

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

**Police Pursuit
A Policy Recommendation**

A Policy Research Project
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ABSTRACT

High-speed police chases are a serious matter that have become a concern for citizens, police administrators, city managers and legal advisors. It is an issue which deserves the same degree of attention as deadly force - the outcome of high-speed police chases may result in serious injury or death. We therefore have an obligation to reexamine policies, practices, and training. This is particularly important in operations which affect the lives of citizens and officers. The information in this document will increase knowledge and provide information to improve policies, training and practices. This information will also educate administrators and help to promote more effective decision making. The information in this project has been taken from independent studies, law enforcement directives, documents published by the federal government and federal and state court decisions. This document will result in the policy makers developing an effective policy and promote better decision making skills among line personnel and supervision.

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Introduction.

The purpose of this research project is to increase our knowledge and provide information, improve policies, training and practices of the METRO Police Department, relative to police pursuit. Additionally, the information presented will educate the administrators, policy makers and trainers and should also promote more effective decision making.

The problem is what decision making process will better enable a police officer to know when he or she should initiate a pursuit. Additionally, what effect will more definitive policies have on the reduction of liability claims on the officer and the agency? During the course of the pursuit, what should be the role of the patrol supervisor and any other secondary units?

The intended audience is the administrators, policy makers, and trainers of the METRO Police Department. The current policy relative to police pursuit is inadequate in that it does not contain enough information for the line officer or line supervisor to make an intelligent decision regarding the initiation and/or termination of a police pursuit. In developing this policy recommendation it is intended that each principle involved in the decision making process will have adequate information to make an intelligent decision.

The information in this document has been taken from independent studies, federal and state court decisions, law enforcement directives and documents published by the United States Government.

The information incorporated in this document will result in a comprehensive policy recommendation outlining specific elements and principles. The policy recommendation

will enable the policy makers to focus on clear objectives when developing a pursuit policy. Minimizing the problems associated with police pursuits requires effective decision making rather than problem solving skills. Applicable knowledge must be obtained and processed before proper decisions can be made. The outcome of this document should result in the policy makers developing an effective policy and line personnel and supervision possessing a practical guide for decision making.

Historical, Legal and Theoretical Context

It was not until the 1960s that police pursuit was considered a problem for either the police or the public. (Alpert and Fridell, 1992) During this period, public statements were being issued by civic organizations declaring that police pursuit driving resulted in disastrous and expensive outcomes. The law enforcement community contradicted by stating that the negative outcomes were exaggerated and the police pursuit was a necessary tactic for the apprehension of offenders. Rhetorical and unquantitative information relative to this issue was issued by both sides for many years until it was discovered that empirical research would help answer many of these questions.

The self-appointed and unofficial representatives publishing the negative aspects of police pursuits was an organization known as the Physicians for Automotive Safety. The Physicians for Automotive Safety released a report in 1968 citing the dangers of highspeed pursuit. The report and its conclusion created a commotion in law enforcement circles by concluding that the cost in deaths and injuries hardly sustained the risk involved in police pursuits. The law enforcement community justified its position by stating that, "more and not less crashes would result if their authority to apprehend offenders was threatened." (Fennessy et al., 1970). The physician for Automotive Safety released a report in 1968 citing the dangers of highspeed pursuit which shocked the American public. The figures, which are still cited in the 1990s, included the following:

1. One out of five pursuits ends in deaths;
2. Five out of ten pursuits end in serious injury;
3. Seven out of ten pursuits end in accidents;
4. One out of 25 killed is a law enforcement officer;
5. Four out five pursuits are for minor offenses; and

6. Pursuits cause more than 500 deaths each year.

The liability and safety issues surrounding high speed chases by police officers have created a great deal of interest among law enforcement and government officials. Except for the use of firearms, highspeed pursuits and their results create more controversy than any other aspect of police patrol activity. In most law enforcement agencies, lawsuits brought for vehicular negligence exceed those that allege other kinds of misconduct.

High-speed pursuit is one of the most dangerous activities that can be engaged in by a law enforcement. The police vehicle is a potential deadly weapon and pursuit driving is often a life-or-death situation. The majority of pursuits are the result of reactive police actions; a police officer observes a violation and attempts to apprehend the violator. The initial objective--wanting to stop the violator--is a crucial element in explaining and justifying this potentially hazardous activity. However, those attempt to avoid apprehension on the roadways are not usually dangerous felons. The overwhelming majority of all pursued drivers have committed traffic violations. The police have a legal mandate to enforce the law and protect the public. Fortunately, the majority of all violators will stop immediately when signaled by a police officer. However, a few will not stop and they must be convinced that police officers will attempt to make an apprehension. In many pursuit situations it becomes a personal challenge to the police officer rather than a response to a violation of the law. This makes a written policy particularly important. The officer must use sound judgement in striking a balance between apprehension of the violator and concern for the risks involved. A written policy can provide the criteria and

procedures to be followed in making sound judgements.

