

**THE BILL BLACKWOOD
LAW ENFORCEMENT MANAGEMENT INSTITUTE OF TEXAS**

Chase Policy

A

POLICY RESEARCH PROJECT

**Submitted in Partial Fulfillment
of the Requirements for the Professional Designation
Graduate, Management Institute**

by

Mark Riggs

Garland Department

Garland, Texas

April, 1998

ABSTRACT

This research paper was done to help decide if the Department needs to go to a "No Chase" policy; we don't. During a police pursuit several things can go wrong but with the right policy, training, good supervision and a post evaluation they can be avoided.

Sound management controls can reduce the liability and increase the safety of officers and citizens. Finding a balance between the risk of pursuing law violators and the safety of the public is challenging but possible.

Agencies must closely supervise, review and evaluate implementation of the pursuit policies. Most studies and published literature support the same basic conclusions: that a comprehensive written policy, enhanced training and effective supervision will reduce the potential for pursuits that end in tragedy.

Introduction:

The purpose of this paper is to gather the information necessary to make an educated policy on pursuits. Officers should be secure in their knowledge that if they are within the guidelines they will be protected. What type of policy is needed, ambiguous or defined?

The liability repercussions for the department and the officer are examined. The possibility of officers losing their jobs or being convicted of a felony is a concern. Finding a balance between the risk of pursuing law violators and the safety of the public at large is the challenge.

Administrators, officers and citizens are the intended audience of this policy, developing a policy that would hopefully make difficult pursuit decisions easier. Officers would be able to terminate chases without losing face. The Administration would be able to reduce the prospect of liability, and citizens would know what to expect from their police.

Information will be gathered from police journals, books, legal opinions and the newspaper. The decision to pursue is a difficult one but one that needs to be reviewed routinely.

History, Legal, Theoretical Content

To reduce the risks and liability associated with vehicular pursuits, law enforcement organizations must carefully evaluate their pursuit policies, training, supervision, and the post-incident evaluations. Liability reduction can be accomplished through sound management controls and the reduction in the number of pursuit-related accidents. (Swanson, 1997)

When officers are regulated by a written pursuit policy and they are properly supervised during pursuits, the potential for tragedies is greatly reduced. Proper supervision helps to ensure that the pursuing officer's decision-making process is sound and eliminates the possibility of the "pursuit at any cost" mindset. (Hannigan, 1992)

The media focus on police pursuits has been on the deaths and the serious injuries of noninvolved citizens. Of course, all pursuits are potentially dangerous, and there is a risk to noninvolved citizens, the person being pursued and the pursuing officer. However, in comparison to the number of high-speed pursuits conducted, only a small number have ended tragically or result in the filing of lawsuits. (Hannigan, 1992)

The civil rights protected by 42 U.S.C. Section 1983 include the right not to have life, liberty, or property taken without due process of the law, a right secured by the 14th Amendment to the Constitution of the United States, and the right of a person not to be unreasonably seized, a right guaranteed by the fourth amendment. (Parratt v. Taylor 1981)

In Federal civil rights cases to date, several principles have been developed. The Supreme Court will not use U.S.C. Section 1983 for simple negligence cases. Nor will the Supreme Court use it where there is adequate relief to the injured parties under State law. Municipalities can be found liable under 42 U.S.C. Section 1983 (City of Canton v. Harris 1989) where the municipality itself causes the constitutional violation at issue. (Ludlun, 1990)

The Supreme Court gave a green light July 1998 to high-speed police chases, ruling that officers' actions must "shock the conscience" before they can be sued by anyone injured in a crash. Mark S. Kende, who analyzed the case for the American Bar Association, said the "shock the conscience" standard adopted by the court will make it hard for victims of police crashes to win a federal civil rights case. (Lewis v. Casey 1996) "It's a big victory for the police," said Mr. Kende, a professor at the Thomas M. Cooley Law School in Lansing, Michigan. (Jackson, 1998)

The legal theory underlining most pursuit-related lawsuits is that the police were negligent in conducting a pursuit. A negligent action is based on proof of the following four elements: (1) the officer owed the injured party a duty not to engage in certain conduct, (2) the officer's actions violated that duty, (3) the officer's negligent conduct was the proximate cause of the accident, and (4) the suing party suffered actual and provable damages. Negligence litigation focuses on the alleged failure of an officer to exercise reasonable care under the circumstances. (Swanson, 1997)

There is legal support for the continued pursuit of the law violators as long as the police officer does not drive recklessly. The theme among these cases is that the officer

should not be responsible for the outcome of the reckless behavior of the pursued and that the police should not be the insurer of this highly irresponsible person (Alpert, 1989). In one of the earliest and most cited cases, the Kentucky Court of Appeals heard Chambers v. Ideal Pure Milk Co. (1958) where a traffic violator was pursued, drove recklessly and was involved in an accident with an innocent third party. The court ruled that a police officer should not be responsible (Alpert, 1990)

