


## Memorandum

**To:** Chief Kurz  
**CC:** Deputy Chief Kelley  
**From:** Capt. David Holmstock   
**Date:** 1-15-2020  
**Re:** Motor Vehicle Pursuit Analysis for 2019: (44.2.2 (I))

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### Initial Analysis

An analysis of our motor vehicle pursuits for the 2019 calendar year reveals the Durham Police Department was directly involved in one pursuit (19DU-170-AR), and assisted in a second pursuit (19DUR-322-OF) initiated by New Hampshire State Police. During the assisted pursuit, Durham officers provided traffic control and followed at a safe distance to provide assistance if needed. The Durham Police Department has been involved in six pursuits in the past 20 years. The last pursuit by an officer of the Durham Police Department took place on 5/16/2019.

The Durham Police Department, as shown in the chart below, is very rarely involved in pursuits. This makes conducting an analysis rather difficult when looking to see if there are any trends. Two major points of interest continue to stand out when evaluating the department's participation in pursuits.

1. **A strong policy.** *Pursuits should only be initiated when an officer has observed a violator committing a felony or misdemeanor before pursuit is engaged or attempted, or has probable cause to believe the violator has committed a felony or misdemeanor and clearly exhibits the intention of avoiding apprehension. That the violator has created a misdemeanor offense by fleeing shall not be a permissible cause for pursuit. If you attempt to stop a person for speeding (or any violation), and they flee or otherwise attempt to elude you (thereby creating a misdemeanor offense), you shall not be permitted to engage in a pursuit. This prohibition is because the reason for the initial attempt to stop the driver was for a violation.*

Our policy leaves no room for interpretation and provides clear direction to supervisors and officers alike. I believe it continues to play a role in our decrease or lack of pursuits and places the preservation of life as the utmost priority.

2. **Training.** A policy is worthless unless it is reviewed on a regular basis. Durham officers are required to read our policy annually, and show they understand it by passing a written test. An officer must read and review the policy annually for the

rest of their career. Finally, our Use of Force instructors incorporate key points of the policy in their lesson plans and subsequent written tests. Constant reinforcement from supervisors and training officers contributes to a culture that also values human life above everything else and subsequent decisions to engage in a pursuit or not to engage in a pursuit are made based on those values. Again, due to a lack of statistical information, my analysis can only be made based on my twenty-nine years of experience with our department. I believe that in 2019, as stated in previous analysis reports, the two issues noted above are as relevant to our lack of pursuits as any other factors.

### **Critique and Analysis of Pursuit**

I have conducted an analysis of the motor vehicle pursuit that took place on 05-16-2019, at approximately 2233 hours, conducted by Sergeant Ruby and Officer Nicolosi.

- As the initiating officer, Sergeant Ruby completed an investigation report and a letter to the Chief that was submitted within one business day as required by policy.
1. The Durham Police Department policy clearly states the following: *“Pursuits should only be initiated when an officer has observed a violator committing a felony or misdemeanor before pursuit is engaged or attempted, or has probable cause to believe the violator has committed a felony or misdemeanor and clearly exhibits the intention of avoiding apprehension.”*
  2. On the date and time in question, Sergeant Lavoie had previously spoken with the operator of a 2015 GMC Terrain, bearing NH registration 4507136. The operator was identified as an Uber Driver and was unloading passengers illegally on Main Street. As Sergeant Lavoie attempted to speak with the operator, he accelerated and struck Sergeant Lavoie. The operator additionally failed to stop for the voice commands of Sergeant Lavoie.
  3. Sergeant Lavoie’s actions were lawful at the time of the initial interaction. Based on the operator’s failure to stop, Sergeant Lavoie attempted to initiate a pursuit but lost sight of the vehicle almost immediately. Sergeant Lavoie relayed the suspect’s vehicle information to the surrounding units.
  4. Sergeant Ruby, hearing Officer Callahan’s description of the event and description of the suspect vehicle, to include the registration, responded to the area and located the suspect vehicle on 108-Newmarket Road. He pulled the vehicle over lawfully and ordered the suspect to exit his vehicle three times. Additionally, Sergeant Ruby clearly identified himself as a police officer. He was in full duty uniform and driving a fully marked police vehicle. His emergency lights were activated and he intermittently used his siren while stopping the vehicle.
- Knowing he was stopped lawfully, the suspect ignored police commands to exit the vehicle and accelerated from the scene at a high speed in an effort to avoid apprehension.

