

**The Bill Blackwood
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Restrictive Pursuit Policies

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ABSTRACT

Police pursuits and the policies that govern them has long been a subject of controversy in the profession of law enforcement. On one side of the argument are those who feel that pursuits should be banned because of the inherent danger they present to officers, the suspects, and the general public. There are others who believe that pursuits should be permitted, and it should be up to the officer's full discretion to decide when to pursue, how to conduct the pursuit, and when to terminate the pursuit. The third argument is that pursuits should be permitted but should be governed by parameters established under a restrictive pursuit policy.

This paper asserts the belief that agencies should adopt and be guided by restrictive pursuit policies. The information and research found within this paper is a culmination of exhaustive review of a number of law enforcement journals, articles within periodic police publications, and the review of several internet sites. Additionally, the model guidelines for vehicular operations, outlined by the Texas Municipal League; research reports from the U.S. Department of Justice; and Texas law was examined.

Upon reviewing this paper, the reader should have a clear understanding of the issues involved with police pursuits. These issues involve the risks of human suffering, the possibility of damage to personal property, the potential for civil liability, as well as the steps that law enforcement can take to lessen the burden upon them, especially if the pursuit ends in a less than positive manner. Once completed, the reader should understand the need for well-instituted, restrictive pursuit policies for police.

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INTRODUCTION

Police pursuits are among the most controversial topics that police managers have to deal with on a regular basis. Television shows, movies, and cable news have glamorized the police pursuit and brought it into the nation's living rooms as a form of entertainment. The entertainment is given greater value when the pursuit ends in a horrific crash complete with rollovers, fire, and a debris field scattered over a great distance. What is not shown is the suffering of the victims, the stress and affects on the officer(s), the mountains of paperwork, and the time and money that an agency may have to spend defending the actions of its officers in civil litigation as a result of the crash.

Police pursuits create a tremendous amount of risk for damage to vehicles and property as well as the real potential for serious injury or death to officers involved, the suspects, and innocent civilians. As a result of these risks and the extensive civil litigation that may follow, many agencies are revisiting the issue of high speed driving and police pursuits and developing restrictive policies to aid officers in making sound decisions when it comes to initiating, continuing, and concluding pursuits (Cooley, 2006). For many officers, the challenge is in the decision as to whether the fleeing vehicle should be chased or allowed to continue without further police action. There are no clear-cut answers (Sharp, 2003). To a certain extent, the answer may lie in the officer instantaneously trying to determine whether the benefits of a potential apprehension are greater than the danger that the officers, suspects, and the public face as a result of the chase (U.S. Department of Justice, 1997). A restrictive pursuit

policy may provide an officer with the guidance he needs when making these crucial decisions.

When an officer gets into a pursuit driving situation, he may experience an adrenalin “kick,” causing him to tunnel in, and he may incur myopia and auditory lockout. This is compounded by other distractions, such as piercing sirens, flashing LED lights, and blaring radios. These distractions can have a huge impact on the officer’s ability to make clear decisions (Schultz, Hudak, & Alpert, 2009). Witczak (2003) also stated that any emergency response or pursuit driving situation that an officer engages in is no different than an officer employing arrest and defensive tactics or using some type of deadly force. The use of force by police is controlled by state law, case law in many incidents, and by written departmental policies and directives. Police pursuits likewise must have some controls on them, otherwise the insufficiency could result in needless accidents, injuries, and deaths (U.S. Department of Justice, 1997).

A restrictive pursuit policy is one that limits the crimes or situations under which a pursuit may be initiated. This is in contrast to a discretionary policy that may provide basic guidance but gives the officer the discretion to determine when to initiate, conduct, and terminate the pursuit (Cooley, 2006). Employing a restrictive policy gives the officer some clear cut tools to use when making the decision to initiate a chase or to continue to pursue. It is imperative that the officer understands that should he decide to continue a pursuit, he is accepting a higher degree of responsibility should something go awry (Daniels, 2003).

