Okay.

Commander Warych: Okay. I just assumed that, I assumed, which you should never assume, that you had a conversation with your union representatives to come to, to settle the grievance...

Officer Brann: Um-hm.

Commander Warych: ...and that's why, okay, the, the grievance is settled with the removal of the two policy violations, Jeff just needs to sign it, here you go, and then away you go. I encourage you. You guys can do this. We'll get you your personnel file, and you can review your personnel file to, to show you that I am, indeed, telling you exactly what it is so that you don't think this, this one is in your personnel file.

Officer Brann: Okay.

Commander Warych: I'm just, I'm just telling you that you can double check my work. I have no problem with that.

Officer Brann: Right.

Commander Warych: I, I, I have...

Officer Brann: (inaudible) that's why I'm asking...

Commander Warych: Yeah, no, no.

Officer Brann: ...(inaudible) just, just because you understand how it seems.

Commander Warych: I...

Officer Brann: From the beginning of this...

Commander Warych: Yeah...

Officer Brann: ...my opinion was that there was an end result that someone wanted, and they said that they wanted discipline on me. This is, this is my personal opinion throughout this entire process is that they said this is what we need. We need discipline for Brann, and that decision was made before the investigation was done, and that now we need to put an investigation together to have that end result. That's what I, and, and then in the end when I see this here, I'm like so now before I even had my conversation with you, and you, you understand how it looks from my perspective, right?

Commander Warych: I totally get it...

Officer Brann: And...

Commander Warych: ...and, and that is all on me.

Officer Brann: That's, that's why I just wanna make sure everything is, is squared away when, when we, when we, ah, finish this here, um, but the other concern that I had was just our, our definitions, and I know that our policy is being modified with...

Commander Warych: It will be, there'll be a section added of what we talked about...

Officer Brann: Yep.

Commander Warych: ...when a pursuit is terminated, what is the officer's, a guideline for what is the officer supposed to do if they find that same vehicle again.

Officer Brann: Okay. Okay.

Commander Warych: And what I plan on doing is I plan on kind of typing it up and then giving the verbiage to Scanlan, and Scanlan can hash it out, not hash it out, but bring it to the union board...

Officer Brann: Um-hm.

Commander Warych: ...to see if we can come to some agreement and what's best for the department or like...

Officer Brann: What, what's reasonable and...

Commander Warych: What's reasonable.

Officer Brann: ...and what would be actually attainable.

Commander Warych: Yes.

Officer Brann: Okay.

Commander Warych: So it's not just Commander Kevin Warych thinking, okay, this is reasonable, but I'm not in that squad car.

Officer Brann: Um-hm.

Commander Warych: That being said, there's gotta be a vetting process, but that's my intent.

Officer Brann: Okay. Um, I don't know if you can release this or not, but during my investigation, do you know if our, ah, like Range Master Nejedlo was asked

about this as a vehicle or pursuit instructor or if, ah, Brian Jordan was ever asked anything about this?

Commander Warych: I don't know the answer to that question...

Officer Brann: Okay.

Commander Warych: ...The only person that I know that reviewed this was Buth.

Officer Brann: Okay. And he's a vehicle or a pursuit instructor then?

Commander Warych: That, that's my understand-- that's what I'm told. Now...

Officer Brann: Okay.

***** Approximate 6-minute mark *****

Commander Warych: ...I'm, I'm kinda in a quagmire here because I came into this when the personnel file was already issued to you and...

Officer Knutson: There was a lot of switching.

Commander Warych: ...there was, you know, so my understanding is, is Buth reviewed it, Commander Ebel reviewed it, and then, and that's coming from back to Florence to issue the personnel file entry.

Officer Brann: Right. Okay. I'm not gonna ask you about why the procedures were so, cuz in, in the end when I wanted to know who brought the complaint against me, who did the review, that was all unknown. I was told well, it came from upstairs, and then I cut and pasted it into a personnel file. That was from Captain Florence.

Commander Warych: Um-hm.

Officer Brann: So I hope you can understand my frustrations with, with this cuz I, I understand how others have been reviewed during pursuits, and I have understood how that goes...

Commander Warych: (inaudible)

Officer Brann: ...and when things are so different with how mine is handled, you gotta understand I sit back and I say why, why is this, who has it out for me...

Commander Warych: (inaudible)

Officer Brann: ...and why is this at, and then little things like, like the date being on here that it's already placed in my personnel file before I reviewed it, (inaudible) things like that but as long as we're squared away on here, um...

