



# INDEPENDENT INVESTIGATIONS DIVISION

Report Concerning the Police-Involved Fatal Incident in  
Charles County, Maryland on January 20, 2022

May 18, 2022

**Report of the Independent Investigations Division of the Maryland  
Office of the Attorney General Concerning the Officer-Involved  
Death of Inga Trinette Person on January 20, 2022**

Pursuant to Md. Code, State Gov't § 6-106.2, the Office of the Attorney General's Independent Investigations Division (the "IID") provides this report to Charles County State's Attorney Anthony B. Covington regarding the officer-involved death of Inga Trinette Person.

The IID is charged with "investigat[ing] all alleged or potential police-involved deaths of civilians" and "[w]ithin 15 days after completing an investigation ... transmit[ting] a report containing detailed investigative findings to the State's Attorney of the county that has jurisdiction to prosecute the matter." Md. Code, State Gov't § 6-106.2(c), (d). The IID completed its investigation on May 17, 2022. This report is being provided to Charles County State's Attorney Anthony Covington on May 18, 2022.

**I. Introduction**

Ms. Person died after the car in which she was a passenger crashed during a police pursuit on January 20, 2022. At 8:02 p.m., Officer Chad Irwin of the Charles County Sheriff's Office ("CCSO") attempted a traffic stop of a Toyota Camry on St. Charles Parkway near St. Ignatius Drive in Waldorf, Maryland. The driver did not stop, instead turning into a parking lot and driving through a gas station before returning to St. Charles Parkway. The driver drove northbound, accelerating to at least 85 miles per hour. Less than a minute later, the driver lost control of the Camry and crashed into the trees along St. Charles Parkway. The driver fled and was arrested in a nearby neighborhood approximately 45 minutes later. The passenger, Ms. Person, was ejected from the Camry during the crash and was pronounced dead at the scene at 8:18 p.m.

This report details the IID's investigative findings based on a review of physical evidence, crash scene analysis, autopsy reports, video and audio recordings, officers' written reports, and personnel records for the officer involved. The IID also interviewed civilian witnesses, responding officers, and the paramedics who attended to Ms. Person. All materials reviewed in this investigation are being provided to the Charles County State's Attorney's Office with this report and are listed in Appendix A.

This report also includes an analysis of Maryland statutes that could be relevant in a vehicle pursuit of this nature. The IID considered the elements of each possible criminal charge, the relevant departmental policies, and Maryland case law to assess whether any charge could be supported by the facts of this incident. Because the Charles County State's Attorney's Office—not the Attorney General's Office—retains prosecution authority in this case, this report does not make any recommendations as to whether any individuals should or should not be charged.

**II. Factual Findings**

The following findings are based on a forensic examination of the crash scene as well as review of in-car video, radio transmissions, analyses from the Maryland State Police Crash Team

and Medical Examiner, and interviews with civilian and law enforcement witnesses. CCSO officers are not equipped with body-worn cameras.

On January 20, 2022, CCSO Officer Chad Irwin was on patrol in his marked patrol car, which was equipped with a dashboard video system that recorded the pursuit. The dashboard camera video shows that at 8:01:28 p.m., Officer Irwin stopped at a red light at the intersection of Smallwood Drive and St. Charles Parkway; he was in the rightmost of two left-turn lanes. While waiting for the light to change, Officer Irwin began to move into the lane to his left. He moved slightly, then stopped and waited for a dark-colored Toyota Camry to pass him. The Camry stopped at the red light, and Officer Irwin pulled into the left lane behind it. When the light turned green, both cars turned left onto northbound St. Charles Parkway. The Camry then activated its turn signal and moved into the right lane, causing the car already in that lane to brake. As they got to the intersection with St. Ignatius Drive a few seconds later, Officer Irwin activated his emergency lights and followed the Camry as it turned right. According to CCSO Officer Chance Wynne, Officer Irwin told him later that he had been trying to pull the Camry over due to an unsafe lane change.



**Image 1:** In-car video from Officer Irwin's patrol car as the Camry changed lanes on St. Charles Parkway. The Camry is circled.

When Officer Irwin activated his emergency lights, the Camry did not stop. It turned off St. Ignatius Drive into a parking lot and drove through a Safeway gas station. At 8:02:23 p.m., Officer Irwin radioed, "He's running." After passing the gas pumps, the driver reversed the Camry towards Officer Irwin's patrol car. Officer Irwin radioed, "He just almost hit me." The Camry then exited the lot and continued northbound on St. Charles Parkway.



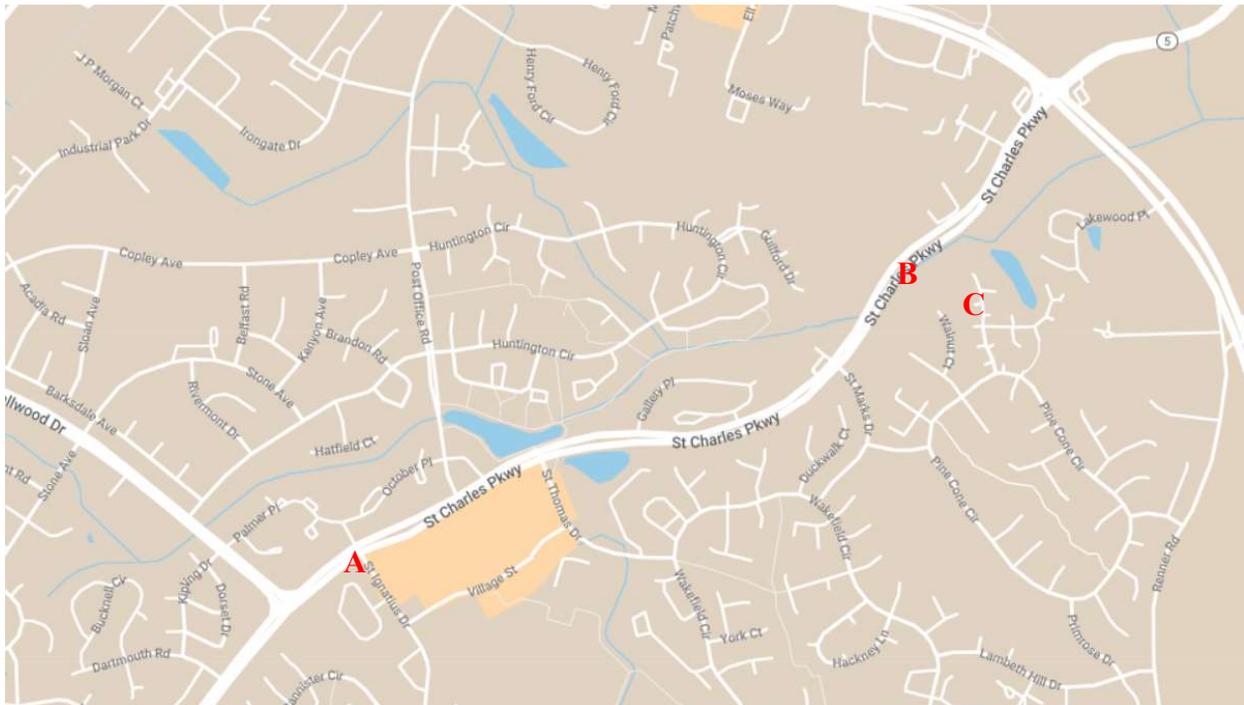
**Image 2:** In-car video from Officer Irwin's patrol car after the Camry had reversed towards him in the Safeway gas station.

After leaving the parking lot, the Camry quickly accelerated. While the Camry's speed was not measured, Officer Irwin's in-car video system shows his patrol car traveled up to 87 miles per hour without closing the gap to the Camry. A civilian driver who witnessed the pursuit said Officer Irwin was approximately seven or eight car-lengths behind the Camry. This estimate is consistent with the distance seen on Officer Irwin's in-car video.



**Image 3:** In-car video from Officer Irwin's patrol car immediately before the Camry's crash. The Camry is circled.

The pursuit lasted approximately 50 seconds after leaving the gas station parking lot. Throughout the pursuit, Officer Irwin maintained radio contact with dispatchers and his supervisor, later identified as Sergeant Jeff Feldman. He first reported, “He’s running,” then soon added, “He just almost hit me.” Officer Irwin radioed “10-80 [pursuit]” and gave his location as “[St. Charles] Parkway coming up on St. Thomas [Drive].” He then said they were traveling “northbound, coming up on [Route] 5.” When asked if the pursuit was for “traffic only,” Officer Irwin responded, “That’s right.” When Sgt. Feldman asked for Officer Irwin’s speed and traffic conditions, Officer Irwin responded that traffic was light but did not note his speed. As Officer Irwin responded, the Camry crashed. The crash occurred approximately 1.2 miles from where the pursuit began.



**Image 4:** Map of the pursuit location, including the approximate locations of: (A) Officer Irwin’s attempted a traffic stop of the Camry; (B) the crash; and (C) Mr. Penn’s arrest.

As he passed the crash scene, Officer Irwin noted a significant amount of debris in the road. He radioed that he had “lost” the Camry, which he thought may have “10-50’d [crashed]” or may have gotten too far ahead of him to see. He then pulled over to the shoulder. Within several seconds, CCSO Corporal David Benthin radioed that he had arrived at the crash scene and, “It looks bad.” Officer Irwin turned his cruiser around and drove back to the crash site.