Restrictive pursuit policies are becoming more common among agencies today because of the great amount of pressure placed on agencies by the media and the

public. In some areas, there is even pressure for agencies to ban police pursuits altogether (Sharp, 2003). As police managers closely examine the issues involved and weigh in on the dangers, the benefits, and the new technologies available, they call upon their own professional ethics and experiences to make sound decisions. Under the circumstances identified to this point, agencies, when determining how to handle the pursuit issue, should strongly consider the adoption of restrictive pursuit policies for their officers.

POSITION

When Metro Dade Miami implemented a policy in 1992 that restricted pursuits to those cases that involved a violent felony only, they saw the number of pursuits decrease the following year by 82% (U.S. Department of Justice, 1997). A restrictive pursuit policy puts the officer in charge of the situation. The officer calls the shots, makes the decisions on how the pursuit should be handled, and bases his decisions on a number of factors, such as traffic volume, weather conditions, and the road conditions, all of which are guided by the policy. The suspect in the pursuit is not likely to concern himself with these conditions, so the officer in charge must adapt his decision making as the situation evolves. If it is evolving to the point where it is too perilous to continue, then he must make the appropriate decisions based on the policy as well (Daniels, 2003).

In a study of 30 randomly selected law enforcement agencies of various types and sizes and various regions in the United States, it was found that 83% placed restrictions on the conditions and circumstances under which officers were permitted to engage in pursuits. The main restrictive factors were the nature of the original violation

(97%), weather (90%), the presence of pedestrians (87%) and risk/benefit analysis (87%). Other conditions based on ranking included patrol car conditions, familiarity with locale, traffic volume, time of day/night, and the potential for later apprehension (Sharp, 2003). A well written policy requires a great deal of planning and foresight, but the potential benefits of having it when the need arises are invaluable.

Witczak (2003) pointed out that a good policy should meet a number of standards and include information on decision points, such as when to initiate, continue, or terminate a pursuit, as well as establish supervisory responsibilities and the training of agency personnel. Also included in the policy should be guidance related to acceptable tactics and techniques, multi-jurisdictional pursuits, and follow-up debriefings. The policy must evolve as the agency grows, technology improves, new case law establishes parameters to follow, and law enforcement techniques change. The policy should be reviewed for accuracy and currency on a regular basis in order to stay on the cutting edge (Specht, 2006). A well written policy goes a long way to providing excellent guidance to the officers while at the same time reducing the potential for civil liability and enhancing the agency's image as a professional, conscientious, and ethically sound law enforcement agency.

A written policy has very little value if officers are not carefully trained in how to put it into practice or held accountable for failing to abide by its provisions. According to a report by the United States Department of Justice (1997), only about 60% of agencies provide entry level training in pursuit driving at their academies, and of these, the average amount of time devoted to the topic was less than 14 hours. Once in-service, the picture was bleaker, with the average officer receiving about three hours per year

and rarely was this focused on true pursuit driving issues. The Texas Commission on Law Enforcement Officers Standards and Education (TCLEOSE) mandates a minimum of 32 hours of driver training in the Basic Peace Officer Course (BPOC), and this must include a block of simulator or actual hands on driving (Texas Commission on Law Enforcement Officer Standards and Education, 2009). However, once on the streets, in-service training is left entirely up to the employing agency with no minimum hours established by law or rule.

Even a minimal amount of annual retraining can be beneficial to the officer and the agency. By providing the retraining, it refreshes the officer's memory and renews them to some points of the policy that they may have forgotten, as well as reduces the likelihood that they may unintentionally violate the policy should they engage in a pursuit situation. This type of training can be accomplished through ten minute blocks during regular meetings, roll calls, or in-service training sessions (Lesh, 2003). By having some kind of ongoing training, it provides the officer some defense should they find themselves under litigation relating to their actions. Officers lacking experience and training in pursuits can very quickly find themselves in over their heads and beyond their skills levels, thus elevating the danger level for all parties involved (Daniels, 2003).