Police pursuits lawsuits prosecuted under The Federal Civil Rights Acts which involve death or personal injuries most frequently are pursued on a claim of excessive use of force. Whenever an excessive force claim originates with either an arrest or an investigatory stop of a citizen who is not already under detention, it "is most properly characterized as one invoking the protections of the Fourth Amendment, which guarantees citizens the right 'to be secure in their persons ... against unreasonable ... seizures' of the person."

Police pursuits have generated a number of liability claims asserted under 42 USC, Section 1983 of The Federal Civil Rights Act for the use of excessive force resulting in death or personal injuries during the course of the arrest or investigative stop. The claims alleges that the police cause a governmental termination of freedom of movement intentionally applied, resulting in an unreasonable seizure contrary to the Fourth Amendment to the Constitution of the United States. However, an officer still may not be liable, unless the officer violates law that was already clearly established at the time of the incident of which the officer knew or should have known. The agency of the officer is not liable, unless an unconstitutional governmental policy or custom of the agency is the proximate cause of the officer's unconstitutional conduct.

Police pursuit lawsuits presented under The Federal Civil Rights Act which involves death or personal injuries most frequently are pursued on a claim of excessive force. Whenever an excessive force claim originates with either an arrest or an investigatory stop of a citizen who is not already under detention, it " is most properly characterized as one

invoking the protections of the Fourth Amendment, which guarantees citizens the right to be secure in their person ... against unreasonable ... seizures' of the person."

Graham v. Connor, 490 U.S. 388, 394 (1989).

Therefore, the two primary liability questions on which the plaintiff bears the burden of proof to secure affirmative answers by a preponderance of evidence are:

1. Did the officer make a seizure?
2. If so, was the seizure unreasonable?

Brewer v. County of Inyo, 490 U.S. 593 (1989)

If the answer to both of these questions is yes, the officer is liable to respond for the ensuing death or personal injury, and if the law enforcement agency employing the officer had a government policy or custom of making unconstitutional seizures of suspects in violation of the Fourth Amendment which proximately causes unreasonable seizure, then it, too, would be liable to respond in damages.

The most critical components of liability analysis are:

1. The facts and circumstances confronting each involved officer throughout the pursuit.
2. Did the officer make a seizure?
3. If so, was the seizure unreasonable?
4. Whether the officer who proximately caused the seizure violated some law that was already so clearly established that he knew or should have known it;
5. Whether the law enforcement agency which employed the officer who made the seizure had any governmental policy or custom of making unreasonable

seizures of persons.

A thorough and proper analytical process demands a careful accumulation and assessment of all facts of a police pursuit. An evaluation of existing pursuit policies commensurate with the Fourth Amendment requirements should be considered

Aside from the legal considerations of pursuit policy development, police administrators have a duty to ensure the safety of officers, violators and the public. Therefore, they must provide their officers with direction through written policies. A pursuit policy should accurately define the behavior of the officer within the scope of the policy. The policy should address three key questions that will arise during the pursuit: when to pursue, what to do during the actual pursuit, and when to abandon the pursuit.

The most commonly accepted definition of police pursuit is an active attempt by an on-duty law enforcement officer in an authorized emergency vehicle to apprehend one or more occupants of a moving motor vehicle, providing that the driver of such vehicle is aware of the attempt and avoiding apprehension by maintaining or increasing his speed or by ignoring the officer's attempt to stop him. The officer's decision to initiate a pursuit should be tempered by consideration of some basic factors.

First, consideration should be given to the nature and seriousness of the offense. Non-hazardous violations such as equipment, registration violations such as equipment, registration violations may not warrant a pursuit, especially a high-speed pursuit. However, hazardous violations that present a continuing danger to other road users require immediate and sometimes aggressive attempts to apprehend the violators. Driving under

the influence of alcohol or drugs, reckless driving or driving at excessive speeds are examples of hazardous violations.

Second, consideration should be given to roadway and traffic conditions. During periods of congestion, pursuit may be impossible or extremely hazardous. In addition, every roadway has a maximum speed at which a motor vehicle may operate safely. Some of the limiting factors include lack of straight and level surface; the presence of rain, snow, ice, loose gravel or other foreign substance on the road surface. The officer's familiarity with the roadway being traveled is also a factor in his decision to pursue.

Third, consideration should be given to the type and condition of the police vehicle being driven by the officer. Unmarked police vehicles not equipped with siren or emergency lights should never engage in pursuit driving for the purpose of apprehending a traffic violator. Three-wheel motorcycles should not engage in the pursuit of traffic violators under any circumstances and two-wheel motorcycles should engage in pursuits only under extreme circumstances, abandoning the pursuit as soon as assistance can be obtained from a marked police vehicle. It should also be noted that prolonged high-speed pursuits will adversely affect the strength of tires, brake operation and other equipment vital to the safe operation of the police vehicle.

Fourth, consideration should be given to the time of day and geographic location. Pursuits engaged in during times when the motorist or pedestrian traffic is heavy- such as rush hour- are extremely hazardous. The potential danger to others may outweigh the benefit of a successful apprehension.

Lastly, consideration should be given to the likelihood of successful apprehension.

The officer should engage in pursuits only when the likelihood of successful apprehension is high. This view considers the fact that the majority of pursued drivers are traffic violators.

