

**The Bill Blackwood
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High Risk Police Pursuits

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ABSTRACT

High-risk police pursuit is relevant to contemporary law enforcement because it has been one of the most controversial police practices for the past two decades. There are law enforcement agencies that continue to allow officers to pursue at the officer's discretion, while other agencies have decided to eliminate police pursuits completely. Still other agencies allow only those pursuits that meet pre-determined criteria. Opinions regarding high-risk pursuits differ within law enforcement, the public, the media, and the courts.

The position of the researcher is that police officers have a sworn duty to enforce the law and make every reasonable attempt to apprehend those who violate the law or who present a danger to innocent parties. The freedom to pursue those who violate the law is an invaluable tool for law enforcement. Police officers with proper training, reliable equipment, and a legal written policy that is supported must be afforded individual discretion in deciding whether or not to pursue. The types of information used to support the researcher's position will be publications, research polls, court rulings, and an interview with an eyewitness to a recent incident. The conclusion drawn from this position paper is that when properly trained and supported with a legally defensible policy, law enforcement officers should be allowed to engage in high-risk pursuit driving at the officer's discretion.

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INTRODUCTION

When law enforcement officers pursue fleeing offenders and apprehend those offenders without incident, there is rarely any controversy. The public, the media, and police administrators tend to agree the officer did their job well. However, when a pursuit ends badly with injury or even death, there are those who question whether or not the officer's decision to pursue was reckless or an exhibition of poor judgment. In these cases, the officer's decision and actions will invariably be critiqued by the media, the public, and the officer's superiors.

Law enforcement officers are sworn to protect the property and safety of the citizens in their care. Ideally, this is accomplished through the apprehension of the violator(s) of the law. Any person who violates federal, state, or local statutory law is, by definition, a criminal and thereby subject to arrest or detention. Some of these violators surrender without resistance, while others make a conscious decision in attempting to avoid apprehension. It is these violators who force the officer to choose whether or not to pursue and apprehend. It is at this point that the officer must decide if the need to immediately apprehend will justify the risk involved in pursuing the violator.

In the most recent ruling of the Supreme Court of the United States, *Scott v Harris* (2007), regarding a high speed pursuit, the court ruled, "a police officer's attempt to terminate a dangerous high-speed car chase that threatens the lives of innocent bystanders does not violate the Fourth Amendment, even when it places the fleeing motorist at risk of serious bodily injury or death" (p.13). Additionally, when the respondent posed the question of whether the police could have avoided the tragic ending if they had ceased the pursuit, Justice Scalia stated that the respondent might

have been just as likely to respond by continuing to drive recklessly. Justice Scalia further stated “we are loathe to lay down a rule requiring the police to allow fleeing suspects to get away whenever they drive so recklessly that they put other people’s lives in danger”(as cited in *Scott v Harris*, 2007, p. 13). Justice Scalia added that such a rule would create perverse incentives for the fleeing motorist. Justice Scalia reinforced this by stating that a “fleeing motorist would know that escape was within his grasp, if only he accelerates to 90 miles per hour, crosses the double yellow line a few times, and runs a few red lights. The Constitution assuredly does not impose this” (as cited in *Scott v Harris*, 2007, p.13).

Every law enforcement agency should adopt a legally defensible policy. That agency must then provide for the training of all officers, both the physical training necessary for pursuit driving as well as the classroom training regarding that agency’s policy. Then, and only then, should that agency allow its officers individual discretion to initiate high-speed pursuits in the performance of their duty to enforce the law and apprehend violators.

POSITION

In 1952, the Kentucky Supreme Court handed down a decision reversing a decision from a lower court that had determined that two police officers were liable for injuries suffered by a third party as the result of a police pursuit. The Kentucky Supreme Court said that officers would be derelict in their duties by not pursuing the fleeing motorist. Further, the court stated that the officers were performing their duty to pursue the violator who was failing to obey the speed laws. The court also said that officers could not be insurers of the conduct of the people they chase (as cited in Alpert

& Smith, 2008). Since that time, there have been numerous court decisions regarding police pursuits. However, none of these cases seem to have established clear parameters under which law enforcement could operate, especially in reference to police pursuits. Only as recently as 2007 did the courts establish that if a fleeing motorist's actions present a threat to police officers or the public, the use of deadly force is reasonable.

