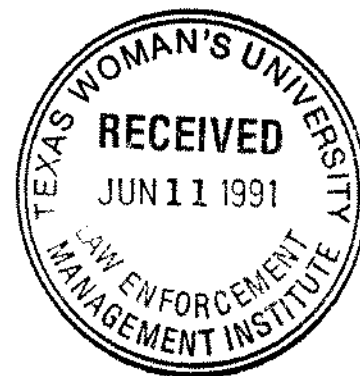


LAW ENFORCEMENT MANAGEMENT INSTITUTE

A REPORT WITH RECOMMENDATIONS CONCERNING
POLICE PURSUITS AND THE DEVELOPMENT
OF PURSUIT POLICIES

A RESEARCH PAPER
SUBMITTED IN PARTIAL FULFILLMENT
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#91

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PART ONE.

INTRODUCTION

Over the years, a considerable amount of attention has been given to the issue of deadly force used by police officers. Writers have focused attention on which officers are likely to use deadly force, who deadly force is likely to be used against and the circumstances in which deadly force is likely to be used. As a result, these writers and researchers have provided law enforcement administrators with a considerable amount of information upon which to base deadly force policies.

Only in recent years has similar attention been given to the issue of high-speed police pursuits. Police pursuits should be given as much attention as deadly force because police pursuits themselves can also be a form of deadly force. Like the use of firearms, pursuits can result in the deaths of, and injuries to, law enforcement officers, suspects and innocent third persons, as well as damage to property. As a result, these pursuit related deaths, injuries and property damage can, like the use of firearms, result in costly litigation and bad publicity. Unlike the use of firearms, deaths and injuries resulting from pursuits are usually unintentional.

When an officer fires a weapon, it is often a conscious attempt by the officer to inflict some degree of harm on the suspect in order to neutralize the suspect's actions. The object of a pursuit is to have the suspect stop his vehicle

in a safe manner and any accidents that occur during the pursuit are clearly the opposite of the pursuing officer's intentions.¹

Given the fact that any pursuit is a potentially hazardous situation, careful attention should be given to the policy that governs pursuits. A discretionary pursuit policy is one that allows the pursuing officer to make all decisions about how the pursuit is handled. A restrictive pursuit policy sets definite limits on how the pursuit is handled. These limits may include restrictions on the number of units involved, circumstances in which the pursuit must be terminated and so on. A discouraging type of policy would prohibit pursuits in all but the most extreme situations.² These situations would then be clearly defined in the policy.

The type of policy adopted by a law enforcement agency can show what priority the agency gives to the safety of the community. For example, it can be argued that no offense is so minor that the suspect should not be aggressively pursued. At the other extreme, it can be argued that the safety of the community is so inherently valuable that it should not be put in jeopardy by a high-speed pursuit. Most people would agree that the correct pursuit philosophy lies somewhere between³ the two extremes. In developing a pursuit policy, therefore, law enforcement administrators must decide which pursuit situations would warrant risking the safety of officers, suspects and innocent citizens and which pursuits would not.

Since the early 1980's, several research projects and articles have been published on the subject of police pursuits. While these articles and projects are not an exhaustive analysis of the topic, they do provide an excellent foundation of information that is worthy of consideration. Prior^{to}_A the 1980's, however, very little had been written about police pursuits. The two most well known studies done during this period were conducted by the United States Department of Transportation and a group known as Physicians for Automotive Safety. The lack of scientific data and a questionable method of data collection makes the conclusions by these studies somewhat suspect.⁴

CHARACTERISTICS OF PURSUITS

The earliest scientific study of police pursuits was conducted by the California Highway Patrol. This study was conducted over a six-month period in 1983. In this project, 683 pursuits initiated by the California Highway Patrol and ^{ten}~~10~~ California police and sheriff's departments were analyzed.⁵

The study reports that a violation of the California Vehicle Code was the most common reason for initiating a pursuit. Sixty-three percent of the pursuits in this study were initiated for this reason. Attempting to apprehend an individual suspected of driving while intoxicated represented sixteen percent of the pursuits studied. This was the second highest factor that led to a pursuit. No other single reason for pursuit represented as much as ten percent of the total

number of pursuits. Attempting to apprehend a known felony suspect, for example, was a preceding factor in only six percent of the pursuits in this study.

The reported apprehension rate in this project was seventy-seven percent. Yet, a closer look at the data reveals the actual circumstances of the apprehension. While seventy-seven percent of the pursuits resulted in an apprehension of the suspect, only thirty-six percent of the pursuits resulted in the suspect voluntarily stopping his vehicle and surrendering. In thirty-two percent of the pursuits resulting in an apprehension, the suspect's vehicle was either involved in a collision or became disabled in some way before the suspect was apprehended. Nine percent of the apprehensions were a result of a forcible means of stopping the suspect's vehicle such as ramming or boxing in the vehicle or by setting a roadblock. It should be noted that thirty percent of pursuits in this study actually resulted in one or more of the vehicles being involved in a collision. These statistics can and should raise concerns about injuries and deaths resulting from police pursuits. The study suggests that although the number of pursuit-related injuries and deaths are significantly high, there may not be as many as is sometimes implied.

