

**THE BILL BLACKWOOD  
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**Rising Concerns of Police  
Emergency Driving**

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## **ABSTRACT**

The purpose of this paper is to record and present information in the area of police emergency driving which have caused rising concerns for police administrators. The dilemma that it produces is based partially on differing view points. On the side of law enforcement is the legal duty to apprehend criminals. On the side of the citizens is the expectation of streets that are safe, not just from the bad guys, but from the pursuing officer as well. (Alpert & Anderson 1986). Through this data and research, police administrators will be able to aide their departments in reducing the liabilities which exist with police emergency driving.

The police patrol vehicle is a tool used by the police officers on a daily basis across the nation for emergency responses to calls for service and police pursuits. Available research now suggests that between 50,000 and 500,000 police pursuits take place annually in the United States. As a result of this frequency of use, there are police involved accidents which result in large amounts of property damage, personal injury and fatalities.

Previous authors and researchers have written about legal aspects, civil liability, policies and procedures, past statistics and training in the area of police emergency driving. The research that I have conducted collectively touches on all of these areas. The methods that were used in conducting research was traditional for the most part. Some legal research, survey information from past authors and researchers is included.

The information gathered in the area of civil liability should lead police administrators to increasing training and developing better policy and procedures which in turn will increase the police officer's knowledge and driving ability.

## INTRODUCTION

Police emergency driving is a major dilemma facing law enforcement today. There are thousands of police pursuits and emergency calls on an annual basis in the United States. With the duty of law enforcement officers to “protect and serve”, police emergency driving is a daily aspect of enforcement. For example, each year, the California Highway Patrol makes over 4 million vehicle enforcement stops. This figure includes 139,000 arrests for driving under the influence of alcohol or drugs and over 13,000 arrests for felonies ranging from possession of stolen property to homicide. A significant number of these stops escalate into pursuit situations (Abbott 1988). A small number of these police emergency driving incidents that have resulted in death or serious bodily injury to innocent citizens, pursuing officers, or suspects. Even though, measureably, there is a small percentage of police emergency driving-related accidents which have caused death or personal injury, civil suits usually follow each case. Because of the increase in the number of monetary civil judgments arising out of emergency driving situations, law enforcement agencies are taking a critical look at their policies and procedures as well as their emergency driver training programs. Several different view points have arisen. On the side of law enforcement is the legal duty to apprehend criminals. On the side of the citizens is the expectation of streets that are safe, not just from the bad guys, but from pursuing cops as well (Alpert & Anderson 1986). Even though an officer may conduct the “perfect” chase by following all policy directives and by making all the right decisions, the chase may result in the worst possible outcome due to some unforeseen contingency (Alpert & Anderson 1986).

The research in this area is important to all police personnel as it will help to understand the liabilities involved as well as the view points of all the parties involved. This research will offer the police administrator an educated perspective in dealing with this controversial area. The major sources utilized in researching this topic of police emergency driving are periodicals and case law.

## Historical, Legal or Theoretical Context

During the 1980's, police pursuits became subject to the dynamic changes previously seen in the areas of deadly force and domestic violence. This trend will continue during the 1990's and unless the issue of police pursuits is strategically managed, it will undergo the same fate (Alpert 1987). Police emergency driving including police pursuits have always been seen as a duty expected by both the police officers themselves as well as the general public. Every police pursuit that ends in injury or death of the police officer, the suspect or an innocent third party, is now undergoes close scrutiny. Evidence of this occurred following seven police pursuits in Los Angeles County during November 1992 that resulted in ten fatalities: These pursuits were followed by editorials and articles advocating of a variety of emotional solutions (Grimmon 1993). Fearful of public sentiment against the loss of life and destruction of property resulting from these types of collisions, law enforcement agencies seldom kept records or statistics showing the magnitude of the problem (Alpert 1988:Alpert & Anderson 1986). It was not until the 1980's, however, that any empirical research was conducted on pursuit driving, although many individual police agencies and professional associations recognized the need for investigation and improvements in police pursuit policies and practices (Alpert & Dunham 1989). Available research now suggests that between 50,000 and 500,000 police pursuits take place annually in the United States. Estimates are that 30 percent of all police pursuits end in injury (Kappeler & del Carmen 1990).

Unfortunately, for law enforcement administrators and municipal and state government officials, just recognizing that there is an issue is not enough. Three United States Supreme Court's cases rocked law enforcement establishments of the United States; *Tennessee v. Garner* (1985), *Bower V. County of Inyo* (1989), and *City of Canton v. Harris* (1989) (Westmoreland & Stenning 1994). These cases addressed the use of deadly force, road blocks and training, respectively. As law enforcement officials around the country watched to see how these rulings would affect their agencies, law suits began to be used to

force law enforcement officers and departments to change their ways of doing business (Westmoreland & Stenning 1994). Even still, there are many agencies that have made no changes or are slow in complying with the courts demands.