The analysis conducted by the Maryland State Police (“MSP”) Crash Team found that the Camry had crashed after the driver, Joseph Eugene Penn, lost control while driving at a high rate of speed. MSP could not estimate the Camry’s speed at the time of crash but noted that a witness estimated the Camry was traveling approximately 80 miles per hour. The speed limit at this stretch of road was 45 miles per hour. Immediately before the crash, the Camry began to rotate counterclockwise, so its passenger side was facing forward. The Camry drove off the left side of the road and the passenger side collided with multiple trees. The Camry then rebounded across

the road and stopped on the right side of St. Charles Parkway, as pictured below. During the collision, Ms. Person was ejected from the Camry onto the right shoulder of the road.



**Image 5:** In-car video from Cpl. Benthin's patrol SUV immediately upon arriving at the crash scene. Ms. Person's body, located on the shoulder of the road, is blurred for privacy.

Cpl. Benthin arrived at the crash scene approximately 30 seconds after the Camry crashed. As he stopped his patrol SUV, his in-car video shows that Mr. Penn exited the driver's side of the Camry and ran into the trees in front of the crashed car. Cpl. Benthin exited his car and followed Mr. Penn, using his flashlight to look into the woods. Over the next 90 seconds, six other officers arrived and similarly searched for Mr. Penn in the woods. There is no indication that any officer noticed Ms. Person during this time. On radio, Cpl. Benthin had reported that someone "ran into the woods." Each officer walked or ran toward the woods or crashed car. None reported seeing Ms. Person at this point.

Cpl. Benthin's in-car video shows that just over two minutes after the Camry crashed, two officers came out of the woods and saw Ms. Person. One immediately radioed that there was an "unresponsive female," to which the dispatcher responded, "I'll start EMS [emergency medical services]." The officer then reported that Ms. Person had suffered severe head trauma but still had a pulse.

Multiple officers' in-car videos show that officers provided aid to Ms. Person for several minutes, including performing CPR. Paramedics arrived at 8:13 p.m. and continued CPR until 8:18 p.m., when they pronounced Ms. Person dead.

While some officers attended to Ms. Person, others searched for Mr. Penn in the woods and nearby neighborhoods. At 8:50 p.m., Officer Michael Pagano arrested Mr. Penn in the Weeping Willow neighborhood on the opposite side of the trees through which Mr. Penn had fled. Officer Pagano later reported that Mr. Penn had blood on his head, mud on his pants, and no shoes. He also said that Mr. Penn admitted to having "smoked crack cocaine." After being taken

to the hospital, Mr. Penn [REDACTED] Protected medical information has been redacted.

[REDACTED] When questioned by MSP Sergeant Jason Ewig at the hospital, Mr. Penn said that he had been the driver of the Camry and had fled because there were open warrants for his arrest. Mr. Penn had been given pain medication before this interview and struggled to stay awake, causing Sgt. Ewig to end the interview after nine minutes. The information he provided was confirmed by other means, however. Investigators confirmed that Mr. Penn had open civil and criminal warrants, and Mr. Penn’s DNA was found on the Camry’s driver-side airbag and on the frame between the windshield and driver’s window. While Mr. Penn later told MSP Sergeant Justin Zimmerman—when being served with an indictment for his role in Ms. Person’s death—that he was not the driver, this claim contradicts his prior statements and the physical evidence.

### **III. Investigation**

The IID began its investigation immediately after the crash. This section summarizes the initial response, MSP Crash Team’s analysis, DNA analysis, Medical Examiner’s report, and civilian and law enforcement witnesses’ statements.

#### *A. Initial Response*

CCSO officers responded to and secured the crash scene within one minute of the crash. Pursuant to Md. Code, State Gov’t § 6-106.2 and IID protocols, CCSO notified MSP that there had been an officer-involved fatality. MSP Crash Team Sergeant Justin Zimmerman and Corporal James Lantz, and IID Deputy Chief Renee Joy, Chief Investigator Tony Schartner, Deputy Chief Investigator John Fernandez, Investigators Cleo Savoy and David Davis, and Assistant Attorney General Sam Dinning responded to the scene and assumed control of the investigation.

#### *B. Crash Investigative Report*

The MSP Crash Team prepared a Detailed Crash Investigative Report analyzing this incident. Sergeant Justin Zimmerman examined physical evidence at the scene—such as tire marks, roadway conditions, damage to the Camry, and damage to trees and other vegetation along St. Charles Parkway—and reviewed dashboard camera video, officer and civilian witness statements, and DNA analysis. The Camry was not equipped with an Event Data Recorder that was compatible with MSP’s data retrieval tool, so investigators were not able to obtain any electronic information from the car itself.

Sgt. Zimmerman concluded that Mr. Penn was driving the Camry and Ms. Person was a passenger. While driving northbound on St. Charles Parkway, fleeing the attempted traffic stop, Mr. Penn was traveling at a high rate of speed and failed to negotiate a curve in the roadway. He lost control of the Camry, which began to spin counterclockwise, causing its passenger side to hit several trees on the left side of the roadway. The Camry then rebounded across the road and stopped on the right side of St. Charles Parkway. Ms. Person was ejected from the car during this crash.

### *C. Medical Examination*

Ms. Person's autopsy was conducted by Assistant Medical Examiner Ling Li, M.D., on February 3, 2022. Dr. Li identified Ms. Person's cause of death as: "Multiple Injuries." Dr. Li deemed the manner of death to be: "Accident."

Dr. Li identified numerous injuries during the autopsy. These injuries included lacerations to the head and torso, a skull fracture, brain bleeding, a ruptured aorta, lung contusions, and fractured ribs, clavicle, and pelvis.

### *D. DNA Analysis*

Mr. Penn's DNA was found on the driver's airbag and the Camry's A pillar, the portion of the vehicle frame between the windshield and driver's side window. DNA was collected from the passenger's airbag, but testing was inconclusive.

### *E. Civilian Witness Statements*

Investigators identified one civilian who had witnessed the pursuit. He stated that the Camry was traveling approximately 80 miles per hour when it passed his car, and that Officer Irwin was about seven or eight car-lengths behind the Camry. He did not see the crash but saw debris when he arrived at the crash site. He also saw Mr. Penn flee the Camry, falling twice as he tried to stand up, then running into the woods. The civilian also said that officers did not seem to notice Ms. Person when they first arrived.

### *F. Law Enforcement Officers' Statements*

Officer Irwin, like the subject of any investigation, has the right under the Fifth Amendment to not make any statement. He declined to be interviewed by investigators. Nine responding officers gave interviews to the IID. Three responding paramedics, Lindsay Cox, Lindsay Foster, and Michael Turner, wrote reports summarizing their involvement. Three responding paramedics, Ms. Foster, Mr. Turner, and Christopher Schultz, also provided interviews to IID Investigator Cleo Savoy.

Cpl. Benthin was the first officer to arrive at the crash scene. He said he had been parked at the Safeway gas station on St. Charles Parkway when he heard tires squeal. He saw a police cruiser pass through the parking lot and heard a radio transmission that a vehicle was not stopping. Cpl. Benthin then followed the officer onto northbound St. Charles Parkway, though he did not see either that officer's vehicle or the pursued car until arriving at the crash scene. When he arrived there, Cpl. Benthin saw movement in the crashed car and then saw someone run into the woods. He said he did not see Ms. Person on the roadway until he came back out of the woods. At that point, other officers were providing aid to Ms. Person.

Officer Chance Wynne said that Officer Irwin was very upset and needed to be calmed down after seeing that Ms. Person had been ejected from the Camry. Sgt. Feldman, Lieutenant Kyle Evans, and Lieutenant Josh Richards said that Officer Irwin was "crying" and "bawling"

after the crash. Officer Wynne also said that Officer Irwin reported he had been trying to pull the Camry over due to an unsafe lane change.

Officer Irwin's supervisor, Sgt. Feldman, said he had been communicating with Officer Irwin by radio during the pursuit. This dialogue can also be heard on the recording of radio transmissions. Sgt. Feldman asked for Officer Irwin's speed and traffic conditions, and Officer Irwin reported light traffic but did not note his speed. Sgt. Feldman tried to follow up by radio but said communication was difficult because other officers were on the radio at the same time. He said Officer Irwin then reported the possible crash. Sgt. Feldman said he did not cancel the pursuit at any point because the entire interaction was only about one minute long. Lt. Richards also said that, while supervisors will often discontinue pursuits that began with only traffic stops, here the pursuit was so short that it was difficult to conduct an assessment before the Camry crashed.

Lt. Evans stated that CCSO had been attempting to maintain a highly visible presence in the area of the initial attempted traffic stop because there had been several shootings in that area recently. He said that officers were conducting a lot of traffic stops because, "you're going to get something out of it."

Officer Dylan Chadbourne was the primary officer providing medical aid to Ms. Person at the scene, as can be seen on multiple officers' dashboard camera videos. He said that he brought his EMT bag and checked Ms. Person's vitals, finding no pulse or breathing. He cut her clothing to check for injuries and then began CPR, which he turned over to paramedics when they arrived.

Officer Michael Pagano was the officer who ultimately found and arrested Mr. Penn. He said he was looking for the person who had fled when he saw someone in a nearby neighborhood with blood on his head, mud on his pants, and no shoes. This neighborhood was through the trees in front of where the Camry had crashed. The man ultimately gave his name as Joseph Eugene Penn. Officer Pagano reported that Mr. Penn said he had fled because he had outstanding warrants and had "smoked crack cocaine."

Paramedics Lindsay Cox and Lindsay Foster wrote statements about the medical treatment and condition of Ms. Person when they arrived after the crash. Both paramedics reported that they were told Ms. Person initially had a pulse but, before they arrived, officers radioed that she had lost a pulse and that they were beginning CPR. Computer-aided dispatch reports show that officers had reported "trauma arrest," referring to a lack of pulse or breathing. Ms. Cox noted that CPR continued even after paramedics detected no heartbeat. When paramedics detected no change after several minutes, they stopped resuscitation efforts. Ms. Person was pronounced dead at 8:18 p.m.