The California Highway Patrol reached the conclusion that high-speed pursuits are worth the risks that are inherent in pursuit situations. The report concludes

in part by saying:

Undoubtedly innocent people may be killed or injured because an officer chooses to pursue a suspect, but this risk is necessary to avoid the even greater loss that would occur if law enforcement agencies were not allowed to aggressively pursue violators.⁶

Very few law enforcement administrators would totally agree with this conclusion. Although an attempt to apprehend a known felon may justify a higher degree of risk, one must question a policy that would allow an officer to place himself, a suspect or a citizen in so much danger in order to write a traffic ticket.

Although this study provides a foundation of statistical data on police pursuits, there are several factors that must be remembered when studying this information. Most of the pursuits that were used in this study were initiated by the California Highway Patrol. Without a replication of this study, it would be impossible to determine if the same results would be obtained by analyzing pursuits conducted by municipal police departments or county sheriff's departments. State police agencies place a great deal of emphasis on traffic law enforcement and, as a result, a large number of the pursuits may be expected to be the result of a traffic law violation.

County and municipal police agencies are likely to place more emphasis on the enforcement of other criminal laws as

well as traffic laws. Hence, it would be reasonable to question whether a greater percentage of pursuits in local jurisdictions would be related to these other crimes.

Pursuit related collisions, injuries and deaths are other statistics that may not translate evenly between the state and local jurisdictions. Pursuits involving highway patrol units are most likely to occur on large freeways and, consequently, may not encounter large amounts of vehicular traffic unless the pursuit occurs in a highly congested urban area. Pursuits involving local police agencies would be more likely to encounter higher levels of both vehicular and pedestrian traffic. Based on this higher level of traffic encountered by the local jurisdictions, one could assume that collision, injury and death rates would be higher.

A study examining the local perspective of pursuits was undertaken by Michigan State University from April 1 to September 30, 1984. This study used a modified version of the questionnaire used in the California Highway Patrol Study. Variables that were found to be insignificant in the California Highway Patrol Study were eliminated while new variables were added.

A total of forty police departments and thirty-five sheriff's departments participated in the study. The study had a broad geographic base in that departments from the states of Alabama, Arizona, California, Florida, Georgia, Hawaii, South Carolina and Tennessee as well as Guam and the

Virgin Islands were represented. A total of four hundred
twenty-four pursuits were examined in this study.

A breakdown of the data gathered in this study provides some interesting comparisons with the study done by the California Highway Patrol. The event that led to the pursuit is a good example. In the Michigan State Study, violations of the motor vehicle laws led to fifty-two percent of the pursuits that were analyzed. Although this figure is rather large, it is still below the sixty-three percent reported by the California Highway Patrol. The data from both studies reveals that a large number of pursuits are initiated for traffic violations only. Although it is a popular belief in law enforcement circles that suspects fleeing from relatively minor traffic offenses have been involved in more serious criminal activity, the data from Michigan State tends to
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reveal otherwise. In this study, the number of fleeing traffic violators actually involved in or wanted for more serious criminal charges was very low. This would tend to indicate that only minimal amounts of risk should be allowed when pursuing traffic violators.

While the percentage of pursuits resulting from vehicle code violations in the Michigan State Study was lower than the reported percentage in the California Highway Patrol Study, percentages of pursuits resulting from other factors were higher. Attempting to apprehend an individual suspected of being involved in criminal activity represented eighteen

percent of the pursuits in the Michigan State Study compared to only six percent in the California Highway Patrol Study. Pursuits of known felony suspects and assisting other agencies in pursuits were also reported more often by the Michigan State Study than by the California Highway Patrol. The difference in these categories, however, was not as dramatic as pursuing those who were suspected of some type of criminal activity. The only exception was the pursuit of those suspected of driving while intoxicated. This factor led to ten percent of the pursuits studied by Michigan State compared to sixteen percent at the California Highway Patrol.

By comparing the data from these two studies, a conclusion can be developed regarding the initiation of pursuits. Regardless of the law enforcement agency involved, an extremely large number of pursuits result from violations of state vehicle laws. Contrary to popular belief very few of these suspects have been involved in any other type of criminal activity. Conversely, the number of individuals pursued because they are known or suspected of being involved in more serious crimes is quite low.

Another area in which these studies can be compared is the number of pursuits that result in collisions. This comparison can be made by considering the rates of capture and escape that are reported by these two studies and the circumstances behind this data. Both studies report that seventy-seven percent of the pursuits resulted in

apprehension of the suspect. However, while the California Highway Patrol reports that the suspect voluntarily stopped his vehicle and surrendered in thirty-six percent of the pursuits, Michigan State reports that only twenty-eight percent of the pursuits it studied were terminated in this manner. Consequently, the Michigan State Study reports a high rate of apprehension as a result of the suspect's vehicle being involved in a collision or becoming disabled in some way. Furthermore, the study reports that in four percent of the pursuits, the suspect escaped after being involved in a collision.⁹ Less than one percent of the pursuits in the California Highway Patrol Study resulted in such an occurrence. Both Michigan State and the California Highway Patrol report that only one percent of the pursuits resulted in an accident involving an officer. A comparison of these facts seems to suggest that pursuit related accidents are more likely to occur in pursuits involving local police agencies. The accidents in which local agencies are involved ordinarily occur in urban areas with high amounts of traffic. As a result, the risk of accidents in more highly travelled areas would be proportionally higher than those conducted in other areas.