Aside from the obvious costs associated with injury and loss of life, this police practice often results in legal liability. Courts attempt to balance criminal apprehension and the potential dangers of police pursuit. In doing so, a number of lawsuits have resulted in six- or seven-figure awards and several have brought some municipalities and townships near bankruptcy. (Kappeler & del Carmen 1990).

Despite some differences in state laws, the basis for most pursuit-related liability is negligence. Pursuit litigation usually focuses on whether the police acted prudently and reasonably under the circumstances (Schofield 1988). In 1978, the United States Supreme Court made a landmark decision in Monell v. New York City Department of Social Services which recognized that a municipality can only be held liable under the Civil Rights Act, 42 Section U.S.C. Section 1983, where the municipality itself causes the constitutional violation for which the complaint is made. Briefly stated, 1983 liability attaches only if the policy, custom or usage of the municipality is the “moving force” behind the constitutional injury (Alpert & Smith 1991). In the late 1980’s, some state legislatures (California and Utah) enacted laws granting immunity to public agencies that adopted a written policy on vehicular pursuit from liability damages for personal injury or death, or for damage to property resulting from the collision of the vehicle pursued by a peace officer employed by that entity. This immunity was made contingent upon the adoption of a written pursuit policy that met certain minimum standards set forth in the statute (Wilson, Cotkin & Collins 1993). This move by the states of California and Utah at that time gave every agency in those states an incentive to produce a policy governing police pursuits. Although, there were court cases after that time where agency’s pursuit policies were reviewed by the courts, and the they returned with judgments removing the immunity from the agencies involved due to their policies being too ambiguous.

There is no simple solution for the complex problem of police pursuits. There is, however an increasing awareness among both police officers and the public they serve

of the devastation that accompanies an unsuccessful police pursuit. . .of the ineffectiveness of law enforcement's past policies and practices. . .of the waning glamour and mystique previously associated with police pursuits. . . of the critical need to address and manage police pursuits in a responsible manner as we enter the 21st century (Alpert 1987).

Perhaps the most important questions that concern police administrators and the public about pursuits are: (1) what is the relative dangerousness of police pursuits; (2) what is their relative importance in fulfilling the police mission; and (3) how can property and personal losses be minimized while officers fulfill their mission. The decisions made by the United States Supreme Courts as well as the individual states have forced law enforcement administrators to create clear and enforceable policies and procedures as well as realistic training in the area of police pursuits and emergency driving.

## **Review of Literature or Practice**

Since 1983, several studies have documented the number of pursuits as well as the percentage of apprehensions and the reason for the pursuit. Other studies include police pursuits that have terminated as a result of collisions and the descriptive information of the police officer involved. Information from these studies have sometimes conflicted with the perception that media has portrayed to the general public. Unfortunately, the perception of what stands as acceptable behavior for officers often depends on Hollywood's depiction of police actions (Morris 1993). As a result, the general public would be lead to believe that a majority of the police pursuits end in an accident with injuries or death.

The California Highway Patrol study reports findings from an analysis of almost 700 pursuits. The profile based upon results from this study shows that the typical pursuit: (1) is initiated by a traffic violation; (2) takes place at night; (3) continues for one mile; (4) lasts one to two minutes; (5) involves two police cars; (6) is terminated voluntarily by the offender; (7) involves a male driver 20 years of age. 77 percent of the suspects were apprehended; and 70 percent of the pursuits ended without an accident (Alpert & Dunham 1989).

In fact , pursuit driving, the most dangerous type of driving in which a police officer engages, accounts for less than 5 percent of all the accidents involving police cars (Alpert & Dunham 1989). In contrast, another study found that about 50 percent of the felony-related pursuits ended in a collision. A national study conducted by Michigan State University found that when a police unit was involved, one collision in 35 ended in death (Beckman 1987). A 1987 study in Metro Dade Police Department revealed some surprising information. A greater frequency of pursuits was expected relative to the expectations derived from the social concern over police pursuits and the media attention given the subject. However, the figures indicate that pursuit driving is 65 times more likely to result in an accident than other police driving, and that a pursuit-related accident occurred almost every three days (Alpert & Dunham 1989).



In the United States in 1988, 58 law enforcement officers (38 percent of these killed that year) died as a result of police pursuits. That same year, 75 died from gunshot wounds. An examination of the loss of human life from police pursuits including police officers, suspects and the innocent public shows that 2,885 individuals lost their life from 1980 through 1989, for a yearly average of 288 nation-wide (Grimmond 1993). From 1989 to 1991, the National Highway Traffic Safety Administration, NHTSA, reported that 924 people died in pursuit related collisions. Of these, 737 were killed in the vehicle being pursued, 173 were third party non-participants, and nine were police officers. In 1990 alone, there were 314 deaths and 20,000 injuries (Smith 1993).

