

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

Pursuit Management

**A Leadership White Paper
Submitted in Partial Fulfillment
Required for Graduation from the
Leadership Command College**

**By
Ricardo Esqueda**

**Bexar County Sheriff's Office
San Antonio, Texas
February 2017**

ABSTRACT

High-speed pursuits are a challenge to law enforcement agencies throughout the United States; they raise questions of training or lack of documentation regarding training or procedures. There should be clear and consistent policies and procedures established for agencies to follow. Officers and their agencies are often held liable for actions in pursuits; techniques used to end pursuits may end in collateral damage, with innocent victims being injured or losing their lives.

In society today, it is common to have pursuits on the daily news. The law in Texas defines the violation of evading arrest as a person intentionally fleeing a person known to be a peace officer (Texas Criminal and Traffic Law Manual, 2013). Raising the penalties has failed to decrease pursuits. The suspect has no policies or procedures to follow, and they are not regulated by case law or liability issues as they flee, which endangers both the civilian and law enforcement community. However, death and destruction can be instantaneous for victims, while families are left to deal with the grief that comes with no explanation or reason. Death or injury of the victims, and at times even the suspects, may end in civil litigation, where policies and procedures of agencies are tested in the court systems, and then officers are put on trial for their actions.

Agencies are training in pursuits and evaluating their practices to improve agency policies to best protect against litigation resulting from bad decision making. There is no way to be immune to civil litigation as a result of any law enforcement action, but preparation and training can leave an agency less vulnerable. This paper concludes that high speed pursuit laws may be having an effect, but consistency in training and possibly technology may hold the final means to an end of pursuits.

TABLE OF CONTENTS

	Page
Abstract	
Introduction	1
Position	2
Counter Position	5
Recommendation	8
References	12

INTRODUCTION

Vehicle pursuits are an issue that law enforcement administrators face on a daily basis; the use and management of pursuits have led to policy changes due to incidents. The public has been a strong voice in the management of pursuits due to several deaths of innocent civilians throughout the United States, and this challenge raises the questions of training or lack of documentation regarding training or procedures which are meant to assist officers involved in pursuits. Initially, when the pursuit begins, "The first and foremost reaction is astonishment. You can't believe someone is not stopping" (Pirro, 2009, para.2).

Vehicular pursuits are considered to be a tool in the war on crime. In today's society it is common to have a pursuit on the daily news. The law in Texas defines the violation of evading arrest as, "A person intentionally fleeing a person known to be a peace officer" (Texas Criminal and Traffic Law Manual, 2015-2016, p. 130). Even raising the penalties for this violation has failed to decrease pursuits. Agencies are training and making more evaluations of their practices in an effort to improve agency policy to best protect against litigation resulting from bad decision making. There is no way to be immune from civil litigation as a result of any law enforcement action, but preparation and training can leave an agency less vulnerable. In support of the position of this paper, a brief review and history of high speed pursuits was conducted using research studies, internet sites, journals, newspaper articles and case law. Police pursuits should be used as a conditional tool, which should have strict criteria when utilized. The initiation of a pursuit should be clearly defined and consistent for all officers to understand.

POSITION

Law enforcement agencies have the responsibility to their community to provide the best in services and protection. The community expects law enforcement agencies to pursue criminals with due regard to public safety, and in doing so, they maintain the community support and respect. The issue of policies and procedures are nothing new to law enforcement, but maintaining and incorporating periodic review of policies is the responsibility of that agency. There are several instances where officers rely on the agency policies to guide them in extreme and dangerous situations. The public relies on the agencies to keep them protected from danger or liabilities that could come upon a community as a result of bad or outdated policies.

The issue of vehicular pursuit is a widely contested and publicized subject. There is both support and dismay, which is mostly due to the unforeseen risks, such as fatalities of innocent persons, who, at the time, have no affiliation with a vehicular pursuit but yet they lose their life as a result. The innocent loss of life is the most devastating issue which is used against the vehicular pursuits.

Today, "It is very rare for police officers to try to shoot out a fleeing suspect's tires, or to shoot at a moving vehicle at all" (Grabianowski, 2006, p. 4). A law enforcement agency with a strong and consistent vehicular pursuit policy can have several advantages. The consistent policy will allow the officer to know what procedure is acceptable and which options are not available. The fact is that in a high stress situation, an officer will rely on his or her training for, at times, an instantaneous decision under extreme pressure and stress.

