

**MODEL LAW ENFORCEMENT  
PURSUIT AND RESPONSE POLICY**

**House Bill 4039 as passed by the House  
Second Analysis (4-8-97)**

**Sponsor: Rep. Kirk Profit  
Committee: Judiciary**

***THE APPARENT PROBLEM:***

Although law enforcement officers are sworn to pursue and apprehend those who break the law, some law enforcement agencies reportedly are adopting so-called "no-pursuit" policies in response to large liability awards resulting from claims by persons injured as a result of the actions of those who flee from police. It is widely believed in the law enforcement community that, while action needs to be taken to avoid injury to innocent parties, no-pursuit policies simply are unacceptable. A police officer who undertakes a pursuit is engaging in conduct with potentially deadly consequences; police pursuits are reported to have caused 10 deaths in the Detroit area in 1989, with an additional 20 injuries. Data from other states suggest that the injured person is most often the offender or the police officer; however, when an innocent bystander is hurt or killed, the consequences of the pursuit are all the more tragic. According to press reports, approximately 29 innocent bystanders were killed in police chases in the Detroit area between 1982 and 1990.

Clearly, the need to apprehend criminals must be balanced against the potential hazards of police pursuits. Some people believe that a model policy should be developed for police to follow.

***THE CONTENT OF THE BILL:***

The bill would create a new act, the "Law Enforcement Pursuit and Response Policy Act," that would establish a panel in the Michigan Law Enforcement Officers Training Council (MLEOTC); the council, with the advice of the panel, would be required to develop a model law enforcement vehicle pursuit and response policy governing the emergency operation of law enforcement vehicles by governmental agencies. The bill would allow a governmental agency to adopt all or part of the model policy, or to develop and adopt its own policy and have the council review and comment on that policy.

Law enforcement vehicle pursuit and response policy panel. The law enforcement vehicle pursuit and response policy panel would be created within the Michigan Law Enforcement Officers Training Council.

The panel would be required assist the council in performing its duties, including advising the council on the development of a model law enforcement vehicle pursuit and response policy governing emergency operation of law enforcement vehicles by governmental agencies (where "governmental agency" would mean "the state, political subdivisions, and municipal corporations" or a combination of these agencies). The council would provide both facilities for the panel's meetings and necessary office and clerical assistance. (Note: Section 6 of the bill says, in part, that the "the council, with the advice of the panel, shall develop a model law enforcement vehicle pursuit and response policy," while section 7 refers to "the model law enforcement vehicle pursuit and response policy developed by the advisory panel under section 6." Emphasis added.)

The advisory panel would consist of the members of the MLEOTC (see BACKGROUND INFORMATION) and, at a minimum, one individual as a member and one as an alternate member selected by the council from lists submitted by each of the following groups:

- \*\* the Michigan Association of Counties,
- \*\* the Prosecuting Attorneys Association of Michigan,
- \*\* the Michigan Municipal League,
- \*\* the Michigan Townships Association,
- \*\* an organization of police officers who regularly performed law enforcement duties on urban streets or roads;
- \*\* an organization of police officers who regularly performed law enforcement duties on suburban streets or roads;
- \*\* an organization of police officers who regularly performed law enforcement duties on rural streets or roads; and

\*\* an organization of police officers who regularly performed law enforcement duties on limited access roadways.

The organizations supplying the lists of individuals to the council would have to designate which individuals were to be selected to be members and which were to be selected as alternates. If a panel member were absent from a panel meeting, his or her alternate would be required to act as a member of the panel at that meeting.

The initial members selected from these groups would serve staggered terms; three would serve four-year terms, three would be selected for three-year terms, and four would be selected for two-year terms. After the initial selections, members selected by the council would serve two years or until a successor was appointed. Vacancies on the panel would be filled in the same way as the original selection. Members would have to be selected by the commission within 90 days after the bill took effect, and would have to hold their first meeting within 90 days after appointment. Members would serve without compensation, though they would be reimbursed for expenses incurred in the performance of official duties as provided by law for state employees.