Review of Literature or Practice

The time has come for law enforcement to avoid the knee jerk reaction to the pursuit exploitation that has caused some departments to eliminate pursuits altogether. Liability can not be eliminated by just not chasing. There is a need for comprehensive pursuit policies to govern our actions. We must train all officers specifically on the policy, provide hands-on training in the emergency vehicle operations and flood our training programs with behavior-related training to enhance the officer's ability to recognize the hazards of the pursuit. (Morris, 1993)

While surviving family members of police pursuits make compelling advocates for a universal "no chase" policy, the National committee on Police Emergency Vehicle Operations, appointed by former IACP President John Whetsel in 1995, failed to advocate such a policy. Instead, it called for every law enforcement agency to institute a policy that requires a risk-balancing test, to enter into and to continue a pursuit. It also

encouraged the federal government to make highway trust fund dollars available for universal, ongoing emergency vehicle driver training. Finally, it urged federal assistance in making defense-based technology available to the police departments to obviate the need for pursuits, by providing electronic and other means to disable the pursued vehicle and thus terminate a pursuit. (Sweeney, 1997)

The U.S. Senate approved a proposal March 3 by Senator Byron Dorgan (D-N.D.) which seeks to reduce the number of deaths and injuries which result from high speed police pursuits. The plan was adopted as part of a package of amendments to the Federal highway bill now being considered in the Senate.

Dorgan's plan would authorize the Federal Department of Transportation to work within the state and local police jurisdictions to provide training for police officers on how to handle high speed chases. The legislation authorizes funding for a start up program for such training.

During the past decade, pursuit driving has become a hotly debated and controversial topic. Fortunately there is agreement on at least three aspects of pursuit: (1) pursuits are dangerous, (2) pursuits must be controlled, and (3) involvement in a pursuit causes the participants' adrenaline and excitement to increase. Certainly, practitioners and the researchers disagree about the degree of danger, need of control, and increase in the excitement and adrenaline, but no one has disputed their presence. In fact, evidence suggests that these aspects vary: some pursuits are more dangerous than others, some need more control than others, and some affect the participants more than others.

The consequences of the presence of the danger, need for control, and increased excitement have been the subjects of the debate on the reasonableness of the pursuit; the increase in the excitement and adrenaline level is important for the supervision of a pursuit. (Alpert, 1997)

The purpose of policy is to reduce officer discretion and can include specific requirements and prohibitions as well as general guidelines. The restriction of the specific actions, such as limiting the offenses for which officers can chase, the maximum speed and the duration of the pursuit, can all be controlled by specific rules. Similarly, these actions can be considered within the context of the other variables, depending upon the type of policy desired and the type of training provided.

An agency with the help of the city attorney may consider these rules and guidelines: (1) when to continue (initiate) a pursuit, (2) police units authorized to participate and their roles, (3) supervisory roles and responsibilities, (4) multi jurisdictional pursuit issues, (5) driving tactics, (6) permissible and impermissible exceptions tactics, (7) air support, (8) termination, (9) capture of suspect, (10) reporting and the post pursuit analysis. The policy can help create tactical knowledge and advance preparation, which involves knowing as much as possible about a situation before taking or continuing action to resolve it. (Beckman, 1987)

Discussion of Relevant Issues

There are several issues an agency needs to consider when developing a pursuit policy; civil liability, officer discretion, media attention and apprehension of law

violators. To reduce the risks and liability associated with vehicle pursuits, law enforcement organizations must carefully evaluate their pursuit policies, training, supervision, and post-incident evaluations. Liability reduction is accomplished through sound management controls and a reduction in the number of pursuits-related accidents.

The function of a well written pursuit policy is to state the department's objectives, establish some ground rules for the exercise of the discretion, and educate officers as to specific factors they should consider when actually conducting a vehicle pursuit. Where feasible, comprehensive policy statement should give content to terms such as reasonable and reckless and provide officers with more particularized guidance. A policy should be tailored to a departments operational needs, geographical peculiarities, and training capabilities. A written policy also provides a basis for holding officers accountable for their pursuit-related conduct. (Swanson, 1997)

Police administrators are concerned with the elements of a policy, liability and the appropriate level of restrictiveness to guide the behaviors of their officers. Police trainers seek to develop the safest and most effective means of conducting a pursuit. Underwriters are concerned with the cost associated with the damages and injuries, which often result from pursuits, as well as the reduction of the cost associated with litigation. Jurists are concerned with decisions that strike a reasonable balance between the state's need to apprehend violators of the law and the public's interest from unreasonable risk of harm. Moreover, they must decide questions of law applicable to the conduct of a pursuit.

Legislators must address political pressures from a broad base of constituents. Legislators also attempt to enact reasonable legislation that balances both public and governmental interests. Researchers seek to discover valid data for analyses on which informed decisions can be made. Furthermore, they identify several variables and attempt to determine the relevance of such variables to the negative and positive outcomes of pursuits. Attorneys, representing their clients' best interest, have interest in the facts of the particular actions, as well as the pursuit data in general. The media's focus on the more spectacular pursuit outcomes reflects their interest in marketable news. However, owing to the frequency and the nature of the police pursuit accidents, the media maintains a general interest in pursuit research as well. (Payne, 1997)

The essential purpose of pursuit is to apprehend a traffic law violator or criminal offender. If this apprehension can be accomplished by means other than high-speed pursuit, then law enforcement should try to use them. When offenders are known, they can probably be apprehended, without chase, in their homes or in places they frequent. Whether or not to engage into a high-speed chase then becomes a question of weighing the danger to the public of the chase itself against the danger to the public of the offender remaining at large. For anyone other than a violent felon, the balance weighs against the high-speed chase.