Paramedic Michael Turner wrote a statement about his response to the scene of Mr. Penn's arrest. He said that Mr. Penn was "complaining of general pain" and had an abrasion on his forehead. He also said that Mr. Penn "admits to using crack today." Mr. Turner wrote that "no life threatening injuries [were] found," and that Mr. Penn was transported to a trauma center.

Ms. Foster, Mr. Turner, and paramedic Christopher Schultz also provided interviews to the IID about their response to the crash. They reported that Ms. Person was receiving aid from CCSO and Waldorf Fire personnel when they arrived. They also reported that Ms. Person had no pulse and did not show any signs of life. Mr. Schultz said that CPR continued for four or five minutes after he arrived, but Ms. Person was then pronounced dead. This is consistent with what can be seen on officers' in-car videos. Ms. Foster and Mr. Turner also responded to the scene of Mr. Penn's arrest. They said that Mr. Penn reported using crack cocaine that night.

CCSO Detective Eric Weaver also wrote a report summarizing the incident. Detective Weaver's report is consistent with the factual summary above and describes the investigative measures taken on the night of the incident, including review of in-car video, photography of the scene, and identification of Ms. Person by fingerprint scanner.

CCSO's Police Vehicle Pursuit Policy provides that, after any pursuit, supervisors must complete a Pursuit Report and Form #226A, a report analyzing the officer's conduct during the pursuit. CCSO completed a pursuit report in this case, which recounted the facts of the pursuit and stated that the pursuit was justified. CCSO did not complete Form #226A, stating that it was not necessary because personnel from the Office of Professional Responsibility ("OPR") responded directly to the scene. OPR wrote a critique memorandum that did not note any policy violations by Officer Irwin.

#### **IV. Involved Parties' Backgrounds**

As part of its standard investigative practice, the IID obtained information regarding all parties' criminal histories, as well as Officer Irwin's departmental internal affairs records and relevant training. To the extent it exists, any criminal history information is being provided to the State's Attorney's Office with this report.

In this case, this information did not affect the analysis of potential criminal charges.

*Inga Trinette Person:* Ms. Person was a 52-year-old Black woman who lived in Washington, D.C.

*Joseph Eugene Penn:* Mr. Penn is a 41-year-old Black man who lives in Bryans Road, Maryland.

*CCSO Officer Chad Irwin:* Officer Irwin was hired by CCSO on June 3, 2019, and is assigned to a road patrol unit. He is a 23-year-old white man. Officer Irwin has no internal affairs investigations that were found to be substantiated. He was involved in one other vehicle pursuit, in December 2021, which was authorized by a supervisor and terminated when Officer Irwin lost sight of the pursued vehicle.

#### **V. Applicable Policies**

CCSO has the following policies concerning vehicle pursuits and rendering medical aid. The complete policies are attached as Appendix B.

*Administrative and Operations Manual, Section 4-302: Police Vehicle Pursuits*

CCSO's vehicle pursuit policy states that its purpose is "to provide officers and supervisors guidance in balancing the safety of the public and themselves against law enforcement's duty to apprehend violators of the law." Officers must "make a quick assessment that the need to identify and apprehend the violator outweighs the risk created by the pursuit." The policy further provides that a supervisor shall take command of the pursuit and "make ongoing risk assessments," considering factors such as the underlying offense, roadway conditions, traffic conditions, and speed. The policy states: "After being provided the necessary information for the proper risk assessments, the supervisor shall determine if the pursuit should continue or be canceled."

*Administrative and Operations Manual, Section 4-400: Vehicle Crashes*

CCSO policy requires that officers responding to a crash ensure "that persons involved are checked for injuries, emergency aid is given for life-threatening injuries[,] and paramedics and ambulances are summoned."

## **VI. Applicable Law & Analysis**

The IID analyzed Maryland statutes that could be relevant in a vehicle pursuit of this nature. This section presents the elements of each possible criminal charge and analyzes these elements in light of the findings discussed above.

### *A. Manslaughter by Vehicle or Vessel<sup>1</sup>*

Criminal Law § 2-209(b) states: "A person may not cause the death of another as a result of the person's driving, operating, or controlling a vehicle or vessel in a grossly negligent manner."

To prove manslaughter by vehicle, the State must establish: "(1) that the defendant drove a motor vehicle; (2) that the defendant drove in a grossly negligent manner, and (3) that this grossly negligent driving caused the death of [Ms. Person]." MPJI-Cr 4:17.10 Homicide—Manslaughter by Motor Vehicle, MPJI-Cr 4:17.10 (2d ed. 2021). Grossly negligent conduct is that which "amount[s] to a wanton and reckless disregard for human life." *Duren v. State*, 203 Md. 584, 588 (1954) (citing *State of Maryland v. Chapman, D.C.*, 101 F. Supp. 335, 341 (D. Md. 1951); *Hughes v. State*, 198 Md. 424, 432 (1951)).

The available evidence does not indicate that Officer Irwin's driving was itself wanton or reckless. *See Duren*, 203 Md. at 584 (holding grossly negligent driving to consist of "a lessening of the control of the vehicle to the point where such lack of effective control is likely at any moment to bring harm to another"). While Officer Irwin traveled up to 87 miles per hour, he did

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<sup>1</sup> This report does not analyze the charge of common law involuntary manslaughter with respect to the pursuit itself because that charge is preempted by the manslaughter by vehicle statute. *State v. Gibson*, 254 Md. 399, 400-01 (1969). This report will, however, analyze a potential involuntary manslaughter charge with respect to the officers' response to the crash.

so while consistently several car-lengths behind the Camry and he maintained control of his patrol car throughout the pursuit.

Because the available evidence does not indicate that Officer Irwin drove recklessly, the State would need to show that the decision to engage in the pursuit was itself grossly negligent. The Court of Appeals has held that, “a violation of police guidelines *may* be the basis for a criminal prosecution.” *State v. Pagotto*, 361 Md. 528, 557 (2000) (citing *State v. Albrecht*, 336 Md. 475, 502-03 (1994)) (emphasis in original). The Court clarified that, “while a violation of police guidelines is not negligence *per se*, it is a factor to be considered in determining the reasonableness of police conduct.” *Id.* (citations omitted). Maryland courts have considered officers’ policy violations as evidence of negligence, recklessness, unreasonableness, and corrupt intent. *See, e.g., Albrecht*, 336 Md. at 503; *Pagotto*, 361 Md. at 550-53; *Koushall v. State*, 249 Md. App. 717, 729-30 (2021), *aff’d*, No. 13, Sept. Term, 2021 (Md. Feb. 3, 2022); *Kern v. State*, No. 2443, Sept. Term 2013, 2016 WL 3670027, at \*5 (Md. Ct. Spec. App. Jul. 11, 2016) (unreported); *Merkel v. State*, No. 690 Sept. Term 2018, 2019 WL 2060952, at \*8 (Md. Ct. Spec. App. May 9, 2019) (unreported)<sup>2</sup>; *Mayor and City Council of Baltimore v. Hart*, 395 Md. 394, 398 (2006) (civil litigation). However, a “hypertechnical” violation of policy, without more, is not sufficient to establish gross negligence. *State v. Pagotto*, 127 Md. App. 271, 304 (1999), *aff’d*, 361 Md. 528 (2000).

Officer Irwin complied with parts of CCSO’s vehicle pursuit policy. He maintained radio contact throughout the pursuit, used his patrol car’s lights and sirens, provided adequate distance between himself and the Camry, and maintained control of his patrol car at all times. Additionally, Sgt. Feldman, who had command for the pursuit under CCSO policy, did not cancel the pursuit at any point.

However, Officer Irwin possibly violated CCSO policy in two ways.<sup>3</sup> First, Officer Irwin did not report his speed when asked by Sgt. Feldman, reporting only that traffic conditions were light. Second, and more significantly, Officer Irwin initiated a pursuit for an alleged unsafe lane change, a minor traffic violation.<sup>4</sup> CCSO policy does not prohibit pursuits for traffic violations, but it does require officers to weigh “the risks created by the pursuit” against the severity of the suspected offense.

It is also not clear whether Officer Irwin had reasonable articulable suspicion to believe that there had been a violation. If there was no violation, there would be no justification for the initial attempted traffic stop of the Camry. Based on Officer Irwin’s in-car video, which captured

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<sup>2</sup> Pursuant to General Provisions § 1-104, unreported opinions shall not be used as either precedential or persuasive authority in any Maryland court. They are included here solely for illustrative purposes.

<sup>3</sup> The IID does not conduct an analysis of whether Officer Irwin violated any department policies for purposes of administrative actions. It does examine Officer Irwin’s policy compliance in order to assess his state of mind, which is a necessary element of certain criminal charges.