Commander Warych: That, again, my apologies for doing that. I just thought, again, cuz I thought that the grievance was settled that that's what, um, was gonna happen.

Officer Brann: Okay. Um, and then, so I'm aware, I'm not refusing to sign this at all and have never been refusing. I just wanted to be educated on what things are.

Commander Warych: I understand.

Officer Brann: So when it says officer informed of incident as outlined in details, this is saying that I have read what has been prepared and I'm acknowledging that I have reviewed it.

Commander Warych: Correct.

Officer Brann: It does not say that I agree with it...

Commander Warych: That's correct.

Officer Brann: ...because you know that I don't agree with everything.

Commander Warych: I, yep.

Officer Brann: So this is not an admission of guilt, an admission of these policy violations on my half.

Commander Warych: You, by signing this, you are acknowledging the fact that you have accepted, not accepted, but you have, ah...

Officer Brann: I've been informed.

Commander Warych: ...been informed that this personnel file entry will be...

Officer Brann: Okay.

Commander Warych: ...in your personnel file.

Officer Brann: Okay. And it doesn't revoke any of my rights for any, um, future complaints or anything like that or any legal aspect? It's not holding me that I'm agreeing to this then, correct?

Commander Warych: You know, that's a question for the lawyers, I mean, no...

Officer Brann: Okay.

Commander Warych: ...I mean, you have pursued the grievance procedure...

Officer Brann: Um-hm.

Commander Warych: ...um, the grievance was settled after the step 1 before it went to the Human Resources Director...

Officer Brann: Um-hm.

Commander Warych: ...um, so that's my knowledge of it.

Officer Brann: Okay. And then the, the other thing, I have to follow up with this on my half, this modification, your understanding is, was part of the grievance process of settling of the grievance, is that correct?

Commander Warych: Yes.

Officer Brann: Okay.

Commander Warych: Because my understanding is once you get to step 2, once the Chief gets it and the Chief makes a decision to approve or deny, um, if he denies, then the union has so many days to go present the grievance to the Human Resources Director...

Officer Brann: Okay.

Commander Warych: ...but at that point, the union, this is what I am being told, the union owns the grievance, and they determine whether or not to take it to the Human Resources Director or not. They chose to talk about it and settle it, which was, this is the result of the settled, the settlement.

Officer Brann: Okay.

Commander Warych: Am I wrong?

Officer Knutson: You are correct.

Commander Warych: Okay.

Officer Brann: Are you aware of the Chief's denial or the rejection of the, of the grievance?

Commander Warych: Yes.

Officer Brann: Okay. Okay. Then I will sign.

Commander Warych: Do you want a copy?

Officer Brann: Yes, please.

Commander Warych: All right. Do you want a copy of this?

Officer Brann: That's just the...

Commander Warych: This is the original.

Officer Brann: Yeah, I'll take the original or I'll, I'll take a copy of the original. That's got the four policies on it?

Commander Warych: Yep.

Officer Knutson: Potentially we're done here?

?: (inaudible)

Commander Warych: Here you go.

Officer Brann: Okay. Thank you. Um, is there, so this, this in your mind in, in, from what you're doing, this is done?

Commander Warych: Hopefully, we never have to talk about it ever again.

Officer Brann: Okay. Is, so as far as coming back to me, I'm not gonna be getting anything other than this letter in my file? They're not going to be modifying anything that I do, changing my position, sending me to training, or anything like that?

Commander Warych: Nope.

Officer Brann: Okay.

Commander Warych: There's no reason to.

Officer Brann: Okay.

Officer Knutson: If, there was something about a rebuttal that was mentioned, if, if Jeff chooses to submit a rebuttal, that will be attached to that form?

Officer Brann: Oh...

Commander Warych: Yeah, I don't...

Officer Brann: Just inherent of saying my portions of the concerns with the, with the write-up, that can be attached?

Commander Warych: There's, in my opinion, yeah, you can, yes.

Officer Brann: Okay.

Commander Warych: There's nothing to say that you can't. I've never seen that before but if you want to provide that, I have no problem with that.

Officer Knutson: Okay.

Officer Brann: Okay. I think that's it (inaudible) ...

Commander Warych: Good. The date is, ah, March 22nd, and time is 11:39.

(END OF RECORDING)



Report to the
Personnel Committee
of the City of Green Bay

MEETING DATE

January 7, 2020

PREPARED BY

AGENDA ITEM # D.3.

Consideration with possible action on an intergovernmental agreement with the Green Bay Area Public School District to permit off-duty police officers to use City of Green Bay Police Department uniforms and equipment.