A carefully thought out restrictive pursuit policy can pay huge dividends for the agency. If it is coupled with a well designed pre-service and ongoing in-service training program, the safety level of all members of society is enhanced. The third aspect involves the incorporation of the program into the agency's standard operating procedures. This conglomeration is likely to minimize the chances of property damage or serious injury to officers, suspects, and the general public.

Restrictive policies are effective as well as an alternative to policies that prohibit pursuits. In law enforcement there is a need to apprehend known offenders; in fact, some may argue that the law requires it. Texas Code of Criminal Procedure (CCP) Article 2.13 states, "it is the duty of every Peace Officer to preserve the peace within his jurisdiction using...all lawful means including arresting offenders in every case where authorized by law" (*Texas Criminal and Traffic Law Manual, 2009-2010 Edition, 2009, "Duties and Powers," para. 1*). Failing to pursue may be viewed by some as a neglect of an officer's duties and subject the officer to disciplinary action. It may also be further argued that if an agency is publicly known not to engage in pursuits, then its credibility with both law abiding citizens and violators will suffer (Nugent, 2005). This knowledge may cause additional people to flee from the police, decreasing the probability of apprehension and further endangering the public.

COUNTER POSITION

Any time an officer turns on his overhead emergency lights and begins pursuit of a vehicle, there is an increased risk of injury to individuals or damage to property. One study often cited claimed "that as many as 40 percent of all motor vehicle pursuits result in some type of collision" (Alpert, 1998, p. 36). The study also attributed more than 300 deaths each year in this country to police pursuits (Alpert, 1998). The National Highway Traffic Safety Administration estimated that 2,500 people died in police chases on American roadways between 2000 and 2006 (as cited in Peck, 2008). Pursuitwatch, a national police chase watchdog group, claimed that its research showed more than 14,000 people are injured each year in police chases in the United States (as cited in

Peck, 2008). Although there is great disparity in these numbers, the issue of potential death and injury as a result of police pursuits is definitely an issue in need of review.

Although these numbers may seem compelling to some, the disparity lies in the fact that they are merely estimates based on small scale surveys. According to another survey, 75% of officers reported they had to do a report if they are involved in a pursuit; however, only 20% of these reports are required to be submitted to some type of state agency for statistical compilation (Sharp, 2003). The only data that may be readily available on pursuits would be maintained in computerized dispatch systems or on radio tapes, and these are rarely reviewed unless there is some type of crash or some party requests the information (Schultz, Hudak, & Alpert, 2009).

Further adding to the debate is the lack of a consistent definition of what a pursuit is. It can be defined based on a number of factors, such as the time the incident lasted, the distance covered, the speed of the vehicles, or some other factor defined by the author of the policy. The Texas Municipal League (TML) publishes a series of model policies for municipal agencies in Texas. In their sample Vehicle Operations Policy, pursuit is defined as “the driving concerned with the pursuit and apprehension of a violator or violators in a motor vehicle” (Texas Municipal League, 2008, p. 1). Under this definition, any time an officer turns around and starts after a traffic violator, they are in pursuit. This is an occurrence that occurs thousands of times each day in Texas. If this standard is applied to the numbers that claim 40% of pursuits result in a collision, the percentage of pursuits resulting in crashes would be minuscule. Until a consistent definition of a pursuit can be established and reporting standards can be formulated on a large scale basis, agencies will have no accurate numbers on pursuits or the injuries

or deaths that are a result of them. This will allow many organizations to establish their own standards and develop the numbers they need to fit their needs at the time.