As the issue regarding police emergency driving, mainly police pursuits, continued to rise to the forefront in law enforcement, studies continued to be conducted to gain more information to assist in handling this dilemma. The Dade Association of Chiefs of Police, initiated a two-phase national study on police pursuits in 1984. The first phase included a content analysis of pursuit policies from around the country. This resulted with all of the police departments in Dade County adopting a model pursuit policy. The second phase of the study consisted of an empirical analysis of pursuits in Dade County which resulted in a form being created to collect specific information on every pursuit.

Another area, identified as a need for research in the area of police pursuits, is realistic training. Westmoreland and Stenning 1994 surveyed 123 Texas municipal police departments that employ 26 or more full-time police officers. One of the questions asked was how many departments had a competency-based emergency driver training course.

Only 39.4 percent of smaller departments have driver training programs compared to 90.6 percent of the larger departments. Of the 115 municipal police departments that constituted the study sample, 38 have no driver training program. What is extremely alarming is that there are 744 departments in Texas that are smaller than the 115 studied. Therefore, if the study sample is representative of the statewide population, it is possible that 867 Texas municipal departments, over 700 may have no driver training program (Westmoreland & Stenning 1994).

In two separate questions, the respondents were asked about the importance of additional driver training and whether or not, in their opinion, their department provided adequate

training. Eighty-five percent of the respondents indicated that additional driver training would have a medium to high level of impact on pursuits: However, 67 percent reported that their department did not presently provide adequate training.

Through these studies important information has been brought to the attention of law enforcement personnel as well as to the general public. The research that discusses accidents related to police pursuits can be interpreted in different ways. On one hand it could be argued that there is a dangerous risk of injury or death. On the other hand, the benefit of initiating pursuits is that, contrary to conventional thought, nearly three-fourths result in arrest. While a majority of the pursuits were initiated for relatively minor traffic infractions, nearly 50 percent of those apprehended were charged with serious felony offenses unrelated to the pursuit (Alpert & Dunham 1989). We have also learned that the absence of a strong and convincing policy on police pursuits forces officers to react intuitively. This intuition is probably based on practice and custom. The consequences of aggressive police pursuits without established guidelines may include the unnecessary loss of property, personal injury, or death (Alpert & Anderson 1986). Then there is the concern for the need of comprehensive police emergency driver training programs. The absence of this training can have an alarming result. A collision of some type can be expected to occur in 32 percent of the pursuits. When the severity of these collisions is analyzed, 20 percent will result in property damage, and 13 percent will result in personal injury. Using the same method of comparison, a fatality will occur in 1.2 percent of police pursuits.

## Discussion of Relevant Issues

There is a growing concern sweeping across the country implicating law enforcement as the force behind the increasing number of pursuit-related deaths and injuries.(Morris 1993). The media focus primarily on those pursuits resulting in death, serious injuries and/or lawsuits. Less focus has been directed to the pursuits resulting in the apprehension of various felons, fugitives, murders and serious misdemeanor offenders, such as driving under the influence of alcohol and/or drugs (Hannigan 1992). This causes several different view points to emerge. First, the law enforcement viewpoint considers pursuit driving as a vital aspect of deterrence for both traffic supervision and crime control. Second a group, comprised mainly of physicians reasoned that pursuit driving resulted in an unacceptable number of casualties (Alpert & Dunham 1989).

Since Monroe, and more importantly Monell, suits brought against law enforcement agencies alleging wrongful police use of force, especially deadly force, have resulted in defensive actions taken by police agencies to protect themselves as much as possible from litigation. These actions include: narrow policies regulating officers' use of deadly force, more and better training, and improved supervisory control, among others (Alpert & Anderson 1986).

The time has come for law enforcement to avoid the knee-jerk reaction to pursuit exploitation that has caused some departments to eliminate pursuits altogether (Morris 1993). The first step is in determining the appropriate policies and procedures which balance deterrence and citizen safety is the key element in obtaining the desired police reaction to motorists who refuse to respond to emergency signals (Alpert & Smith 1991). A policy's first principal is that officer's primary responsibility is to protect lives. It is important that officers recognize the impact of their decisions during a pursuit and that they not engage merely in a contest to win (Alpert & Smith 1991). One way to help officers balance their standards would be to weigh the alternatives as if firing a weapon in a situation where innocent bystanders may be endangered. A statement concerning the rationale of pursuit driving should follow. When the foreseeable dangers or risks of a pursuit outweigh the need to immediately apprehend the suspect, the lead officer or his supervisor must terminate it (Alpert & Smith 1991). A policy's third principal should be a definition of

pursuit that follows the stated rationale. Lastly, a policy's fourth principal should be some statement concerning the specific tactical limitations permitted in the pursuit.