- At the time of the stop, Sergeant Ruby knew that Fournier had struck and officer and fled the scene. Additionally, he knew the suspect had just fled a second time and based on this information he believed the need to apprehend the suspect outweighed the risk of a pursuit.
  - Sergeant Ruby, using lights and siren, followed the suspect vehicle and continued to update Strafford County Dispatch regarding speed and location. After crossing over the town line, the suspect's vehicle ultimately came to a stop in Newmarket. Sergeant Ruby conducted a felony stop and placed the suspect into custody.
  - Sergeant Ruby completed a letter to the Chief within 24 hours and completed a Response to Resistance Report.
5. Sergeant Ruby's actions were lawful and professional. The sergeant made a rational evaluation of the situation based on facts and circumstances known to him at the time of the stop.
    - The officer strictly adhered to the policy during this incident and documented his actions very well.
  6. There were no roadblocks or other devices, such as "stop sticks" used during this pursuit. The officer showed he was well trained, the equipment worked as designed and policy was adhered to.

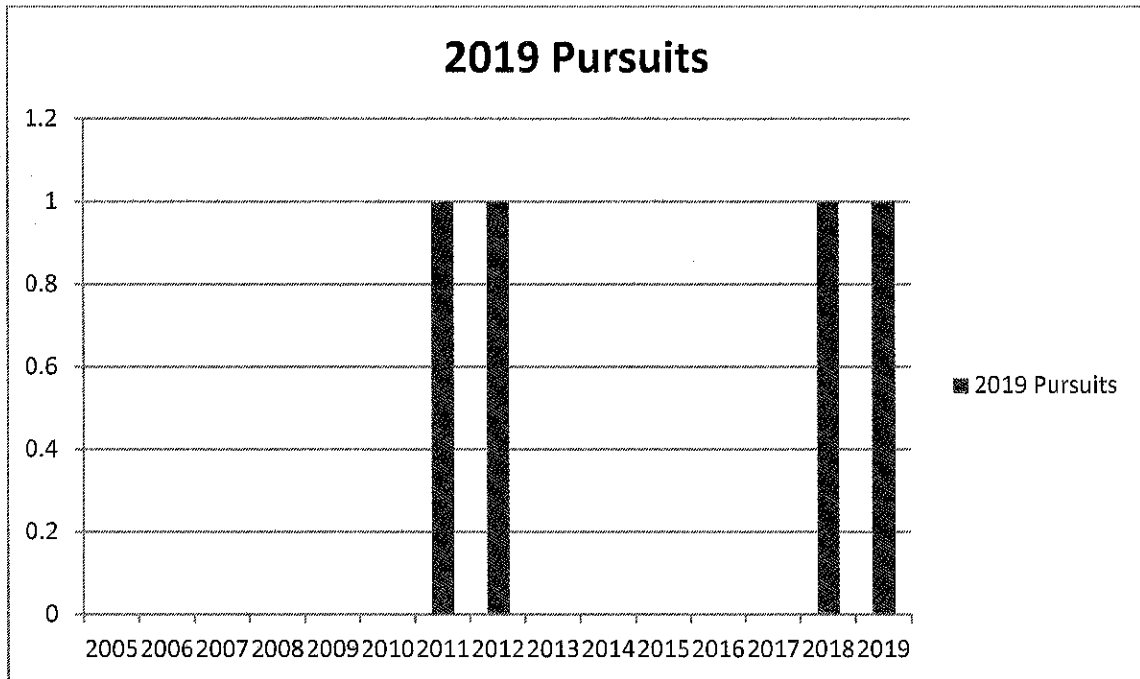
### **Analysis of Related Factors**

The information below continues to be as relevant in 2019 as it was in 2012.