Civil liability may also be a problem in pursuit cases. In the Supreme Court case of *Brower v. County of Inyo*, the Court ruled that a roadblock placed by the officers was, in fact, a seizure under the fourth amendment to the U.S. Constitution and in some cases may constitute civil rights violations and/or excessive force (as cited in Nugent, 2005). However, in this case, they weighed heavily on whether the actions taken by the police caused the intended results, in this case Brower's death, or the consequence was an unintended event. If deadly force is used during the pursuit, it must comply with the fleeing felon rule as established in the prior case of *Tennessee v Garner* (as cited in Nugent, 2005). If it is determined that the officers violated the civil rights of the victim in this case, then the results of the litigation may be extremely heavy. The liability may also be costly if the victim in the case is an innocent third party.

Although the threat of potential for civil liability in pursuits is real, there are proactive steps that an agency can take to reduce the chances of a large loss as a result of an action related to a pursuit. Cooley (2006) identified three main areas that are of concern. The first is negligence by failing to enact a restrictive pursuit policy, the second involves the negligent initiation of a pursuit, and the third is the failure to terminate a pursuit in a timely manner. Based on his recommendations, if the first action is taken and instituted, it should greatly enhance the chances of proper action in steps two and three. Cooley (2006) also advocated thorough training as well as full articulation of all events involved in a pursuit action.

Daniels (2003) argued that there are some officers that let their egos take over when they get into the pursuit situation, and there are others who are physically or psychologically suited to participate in this type of high tension, high risk activity. He further pointed out that if they are unprepared or inexperienced in driving at high speeds, they may become a huge liability to the department as a result of participation in a high speed pursuit.

While it is true that there are officers who are not physically or psychologically suited for pursuit actions and others that may allow their ego to get involved, it is the supervisor's responsibility to know the capabilities of the officers under his control and to monitor the situation as it unfolds. If at any point it appears that the officer is losing control of the situation, then the supervisor must make the appropriate decision and terminate the pursuit action. If the officer himself terminates the pursuit, proper steps should be in place, in policy, to ensure that terminating a pursuit is never looked upon with disapproval if done for safety purposes (Daniels, 2003).

Another argument against restrictive pursuit policies may come from the other end of the spectrum. The first set of arguments presented were all based on opposition to pursuits or favoring the banning of pursuits. There are still those that believe that there should be policies that are not restrictive but instead leave the decision of whether to pursue, how to conduct the pursuit, and when to terminate the pursuit entirely on the shoulders of the officers involved (Nugent, 2005). These types of policies are referred to as discretionary policies, are not often found in ultra-modern police departments, and have lost popularity in the past 30 years because of the lack of guidance and direction

they provide and the potential problems they can create, especially if the officer(s) are fairly inexperienced.

Operating solely on discretion of the officer under these extreme and dangerous conditions could be a very risky proposition. Using the same argument presented by Cooley (2006) earlier, the introduction of a restrictive policy, coupled with adequate training, would help limit the use of discretion. The parameters established by such a policy would negate any adverse actions stemming from bad decisions made under the use of a discretionary policy.

CONCLUSION

The longer a pursuit is stretched out, the greater the chances of something going wrong or the outcome not being good. By instituting a well thought out and written restrictive pursuit policy, the agency is providing the officers and their supervisors a set of tools that will greatly enhance their ability to make good, sound decisions in a pursuit situation. Once the policy is in place, steps must be taken to make sure the policy is implemented and followed by all who are affected by it. This would require a period of training, possibly involving some real life scenarios and situations, to demonstrate how the policy works and help the officers feel at ease operating within its guidelines.

There are those who oppose police pursuits and feel they should be banned, but this is not realistic to most officers. An officer following a vehicle late at night that is weaving all over the road and into oncoming traffic is going to attempt to stop the vehicle. If he turns on his lights and siren, and the vehicle continues to go without stopping, he is now engaged in a pursuit, even if they are within the speed limit. Under the circumstances, telling the officer he has to turn off his lights and let the vehicle go is

not practical and would present and immediate danger to many people. The officer has to be given the tools to deal with this situation and others like it. That is the purpose of the restrictive pursuit policy. The restrictive policy should be considered for all agencies to govern pursuit driving operations.

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