<sup>4</sup> This analysis credits Officer Wynne’s statement that Officer Irwin said the attempted traffic stop was due to an unsafe lane change. There is no testimony or other evidence suggesting an alternative basis for the attempted stop. While Officer Irwin’s true motivation may have been to identify evidence of a more serious crime, as suggested by Lieutenant Evans’ statement that officers were conducting stops due to increased gun violence in the area and could “get something” from traffic stops, such pretextual stops are legally permissible. *See State v. Pagotto*, 361 Md. 528, 534 (2000) (citing *Whren v. United States*, 517 U.S. 806, 813 (1996)).

the entire 40-second period when Officer Irwin was behind the Camry but had not yet activated his emergency lights, the only potentially unsafe lane change by Mr. Penn occurred when he had first turned onto St. Charles Parkway and moved into the rightmost lane, causing a driver in that lane to apply their brakes. It is not clear whether this action rises to the level of a traffic violation. While it is a traffic violation to change lanes in a way that forces another driver to “slam on his brakes to avoid a collision,” *Steck v. State*, 239 Md. App. 440 (2018), the other driver here did not have to stop abruptly and did not appear close to colliding with the Camry. If Mr. Penn’s driving was not an unsafe lane change in violation of Transp. § 21-309, Officer Irwin’s attempted stop would be unjustified. *See Rowe v. State*, 363 Md. 424, 441 (2001); *see also Lewis v. State*, 398 Md. 349, 368-69 (2007) (holding that “almost” committing a traffic violation or “almost” causing an accident is insufficient to justify a stop). Even if there was a basis for stop, it was so negligible that it would be difficult for it to meet the required balancing of harms under CCSO policy.

Nonetheless, it would be difficult to establish that Officer Irwin’s actions—specifically, initiating a pursuit for a minor traffic violation, failing to report his speed, and attempting a potentially unjustified traffic stop—amounted to gross negligence. First, initiation of the pursuit was within Officer Irwin’s discretion under CCSO policy, and the pursuit was not cancelled by his supervisor, who had command responsibility and knew the pursuit had been initiated for only a traffic violation. Second, Officer Irwin’s failure to report his speed could be explained as an oversight rather than an intentional, reckless, or grossly negligent omission. Officer Irwin responded to Sgt. Feldman’s question regarding traffic volume, and Sgt. Feldman did not have the opportunity to repeat his question regarding speed before the Camry crashed. Third, as discussed above, the attempted stop was arguably justified by what could be perceived as an unsafe lane change. Even if it was not justified, its borderline permissibility would make it difficult for the State to prove that the attempted stop rose to the level of gross negligence.

Additionally, in the absence of grossly negligent conduct, the available evidence would not support a conclusion that Officer Irwin caused Ms. Person’s death, as required to satisfy the third element of a manslaughter by vehicle charge. *Craig v. State*, 220 Md. 590, 597 (1959); *see also Pagotto*, 127 Md. App. at 358 (holding that a driver’s attempt to drive away from an officer “constituted an independent intervening cause,” which broke the causal link between the officer’s conduct and the death). After Officer Irwin initiated the pursuit, Mr. Penn committed several unlawful acts—including reckless driving, speeding, and unsafe lane changes—that more proximately caused the crash that killed Ms. Person. Additionally, the ultimate crash was a single-car collision that did not physically involve Officer Irwin’s vehicle.

#### *B. Criminally Negligent Manslaughter by Vehicle or Vessel*

Criminal Law § 2-210 states: “(b) A person may not cause the death of another as the result of the person’s driving, operating, or controlling a vehicle or vessel in a criminally negligent manner. (c) For purposes of this section, a person acts in a criminally negligent manner with respect to a result or a circumstance when: (1) the person should be aware, but fails to perceive, that the person’s conduct creates a substantial and unjustifiable risk that such a result will occur; and (2) the failure to perceive constitutes a gross deviation from the standard of care that would be exercised by a reasonable person. (d) It is not a violation of this section for a

person to cause the death of another as the result of the person’s driving, operating, or controlling a vehicle or vessel in a negligent manner.”

Criminally negligent manslaughter by vehicle differs from manslaughter by vehicle only in that it requires proof of criminal negligence rather than gross negligence. MPJI-Cr 4:17.10 Homicide—Manslaughter by Motor Vehicle, MPJI-Cr 4:17.10 (2d ed. 2021). Gross negligence requires proof that “the defendant *was conscious of the risk* to human life posed by his or her conduct.” 96 Md. Op. Atty. Gen. 128, 138, Dec. 21, 2011 (*available at* <https://www.marylandattorneygeneral.gov/Opinions%20Documents/2011/96oag128.pdf>) (emphasis in original). Criminal negligence requires proof that “the defendant *should have been aware, but failed to perceive* that his or her conduct created a ‘substantial and unjustifiable risk’ to human life and that the failure to perceive that risk was a ‘gross deviation’ from the standard of care that a reasonable person would exercise.” *Id.* (emphasis in original; quoting Crim. Law § 2-210).

As with the manslaughter by vehicle charge discussed above, the available evidence does not suggest that Officer Irwin created an unjustifiable risk that was a gross deviation from a reasonable standard of care.

### *C. Involuntary Manslaughter*

While the charge of involuntary manslaughter is preempted by the manslaughter by vehicle statute with respect to Officer Irwin’s actions while driving, it would not be preempted with respect to officers’ actions following the crash. This section will therefore analyze officers’ actions only after the Camry’s crash.

To prove involuntary manslaughter, the State must prove: “(1) that the defendant acted in a grossly negligent manner; and (2) that this grossly negligent conduct caused the death of [Ms. Person].” MPJI-Cr 4:17.9 Homicide—Involuntary Manslaughter (Grossly Negligent Act and Unlawful Act), MPJI-Cr 4:17.9 (2d ed. 2021). As discussed above, gross negligence is conduct which “amount[s] to a wanton and reckless disregard for human life.” *Duren*, 203 Md. at 588.

The available evidence does not indicate that officers’ responses to the crash were grossly negligent. Officers acted in accordance with departmental policies, which call for officers to provide aid and utilize EMS. While officers searched the crashed car and woods for Mr. Penn before providing aid to Ms. Person, radio communications, in-car video, civilian witness testimony, and officers’ testimony indicates that officers did not see Ms. Person on the roadway until they came back from the woods approximately two minutes after the crash. There is no indication that any officer knew a second person had been in the car. When officers did discover Ms. Person, they immediately notified dispatchers, who then called for EMS. Officers provided aid consistently after finding Ms. Person, including performing CPR for several minutes until paramedics arrived. Paramedics then continued CPR until Ms. Person was pronounced dead.

Additionally, in the absence of grossly negligent conduct, the available evidence would not support a conclusion that officers caused Ms. Person’s death, as required to satisfy the

second element of an involuntary manslaughter charge. *Craig*, 220 Md. at 597; *see also Pagotto*, 127 Md. App. at 358.

*D. Duty of Driver to Render Reasonable Assistance to Persons Injured in an Accident*

Transportation Article § 20-104(a) states: “The driver of each vehicle involved in an accident that results in bodily injury to or death of any person or in damage to an attended vehicle or other attended property shall render reasonable assistance to any person injured in the accident and, if the person requests medical treatment or it is apparent that medical treatment is necessary, arrange for the transportation of the person to a physician, surgeon, or hospital for medical treatment.”

This offense requires proof that: (1) the defendant drove a motor vehicle; (2) the motor vehicle was involved in an accident; (3) the accident resulted in bodily injury to or death of a person or in damage to an attended vehicle or other attended property; and (4) the defendant did not render reasonable assistance to a person injured in the accident.

For the reasons discussed above with respect to the potential charge of involuntary manslaughter, the available evidence does not indicate that officers failed to offer reasonable assistance to Ms. Person. As described in the section above, immediately upon discovering Ms. Person on the roadway, officers reported that she had severe head trauma, dispatch called for EMS, and officers performed CPR until EMS arrived.

*E. Reckless Driving & Negligent Driving*

Transportation Article § 21-901.1(a) states: “A person is guilty of reckless driving if he drives a motor vehicle: (1) In wanton or willful disregard for the safety of persons or property; or (2) In a manner that indicates a wanton or willful disregard for the safety of persons or property.”

Transportation Article § 21-901(b) states: “A person is guilty of negligent driving if he drives a motor vehicle in a careless or imprudent manner that endangers any property or the life or person of any individual.”

Factors such as “[s]peed, erratic driving, disregard of the red light, [and] force of impact ... can be taken as evidence of wanton or reckless disregard of human life.” *Taylor v. State*, 83 Md. App. 399, 404 (1990) (citing *Boyd v. State*, 22 Md. App. 539 (1974); *State v. Kramer*, 318 Md. 576, 590 (1990)).

As discussed above with respect to the potential charge of manslaughter by vehicle, Officer Irwin maintained a distance of several car-lengths from the Camry and maintained control of his vehicle throughout the pursuit. The available evidence does not indicate that he drove recklessly or negligently.

### F. Misconduct In Office

Misconduct in office is a misdemeanor not enumerated in statute. *Leopold v. State*, 216 Md. App. 588, 604 (2014). To prove misconduct in office, the State must establish: (1) that the defendant was a public officer; (2) that the defendant acted in their official capacity or took advantage of their public office; and (3) that the defendant corruptly did an unlawful act (malfeasance), corruptly failed to do an act required by the duties of their office (nonfeasance), or corruptly did a lawful act (misfeasance). MPJI-Cr 4:23 Misconduct in Office (Malfeasance, Misfeasance, and Nonfeasance), MPJI-Cr 4:23 (2d ed. 2021). “[T]he conduct must be a willful abuse of authority and not merely an error in judgment.” Comment to *id.* (citing Hyman Ginsberg and Isidore Ginsberg, *Criminal Law & Procedure in Maryland* 152 (1940)).

It is probable that, if the State proved one of the above charges, it could also prove misconduct in office under a theory of malfeasance. See *Sewell v. State*, 239 Md. App. 571, 604 (2018) (Malfeasance is conduct that “falls outside the official’s discretion and authority, and if done willfully, is corrupt on its face. The fact-finder can therefore infer the element of corruption with direct evidence of the official’s intent to act corruptly....”); see also *Pinheiro v. State*, 244 Md. App. 703, 722 n. 8 (2020). However, for the reasons discussed above, it is unlikely the State could prove Officer Irwin engaged in conduct that was “corrupt on its face.”