Every law enforcement officer takes an oath to enforce the laws of the United States, their individual state, and their local government body to the best of the officer's ability. There has never been such an oath that grants the individual officer the authority to select which laws they will enforce and which laws they will ignore due to the potential of danger resulting from attempted enforcement. Officers must be allowed to assess each scenario and determine their course of action based upon their knowledge, abilities, training, and experience. This, combined with whether the need to immediately apprehend the violator will outweigh the risk to all parties involved, is the basis for officer discretion (Margolis, 1981). When deciding whether to engage in a high-risk pursuit, officers must evaluate the location and their knowledge of the area, the involvement of and risk to innocent bystanders, their personal abilities, the capability of their equipment, the availability of additional resources, and they must determine the apparent risk factors versus the necessity to immediately apprehend. Not only must the officer make their decision instantly to initiate involvement in a pursuit, they must constantly reassess the changing risk factors and employ discretion as to continuing or terminating involvement in the pursuit. A pursuit that begins with low risk and a high probability of success may, at a moment's notice, become too dangerous to continue.

One determining factor that must be considered by the officer is an honest self-assessment of his or her abilities. All officers who are faced with the slightest possibility of involvement in a vehicular pursuit must receive adequate professional training in pursuit driving (Cooley, 2009). This training should be re-enforced and/or updated periodically to compensate for new types of equipment and successful techniques. While the officer may have experienced many, few, or no actual pursuit situations, experience alone may be insufficient. Technology, techniques, and equipment improvements are changing rapidly and have profound effects on the potential success or failure of police pursuits.

According to training conducted by the Texas Department of Public Safety (DPS) on how to write and defend a pursuit policy and the model policy created by the International Association of Chiefs of Police (IACP), certain guidelines must be established and disseminated to all affected personnel. The officer must adhere to written pursuit policy guidelines. Every law enforcement agency must produce a legally defensible pursuit policy. Each officer must be thoroughly trained regarding the content of that policy. The policy should clearly define the officer's individual culpability in deciding whether or not to initiate, participate in, or terminate participation in a high risk pursuit. The policy should clearly define what actions will neither be permitted nor supported by the department. The policy should allow the officer to terminate a pursuit if the officer or the officer's equipment becomes disabled to the extent that the officer feels unsafe to continue. The policy may also allow for a supervisor to terminate the pursuit when the supervisor deems the pursuit to be unreasonable or unsafe. The policy should also assure the officer that they will suffer no retribution for refusing to

participate in a pursuit that the officer perceives to be or become too dangerous to continue. Foremost, agency administrators must continuously monitor court decisions and applicable legislation to determine that the policy ensures officers operate within established law.

COUNTER POSITION

There are many who believe that high-risk pursuits are too dangerous, and law enforcement must restrict or even eliminate their involvement. Their position is that high-risk pursuits unnecessarily increase the risk of injury to a minor violator or the innocent public at large. The popular belief is that if the police do not pursue, the violator will cease to flee and the violator can be safely apprehended at a later time. There are almost daily reports in the media of police pursuits. Undeniably, some of these end badly and result in the serious injury or death of the fleeing violator, the pursuing officer(s), or innocent by-standers. Unfortunately, there will almost always be someone who will contend that it all could have been avoided if only the police had chosen not to initiate or continue the pursuit.