Payne (2002) described the procedures which should be implemented prior to any pursuits which are “developing stronger and more meaningful policies, improved training, closer supervision, and more accountable discipline” (para.1). A policy can reduce the errors made when confronted by unforeseen situations or circumstances in high stress moments, therefore reducing the risk of excessive liability risks that can be brought upon an agency or community. These days, an unforeseen tragedy that may be perceived as bad police procedures can leave a mark against the community (Payne, 2002); news stations use the dynamic presentation for ratings rather than protecting a community’s reputation when reporting an individual incident. Training law enforcement officers on how to handle pursuits can reduce mistakes or stop them from simply guessing on what to do while in the situation. Agencies that have trained as best as they can for all sorts of scenarios can see the benefits with lower instances of civil litigation. A faulty decision which leads to a fatality of the officer, innocent civilian, or suspect will lead to a civil case in most instances and, above that, the unseen emotional and or psychological trauma may go untreated and leave a debilitating effect on the individual.

Agencies that either ban vehicular pursuits or heavily restrict them can have an adverse effect, and an officer who feels that their hands are tied and they cannot pursue may feel beaten in a sense. The community may lose confidence in their law enforcement agency by perhaps feeling inadequately protected. The suspect may also see the hesitation from an officer or the lack of reaction to a situation, which may dictate a certain negative response from the suspect.

The issue still remains that a criminal does not have a policy and procedure manual to go by, and they are not regulated by anything but their will to get away at any cost. In the event that this type of restrictiveness is mandated by an agency, it would be better served by being fully explained or taught while being initiated to the officers. When the officers can feel confident with the decisions that have led to the strict procedures, they will walk with self-pride and respect. Failure to follow policies can have an adverse effect on a community; the issue of dealing with civil litigation as a result of a fatal decision can have an adverse effect on the agency. The rise of insurances and community outcry against a situation can have community residents and leaders demanding the chief of police to resign or to have officers terminated. In smaller communities, where civil service is not in place or a collective bargaining agreement, they may lose officers as a result of community outcry because they have no protection against being terminated as an at will employee. The fact that communities can influence the hiring and firing of employees is a reality in small city life; they will do what they have to do to protect the city's reputation and integrity, and with no employment protections, officers will be left defenseless.

When policies are put into place in small communities, they can help guide the officers in their decision making, which will possibly prolong their career with a small agency. In the larger agencies, more protection is afforded but the issue still remains that when there is an effective policy in place, officers will have the resources required to help make the best decisions in the high stress situations. The result of supervisors who are held accountable for the supervision provided to their officers can be instrumental in the reduced liability. The proper policy that is accompanied by good

supervision can assist the agency in better decisions and accountability, and although there is no way to totally do away with potential risks of liability, it will give the agency a fighting chance to show an attempt was made to do what was best. The combination of policy, preparation, and planning can support the agency against litigation. Hicks (2007) stated, "If a plaintiff should desire to establish proof of negligent operation of an emergency vehicle, factors beyond the mere violation of a traffic law must be established if the claim of negligence is to be supported" (p. 32).

COUNTER POSITION

One reason on why the public is against a vehicular pursuit is due to instances where the vehicular pursuit ends in a crash where an innocent person has been injured or killed, which causes an adverse reaction in the public eye. Today, when the crashes occur, sometimes they are shown live as news helicopters follow the pursuits as they happen. The sentiment is that pursuits should not be allowed due to the potential for innocent people dying as a result, and officers with minimal training who may be unprepared to handle a pursuit have resulted in devastating tragedies.

Alpert and Dunham (1990) stated, "Police administrators and command-level officers have to make policies and permit practices and customs in many areas without the assistance of empirical research or evaluation" (p. 2). This position reinforces that fact that some agencies should not pursue vehicles prior to training, and research has been done to have a policy that is thorough. Pursuits are addressed in websites, which address the dangers "throughout the United States, and especially in California, the number of children, spouses, parents, siblings and family members killed and injured in police chases continues to climb with no promise of action" (Morshower, 2013, p. 1).

These sentiments reflect the civilian mindset in trying to make changes and writing articles for change such as “where the suspect poses no immediate danger to the public, it's the chase itself that causes the threat” (Morshower, 2013, p. 1).

The end result would seem to be the same, in that the realization to stop pursuits is a double edged sword and although they understand the need for pursuits, they want procedures established and followed by officers. The population as a whole has increased and with more civilians on the road, the potential for crashes has risen. However, there are no statistics substantially gathered on police pursuit crashes and whether they end in injury or fatality. Law enforcement agencies list the outcomes, but these are not collected nationwide in a uniform method, although studies have been done such as the IACP pursuit database. Lum and Fachner (2008) showed that 36% of officer deaths have been attributed to crashes from 1987 to 2006, totaling 968 officers who lost their lives. This statistic has led to variations of policy changes and some changes will have been as a direct result of a death.