Police policies regarding pursuit generally fall under one of three models: (1) Judgmental-allowing officers to make all major decisions relating to initiation, tactics, termination; (2) Restrictive-placing certain restrictions on officers' judgments and decisions; and (3) Discouragement-severely cautioning or discouraging any pursuit, except in the most extreme situations (Alpert & Dunham 1989).

The second area that has been a target area for improvement in law enforcement where pursuits are concerned is with training. Inadequacy of police training is frequently alleged as a basis for municipal liability (Kappeler and Vaughn 1989). The establishment of a standard of "deliberate indifference" for gauging adequacy of training policy would be a welcome delineation, if clear guidance were provided to determine the degree of indifference a policy must reflect to rise to constitutional level (Alpert & Smith 1991). "Deliberate indifference" basically refers to the governmental entity knew or should have known of the stated situation. The term has been used by lower courts on numerous occasions, typically in conjunction with "reckless disregard" or "gross negligence", to define the underlying parameters of municipal liability (Alpert & Smith 1991). Unlike some states, Texas does not have a statewide facility in which to train all of its officers. Although civil judgments have not yet forced the issue in Texas, it is inevitable that Texas must at some time face the problem of providing statewide emergency driver training for its officers (Westmoreland & Stenning 1994). The multitude of situations and conditions under which an officer operates a vehicle demands a well-trained individual. A driver training program stressing basic concepts is essential in order to meet these demands (Abbott 1988). According to attorneys, Bogren (1990) and DeGrazia (1990), when an agency refuses to provide its officers with ongoing training that will allow them to properly handle situations that are common to their duties, they will eventually find themselves liable. They believe that there are certain objectives that were critical to a defense against "deliberate indifference" in which a deadly force issue was in question:

(1) there must be a valid “deadly force” policy in effect; (2) each officer must be given a copy of the policy and sign or otherwise indicate that he has read and understands it; (3) the policy must be reviewed twice yearly; (4) the policy should be bound and kept in the officer’s possession; (5) officers must receive adequate training; and (6) the policy must be kept up to date (DeGrazia 1990 and Bogren 1990).

The third area that must be in tact before any of this can be a success is supervisory control. Most problems associated with pursuits can be minimized with effective supervision and a comprehensive written pursuit policy, which is constantly refined and strictly enforced (Hannigan 1992). Proper supervision helps to ensure that the pursuing officer’s decision-making process is sound and eliminates the possibility of the “pursuit at any cost” mindset (Hannigan 1992).

We must train all officers specific to the policy, provide hands-on training in emergency vehicle operations and flood our training programs with behavior-related training to enhance the officer’s ability to recognize the hazards of pursuit (Morris 1993). The police administrators and the local governments have been motivated to act on the dilemma of police emergency driving for one main reason-money. In an out of court settlement in 1985, the California Highway Patrol paid 12 million dollars to a plaintiff in an emergency driving related collision (Westmoreland & Stenning 1994). The amount of cost paid in liability suits in pursuit-related accidents would have been a better investment in the area of training before the problem became a problem.

## **Conclusion/Recommendations**

The purpose of this research was to record and present information in the area of police emergency driving which has caused a rising concern for police administrators. Through this data and research, police administrators will be able to aide in reducing the liabilities which exist with police emergency driving. The issue that is presented to police administrators in law enforcement today is vehicular pursuits are an inherently dangerous but necessary part of law enforcement's obligation to promote law and order in our society. Unfortunately, some accidents are unavoidable, and some pursuit-related liability is probably an inevitable consequence of law enforcement responsibilities.

Apprehension of the criminals is at the heart of the police mission. It can be argued that any law violator should be chased and arrested. It is also arguable that if a motorist initiates a chase, it is he or she who is responsible for any resulting damages (Alpert & Anderson 1986). But civil litigation from pursuits will increase steadily in the future. Barriers that have prevented third-party liability law suits through immunity such as the California Vehicle Code will be overcome by judicial decisions and legislation, unless alternative pursuit strategies are implemented by law enforcement according to leading experts in the field. These issues will require law enforcement to continue to police ourselves in the area of police emergency driving. Although there will always be some situations requiring pursuit, as many as 50 percent of the present pursuits might be eliminated through comprehensive training, the development of specific policies and procedures, and keener awareness of the outcome of pursuits (Morris 1993). The other area that may facilitate major changes in the future in the area of police pursuits is technological development. The past court decisions have brought about the changes in police emergency driving today, and unfortunately different court decisions will also be what possibly will mold this area in the future.

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