The panel would have to hold regular annual meetings at a place and date set by the panel; special meetings could be called by the panel chairperson or by at least seven panel members on at least three business days' actual notice. The panel would be required to meet at least once a year to review the model policy developed under the bill.

A majority of the panel members selected and serving would constitute a quorum, and final action by the panel would be only by affirmative vote of a majority of the panel members appointed and serving. Panel members could not vote by proxy.

Model policy. Within one year of the first meeting of the law enforcement pursuit and response policy advisory panel, the MLEOTC would be required to develop a "model law enforcement vehicle pursuit and response policy" governing the the emergency operation of law enforcement vehicles by governmental agencies.

The policy would have to do all of the following:

- \*\* define the model policy's coverage;
- \*\* recognize that pursuit or response has the potential for risk or harm;
- \*\* identify the circumstances warranting starting, continuing, or ending a law enforcement pursuit or response, based both on (a) the risks to the physical safety of employees and the public (including innocent

bystanders) of initiating or maintaining a law enforcement pursuit or response; and (b) for law enforcement pursuits involving the chase of someone charged with or suspected of violating the law, the danger to society of not effecting immediate apprehension (including considering the seriousness and immediacy of the threat posed by the pursued person and the adequacy of other apprehension methods).

\*\* identify the procedures for a law enforcement agency's starting, continuing, and ending a law enforcement pursuit or response, including (a) authorization for employees not actively involved in the pursuit or response to prohibit, modify, or end the pursuit or response, (b) specific rules governing pursuits and responses that crossed jurisdictional boundaries, and (c) specific rules governing permissible pursuit and response methods and tactics;

\*\* establish guidelines requiring law enforcement agencies to internally monitor the effects of their pursuit and response policy; and

\*\* establish minimum requirements for law enforcement vehicle operators, and guidelines for training them, to comply with an adopted law enforcement vehicle pursuit and response policy.

Reporting requirements. The MLEOTC would be required to report the model policy developed by the advisory panel to each house of the legislature and to each law enforcement agency in the state. (See note above regarding the differences between sections 6 and 7 about which entity is to develop the model policy.)

The bill would define "law enforcement agency" to mean city, village, or township police agencies; sheriffs' departments; the Department of State Police, including, but not limited to the Motor Carrier Division; the Law Enforcement Division of the Department of Natural Resources; county or regional park police agencies whose officers were appointed under state law; and college and community college public safety departments whose officers were granted the powers and authority of peace and police officers under state law. (The public safety officers act, Public Act 120 of 1990, allows the governing boards of public four-year institutions of higher education to grant the public safety officers of the institution the same powers and authority as are granted by law to peace and police officers. The law governing county and regional parks, Public Act 261 of 1965, allows counties or regional commissions to appoint park rangers who may be deputized by a sheriff to enforce state laws; however, whether or not deputized, park rangers have the powers, privileges, and immunities conferred upon peace officers by state law. In both cases, the public safety officers and park rangers must meet the minimum employment standards of the

Michigan Law Enforcement Officers Training Council Act.)

**Adoption of model policy.** Governmental agencies could adopt all or part of the model policy developed under the bill, or could develop and adopt their own policies. If a government agency adopted the model policy, it would have to notify the MLEOTC, which would keep a record of the type of policy each agency adopted.

If a governmental agency adopted its own policy, in whole or in part, it could send that policy to the MLEOTC for review and comment. The council would be required to make its review and comments in writing, including any recommendations for revision and improvement, and return those comments as soon as possible to the governmental agency.

If a governmental agency discontinued all or part of a policy adopted under the bill, it would be required to immediately inform the MLEOTC in writing of the date on which the policy was discontinued.

**Effective date, sunset.** The bill would take effect on October 1, 1997, and would be repealed five years later.

### **BACKGROUND INFORMATION:**

The Michigan Law Enforcement Officers Training Council Act (Public Act 203 of 1965), among other things, created an eleven-member law enforcement council consisting of the attorney general and "commissioner" (director) of state police (or their designated representatives) and nine members appointed by the governor from lists submitted by the Michigan Association of Chiefs of Police (three members), the Michigan Sheriffs Association (three members), the Fraternal Order of Police (one member), the Metropolitan Club (one member), and the Detroit Police Officers Associations (one member).