The Michigan State University Study analyzed pursuit related injuries and deaths in greater detail than did the California Highway Patrol. As can be predicted, a large percentage of the injuries and deaths reported in this study

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occurred during pursuits resulting from motor vehicle law
violations. Fifty-five percent of the injuries to suspects
and fifty-six percent of the deaths of suspects were incurred
during the pursuits initiated for that reason. More
importantly, one-hundred percent of the deaths to innocent
third persons occurred while pursuing a traffic violator.¹⁰ The
study reports that fifty-nine percent of injuries to third
person occurred while an officer was "assisting another
agency"¹¹ in a pursuit, but it did not specify the reason why
the pursuit was initiated. Pursuits of known and suspected
criminals resulted in the second highest number of injuries
and deaths to suspects and injuries to other persons.
Pursuits of traffic violators and criminal suspects
resulted in the highest number of injuries and deaths to
police officers.¹²

There are two possible explanations for this
information. By sheer numbers, the pursuit of vehicle code
violators is most likely to result in a collision. This
would result in a proportionate rise in the number of
injuries and deaths associated with such pursuits. Pursuits
of known or suspected criminals must be explained
differently. One possible explanation is that officers
and/or suspects are willing to take greater risks during this
type of pursuit. As mentioned earlier, the law enforcement
administrator must decide whether the necessity of the
apprehension outweighed the additional risks. The answer
must then be clearly communicated to the officers.

Two other studies of police pursuits have been conducted. One study was done by the Dade County Florida Association of Chiefs of Police in 1985 and 1986, while the other was conducted by the Metro-Dade County Florida Police Department in 1987. The study by the Dade Association of Chiefs of Police was divided into two phases.¹³ The first phase consisted of a review of pursuit policies from law enforcement agencies across the nation. As a result of this survey, the Association developed a model pursuit policy that was subsequently adopted by all the police departments in Dade County, Florida. The second phase of the study was an empirical analysis of the pursuits that occurred in Dade County after the policy went into effect. The data base for this study consisted of 398 pursuits that took place from August 1, 1985 to July 30, 1986.

The second study was conducted by the Metro-Dade Police Department.¹⁴ This study was based on the same policy and questionnaire developed by the Dade Association of Chiefs of Police. This study was limited to pursuits involving the Metro-Dade Police Department. The study was conducted during calendar year 1987 and involved 323 pursuits.

The events leading to the pursuits in these studies provide similarities and contrasts to the preceding events in the studies done by the California Highway Patrol and by Michigan State University. As in the preceding studies, traffic offenses led to a majority of the pursuits. The

association reports that sixty-one percent (241) of the pursuits it studied were initiated for this reason, while the Metro-Dade Police study indicates that fifty-four percent (176) of the pursuits resulted from traffic violations. In pursuits resulting from the attempted apprehension of known or suspected criminals, the two Dade County studies provide conflicting results. In the association's study, twenty-two percent (87) of the pursuits were initiated for this reason. This is close to the twenty-five percent reported by Michigan State University. The Metro-Dade Police Department's study, on the other hand, reveals that forty-four percent of the pursuits it analyzed resulted from an attempt to stop a known or suspected felon or a suspect that the officer was advised to "be on the lookout" for. Another contrasting statistic in the Metro-Dade Police Study was the pursuit of those suspected to be driving under the influence. The Metro-Dade Police report that less than one percent of the pursuits were for this reason. The percentage for this type of pursuit ranged from four to sixteen percent in the other three studies.

The two Dade County Studies provide a great deal of information on accidents and the resulting injuries and deaths. The Dade Association of Chiefs of Police reports that 135 of the pursuits in the Metro-Dade Police Study resulted in accidents. These figures represent approximately one-third of the total number of pursuits in both studies.

This rate is comparable to the accident rates reported by the California Highway Patrol and Michigan State University. Given these accident rates, it is important to understand the circumstances in which the accidents occurred. The Dade Association of Chiefs of Police reports that although pursuits of traffic violators may be overrepresented in the total number of pursuits, this pursuit category results in a disproportionally low number of accidents. Of the total number of accidents reported in this study, only forty-eight percent were the result of pursuits of traffic law violators. On the other hand, pursuits of known or suspected criminal suspects tend to result in a disproportionally high number of accidents. While the association notes that a pursuit of a known or suspected criminal suspect makes up slightly less than one-fourth of all pursuits, these pursuits represent forty-seven percent of the pursuits that result in accidents. These statistics tend to support the theory that police officers and suspects will take additional risks in a pursuit in which the fleeing suspect is known or believed to be wanted for something more serious than a traffic violation.