It would also be difficult for the State to use Officer Irwin’s attempted traffic stop, for which he may have lacked reasonable articulable suspicion, as the basis for a misconduct in office charge. The available evidence does not indicate that Officer Irwin knew his attempted stop was unjustified or that he had an improper ulterior motive. Rather, it suggests that Officer Irwin believed he was conducting a legitimate, if pretextual, traffic stop. If the stop was not justified, that would likely be considered an error in judgment rather than evidence of malice or corruption, as required to prove misconduct in office.

### G. Other Charges Considered<sup>5</sup>

There are several other charges for which full analysis was not warranted given the facts of this incident. Those charges are addressed briefly here.

The crimes of first-degree murder, intentional second-degree murder, and voluntary manslaughter each requires the State to prove the defendant had “either the intent to kill or the intent to inflict such serious bodily harm that death would be the likely result.” MPJI-Cr 4:17 Homicide—First Degree Premeditated Murder and Second Degree Specific Intent Murder, MPJI-Cr 4:17 (2d ed. 2021); *Cox v. State*, 311 Md. 326, 331 (1988) (voluntary manslaughter is “an intentional homicide”). In this case, there are no facts suggesting Officer Irwin intended to kill or cause serious bodily harm to Ms. Person.

The crime of second-degree depraved heart murder requires the State to prove the defendant “created a very high degree of risk to the life of [Ms. Person]” and “acted with extreme disregard of the life endangering consequences” of such risk. MPJI-Cr 4:17.8

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<sup>5</sup> This report does not analyze the potential charge of reckless endangerment because the relevant subsection of that statute “does not apply to conduct involving ... the use of a motor vehicle.” Criminal Law § 3-204(c)(1)(i).

Homicide—Second Degree Depraved Heart Murder and Involuntary Manslaughter (Grossly Negligent Act and Unlawful Act), MPJI-Cr 4:17.8 (2d ed. 2021). With respect to the pursuit, this charge is preempted by the manslaughter by vehicle statute. *Blackwell v. State*, 34 Md. App. 547, 555-56 (1977). With respect to the response to the crash, as discussed in the involuntary manslaughter section above, there is no evidence suggesting that any officer “created a very high degree of risk of life” or “acted with extreme disregard.”

## **VII. Conclusion**

This report has presented factual findings and legal analysis relevant to the fatal vehicle pursuit that occurred on January 20, 2022, in Waldorf, Maryland. Please feel free to contact the IID if you would like us to supplement this report through any further investigation or analysis.

## Appendices

### **Appendix A – Materials Reviewed**

CCSO Computer-Aided Dispatch Reports (6 documents)  
CCSO Dashboard Camera Video (19 videos)  
CCSO Dispatch Radio (1 recording; 1 document)  
CCSO Reports (4 documents)  
Civilian Witness Statements (1 recording)  
Emergency Medical Services Records (2 documents; 5 recordings; 4 videos)  
IID Investigative Reports (10 documents)  
Involved Parties' Criminal Histories (4 documents)  
Joseph Penn Medical Records (1 document)  
Medical Examiner's Report (1 document)  
MSP Investigative Reports (6 documents)  
MSP Lab Reports (2 documents)  
Officer Irwin Internal Affairs Records (2 documents)  
Officer Irwin Training Records (5 documents)  
Officer Witness Statements (5 recordings)  
Photographs (474 photographs)  
Private Business Video (1 video)

### **Appendix B – Relevant CCSO Policies**

See attached.



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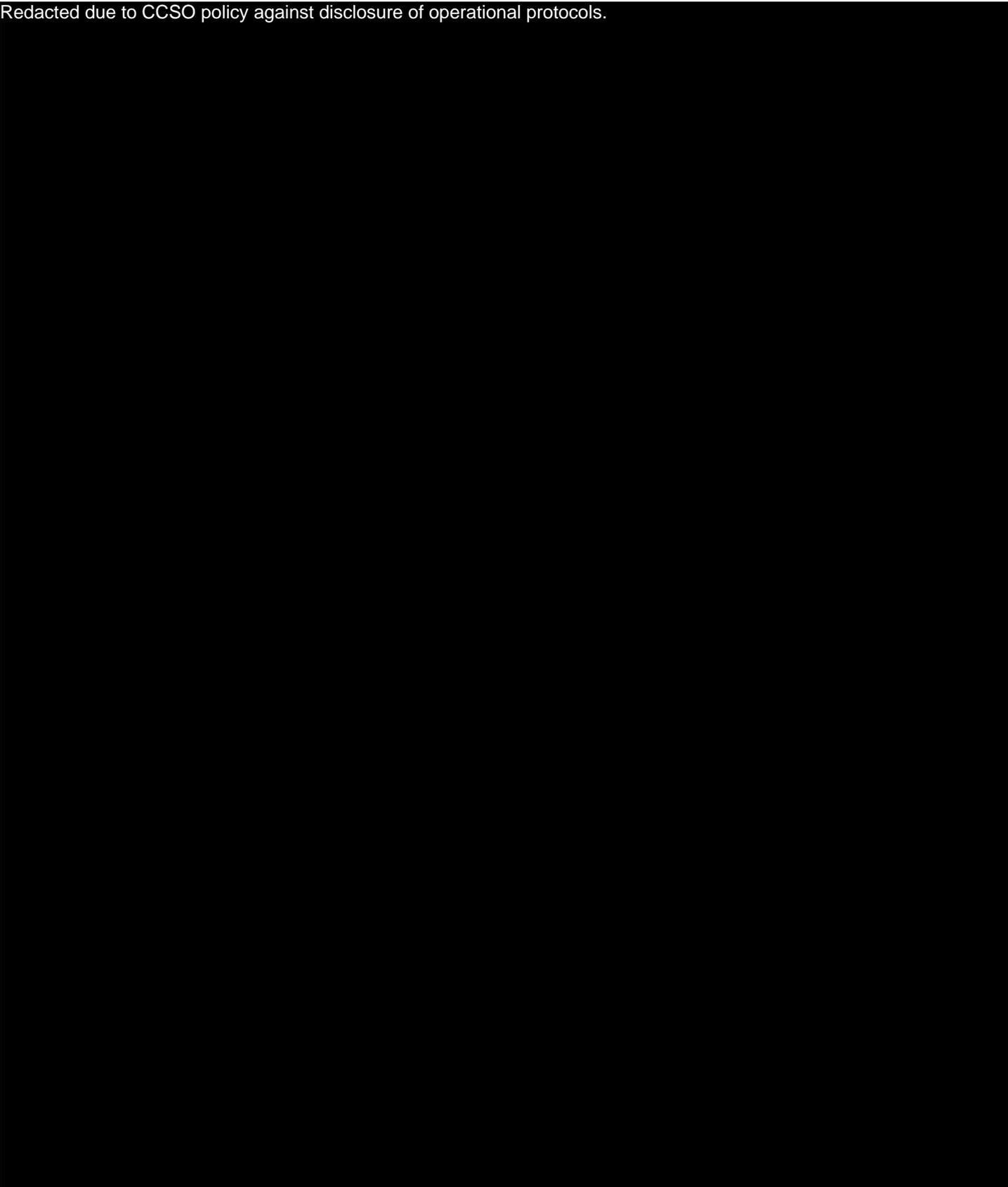


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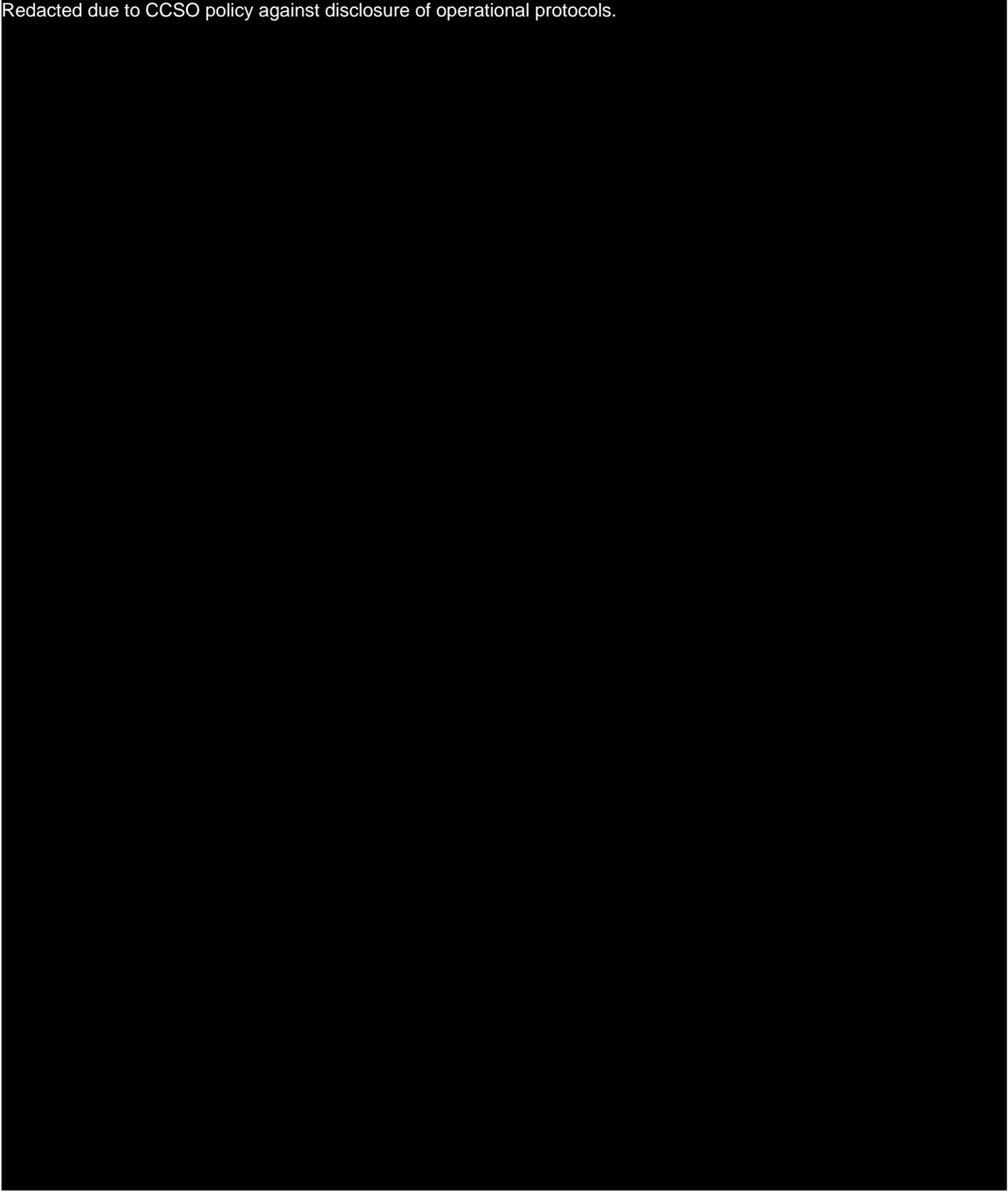