The sometimes strict policies show the reluctance for agencies to participate in chases when and if they are allowed. While it is tragic that innocent people may be killed during a vehicular pursuit, it is important to remember the Supreme Courts ruled police vehicular pursuits are acceptable. The Supreme Court reviewed the situations of pursuit in the case *Sacramento v. Lewis* (1998), where the court held stricter standards in regards to fault for pursuing officers and went on to say that the officers' actions would have to shock the conscience in regards to violating a person's rights.

The Supreme Court has ruled that an agency will be held accountable and can be classified as deliberate indifference to the constitutional rights of members of the public ("Federal Liability," 2007). If constitutional injury occurs, officers can be held accountable in both criminal and civil court. In December of 2010, a San Antonio Police officer was found guilty and sentenced to prison for 15 years for the fatal crash that killed his fellow officer (Kapitan, 2012). The officer was held accountable by a jury of his peers for the speed related crash. The courts are holding officers and agencies accountable for their policy implementation and process, which includes training requirements.

In February of 1994, a person named Michael Moore committed the offense of burglary in Copperas Cove, Texas. While committing the burglary, the resident Christa Bentley was awakened and subsequently murdered by Michael Moore, who then left the scene of the crime. Officers in the area initiated a traffic stop on the vehicle being driven by Michael Moore, which led to a vehicular pursuit on the probable cause of operating without headlights. After a vehicular pursuit, an apprehension was made and there was a subsequent discovery of the capital murder, which led to the conviction and sentence of death for Michael Moore in 2002 (*Moore v. Johnson*, 2000). This case highlights the use of restrictive but allowed vehicular pursuits.

In the case of Michael Moore, a decision to not pursue could have impaired the discovery and arrest in the capital murder case, leaving the possibility of an unsolved murder, thus leaving a community in fear and adding stress to the local police agency to locate and identify the suspect before they may strike again. Had a tragic crash occurred prior to knowing of the capital murder, the news media and proponents would

have rallied around a devastating crash. Once all of the information would have been revealed, it would have merely been mentioned in a back page publication and litigation against the police agency.

RECOMMENDATION

Law enforcement agencies are being held accountable for the actions of their officers by way of listed policies and training. Communities expect agency standards to be upheld and for the agency's personnel to be held accountable. The legal community stands ready for litigation against agencies due to their actions. Community leaders are working with the local jurisdictions as a partnership to combat the needless deaths and injuries, which are results of vehicular pursuits.

In an effort to assist agencies in developing policies, organizations such as the International Associations of Chiefs of Police are providing free training to agencies throughout the United States, which includes a model pursuit policy (<http://www.iacp.org/>). The current International Associations of Chiefs of Police model policy link will be attached as Appendix. The avenues to access information from agencies has been opened for agencies regardless of their size or jurisdiction. The current technical age has provided more alternatives to use in pursuits. The mechanical advancements have also increased the alternatives, and automakers have increased occupant safety applications, which assists with potential injuries to occupants. The issues of vehicular pursuits will never totally be resolved, but with advancements and awareness, agencies can all take the necessary steps to mitigate the injuries.

The strongest defense to bad pursuit decisions is to prevent them with training. Constant and consistent training will have officers making the best decisions possible.

The decisions of officers will be improved. The consistency provided by good training and supervision reinforces to officers that they can make the right decisions to the best of their abilities. There are no absolutes in decision making skills but consistent training will help. The key to good leadership is to train officers well enough and give them the ability to make decisions individually and not be reliant on supervision in these instances; this will minimize the risks in a pursuit. There is an adrenaline rush in a pursuit; they may also feel fear if a young officer asks for guidance from a supervisor over the radio while under fire only to not get a response. When in a situation where there is silence from a supervisor, fear can be reduced by addressing issues through training; knowledge is power and an officer can have the confidence to make decisions in seconds and make them well.

The Association of Law Enforcement Emergency Response Trainers (ALERT) has sponsored a government funding grant for instructing agencies for free on pursuit training ("EVOC," 2016). The training focuses on case law and policy, which are instrumental in helping agencies develop a pursuit policy that best serves the agency and citizens it has sworn to protect. In the end, that is what this comes down to. The protection of citizens is paramount, and this must be considered in the development of policies. The alternatives to lax policies and leadership will be played out in courtrooms in civil litigation and large judgments against agencies. Some agencies have been forced to pay large sums in monetary judgments; others make changes in training and policies. In present day, officers have been tried in criminal courts as a result of pursuit crashes.