The Metro-Dade Police Study closely analyzed the pursuits that resulted in accidents in order to determine if there were any factors that were common in pursuit related accidents. ¹⁵ The study considered such characteristics as the age and gender of the officers involved in the pursuits. The reason for the pursuit, the weather conditions, and the

number of police vehicles involved in the pursuit were all¹⁴
studied as possible contributing factors. Some of these
factors were found to have a significant impact on the
likelihood of an accident while others did not.¹⁶

The Metro-Dade Police Study reports that the reason for
the pursuit greatly increases the probability of a pursuit
resulting in an accident. The study reports that the
pursuit of traffic violators are by far the most likely type¹⁷
of pursuit to result in an accident. This can be explained
by the fact that this type of pursuit accounts for over half
of the total number of pursuits. Still, the percentage of
traffic pursuits resulting in accidents is lower than the
percentage of total pursuits initiated for traffic
violations. The pursuit of known or suspected criminal
suspects, on the other hand, tends to be overrepresented when
analyzing the accidents that result in accidents. It must be
assumed that pursuits of traffic violators and known or
suspected criminals both increase the likelihood of a pursuit
resulting in an accident.

The weather conditions were found to have an impact on
the number of pursuit related accidents regardless of the
reason for the pursuit. Pursuits occurring during wet
weather dramatically increased the likelihood of an accident.
Interestingly, the age of the suspects involved in pursuits
occurring in wet weather was generally lower than the
suspects involved in pursuits occurring in dry weather. The

time of day in which the pursuit occurred did not have a significant impact on the probability of the pursuit resulting in an accident.

Certain characteristics of the officers involved in the pursuits were also found to have increased the likelihood of an accident. The age of the pursuing officer was one such characteristic. Officers in the 20-29 year old age group were by far more likely to be involved in a pursuit that resulted in an accident. As the officers moved into the 30-39 year old range, the probability dropped slightly and the probability dropped considerably as the officers moved into the 40 and over age group. This data could be used to support an argument that young officers tend to view a pursuit as a personal challenge and tend to pursue on emotional factors rather than using common sense. It should be noted that there could also be a positive correlation between the age of the suspect and pursuit related accidents. Although this factor was not specifically studied to determine such a correlation, the four studies seem to indicate that the "typical" suspect in a pursuit is usually a male in his early to middle twenties. Therefore, the suspect may be just as likely as the young officer to view the pursuit as a race in which emotions override common sense. The gender of the officer involved also proved to be an indicator of the likelihood of an accident. The study reports that male officers were twice as likely as female

officers to be involved in a pursuit that resulted in an accident. The female officers, it seems, were less willing to take serious risks than their male counterparts.

The duration of the pursuits in the Metro-Dade Police Study gave mixed results in regard to being an indicator of pursuit related accidents. The pursuits that lasted five minutes or less had a twenty percent probability of resulting in an accident. The probability rose to thirty-seven percent during the six to nine minute range. In pursuits lasting ten minutes or more, however, the probability of an accident occurring dropped to eleven percent. The study notes that while the accident rate in pursuits lasting ten minutes or more was low, the rate in which the suspect escaped was higher in this time period than in any other.

The final factor that was found to increase the likelihood of a pursuit resulting in an accident was the number of police vehicles involved in the pursuit. The Metro-Dade Police reported that as the number of police vehicles involved in the pursuit increases, so does the probability of the pursuit resulting in an accident. The probability of the suspect escaping, however, decreased as the number of police vehicles involved in the pursuit increased. The study also indicates that the same principle applies to the number of police agencies involved in the pursuit. When more than one agency became involved in a pursuit, the accident rate tended to rise. This is an

important factor to consider when developing inter-agency pursuit agreements or determining what limit to place on the number of vehicles to be involved in pursuits.

When analyzing the data from these four studies of police pursuits, certain characteristics of the pursuit begin to emerge. A knowledge of these characteristics is useful when developing a pursuit policy. One of the first things to be noticed is the event that leads to the pursuits. All four studies report that well over half of the pursuits began after a violation of traffic laws only. By sheer numbers, this type of pursuit resulted in the largest number of pursuit related accidents. As was noted earlier, however, this type of pursuit did not result in as high a percentage of pursuit related accidents. This does not necessarily mean that pursuing traffic violators is safer than pursuing other suspects, but it may be an indication that the individuals involved are not willing to take additional risks for such a minor offense.

Another noticeable factor is the age of the suspect. The studies indicate that most of the suspects in pursuits
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are young males. It is possible that the age of the suspects could have an impact on the number of pursuits that result in accidents.

The most important factor that is revealed by these studies are the apprehension and accident rates. The four studies considered here indicate that approximately seventy-

five percent of the pursuits result in the suspect being apprehended. More importantly, they also reveal that thirty percent or less of the pursuits result in an accident. This is a lower rate than is sometimes reported, the chances of injuries or deaths also tend to be lower than reported at times. In addition, the Metro-Dade Police reports that when injuries do occur, they are generally minor injuries. While this is not meant to indicate that all pursuits are harmless, research indicates that pursuits may not be as dangerous as sometimes reported. It also indicates that there may be certain factors that police administrators may control through policy decisions that may reduce the risks of pursuits even further.