1. (Geography): The annual analysis of use for force by the Durham Police Department has proven that the highest crime area requiring extensive patrol coverage and other police services continues to be the area centered on the Downtown/Madbury Road/Garrison Avenue area, to include adjacent roadways. However, the vast majority of the offenses detected as part of officers' self-initiated activity are committed by offenders that are; (a.) on foot and (b.) without immediate access to motor vehicles. The "Cottages" off campus housing complex and the Lodges at West Edge Apartments have now been in existence for a substantial enough time to draw reasonable inferences regarding their impact on motor vehicle enforcement efforts. There remains no discernable impact regarding enforcement of motor vehicle laws.
2. (Date and Time): The time, monthly activity, and days of the week remain the same when identifying our busiest activity periods. Activities that would normally generate an atmosphere conducive to a criminal choosing to flee occur largely on Thursday, Friday and Saturday nights, between the hours of 9PM and 3AM. Our activity increases during the first ten weeks and last eight weeks of the UNH school year (the number of weeks fluctuates to some degree based on UNH Commencement, Homecoming, and even Halloween). The Durham Police Department takes exhaustive steps to prevent such an atmosphere from developing by employing tactics

that drastically increase patrol presence in those areas of town that are prone to this criminal behavior. This increase in police officer presence in the form of cruiser, motorcycle (UNH Police), bicycle and foot patrols creates the illusion that attempts to flee would likely be fruitless.

3. (Enforcement): Motor vehicle violations resulting in summonses being issued to the violator are followed by swift and just prosecution; poor judgment/driving habits are immediately addressed by a police officer at the time of violation and shortly thereafter affirmed by the court. Additionally, as MV laws change either by legislation or judicial review, our officers are quickly trained on the changes and are expected to enforce the laws using appropriate discretion. In the past few years, our enforcement methods were recently studied and validated by members of the University of New Hampshire Master's Degree Program.
4. (Conduct): Durham Police Officers continue to treat violators with a professional demeanor, dignity, respect, and compassion, thus minimizing the anxiety often associated with an encounter with the police. This theory is furthered by the absence of citizen complaints of alleged police officer misconduct associated with motor vehicle enforcement. We have had no motor vehicle related complaints filed in 2019.
5. (Outreach): The Durham Police Department community policing efforts target age groups that are most likely to engage in high-risk behaviors. We have been successful in establishing a two-way dialogue with those age groups. As the community grows, so should our programs. Our school resource officer does an outstanding job of rapport building with students at all levels.
6. (Training): Ongoing roll call training includes repetitive review of the department's Mission and Values Statements, the Law Enforcement Code of Ethics, and Use of Force standards as they relate to pursuit and/or forcible stopping. The clearly stated provisions of the pursuit and roadblock policies gives our staff the necessary understanding of what is expected and what limitations they have BEFORE they initiate a dangerous pursuit. **The result of this agency wide effort is effective enforcement without un-necessary risk.**



### Policy and Reporting Procedure Review

As part of the 2019 analysis, I conducted a review of our pursuit policy and all policies, procedures and practices associated with the reporting process. The policy was most recently modified on January 15, 2020. The policy was updated to clarify existing language pertaining to our administrative review. Additionally, two new sections were added to show initial and continuing training on the pursuit policy.

- The current policy has clear definitions that are comprehensive and provide clear explanations regarding terminology.
- Current laws are identified that outline the liability and responsibility of the officers should they engage in a pursuit.
- Officers are provided training on the policy every year. This is now clearly indicated in the policy.
- Officers are provided initial training on the policy when they are hired. This is now clearly indicated in the policy.
- The responsibility of the officer and supervisors both during and after a pursuit are clear and comprehensive.
- Administrative reporting has been more clearly defined within the policy itself.
- The responsibilities of the Strafford County Dispatch Center are clear and comprehensive.

- Abandoning and terminating pursuit is clear and comprehensive, to include a caution note regarding the emotions experienced by an officer during and immediately after a pursuit.
- Use of Force to terminate a pursuit is clearly defined, to include the authority to authorize such use of force.
- Our policy defines the parameters involved in Inter-jurisdictional pursuits. It is clear and comprehensive.

**Conclusion:**

With the latest updates, I believe our policy is timely, clear, and comprehensive. I believe our reporting system is fair and sound. I do not recommend any further changes to our policies at this time.

Analysis Reviewed by:

Deputy Chief  Date 11/15/2020

Comments:

Chief of Police  Date 1/22/2020

Comments: