

**The Bill Blackwood
Law Enforcement Management Institute Of Texas**

High Speed Pursuits:
The Battle Rages on

**A Policy Research Project
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ABSTRACT

There has been a battle about police officers engaging in high-speed pursuits. What decision making should police officers endure to decide when to pursue or not pursue?

The Controversy is fueled by emerging case law, which at times is Contradictory. Patrol vehicles are viewed in pursuits as weapons because of their potential to cause injury or death on a fleeing suspect, officers, or the general public.

The issue of police pursuits presents an inaccurate picture and leads the public to fear and openly criticize pursuits. Police are sworn to serve and protect their communities and decide whether the violator will continue to be a hazard if they do not pursue.

This should be a call for departments to better train their officers in pursuit driving and for more stringent guidelines with pursuit policies. There is an increased emphasis for departments to have a pursuit policy. Procedures, and training to help decrease high speed pursuits. Some departments have not reviewed their policies in a year or longer. New case laws are handed down each year that affects every department in making or evaluating policies.

Officers should train to recognize weather conditions, traffic, population, their vehicles limitation and their emotions.

If police officers make that decision, the administration and the public owe it to them to see they are equipped and trained properly to make that call.

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Introduction

There has been a battle raging in this country, as well as the world, about police officers engaging in high-speed pursuits. The dilemma seems to stem from the police officers focus on apprehending a violator, verses the safety of the officer, the violator, or that of a third person.

The purpose to be discussed in this project is what decision making process should police officers endure, better enabling them to decide when to pursue or not to pursue. In addition will implementing more stringent polices help in reducing the number of liability claims against the officer and his department. Should there be more in depth training for police officers, and their supervisors in regards to pursuit driving and their roles. .

The intended audience of this policy research will include police administrators, policy makers, (government entity), and the trainers of police agencies. This policy research project, will provide information to the individuals with ultimate decision making authority with valuable information that will aid in that process.

The source of information used in this project will be obtained from numerous articles, publications, books, and federal and state court decisions.

The intended outcome of this project is to provide comprehension information on the issues of pursuits and the most current federal and state case law. This information can be used by policy makers in establishing a comprehensive policy on police pursuits.

The controversy regarding pursuits is fueled by emerging case law which at times is contradictory. A few cases which cite these discrepancies are Tennessee v. Garner 471 U.S. 1, The City of Lancaster and City of Desoto v. Ken Chambers and Evelyn Chambers Supreme Court of Texas, The City of Pharr v. Cesar Ruiz Court of Appeals of Texas 13th District and County of Sacramento v. Lewis U.S. Supreme Court.

Tennessee v. Garner was a Supreme Court case in which the use of deadly force was used to prevent the escape of a fleeing felon. According to departmental policy and Tennessee law, the officers were justified in the use of deadly force to prevent escape. The suit was brought stating that the use of deadly force was a violation of the subjects Fourth Amendment right of unreasonable search and seizure. The Supreme Court held that the use of deadly force was not justified under the circumstances and held that it was an unreasonable search and seizure of his person. The justification for the use of deadly force must lie with the officers probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others. Patrol vehicles are viewed in pursuits as weapons because of the potential to cause serious bodily or injury or death upon a fleeing suspect, officers or the general public.

The City of Lancaster and City of Desoto v. Ken Chambers and Evelyn Chambers concerned a vehicle pursuit involving a motorcycle which was

pursued from Desoto to Lancaster. Bradley Chambers was critically injured as a result of the pursuit which ended in the motorcycle crashing and fatally wounding the driver. The suit claimed negligence and violation of Chamber's civil rights under 42 U.S.C. 1983. The suit stated that the officers acted with negligence in that the authority given them provides them, as authorized drivers of emergency vehicles, "the duty to drive with due regard for the safety of all persons". The Court of Appeals concluded that even if they were negligent, they did not seize Chambers with either reasonable or excessive force. The Court recognized the need for the application of force, the relationship between the need and the amount of force that was used, the extent of injury which was inflicted and whether the force was applied in a good faith effort to maintain or restore discipline. The Court further stated that even if the officers were negligent in the operation of their patrol units, a violation under section 1983 would not occur and have no cause of action.

The City of Pharr v. Cesar Ruiz concerns a high speed vehicle pursuit in which the suspect vehicle entered a private parking lot and collided with Ruiz who was an uninvolved third party. The suit claimed that the City of Pharr's departmental policy and Chief of Police Saldana's memo had removed from the officers all discretion in their decision to initiate a pursuit. The policy stated that an officer shall not engage in a high speed pursuit whenever it reasonably appears that the potential harm to persons or property arising from such pursuit

out way the potential harm threatened by the escaping offender. A supervisor must also be notified prior to engaging in a pursuit unless doing so would unreasonably delay the initiation of the pursuit. The memo from Chief Saldana restricted the speed of patrol units responding to emergencies not to exceed the posted speed limit by more than 10 miles per hour. According to Officer Castillo, it was an unwritten policy of the Pharr Police Department not to contact a supervisor for the initiation of a pursuit. The pursuit had implied consent and was authorized unless a supervisor contacted the officer and advised him to disengage. The Court concluded that when the two policies were read together, and the interpretation of the policy by the Chief and officers were considered, it becomes apparent that the decision to engage a pursuit is discretionary on the part of the officer. However the court did remand the case back to the lower court for any civil action in regards to negligence against the officers.

In *Sacramento v. Lewis*, the county of Sacramento was sued by Teri and Thomas Lewis on the behalf of Phillip Lewis who was the passenger on a motorcycle involved in a high speed pursuit. Lewis was fatally injured after the motorcycle wrecked out and a pursuing patrol unit struck him. The officers were sued under 42 U.S.C. 1983 for depriving Lewis of his 14th Amendment substantive due process right to life. The court held that a police officer does not violate substantive due process by causing death through deliberate or reckless indifference to life in a high speed automobile chase aimed at apprehending a suspected offender.

The issue of police pursuits has been so sensationalized, it presents an inaccurate picture of the problem and leads the public to fear and openly criticize pursuits Barth (1981). The police are sworn to serve and protect their communities and maintain order without unduly endangering the public. The officers must also decide whether the violator will continue to be a hazard if he or she does not pursue the violator. The court in Lee v. City of Omaha (1981) ruled that an officer has the duty to balance the need to apprehend violations against due care and the well being of the general public.

To date there has not been a nation wide study that can provide an accurate estimate of the number of pursuits that take place each year. The Physicians for Automotive Safety (PAS) conducted a study of pursuits in a three months period in (1968) and estimated that 20 percent of all pursuits ended in death, while 70 percent ended in an accident.

However the California Highway Patrol (CHP) in (1983) conducted their own study which found that only one percent of all pursuits ended in death while 20 percent ended in an accident.

Berkman in (1983) found that 17 to 45 percent of all pursuits ended in some kind of property damage, 14 to 23 percent ended in injuries and up to 3 percent ended in fatalities.

The National Highway Traffic Safety Administration (NHTSA) reported that in 1990 there were 314 fatalities resulting from police pursuits. The NHTSA

also estimated there were 20,000 injuries accident that occurred in the over 50,000 they reported yearly.

Similar to Beckman (1985), Alpert and Dunham (1988) used a modified version of the CHP to study pursuits within Metro Dade Police Department and the Miami Police Department. They found in 952 pursuits, 298 (31%) the offenders escaped, while in 646 (60%) the police captured the offender. Of those offenders arrested 305 (47%) were for traffic violations and 317 (48%) were for felonies. They also reported that 310 (33%) of the pursuits involved an accident, 160 (17%) involved injuries and 7 (1%) resulted in death. Alpert and Dunham (1990) concluded that their analysis failed to provide support for a contention that police pursuits resulted in an unfavorable cost benefit ratio.

A survey of the twenty-four agencies was conducted to obtain data for this research. Each agency was sent a questionnaire asking the same question to find out if they had a pursuit policy and to what length it went into. For list of agencies a questionnaire was sent see Appendices A. Out of the twenty four agencies, 16 responded and one refused saying that they had a policy but know it needed to be revised and would not submit to the survey. Of the agencies surveyed six (6) were sheriff's departments and ten (10) were municipalities. One question on the survey ask, does their department allow pursuits, 15 of the 16 did. All (16) stated they allowed pursuits in felony cases, and nine of the 16 allowed pursuits for misdemeanors. When asked if they required a supervisor control of their pursuits, 14 of 16 stated yes. There were 13 of the 16

departments that had a written pursuit policy. The question of when was the last time the policy was revisited was a surprised me. This question had a wide vary of answers, 4 departments have not changed their to dates ranging from 1991 to present. When asked if they provided additional training in pursuit driving only 4 departments said they did. When asked if they allowed the use of pursuit termination technologies, 10 of the 16 do.

As to whether a department allows pursuit termination technology this is a varying subject. There are numerous technologies coming out that will help police find an efficient nonlethal method to stop fleeing suspects to minimize the risk of death, injury, property damage and liability to the police agency, and yet provide a high probability of apprehending the violator. It is an understatement to say that police pursuits are dangerous and police have had little to rely on but traditional options to stop fleeing suspect. However technology has produced six prototype alternatives to help eliminate police pursuits. One such device is the retractable spiked barrier strip that deflates the tire and causes the vehicle to slow. The Auto Arrestor System employs a short pulse of electric current and burns out or disrupts the electronic components in modern vehicles. The Road Patriot is a guided rocket powered unit that is launched from underneath a patrol unit at a fleeing suspect vehicle and goes underneath it to short circuit the electronic components of the engine. The Checkpoint Barrier Strip is a lightweight tire deflator that can be activated at a distance for officers' safety causing the tires to deflate slowing the suspect vehicle. The fleeing Vehicle

Tagging System can be operated by a single officer and consist of a launcher that projects a projectile at a suspect vehicle and once tagged send out a radio frequency that is received in a tracker and the vehicle located. The sixth is Precision Immobilization technique which is tactical ramming of the vehicle.

Relevant Issues.

Chief of Police Charles Wall has told officers in Virginia Beach, Virginia that he had banned all pursuits except for those of armed violent felons. This was in response to a number of accidents involving police pursuits and resulted in the injury and death of several innocent motorist or bystander. Even though the citizens as a victory applauded this, the officers have some concern. Officer's fear this may have an impact on the crime rate as criminals will begin to understand that officer's or not allowed to chase criminals.

This concern and type of action should be a call for departments to better train their officers in police pursuit driving and for more stringent guidelines within their pursuit policies. This issue for training was introduced into the U. S. Congress on September. 29, 1997, by Senator Dorgan. The bill calls for a National Program mandating training for law enforcement officers in vehicle pursuits. It was shown that police officers in the United States receive as little as fourteen (14) hours to none in small to middle sized departments. There is an increased emphasis for departments to have a pursuit policy, procedures and training to help decrease high speed pursuits. There had been studies conducted that show in states that have increased training in pursuit driving the

officers have a more complied effect to either not pursue or to end the pursuit early as to not endanger the lives or innocent civilians.

There are several statistics that help support the call for improved police for police pursuits that have been published by the Texas Engineering Extension Service. They are that more than 50,000 high speed pursuits occur in the United States each year and in these;

- a) 5,000 to 8,000 resulted in a collision
- a) 2,500 to 5,000 resulted in injuries
- b) 300 to 500 resulted in persons being killed

also according to a California Highway Patrol survey of 683 police pursuits they revealed

- a) 33 percent ended in collisions
- b) 10 percent ended in injuries
- c) 1 percent ended in death

The Texas Municipal League reported statistics in Texas alone showed that

- 1) the average police vehicle collision cost \$ 4,500
- 2) the average police vehicle collision involving serious bodily injury and substantial damage cost \$150,00
- 3) and that there was over \$7,000,000 in police vehicle collision in Texas from 1990 through 1999

In examining the work of Dr. Rolando V. delCarmen, he discusses the issues in police liability. Dr. delCarmen talks about the two types of force that are associated with police work, one being non deadly force and then other deadly force. Deadly force is that force that when used would lead a reasonable officer to believe that it poses a high risk of death or serious injury to human life. In dealing with high speed pursuit this is something officers should be

concerned with. Even if officers are not held liable under the Fourth Amendment, unlawful search and seizure of an individual, the parties can bring suit in state court under the state tort act. There the three areas were this can have an implication for police supervisors. Law suits often include the supervisors and the departments as defendants. First, they bring suit for supervisory negligence. The parties sue the departments claiming officers did have a direct link to supervisors' failure to train, negligent supervision, failure to direct, negligent assignment, negligent hiring, negligent entrustment and retention. Second, the suit claims liability for the existence of a written policies that is unconstitutional. Thirdly, suits arise from customs and practices that are deemed a violation of an individuals constitutional rights and have gone unstoppable or tolerated.

The need for policy when it comes to the use of force is an emotional issue in police departments and in the community. One observer wrote "probably the most volatile issue that creates friction between police and the minority community today is that of police use of deadly force". Dr. delCarmen explains that under *Tennessee v. Garner* the court ruled that the use of force to prevent escape is justified if the officer has probable cause to believe that the suspect poses a threat of serious physical harm, to the officer or to others

Conclusion/recommendations

The purpose of this project is what decision making process should police officers endure, better enabling them to decide when to pursue or not to pursue.

It is evident that a lot of departments have policies relating to pursuits.

However some of these departments have not reviewed these policies in over a year or longer. In conducting this research I believe that it is essential that Agencies review their pursuit policy yearly. There are new case laws that are handed down each year that affect every department in making or evaluating departmental policies. Departments should also look at implementing driving courses for every officer on a yearly bases. Officers should train to recognize weather conditions, traffic, population, their vehicle limitations and their emotions. According to the National Law Enforcement and Corrections Technology Center, it was reported that officers in small to medium sized departments had little to no formal training in pursuit driving. In other parts of the world, London required seven weeks of training before an officer can engage in pursuits. In Germany they do not often pursue vehicles because they deem it as too dangerous, however; they do receive seven days of training in pursuit techniques.

Police officers should be taught that both the officer and suspect can be caught up in what is known as "Post High Speed Chase Syndrome". This is marked by an overwhelming desire to fight or run due to their adrenaline levels that soar beyond that of soldiers and pilots during a time of war.

There have been a lot of departments that have banned pursuits altogether or restricted the officers in engaging in pursuits. These bans or restrictions do not solve the dilemma that faces us today.

Officers should be equipped with modern technology to help in the reduction of pursuits. These technologies will help reduce the risk involved to the officer, the violator and the general population. A solution to high speed pursuits may possibly lie in a perfect piece of technology. Such technology could get impaired and reckless drivers off of the roadway and render high speed pursuits obsolete, but this technology seems to be out of reach.

Police for now must perform a delicate balancing act in order to decide to pursue or not to pursue. This decision will lie with the officer at the scene and relies on their judgement, background and experience. If we ask police officers to make that decision and take the risk, then administrators and the public owe it to them to see they are equipped with the best tools and training possible to make that critical call.

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THE CITY OF LANCASTER, LANCASTER POLICE OFFICERS EVERTT
POWELL AND JIMMY MILLER, AND THE CITY OF DESOTO AND DESOTO
POLICE OFFICERS WILLIAM H. RANSOM AND C. P. BENTLEY PETITIONERS
v. KEN CHAMBERS AND EVELYN CHMABERS, INDIVIDUALLY AND AS
NEXT FRIENDS OF BRADLEY CHAMBERS, RESPONDENTS No D-3331
Supreme Court of Texas

COUNTY OF SACRAMENTO, SACRAMENTO COUNTY SHERIFF'S
DEPARTMENT, AND JAMES SMITH, Petitioners v. TERRI LEWIS AND
THOMAS LEWIS, Personal Representatives of the Estate of PHILLIP LEWIS,
Respondents
No. 96-1337 United States Court of Appeals for the Ninth Circuit 1997

CITY OF PHARR, Appellant, v. CESAR RUIZ, et al., Appellees. No. 123-96-
430CV COURT OF APPEALS OF TEXAS, THIRTEENTH DISTRICT, CORPUS
CHRISTI
1997

COUNTY OF SACRAMENTO et al.v. LEWIS et al., personal representatives of
the ESTATE OF LEWIS, DECEASED No 96-1337
SUPREME COURT OF THE UNITED STATES
Decided May 26, 1998

Appendices A

- 1) Austin County Sheriff's Department
- 2) Bastrop Police Department
- 3) Bellville Police Department
- 4) Brenham Police Department
- 5) Colorado County Sheriff's Department
- 6) Columbus Police Department
- 7) Fayette County Sheriff's Department
- 8) Giddings Police Department
- 9) Gonzales County Sheriff's Department
- 10) Lavaca County Sheriff's Department
- 11) Moulton Police Department
- 12) Schulenburg Police Department
- 13) Shiner Police Department
- 14) Smithville Police Department
- 15) Washington County Sheriff's Department
- 16) Yoakum Police Department