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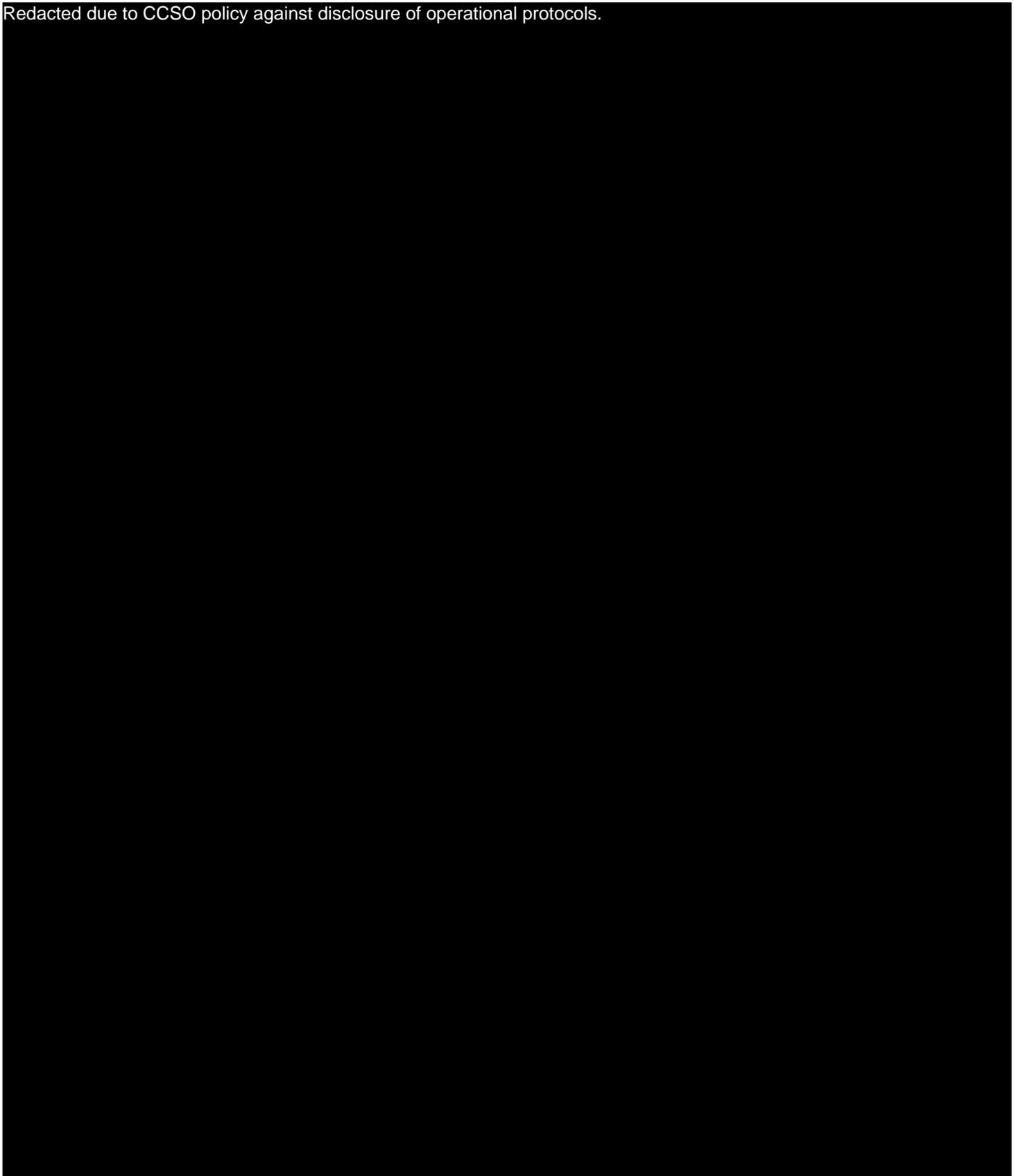
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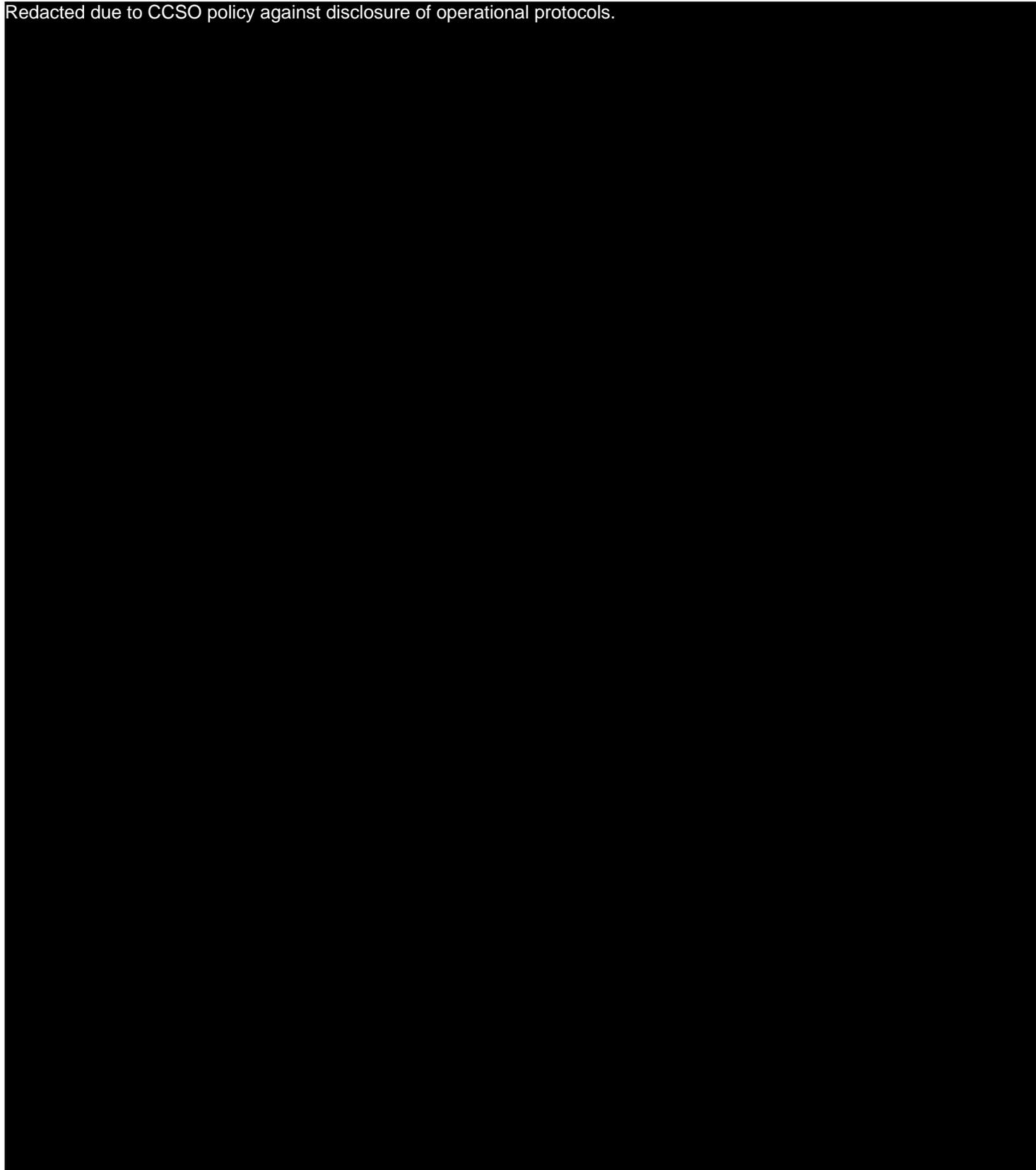
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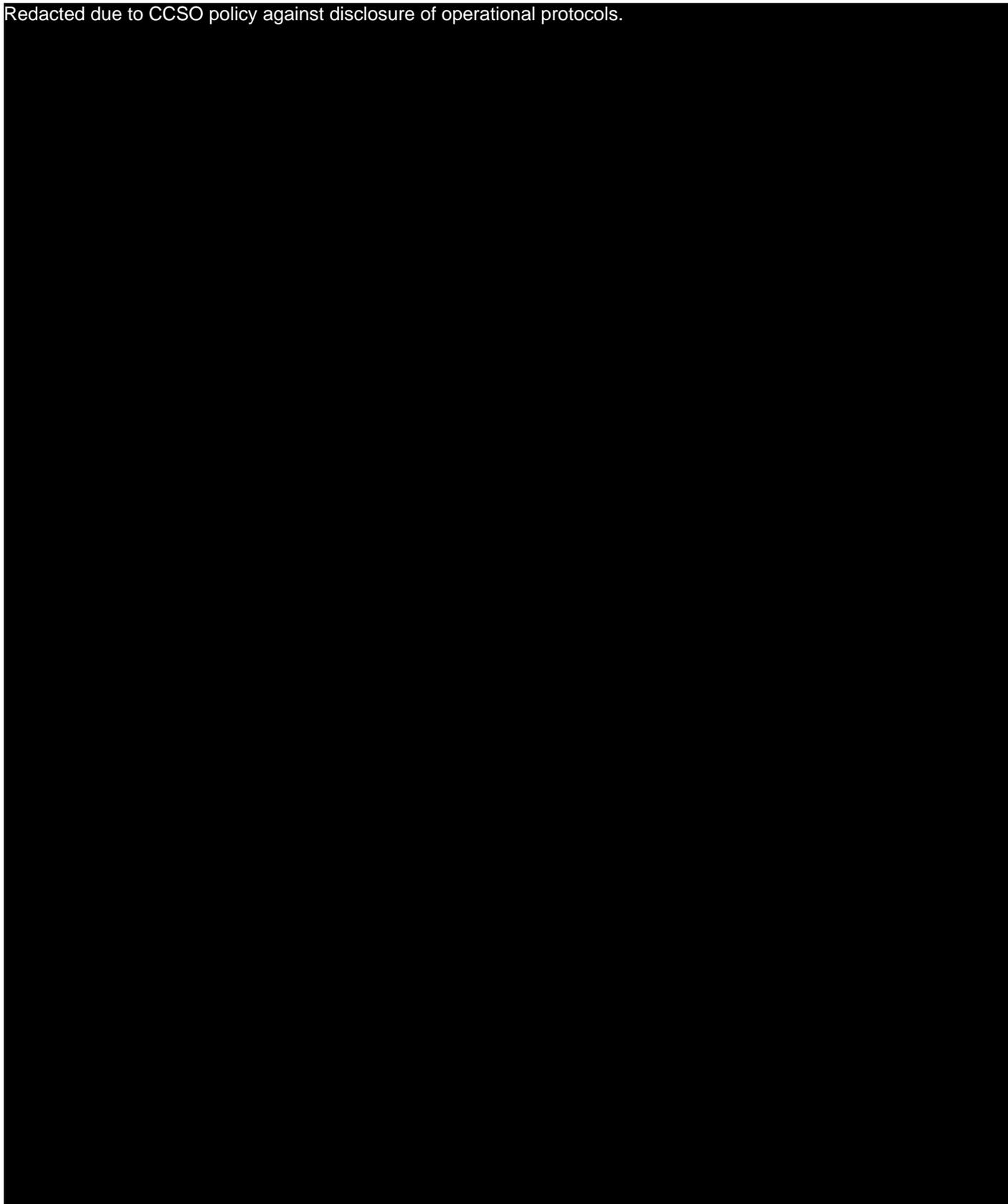
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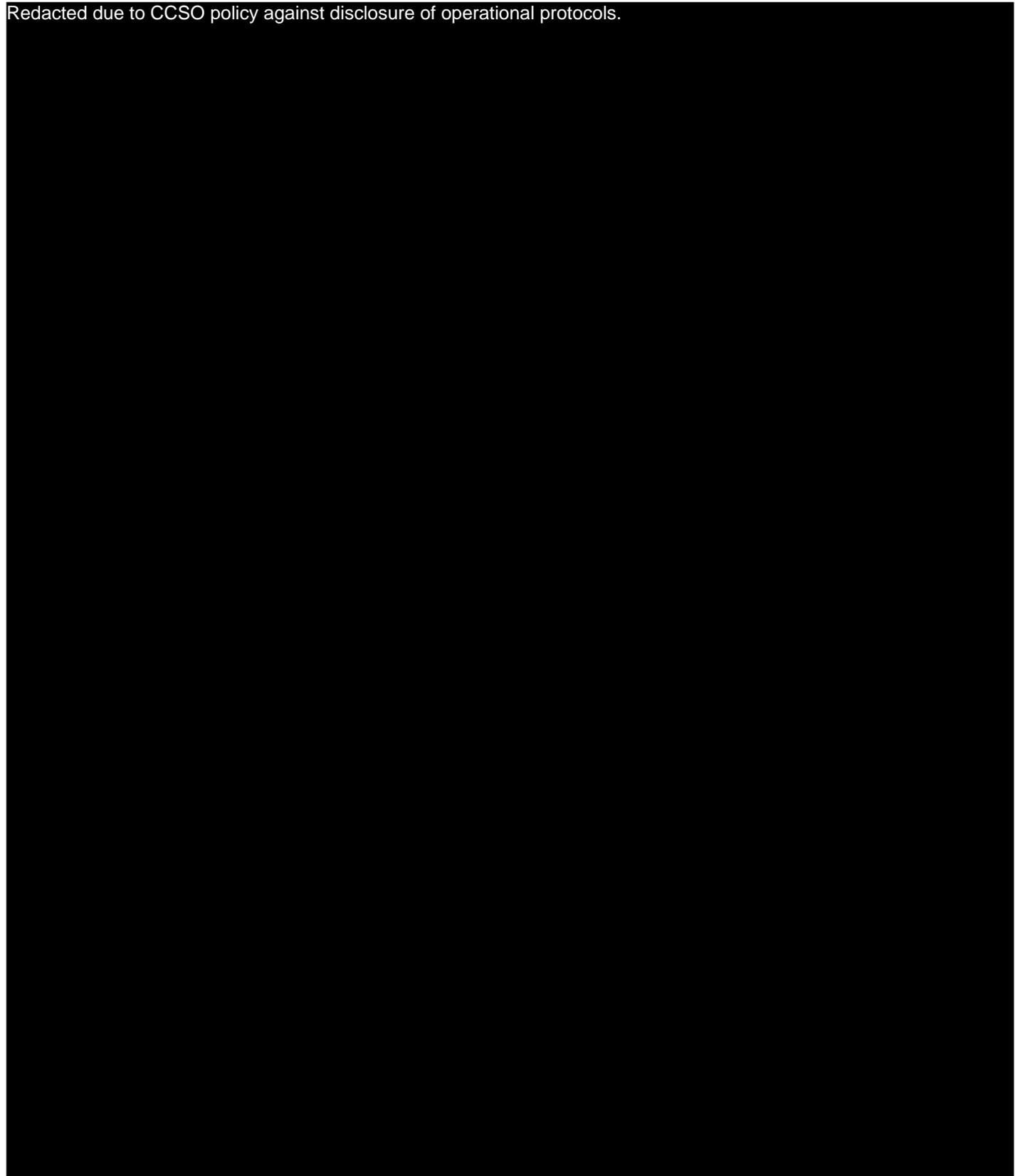