BACKGROUND

RECOMMENDATION

FISCAL IMPACT

ATTACHMENTS

- I. Final Intergovernmental Agreement - GBPD and GBAPSD - 2020-01-06

**INTERGOVERNMENTAL AGREEMENT BETWEEN
THE CITY OF GREEN BAY AND
THE GREEN BAY AREA PUBLIC SCHOOL DISTRICT**

This Agreement is made and entered into this ____ day of _____, 2020, (“Effective Date”) pursuant to the authority of Section 66.0301(2), Wis. Stats., as an intergovernmental agreement by and between the City of Green Bay (“City”), a municipal corporation organized under the laws of the State of Wisconsin, and the Green Bay Area Public School District (“District”), a Wisconsin school district, individually referred to as a “Party,” collectively referred to as the “Parties.”

RECITALS

WHEREAS, the City and the District have previously agreed to cooperate to ensure adequate law enforcement and other services are provided for the protection of staff, students and the Green Bay community; and

WHEREAS, the City and the District have determined that the presence of uniformed Green Bay Police Department (“GBPD”) personnel during specified hours of the instructional day at or near School Facilities and/or at specified school activities and events serves an important safety and educational purpose by fostering positive, proactive relationships between students, staff and the community with uniformed law enforcement officers and also deters dangerous criminal activity; and

WHEREAS, the City and the District mutually agree that law enforcement officers providing exclusively traditional law enforcement functions are not required at all times to carry out the current security needs of the District; and

WHEREAS, the City and the District mutually agree that the District should have exclusive authority to determine who will provide private security services to the District in order to further the important educational purpose of building positive educational relationships and rapport with staff and students; and

WHEREAS, GBPD’s policies do not allow GBPD personnel to utilize GBPD uniforms or equipment when providing private security services; and

WHEREAS, the City and the District desire to cooperate for the provision of the enhanced services and the joint exercise of powers and duties to provide for the presence of uniformed, off-duty security officers at School Facilities during specified hours and school activities and events; and

WHEREAS, the District desires to engage security officers to provide private security services at School Facilities during scheduled lunch periods and at certain extra-curricular events, such as athletic events and school dances; and

WHEREAS, the District desires to contract directly with off-duty GBPD sworn officers to provide private security services at its facilities and events while wearing GBPD uniforms; and

WHEREAS, the City desires to cooperate with the District to allow GBPD Personnel to utilize GBPD uniforms while off-duty in order to meet the District's needs.

NOW THEREFORE, upon the mutual promises contained herein, and upon such other consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

I. Defined Terms

- A. School Facilities.** For purposes of this Agreement, "School Facilities" shall refer to District-owned secondary schools, including school buildings, adjacent parking lots, athletic fields and facilities, as well as adjacent City-owned parks and public gathering spaces where students congregate during the school day, and any other premises jointly designated by the City and District as "school grounds."
- B. Security Officer.** For purposes of this Agreement, "Security Officer" shall refer to off-duty GBPD sworn officers contracted by the District for the purpose of providing private security services at School Facilities.

II. Off-Duty Security Services. The City acknowledges that the District may contract directly with Security Officers. Security Officers are not permitted to engage in law enforcement services while employed by the District, except as permitted in the GBPD Off Duty Police Action policy. For purposes of this Agreement, all of the following shall apply with respect to all such Security Officers:

- A.** The District shall provide to the GBPD Chief of Police or his or her designee the names of the Security Officers at the time of hire by the District.
- B.** The Parties agree that Security Officers are and shall remain employees or contractors of the District during the terms of this Agreement, and as such shall be subject to the administration, supervision, discipline, and control of the District in the scope of their employment with the District. At no times shall any such Security Officers be considered employees of the City while carrying out their duties as Security Officers.
- C.** The District shall establish wages for the private security services and shall compensate the Security Officer directly in accordance with the District's payroll procedures, and shall be solely responsible for any claims or actions brought by any Security Officer related to wages, benefits, workers' compensation, and any other matter pertaining to the services provided.

D. The District maintains the exclusive authority to select and hire the Security Officer in accordance with the District's established procedures.

E. The District shall be solely responsible for conducting performance evaluations of the Security Officer in accordance with District policies and procedures.

III. GBPD Policies Apply. The District agrees that Security Officers shall abide by GBPD's policies for law enforcement officers. In the event that an investigation into a Security Officer's conduct is needed, both Parties agree that GBPD's Professional Standards Division will review the incident for compliance with GBPD policies, at no additional cost to the District, and will forward its conclusions to the District. The District shall retain the exclusive right to determine the appropriate action taken with respect to the Security Officer's employment with the School District based on the results of the Professional Standards Division's conclusions.