LIABILITY ISSUES

Another factor to be considered in the development of pursuit policies is liability. Pursuits that result in accidents can often be expected to be the subject of litigation in both state and federal courts. Plaintiffs frequently have two objectives in filing a pursuit related lawsuit. The first objective is to prove that the officer involved were negligent in the handling of the pursuit and, thereby, establish individual liability on the part of the officer. The second objective is prove that the department is liable in some way. A common method used to attempt to attach liability to the law enforcement agency is to attack the department's pursuit policy. Thus, the absence of a

pursuit policy can prove to be costly to a law enforcement agency. A pursuit policy that is either poorly written or poorly enforced can also be damaging to the agency.

Suits filed at the federal level allege a violation of civil rights under 42 U.S.C. Section 1983. This statute reads:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purpose of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

To prevail in a Section 1983 suit, therefore, a plaintiff must show that a constitutionally protected right has been violated.

One of the more notable examples of a constitutional violation is discussed in the case of Brower v. County of Inyo.²⁰ In this case, the fleeing suspect (Brower) led

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police on a lengthy, high-speed pursuit at night. The police set up a roadblock consisting of a tractor-trailor rig behind a sharp curve in the road. Brower subsequently crashed into the roadblock and was killed. The United States Supreme Court, relying in part on Tennessee v. Garner,²¹ ruled that the police had caused Brower's death "through means intentionally applied" and, thereby, had seized Brower in violation of his Fourth Amendment right of protection from unreasonable search and seizure. The Court noted that although roadblocks and similar tactics in particular and police pursuits in general were not automatically prohibited by this decision, police must use them in a very judicious manner to avoid liability in under Section 1983.

Law Enforcement agencies can also be held liable under Section 1983. In the case of Monell v. New York City Department of Social Services,²² the Supreme Court ruled that governmental agencies can be considered "persons" for the purposes of Section 1983 litigation. The Canton, Ohio Police Department was successfully sued for a Section 1983 violation. In Canton v. Harris,²³ the Canton Police Department's pursuit training policy was alleged to have been the contributing factor in the plaintiff's civil rights claim. In this case, the Supreme Court defined a two-pronged test to determine if a governmental agency can be held liable under Section 1983. First, the policy itself, or lack thereof, must be the driving factor causing the deprivation

of constitutional rights as opposed to individual officers misapplying or violating valid policies. Second, the policy or lack of policy must be negligent to the point of amounting to a "deliberate indifference" to the rights of the citizens. This test would be applied to all policies that are alleged to be a violation of civil rights.

It must be noted, however, that not all pursuit related accidents will cause law enforcement officers or agencies to be held liable in federal court. The Supreme Court has ruled on several occasions that simple negligence does not, by itself, cause a violation of Section 1983.²⁴ In a number of cases, the Court has noted that although no constitutional rights have been violated, the individual officers and/or agencies may have been negligent to some degree and, as a result, liable under state tort law.

The likelihood of being held liable is greater at the state level than at the federal level. This is because state tort statutes require that negligence as opposed to civil rights violations be proven in order to establish liability. When the alleged tort is the result of a police pursuit, the officer's actions during the pursuit are often examined in light of the state's vehicle code. In most states, law enforcement officers are exempt from certain provisions of the state's vehicle code when they are acting in a bona fide emergency situation. These exemptions generally include exceeding the posted speed limit, disregarding stop signs and

signals and so on. These same statutes, however, also place²²
certain requirements on officers engaging in such activities.
In addition to the display of emergency lights and the
sounding of an audible signal or siren, state laws often have
a provision that requires officers to act with "due regard"
for the safety of all persons on or near the roadway.²⁵ The
statutes of Texas provide an example of the concern for
public safety during police pursuits. Section 24 (e) of the²⁶
Uniform Act Regulating Traffic on Highways states that the
driver of an emergency vehicle has a duty to drive with "due
regard" for the safety of others and that the exceptions
provided by the section do not "protect the driver from the
consequences of his reckless disregard for the safety of
others.

The question of how liability should be assessed has
been the source of considerable disagreement among state
courts across the country. One argument suggests that the
fleeing suspects should be held liable for pursuit related
accidents as they are responsible for initiating the
potentially hazardous situation. Some courts seem to accept²⁷
this line of reasoning. In the case of Rhea v. Green, for
example, the Colorado Court of Appeals ruled that the fleeing
suspect's actions alone created a substantial risk of danger
that was clearly foreseeable. The pursuing police officers,
therefore, had a right and a duty to apprehend the suspect
according to the court and, as a result, could not be held

liable for any accident occurring during the pursuit. Two
other cases with similar outcomes are Thornton v. Shore
and Rhodes v. Lamar.²⁹ In Thornton v. Shore, the Supreme
Court of Kansas ruled that as long as the pursuing officer is
in compliance with the requirements placed on him by the
State's Vehicle Code while operating his own vehicle, he is
entitled to all the immunities granted by the Code and is not
liable for the negligent acts of the fleeing suspect.
In Rhodes v. Lamar, The Florida Court of Appeals ruled that
as long as the pursuing officer is operating his own vehicle
with due regard for the safety of others he will not be held
liable for any accidents that occur even though the pursuit
may contribute to the negligence of the pursued suspect. In
these cases, the courts seem to be focusing more on the
actions of the fleeing suspect when assessing liability
rather than those of the pursuing officers.