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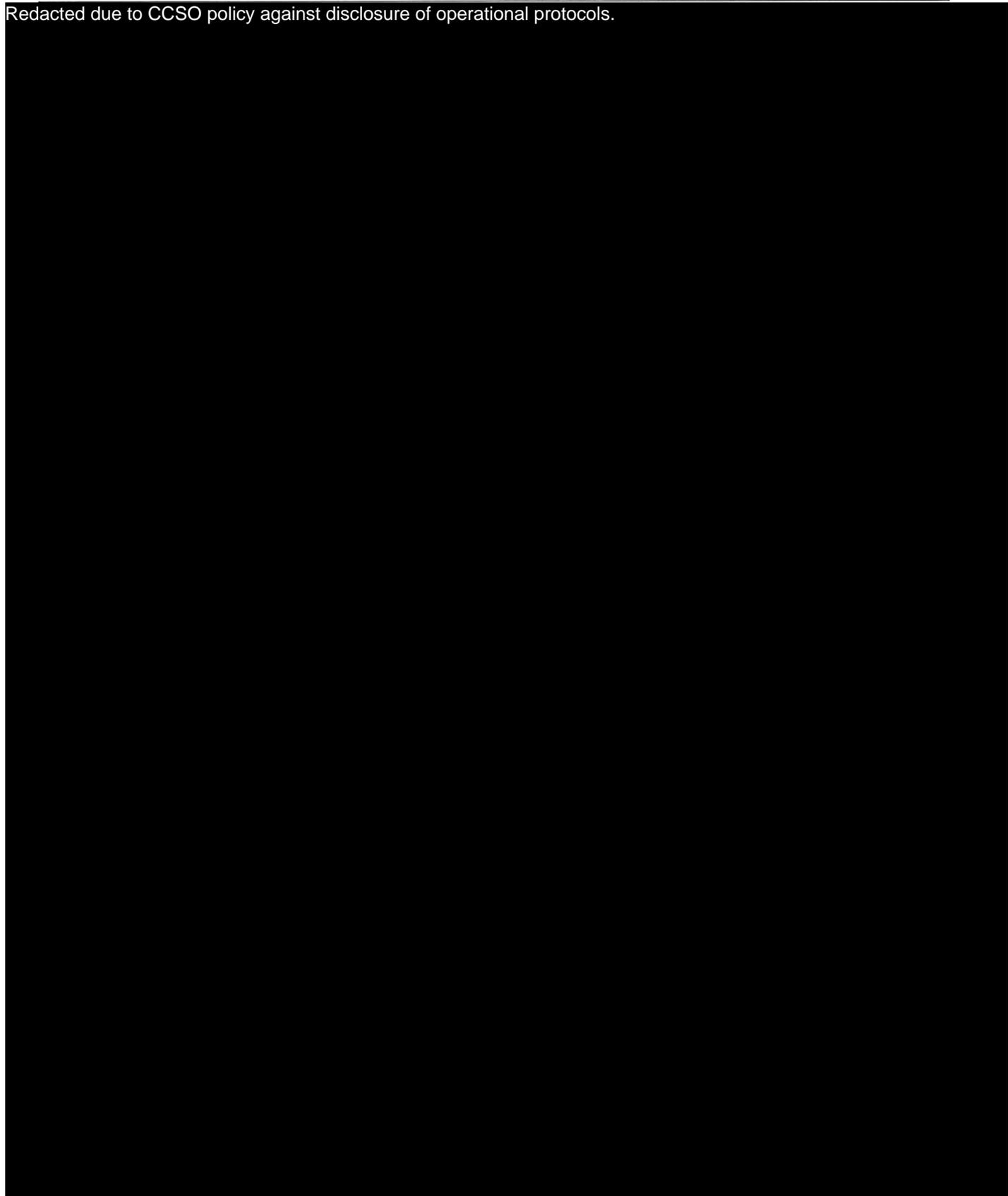
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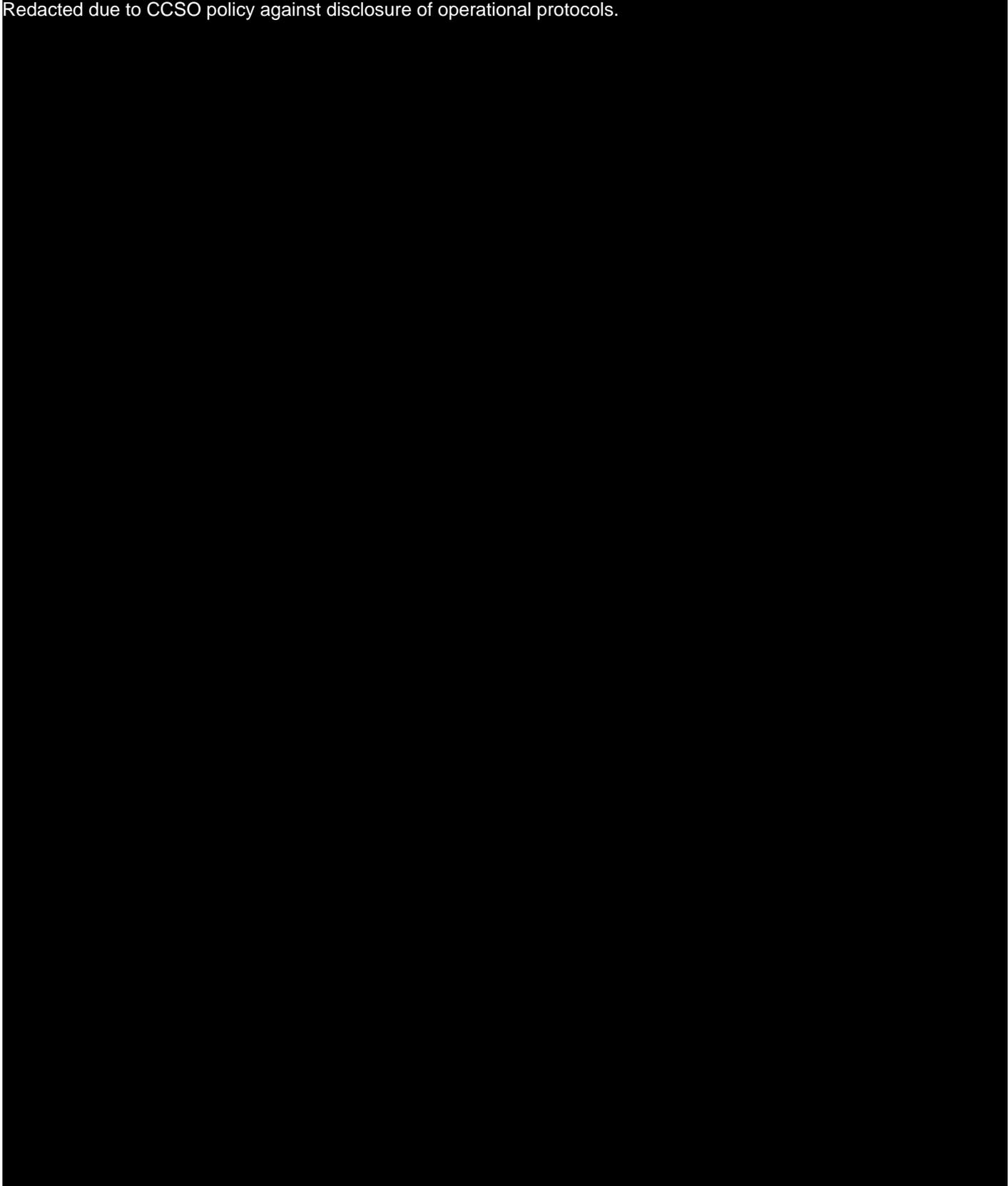
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## 4-400 VEHICLE CRASHES