IV. GBPD Uniforms and Equipment. The City agrees that GBPD Policy Number 1018.2 concerning use of GBPD resources shall not apply to services provided to the District pursuant to this Agreement. Specifically, Security Officers are permitted to use GBPD uniforms and other means of identification and to carry their GBPD-issued duty weapon and approved equipment as permitted for all sworn law enforcement officers while employed by the District as Security Officers. Nothing herein shall be construed as waiving any other portions of Policy Number 1018, or any other GBPD policies.

A. Security Officers are also permitted to utilize GBPD patrol vehicles while employed by the District as Security Officers. The District shall be responsible for any and all damages to the patrol vehicles arising from their use by Security Officers.

V. Indemnification. In consideration of the City's agreements herein, the District hereby agrees to indemnify, defend and hold harmless the City of Green Bay, its elected and appointed officials, officers, employees, agents, representatives and volunteers, and each of them, from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorneys' fees, costs and expenses of whatever kind or nature in any manner directly or indirectly caused, occasioned, or contributed to in whole or in part or claimed to be caused, occasioned, or contributed to in whole or in part, by reason of any act, omission, fault, or negligence, whether active or passive, of the District or of anyone acting under its direction or control or on its behalf, including any Security Officer, even if liability is also sought to be imposed on the City of Green Bay, its elected and appointed officials, officers, employees, agents, representatives and volunteers. The obligation to indemnify, defend and hold harmless the City of Green Bay, its elected and appointed officials, officers, employees, agents, representatives and volunteers, and each of them, shall be applicable unless liability results from the sole negligence of the City of Green Bay.

The District agrees that but-for this Agreement and the District's agreement to indemnify, Security Officers would not be permitted to wear GBPD uniforms while providing off-duty security services to the District. Accordingly, the obligation to indemnify, defend and hold harmless the City of Green Bay, its elected and appointed officials, officers, employees, agents, representatives and volunteers, and each of them, for any such liability arising from any act, omission, fault, or

negligence of any Security Officer shall be applicable regardless of whether the Officer is engaged in private security services or law enforcement services resulting directly from the provision of security services.

The District shall reimburse the City of Green Bay, its elected and appointed officials, officers, employees, agents or authorized representatives or volunteers for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided.

This indemnity provision shall survive the termination or expiration of this Agreement.

VI. Insurance. The District shall procure and maintain insurance coverage with minimum policy limits as the City of Green Bay may require from time to time. The District shall present to the City a Certificate of Insurance naming the City as an additional insured.

VII. Term and Termination.

- A. This Agreement shall automatically terminate at the end of the 2019-2020 school year.
- B. Either Party may terminate this Agreement for any reason upon a ninety (90) day written notice to the other Party.

VIII. General Provisions.

- A. *Assignment.* This Agreement shall not be assignable by either party. Any attempt by a party to assign any of its rights or delegate any of its duties hereunder without the prior written consent of the other party shall be null and void and shall result in immediate termination of this Agreement.
- B. *No Third-Party Beneficiaries.* No person other than the Parties themselves has any rights or remedies under this Agreement.
- C. *Governing Law and Venue.* This Agreement is governed by the laws of the State of Wisconsin. Venue lies in the state and federal courts located in Brown County, WI.
- D. *Waiver.* Failure to require performance of any provision or waiver of a breach of a provision does not waive a party's right to subsequently require full and proper performance of that provision.
- E. *Entire Agreement.* This Agreement represents the Parties' entire agreement on this subject matter and may only be modified, amended, or added to after the date of this Agreement by a written instrument executed by both parties, except as otherwise provided herein.
- F. *Notices.* Any and all notices which either Party may give hereunder shall be in writing and delivered by registered or certified mail, return receipt requested, or by personal delivery, or by first class mail postage prepaid. In the case of first class mail, postage prepaid, delivery shall

be deemed to have been accomplished two (2) days after deposit of the notice in the mail. Until written notice is delivered to the other Party of a change in address, the addresses set forth below shall be presumed to be current:

If to: Chief of Police
Green Bay Police Department
307 S. Adams St.
Green Bay, WI 54301

If to: Superintendent
Green Bay Area Public School District
200 S. Broadway St.
Green Bay, WI 54305

G. *No Agency*. Nothing in this Agreement is intended nor may be construed to create between the City and the District either an employer/employee, joint venture, landlord/tenant, or any other similar relationship, nor shall any Security Officer be considered an employee of the City of Green Bay while providing services to the District. No contractor, agent, employee or representative of either Party shall be deemed to be a contractor, agent, employee or representative of the other Party. Neither Party shall have the authority to act for or on behalf of the other Party to bind the other Party without the express written approval of the other Party.