Other courts, however, seem to have examined the actions
of the officers in much greater detail. The Missouri Court
of Appeals ruled in the case of Oberkramer v. City of
Ellisville³⁰ that although high-speed pursuits are not
negligent per se, they can become negligent when the risks of
the pursuit rise above acceptable levels. In this case, the
court suggested a balancing test between the utility or
necessity of the pursuit and the risks associated with the
pursuit. The court ruled that the pursuing officers may be
held liable for pursuit related accidents when the
foreseeable risks of the pursuit outweigh the benefits.

Courts in Texas are also taking a closer look at the actions of officers engaged in pursuits. In the case of ³¹ Travis v. City of Mesquite, the Texas Supreme Court ruled that officers may be sued individually for their actions in a pursuit that results in an accident. The Court further ruled that the officer's decision to chase a fleeing suspect or to continue the chase may be examined at trial. Although this case does not mean that officers will automatically be held liable for all pursuit related accidents, it does indicate that the actions taken and decisions made by officers during a pursuit will be scrutinized more strictly than ever before.

Although courts in many states are willing to hold fleeing suspects at least partially liable for injuries and deaths resulting from high-speed police pursuits, there appears to be a shift away from this position in recent years. Many courts are now examining the actions of the pursuing officers more closely. The decision to initiate or continue a pursuit as well as the officers actions during the pursuit are increasingly being questioned when assessing liability. Law enforcement agencies and individual officers, therefore, must determine the proper course of action to be taken during the pursuit to avoid having the courts make that determination.

TRAINING SUGGESTIONS

As attention given to the issue of police pursuits has increased, so has the attention given to training officers

for pursuit situations increased. The training for this type of driving should be divided into classroom training and actual behind the wheel training. It is generally agreed that the training for pursuit driving should include a classroom study of the pertinent factors of pursuit driving. These factors may include sound driving tactics, departmental pursuit policies and procedures and statutes and court decisions that relate to pursuits. In addition, actual behind the wheel training is often strongly encouraged to allow the students to practice and improve the driving tactics they have learned in the classroom. Once the material to be covered in the training program has been determined, the question of whether this training is to be included at the recruit or in-service level or both can then be answered.

A discussion of the proper techniques of handling a vehicle during a pursuit is regarded as one of the most important elements of the classroom training. The textbook that accompanies the National Association of Professional Driving course on police driving places great emphasis on these techniques. ³² The textbook goes into great detail in presenting proper methods of accelerating, turning, braking and other functions. Being prepared for any type of road or weather condition is also stressed. This should be considered to be an important first step in any type of high-speed pursuit training program.

It has also been suggested that pursuit policies and procedures should also receive attention in the classroom portion of pursuit training in addition to the tactics for the actual operation of the vehicle. The presentation of the department's pursuit policies and procedures would serve two purposes. This presentation would establish a definite set of parameters within which pursuits must be conducted. It would also define the department's general philosophy toward pursuits. In addition, the discussion of the pursuit policy could be used to introduce the legal and liability issues upon which they are based. An in-depth discussion of statutes, court decisions and theories of liability that affect police pursuits could then be discussed. This portion of the training would focus on developing the officer's attitudes and perspectives on pursuits. It has been argued that properly implemented pursuit training could change the prevailing attitude from "chase them 'till the wheels fall off" to "why risk your life to chase a traffic violators.³³

Actual behind the wheel driver training is also encouraged to prepare officers for pursuit training. Several programs such as the N.A.P.D. Tactical Police Driving Course are available to accomplish this task. Some of these programs train officers at high speeds while others train at low speeds. A small amount of research has been done to determine if the high speed or low speed training would be the most appropriate type of training to use.³⁴ Although

incomplete, the available research suggests that these two types of training are almost equally capable in successfully preparing officers for pursuit situations.³⁵ What cannot be disputed is the fact that either type of behind the wheel training enhances the officer's driving ability and reduces the possibility of pursuit related accidents. In other words, the research seems to indicate that good drivers are made instead of born.

PART TWO. CONCLUSIONS

TRAINING FOR PURSUITS

Three factors begin to emerge as the research findings, court decisions and articles relating to police pursuits are evaluated. First, any pursuit is a potentially hazardous situation that could result in injury or death. Also, available research indicates that certain factors tend to increase the inherent risks. Second, the nation's courts seem to be scrutinizing the actions and decisions of police officers involved in pursuits more than ever before. This scrutiny has also been applied to the pursuit policies and procedures of law enforcement agencies. Finally, the available data suggests that officers could be more effectively trained to handle pursuit situations.

The available information indicates that it is imperative for law enforcement agencies to develop sound pursuit policies that reduce the likelihood of pursuit related accidents. This information provides an excellent

foundation upon which to base the policies. The pursuit policies should be threefold in nature. The policies should govern the method in which officers are trained in handling pursuits. When properly implemented, a training program helps the officers to understand the many factors related to pursuits. The policies must also define the tactics that may be employed during a pursuit. Finally, the pursuit policies should allow for a procedure for reviewing pursuits and pursuit related accidents. This review procedure could be used to assess the training needs of the department and to determine any policy revisions that may be necessary.