It is important then that law enforcement equip itself with means of identifying a suspect without a high-speed pursuit. The most obvious solution is to take a picture of the fleeing vehicle, which entails having a camera available and an officer capable of taking a useful photo with it; in-car video camera. A number of police agencies are

experimenting with computer-controlled cameras or photo-radar systems that automatically snap pictures of speeders and send violation notices through the mail.

Technological means of incapacitating cars have been or are being developed. A Canadian company is marketing a hollow spike strip that can be laid across a roadway in the path of the pursued vehicle. As the car's tires pass over the strip the spikes on the strip break loose from the strip and puncture the tires, slowly deflating them and incapacitating the vehicle. Other devices in development include cars with built in governors that can be triggered by remote radio signals. Whether such governors will ever be universal is questionable, but coerced installation in the vehicles of convicted violators as a condition of probation is conceivable. (Kennedy, 1992)

Conclusion/Recommendations

The purpose of the research was to determine if high-speed pursuit was still a risk the municipalities, officers and public was willing to take. While potential liability from high-speed pursuits significant, the law does provide protection where agencies have made their best efforts to draft and implement specific pursuit directives, adequately training in the policy and techniques of the pursuit driving. Agencies must closely supervise, review, and evaluate implementation of pursuit policies.

The fear of being indicted by a Grand jury for trying to perform your duties as an officer has been lessened by the latest decision of the Supreme Court (Lewis v. Casey, 1996). The operational realities of policing include risk, harm and peril. Risk management strategies by the management team should include state-of-the-art policies

and practices. Most studies and published literature support the same basic conclusions: that a comprehensive written policy, enhanced training and effective supervision will reduce the potential for pursuits that end in tragedy. Management must emphasize accountability and responsibility in pursuit driving, as well as self-control, to achieve the swift, efficient apprehension of violators without compromising public safety.

Officers acting outside the policy guidelines can be held accountable. Officers acting inside the guidelines are not and should never be held responsible for the actions of the pursued, regardless of the consequences.

Well-written pursuit policy will state the department's objectives, establish ground rules, and educate officers. Training may decrease pursuit-related accidents. Cost effective training can be accomplished by emphasizing defensive driving techniques. Police departments are responsible for providing adequate supervision of officers involved in a pursuit. Departments should provide for an on going process of evaluation and documentation of pursuit related incidents. Pursuits ending successfully or unsuccessfully should be critiqued to try and continually improve. All these parts make up a sound plan to protect the city and the officer from possible liability. The most important reason for effective pursuit policies is not minimization of liability, it is to protect life and property-the basic police mission.

Bibliography

- Alpert, Greffrey P. "Questioning Police Pursuits in Urban Areas" Critical Issues in Policing ed. Roger G. Dunham. 1989
- Alpert, Greffrey P. "The Management of Police Pursuit Driving: Assessing the Risks." Critical Issues in Policing. 1989: 547-563
- Alpert, Greffrey P. "Police Pursuit and the use of Force." Justice Quarterly. Vol.14, No.2. June 1997
- City of Canton v. Harris, 489 U.S. 378, 385, 103 L. Ed. 2d 412,109 S.Ct. 1197 (1989); Monell, 436 U.S. at 691.
- Criminal Justice Management and Training Digest "Senate Ok's Dorgan Legislation on High-Speed Police Pursuit." Vol. 4 No.5 March 11,1998
- Hannigan, Maurice J. "The Viability of the Police Pursuits." The Police Chief. Vol.59, No.2 February 1992:46-47
- Jackson, David. "Justices Prevent Lawsuits in most High-Speed Chases." The Dallas Morning News. July 17,1998:1a & 10a

Lewis v. Casey, 116 S.Ct. 2174, 2179 (1996)

Morris, Earl. "Police Pursuits." The Police Chief. Vol.60, No.7 July 1993:51-52

Payne, Dennis M. "Michigan Emergency Response Study: Phase III" International Journal of Police Strategies and Management. Vol.20 No.2 1997: 256-269

Parratt v. Taylor, 1981. 402 US 387.

Power, Stephen "Officer Not Indicted in Fatal Crash." The Dallas Morning News. March 27, 1998: 1a & 10a

Swanson, Charles R. "Legal Aspects of Police Administration." Police Administration. 1997: 413-418

Sweeney, Earl M. "Vehicular Pursuit Balancing the Risks." The Police Chief .July 1997:14-21

Sweeney, Earl M." Vehicular Pursuit: A Serious and Ongoing-Problem. "The Police Chief. January 1997

Whetzel, John. "Pursuit: A Deadly Force Issue" The Police Chief. Vol.59 No.2 February 1992:30-31

104th Congress 1st Session Bill S.923 June 14 1995