Officers are being held accountable for the actions taken. In society today, the populace has been holding police agencies accountable; with the technology available, room for error has been lessened. The supervisors of today can watch live as their officers participate in pursuits and can make real time live decisions as the incident unfolds. The downside is that in civil litigation, all video before, during, and after the incident is admissible in court.

In the *Scott v. Harris* pursuit case, the United States Supreme Court reviewed the onboard video which held that the officers did not violate the rights of the offender and that the offender was a clear danger to the public and officers who were pursuing (*Scott v. Harris*, 2007). There are three types of pursuit policies: The discretionary, restrictive and the prohibitive (II). The Bexar County Sheriff's Office has a discretionary policy for pursuits with established points where a pursuit will be terminated by a supervisor or initiating officer (King, 2016). The set criteria must be met and sustained in order to continue; this is done to minimize the risk and enable the officers to do their jobs effectively. Even with a well written policy in place with strategically placed failsafes, factors such as human error cannot be avoided.

The final key to having a pursuit policy in effect for an agency is the follow-through; when a policy is violated, there must be set procedures in place to address the situation. The level of response should match the violation with either a review board or panel of administrators. When maintaining a consistent policy and also a consistent level of accountability, risk can be minimized. Civil litigation against a law enforcement agency due to a deep pocket perception can be unavoidable, but preparation by establishing a solid foundation of structured policies and procedures should minimize

risk. The issue of police pursuits will never have a winner, and no matter what agencies do, there will be a possibility of a lawsuit depending on the outcome of the pursuit or actions of the officers and supervisors throughout the pursuit.

Area law enforcement trainers have made developed enhanced liability classes, including perspectives from opposing legal staff as a block of instruction on how to protect an agency from being successfully sued. In a course of instruction, it can be a valuable experience to listen to litigators and policy makers who can begin an evaluation of procedures and policies for weaknesses. Law enforcement has progressed some in the last decade but failing to take advantage of current tools available can enhance the liability against an agency in litigation. The state of law enforcement has evolved, but when people are fearful of change in law enforcement and are hesitant to change, this is when litigation is strongest against an agency. An agency policy should be resilient and spontaneous and fluid; it should be able to be maintained as a live document and have the ability to change, to flow with circumstances, to be present for what is happening with current trends and technologies.

The focus on policies and procedures in high speed pursuits cannot be stressed enough, and complacency can leave agencies open to major civil judgements. These types of situations will create a good news story and guide for other agencies on what not to do. In conclusion, when dealing with a police pursuit, always rely on procedures and training and make the right decision to Protect and Serve.

REFERENCES

- Alpert, G.P., & Dunham, R. G. (1990). *Police pursuit driving: Controlling responses to emergency situations*. New York: Greenwood Press.
- EVOC Pursuit Policy Training Workshops. (2016). Retrieved from <http://www.theinteractgroup.com/evoc-pursuit-training-workshop/>
- Federal liability for vehicle pursuits. (2007, July 1). Retrieved from <http://www.policemag.com/channel/patrol/articles/2007/07/federal-liability-for-vehicle-pursuits.aspx>
- Grabianowski, E. (2006, April 13). How police chases work. Retrieved from <http://people.howstuffworks.com/police-chase.htm>
- Hicks, W. L. (2007). *Police vehicular pursuits: Constitutionality, liability and negligence*. Springfield, IL: Charles C. Thomas.
- King, A. (2016, April 6). BCSO explains pursuit policy. Retrieved from <http://news4sanantonio.com/news/local/bcso-explains-pursuit-policy-04-07-2016>
- Lum, D. C., & Fachner, G. (2008, September). *Police pursuits in an age of innovation and reform*. Fairfax, VA: IACP.
- Moore v. Johnson, 225 F.3d 495, 501 n.1 (2000).
- Morshower, G. (2013). Kristie's Law safer and smarter police chases. Retrieved from <http://www.kristieslaw.org/index.html>
- Payne, D. (2002). *Police liability: Lawsuits against the police*. Durham NC: Carolina Academic Press.

Pirro, J. (2009, February 21). Police must weigh pros and cons of hot pursuits. *The News-Times*. Retrieved from <http://www.newstimes.com/news/article/Police-must-weigh-pros-and-cons-of-hot-pursuits-110390.php>

Sacramento v. Lewis, 523 U.S. 833 (1998).

Scott v. Harris, 433 F. 3d 807, reversed (2007).

Texas criminal and traffic law manual. (2013). Charlottesville, VA: LexisNexis.

Texas criminal and traffic law manual. (2015-2016). Charlottesville, VA: LexisNexis.