Developing pursuit training programs is an important first step in preparing officers to handle pursuit situations. Pursuit training should be divided into two segments. The first training should be in the classroom. The goal of the classroom portion of the training program should be to present a wide variety of information regarding pursuits. The department's pursuit policies and procedures should be presented and constantly reinforced throughout the program so the department's philosophy on pursuits is clearly understood. The presentation of research findings, statutes, court decisions and articles on the subject of pursuits would also be useful in the training program. This information would identify pursuit situations in which accidents are likely to occur and define societal concerns on pursuits. The information also shows the possible consequences of

pursuit related accidents. When properly presented, a training program could influence the officers to take a more cautious approach to chasing a fleeing suspect.

Actual behind the wheel driver training is the second segment in a pursuit training program. Any type of driving requires the development of certain motor skills. Chasing a fleeing suspect makes it very important for these motor skills to be highly developed. There are several training programs available that law enforcement agencies can use to help their officers develop these skills. Some of the programs train at high speeds while others train at low speeds. At this point in time, the question of which program is the best is debatable. However research has shown that behind the wheel driver training greatly improves the officer's driving skills and significantly reduces their risks of accidents.

Once the content of the pursuit training program has been established, the police administrator must decide whether the program is to be required at the recruit level, the in-service level or both. Few would argue the notion that new officers should receive this training at the recruit level. It would also be advisable to require in-service officers to receive this training. Requiring in-service officers to receive pursuit training on a regular basis would serve the same purpose as have the officers qualify with a firearm on a regular basis. Just as firearms qualifications

allow officers to demonstrate a proficiency with firearms, regular pursuit training allows officers to demonstrate a proficiency in handling pursuit situations. The classroom portion of the in-service training would allow the officers to keep up to date with any court decisions, research findings, changes to policies or other information that would have an impact on police pursuits.

PURSUIT TACTICS

The information available on police pursuits provides a good foundation upon which to base a pursuit policy. Research studies on police pursuits have identified the pursuit tactics and situations in which accidents are more likely and less likely to occur. Law enforcement observers, in turn, have discussed the results of these research studies in detail. Many of the pursuits that have resulted in accidents have been referred to the courts across the nation to define the liability issue involved. As a group, these sources identify the need for a sound pursuit policy as well as many of the elements it should contain.

The importance of a sound pursuit policy cannot be overstated. The federal courts have ruled that the absence of a pursuit policy, or a poorly written policy, could leave the police agency liable for accidents, injuries and deaths that occur during a pursuit. ³⁶ A well conceived pursuit policy, therefore, would be in the best interest of the entire department. In addition, a well written policy would

set guidelines which, when followed, would reduce the risks of situations in which individual officers could be held liable. The key to a valid pursuit policy lies in identifying pursuit tactics that would reduce the risks of accidents and incorporate them into pursuit policies.

The available information on police pursuits indicates that a pursuit policy should balance the department's need to apprehend fleeing suspects against the need to preserve and protect the safety of the community. This philosophy would permit pursuits only when the legitimate need to apprehend the suspect outweighs the risks inherent in pursuits. The pursuit would not be allowed when the risks significantly outweigh the need to catch the fleeing suspect. This balancing test, therefore, would require that certain elements must be contained in the agency's pursuit policy.

One such element would be a provision for discontinuing pursuits in progress. It is obvious that the probability for an accident increases as the duration of the pursuit increases. This is especially true when the pursuit occurs in an area with a high volume of vehicular or pedestrian traffic. One court has ruled that when a pursuit is continued even when the risks are unacceptably high, the officers and their department may be held liable. The pursuit policy should give the officers the discretion necessary to discontinue the pursuit when appropriate and give supervisors the authority needed to require the officers

to discontinue. The policy could also go so far as to define the conditions in which pursuit must be discontinued. These policies may require that the pursuit be discontinued after a certain period of time or length of the pursuit. They may also require that the pursuit be discontinued if the suspect commits a certain number of traffic violations or under certain weather, road or traffic conditions.

Another important element to be contained in a pursuit policy is the monitoring of the pursuit. It has been suggested that officers can, on occasion, become so emotionally involved in the pursuit that rational thinking often takes a back seat.³⁸ Research seems to back up this argument at least with younger officers, if not for all police officers. Research conducted by the Metro-Dade Police Department indicates that officers in the 20-29 year old age group had significantly higher probability of being involved in a pursuit that results in an accident. Law enforcement agencies, therefore, should seriously consider having each pursuit monitored by an individual not involved in the pursuit. This person would preferably be a supervisor. Hopefully, cooler heads would prevail with such a monitoring system to the point of avoiding an accident.

The "balancing test" type of pursuit philosophy would also prohibit forcible stops of fleeing vehicles such as roadblocks and ramming. Although the pursuit study conducted by the Metro-Dade Police Department indicates that

terminating pursuits in this manner reduces the likelihood of serious injuries and deaths, such actions may indicate that the officers and agencies involved may be jeopardizing safety for the sake of stopping a fleeing suspect. In the case of Brower v. County of Inyo,³⁹ the United States Supreme Court ruled that law enforcement agencies and officers are liable for compromising safety in this manner.