Maryland law (§2-306 of the Public Safety Article of the Maryland Code) requires that law enforcement agencies furnish information relative to vehicle crashes to the Department of State Police. The State Police are charged to collect, analyze, and disseminate that information. The personnel of the Charles County Sheriff's Office shall investigate crashes which come to their attention and gather that information, in accordance with the requirements of this section.

Crash reporting data entered in the Automated Crash Reporting System (ACRS), a program and crash database developed and administered by the Maryland State Police (MSP), is automatically collected by MSP once the report passes through the Charles County Sheriff's Office supervisory approval process.

In addition to the responsibility to gather information concerning crashes, officers are charged to protect the public by providing for an orderly flow of traffic. One of the methods of doing that is to identify persons who cause crashes because of their violation of the Vehicle Law. These persons, when identified, may then be brought to the attention of the Courts and the Motor Vehicle Administration.

There is also a public benefit to be obtained from the statistical data gathered by police in the formal investigation of crashes. That data may then be used to:

- determine the need for selective enforcement at various sites;
- provide for new traffic control devices and highway engineering improvements;
- aid in the development and improvement of driver education programs; and
- provide guidance to legislators in determining the need for new or revised traffic control laws.

### 4-400.1 RESPONSIBILITIES OF RESPONDING OFFICER

An officer who is dispatched, or who is otherwise the first officer at the scene of a crash, will ensure the following, as may be appropriate to the particular scene:

- that measures are taken to prevent the crash scene from becoming worse, e.g., the cruiser is placed to alert oncoming traffic, road flares are set, traffic direction is initiated, etc.;
- that persons involved are checked for injuries, emergency aid is given for life-threatening injuries and paramedics and ambulances are summoned;
- that fire hazards are identified, persons are protected from them and the Fire Department is summoned to deal with them;
- that hazardous cargos and material are detected and steps taken to protect the public and deal with their containment and removal;



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- that the bodies of persons killed are checked for the presence of evidence of organ donor information and if such is found, it is brought to the attention of medical personnel;
- that, as needed, additional assistance is summoned;
- that short-lived evidence (skid marks, debris, vehicle position, etc.) is preserved;
- that principals and witnesses are identified for later interview;
- that the driver's license, vehicle registration information, and insurance information of the drivers and vehicles involved are collected;
- that the condition and extent of damage of each of the vehicles involved is examined;
- that the roadway and objects adjacent thereto which may have been damaged as a result of the crash are identified;
- that any continuing hazards associated with the crash scene are reported to the responsible agency and the public protected from such hazards by warning signs, barricades, etc., until such hazards are dealt with;
- that during the handling, clearing, and investigating of the scene of the crash, there are provisions made for the orderly and expeditious flow of traffic around the scene, or that such detour as may be needed to avoid the scene is made;
- that an official report be made of the facts and circumstances of the crash in accordance with Section 4-400.2 below; and/or
- that the provisions of the Memorandum of Understanding with the State Police outlined in Chapter 3, Section 150, regarding crashes, are complied with. In this regard, if this Agency would not complete an investigation and report, the State Police will probably not either, since our reporting requirements are similar. In these cases, the officer on the scene may handle the incident without requesting State Police.

#### 4-400.2 REPORT REQUIREMENTS

An official crash report shall be required in all cases where the crash involves at least one motor vehicle, occurred within the jurisdiction of the vehicle laws, i.e., on a highway, on private property that is used by the public in general, on property owned or under the control of the State, political subdivisions, County boards, schools, etc., or falls under the provisions of a law applicable to anywhere in the State (DWI), and:

- there is a death or likelihood of death as a result of the crash;
- there are injuries to any person or injuries are claimed by any person as a result of the crash;
- there will be placed charges of violation of the vehicle or other laws as a result of the crash;
- there is impropriety in registration, insurance, or licensing of any driver or vehicle;
- the crash involves any bus, train, government vehicle or aircraft;
- the crash involves any hazardous material (as defined in the Emergency Handling of Hazardous Materials in Surface Transportation handbook) dangers;