### **FISCAL IMPLICATIONS:**

The House Fiscal Agency estimates that total costs for implementing the bill would be approximately \$50,000. Of that, \$35,000 would be for a .5 FTE to support the panel, and \$15,000 would be for reimbursing panel members for expenses, and for meeting costs. (2-11-97)

### **ARGUMENTS:**

#### **For:**

The bill would create a panel, representing many points of view and areas of expertise, that would help the Michigan Law Enforcement Officers Training Council develop a model policy on the use of high speed pursuit and response by police. A police officer who undertakes

a high speed pursuit is employing potentially deadly force; a clearly understood policy on pursuit is as important as one on the use of a gun. As with the use of a gun, the need to apprehend a potentially dangerous criminal must be balanced against the hazards presented to innocent bystanders. Considering that most of the drivers who attempt to flee are not dangerous felons, but instead minor offenders (and often juveniles), it is especially important to ensure that police officers follow clearly articulated procedures that take all factors into account and specify when to start and when to stop a pursuit. By creating a panel to help develop a model police pursuit policy, the bill would improve law enforcement techniques and assure adequate regard for public safety.

#### **Against:**

The bill would create an additional state panel to do something that is already being done; many, if not most, police agencies, including the state police, already have policies on pursuit. It seems unnecessary to develop a model policy given that the bill will not contain sanctions for failure to adopt or follow the model policy. If there is a need for state guidance to ensure that local policies are sufficient, then the bill should grant authority to oversee and evaluate local policies and, if necessary, impose sanctions.

#### **Response:**

Conditions vary from locality to locality, and local agencies are in the best position to determine what is appropriate for them. While the state may legitimately require that law enforcement agencies have pursuit policies that address certain matters (such as procedures for initiating, maintaining, and terminating pursuits), the details of those procedures are best left to local decision makers.

#### **Against:**

Any approach to pursuit policies is inadequate without also addressing the issues of governmental liability. Among the many liability issues raised by this bill are whether a municipality would or should be liable when an individual officer fails to adhere to a proper policy, whether adoption of and adherence to an adopted model policy would or should protect a municipality from liability, and whether a municipality would or should be liable when a police officer followed an adopted policy and broke off a chase of a driver who, for example, was drunk and drove on to cause a fatal accident. Furthermore, the bill also raises issues regarding the degree of liability that should attach to law enforcement officers.

#### **Against:**

Some people believe that the bill should be expanded to cover other emergency vehicles, such as ambulances

and fire engines, in addition to law enforcement vehicles.

**Response:**

Over the years that versions of this bill have been discussed, emergency response vehicles other than law enforcement vehicles have been considered for inclusion in a model policy. However, the inclusion of ambulances and fire trucks presents such potentially complicated considerations that it is preferable at this point to proceed solely with the issue of a model policy for law enforcement vehicles. The law enforcement community wants such a model policy, and they should not be denied this just because similar provisions for ambulances and fire trucks have proven to be so complicated. The legislature should go ahead with the law enforcement vehicle part of the issue; it can always later proceed with similar legislation for other emergency response vehicles.

**POSITIONS:**

The Department of State Police supports the bill. (4-8-97)

The Michigan Fraternal Order of Police very strongly supports the bill. (4-8-97)

The Michigan Sheriffs Association supports the bill. (4-7-97)

The Michigan Trial Lawyers Association supports the bill. (4-7-97)

The Michigan Association of Counties supports the bill. (4-7-97)

The Michigan Townships Association supports the concept of the bill. (4-7-97)

The Prosecuting Attorneys Association of Michigan supports the concept of the bill. (4-7-97)

The Michigan Municipal League opposes the bill because there is no cap on liability. (4-7-97)

Analyst: S. Ekstrom

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.