Perhaps the most important person to insure that policies are being followed and that risk is balanced appropriately is the supervisor. It is necessary to have a detached supervisor who can take charge of a pursuit by radio contact, manage it, and-when necessary- terminate it. It is the supervisor who must compensate for the officer's excitement and possible impaired decision making ability. Supervision is necessary to manage and to control pursuit driving in any law enforcement agency.

Review of Literature

The first complete study on pursuits was sponsored by the U. S, Department of Transportation and published by Fennessy et al., (1970 and see Fennessy and Joscelyn, 1972). The researchers reached the following conclusions based upon a combination of their limited quantitative data and their thorough review of others available information (1970: 150, 153):

Hot pursuit is a highly controversial topic, bound up in the broader issue of what constitutes effective law enforcement. From a sizable and influential police viewpoint, their freedom to pursue law violators is a vital measure of their deferent capability not only in term of their traffic supervision mission, but also in relation to their broader crime control responsibility. The basic argument advanced by this group is that if the police were forbidden to engage in hot pursuit or they unduly retreated, then chaos on the highways would be the results.

The second generation of research on police pursuits was initiated in the early 1980s. The California Highway Patrol, responding to the pleas from the decade before, conducting an exploratory study on police pursuits. The California Highway Patrol study reports findings from an analysis of almost 700 pursuits. The data from this study demonstrates that:

7. 179 (26%) of the pursuits initiated for DU I;
8. 75 (11 %) of the pursuits were initiated for serious criminal activity; and
9. 243 (36%) of the pursuits, were voluntarily terminated be the driver who Surrendered.

Two of the most important findings reported by the California Highway Patrol are that:

- 1) 77 percent of the suspects were apprehended, and
- 2) 70 percent of the pursuits ended without an accident.

The Alpert and Dunham studies are based on aggregated pursuit data which were collected from the two major police departments in Dade County, Florida, the Metro Dade Police Department and the Miami Police Department during the years 1985, 1986 and 1987. There are nine hundred and fifty-two pursuits included in this analysis. The major findings consistent with the data reported in the other studies are: (Alpert and Dunham, 1987)

1. 952 pursuits were conducted;
2. 364 pursuits (38%) resulted in accidents;

- were in 3. 160 pursuits (17%) resulted in injuries;
- 4. 7 pursuits (.7%) resulted in deaths;
- 5. 40 pursuits (4%) were voluntarily terminated by the officer;
- 6. 512 (54%) of the pursuits were Initiated for traffic offenses;
- 7. 19 (2%) of the 1. 683 pursuits were conducted:
- 2. 193 pursuits (20%) resulted in accidents:
- 3. 99 pursuits (11 %) resulted in injuries;
- 4. 7 pursuits (1 %) resulted in deaths;
- 5. 27 pursuits (4%) were voluntarily terminated by the officer;
- 6. 429 (63%) of the pursuits initiated for traffic offense pursuits were initiated for reckless driving or impaired driving;
- 8. 312 (33%) of the pursuits were initiated for serious criminal activity;
- and
- 9. 107 (11 %) of the pursuits were initiated for a BOLO.

Relevant Issues

The better policies share some similar qualities. They appear to be carefully written; they cover many associated issues; they urge consideration of the seriousness of the offense balanced against the danger of the pursuit; and they provide a discontinuance of the pursuit. The following principle issues should also be addressed in a comprehensive policy:

- 1. When should the officer pursue?
- 2. How many units should be allowed to participate in the pursuit?
- 3. What are the responsibilities of the primary and secondary units?
- 4. What is the responsibility of the supervisor during the pursuit?
- 5. Under what circumstances should the pursuit be discontinued?
- 6. What tactics should the policy allow during the course of the pursuit, to aid in the apprehension of the violator?
- 7. Under what conditions should the officer be allowed to use his firearm?

Conclusion / Recommendation

High speed pursuits create more controversy than any other aspect of police patrol activity. Liability suits against the police have increased dramatically. As a result of this explosion in civil litigation, it is vital that policy agencies employ the most comprehensive pursuit policy possible. Police administrators have a duty and responsibility to ensure the safety of officers, violators and the public. Therefore, they must provide their officer with direction through written policies on pursuit that contain explicit guidelines on when to initiate, continue and terminate pursuits. It is the recommendation that an agency's policy should include the following principles:

1. The policy should be workable in real-work situations.
2. The policy should be adaptable to training.
3. The policy should be written in a positive manner.
4. The policy should reflect the values of the command staff and the community.
5. The policy should refer to and/or incorporate relevant laws.
6. The policy should include input from officers at all levels.
7. The policy should be pre-tested to assure that all officers understand the specific intent and consequences of non-compliance.
8. The policy should provide for in-service training, as a matter of record, for all officers and supervisors.
9. The policy should provide examples of behavior.

Indecision or doubt created by sketchy or non-existent guidelines can have disastrous results during a pursuit. Police officers themselves must understand that police pursuits that exceed their authority, that are contrary to accepted police procedures or laws, that are conducted without due regard for the safety of others, or that violate department policies and previous training could lead to death, injury, and civil and/or criminal persecution.

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