Finally, the number of squad cars involved in the pursuit should be limited. Research as well as common sense indicates as the number of vehicles involved in the pursuit increases, so does the probability of an accident. The written policy should define the maximum number of vehicles to be actively involved in the pursuit. The individual assigned to monitor the pursuit could then easily coordinate the activities of these squads. Squads not actively pursuing could be assigned to support activity such as warning traffic ahead of the pursuit, covering possible escape routes and so on. As the research findings and court decisions indicate, a more cautious approach to high-speed pursuits is called for. Establishing a sound and clearly understood policy is an important step in developing that approach.

POST-PURSUIT REVIEW

Once the department has pursuit policies and training programs, a process for reviewing police pursuits should be established. The Houston Police Department and the Tampa

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Police Department have both developed such a review process. These departments suggest that these review procedures serve two important functions. It gives the officers the opportunity to learn from the pursuit experiences while, at the same time, it shows administrators how receptive the officers are to the policies and training. In addition, a system that allows for continual feedback assists the police administrators in determining what the focus of the training program should be and what policy revisions are necessary.

The most important of the functions served by the review process is allowing officers to learn from the pursuits in which they are involved. The lessons learned in the training program can be reinforced when the officer receives a constructive critique of his actions during a pursuit. However, the critique process must not degenerate into merely a process for dispensing criticism or disciplinary action. Although disciplinary action must be taken when necessary, there are many pursuit situations in which constructive criticism may be more appropriate than disciplinary action. The review process, when handled properly, provides a positive experience from which individual officers and the entire department may benefit.

Gathering information on pursuits also allows law enforcement administrators to determine how well officers in their department are responding to training and the agency's pursuit policy. The information gathered on the pursuits can

be used to identify any driving errors or policy violations that are occurring on a consistent basis. The information can also identify any officers that are constantly involved in pursuits as well as the most common situations that occur prior to and during pursuits. With this information, the administrator can determine if the training that is being provided is adequate or properly focused. Any necessary changes to the department's pursuit policies or procedures may also be foreseen with the assistance of this information. Pursuit policies and training programs must be kept up to date and in line with statutes and court decisions. Any review procedure which helps a law enforcement agency do this must be implemented in order to protect the agency and its officers.

Information for a pursuit review process can be gathered in several ways. The Houston Police Department, for example, requires its officers to fill out a "pursuit form" each time they are involved in a pursuit.⁴¹ This form is designed to gather all relevant information relating to the pursuit. The data collected by this form could be an excellent means of determining long term trends and circumstances encountered in "typical" pursuit situations.

Arrest and offense reports and traffic tickets could also provide information relating to pursuits. These reports would provide details on any traffic or other statutory law violations that may have been the reason for or occurred

during the pursuit. These reports may also show how the pursuit was terminated.

Finally, accident reports are an excellent source of information for a pursuit review process. These reports would show the pertinent details of motor vehicle accidents that occur during pursuits. Taken together, these "pursuit forms" and the appropriate reports can provide law enforcement administrators with a considerable amount of information upon which to base their pursuit policies and training programs.

Law enforcement agencies and their officers have been sharply criticized in recent years for the way they have handled high-speed pursuit situations. Their actions and decisions concerning pursuits are being scrutinized by the courts closer than ever before. This criticism and scrutiny comes in response to the potentially lethal risks involved in police pursuits. As a result, it is necessary for law enforcement administrators to develop policies, procedures and training programs that reduce these risks. Research findings, court decisions and literature covering police pursuits is rapidly becoming available to provide a foundation upon which to base these policies and training programs. In addition, there is much the law enforcement administrator can do to gather information from within his or her own department. Regardless of where the information comes from, police chiefs and sheriffs must develop sound

pursuit policies and procedures very soon or risk the possibility of seeing their departments and/or officers be held responsible for injuries, deaths or property damage.

NOTES

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2. Ibid, 220.
3. Erik Beckman, "High-Speed Chases: In Pursuit of a Balanced Policy," in Police Management Today, ed. James J. Fyfe, (Washington, D. C.: International City Management Association, 1987), 102.
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6. California Highway Patrol, Pursuit Study, (Sacramento, Calif.: California Highway Patrol, 1983).
7. Beckman, Identifying Issues in Police Pursuits: The First Research Findings, 57.
8. Ibid, 59.
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11. Ibid.
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17. Alpert, Questioning Police Pursuits in Urban Areas, 224.
18. Richard H. Turner, Tactical Police Driving (Hutchins, Tx.: National Academy for Professional Driving, 1982), 107.

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21. Tennessee v. Garner, 105 S.Ct. 1694 (1985).
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26. Uniform Act Regulating Traffic on Highways, Texas Revised Civil Statutes, Article 6701d.
27. Rhea v. Green, 476 P2d 760 (1970).
28. Thornton v. Shore, 666 P2d 655 (1983).
29. Rhodes v. Lamar, 490 So2d 1061 (1970).
30. Oberkramer v. City of Ellisville, 650 S.W.2d 286 (1983).
31. Travis v. City of Mesquite, No. C8576 (Tex. Dec. 31, 1990) Pet. Reh. Pend.
32. Turner, Tactical Police Driving, 95-109.
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34. John H. Preston and James C. Humphlett, "Law Enforcement Driver Training - High-Speed or Low-Speed Training," The National Sheriff, June-July 1987, 42.
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