H. *Compliance with all Applicable Laws*. At all times, the Parties will adhere to all applicable state, federal and local laws and regulations in the conduct of its business, installation and use of the Software and maintain the proper insurances as are customary in the business. Furthermore, both Parties will comply with Wisconsin's Open Records Law (Chapter 19, Wis. Stats.) as required.

I. *Counterparts*. This Agreement may be executed in several counterparts, and the signatures hereon may be transmitted electronically. Electronic signatures will be deemed to constitute original signatures, and counterparts to this Agreement containing the signatures, whether original or electronic, of all the Parties will be deemed to constitute a single, enforceable Agreement.

J. *No Discrimination*. During the term of this Agreement, the Parties, and the employees, representatives, agents and/or volunteers thereof, shall not discriminate against any person based on race, color, creed, religion, sex, national origin, age, ancestry, disability, sexual orientation, gender identity, gender non-conformity, gender expression, transgender status, pregnancy, or marital or parental status.

IN WITNESS WHEREOF, the parties hereto have set their hands at Green Bay, Wisconsin.

THE GREEN BAY AREA PUBLIC SCHOOL DISTRICT

By: _____
Dr. Michelle S. Langenfeld

By: _____
Dr. Brenda Warren

Date: _____

Date: _____

Title: Superintendent of Schools and Learning

Title: President, Board of Education

CITY OF GREEN BAY POLICE DEPARTMENT

By: _____
Andrew Smith

By: _____
Eric Genrich

Date: _____

Date: _____

Title: Chief of Police

Title: Mayor, City of Green Bay

**REPORT OF ROUTINE PERSONNEL ACTIONS
FOR REGULAR EMPLOYEES**
January 7, 2020

<u>Position</u>	<u>Department/Division</u>	<u>Name</u>	<u>Date</u>
<u>New Hire</u>			
Patrol Officer	Police	Justin DeBeck	12/16/2019
<u>Transfer</u>			
Mechanic Foreperson (D)	Department of Public Works	Jamie Hendricks	12/9/2019
Mechanic (D)			
Truck Driver - Streets	Department of Public Works	Joshua Turner	12/2/2019
Laborer - Streets			
Laborer - Sanitation	Department of Public Works - Sanitation	Keith Waldo	12/16/2019
Truck Driver - Sanitation			
Laborer - Street	Department of Public Works	Randall Spalding	1/6/2020
Truck Driver - Sanitation			
Lieutenant - Day Shift	Police	Jeffrey Brester	12/12/2019
Drug Task Force			
<u>Reclassification</u>			
System Analyst	Administrative Services	David Wilquet	1/1/2020
IT Administrator	Administrative Services	Michael Hronek	1/1/2020
<u>Promotion</u>			
Lieutenant	Police	Benjamin Allen	12/9/2019
Captain			
Lieutenant	Police	Gary Richgels	12/9/2019
Captain			
Advanced Patrol Officer	Police	Erik O'Brien	12/9/2019
Patrol Sergeant			
Advanced Patrol Officer	Police	Thomas Behn	12/9/2019
Patrol Sergeant			
Advanced Patrol Officer	Police	Robby Hock	12/9/2019
Patrol Sergeant			
Advanced Patrol Officer	Police	Derek Wicklund	12/9/2019
Patrol Sergeant			
<u>Grade/Step Change</u>			
Transit Operator	Transit	Tim Moore	12/5/2019
HR Generalist II	Human Resources	Sarah Fidler	12/17/2019
Park Maintenance Worker	Parks	Rick Vanderwegen	12/25/2019
Assitant Development Director	Department of Community and Economic Development	Cheryl Renier-Wigg	12/23/2019
<u>End of Employment</u>			
Transit Operator	Transit	Kaaren Thomas	12/13/2019
Parking Building Technician	Department of Public Works - Parking	Dawn Jolly	1/16/2020
Custodian I	Police	John Nieft	2/3/2020
Transit Maintenance Technician	Transit	Mike Sidlauskas	1/6/2020
Transit Operator	Transit	Craig Brown	12/18/2019
Maintenance Technician	Transit	Mike Sidlauskas	1/6/2020
Tranist Operator	Transit	Eddie Moore	12/31/2019
Captain EMT	Fire	John Lawler	12/21/2019