MacDonald and Albert (2002) used the results of eight previous studies regarding attitudes expressed by the public and police officers concerning pursuit driving. The result of these studies indicated that the opinions about police pursuits varied according to the composition of the group surveyed. Police officers, in general, resented any attempt to control or reduce their discretion. According to the article, little had been learned about public attitudes of police pursuits, but the public views pursuits cautiously and offers only limited support. Older people polled seemed to support police's discretion to determine when to initiate a pursuit. Younger people tended to support

police pursuits when certain criteria existed and felt police should terminate a pursuit when it became too dangerous. Much of the public's lack of support is a result of their limited knowledge about police pursuits. The primary resource for the public is the media. Unfortunately, the media normally reports on the very small percentage of pursuits that are newsworthy for either being extremely dangerous or those that end tragically.

In actuality, the vast majority of pursuits end in a desirable conclusion, with the violator apprehended and no one injured. Margolis (1981) reported the result of a detailed research project in the Phoenix Police Department in Phoenix, Arizona. The data collected encompassed a three-month period in a large metropolitan area. During the research period, police were involved in 48 pursuits. One half of these pursuits were initiated as the result of traffic violations. Only 27%, or 13 of 48, of these pursuits resulted in a collision. Pursuits lasting five minutes or less totaled 86%, or 41 of 48. In the past decade, police departments (i.e. Dallas, Texas; Kansas City, Missouri; Denver, Colorado) have modified their pursuit policies to limit individual officer discretion to initiate high speed pursuits.

Cooley (2009) referred to statistics which indicated that during a study period by the California Highway Patrol in 1995, the banning of pursuits would have resulted in 66 murderers and 190 robbers not being captured, and 4,000 felons would not have been stopped. The study also stated that violators who flee from routine traffic stops are often involved in more serious issues, such as outstanding arrest warrants, narcotics, or other criminal activity. These statistics alone seem to substantiate the need for police to pursue and apprehend those who attempt to flee.

In spite of numerous lawsuits against police departments by persons injured as the result police pursuits, the Supreme Court of the United States has ruled that officers are entitled to “qualified immunity” when there is no evidence of “diligent indifference” or “reckless disregard” for the violator or innocent bystanders by the officer(s) involved (*County of Sacramento v Lewis*, 1998). Further, there is no expectation that opting not to initiate or to terminate involvement in a high risk pursuit will result in the violator ceasing their reckless activity (*Scott v. Harris*, 2007). Law enforcement officers have a sworn duty to enforce the law and to apprehend those who violate the law. The knowledge that the police no longer possess the individual discretion of whether or not to pursue will undoubtedly encourage violators to engage in more reckless conduct to avoid apprehension. In almost every incident, the violator chose to disregard the law in some manner before the police became involved.

While some argue that a violator will cease dangerous behavior if the police do not chase, there is no support to indicate this. In fact, the following is a tragic incident that occurred on August 28, 2009 in Springtown, Texas. Springtown, Texas police officer (Corporal C. S. McGee, ID #557) was interviewed at Springtown Police Department (SPD) regarding Springtown case (#09-23868) resulting from a motorcycle fatality accident. Corporal McGee stated that, at approximately 6:30 pm on August 28, 2009, a Springtown police dispatcher had received information from the Texas Department of Public Safety (DPS) dispatch that a trooper was in high speed pursuit of a black motorcycle traveling eastbound on State Highway 199 (SH199). The motorcycle was reported to be traveling at speeds approaching 100 miles per hour. The posted speed limit on this section of SH199 is 65 miles per hour. The pursuit had lasted

15 minutes and about 23 miles when DPS dispatch notified SPD dispatch at 6:32 pm that the trooper had terminated the pursuit because the pursuit had becoming too dangerous. At this time, Springtown police units were instructed to “stand down” and return to normal patrol responsibilities.

At 6:41pm, Corporal McGee was stopped facing east at a red signal light at the intersection of SH199 Farm Market Road 51 (FM51). The interscetion was crowded with vehicles in all traffic lanes. Corporal McGee was the lead car at the red light. Corporal McGee’s vehicle was in the left traffic lane with other vehicles stopped for the red signal light on both sides of Corporal McGee in the right lane and left turn lane. At 6:41 pm, a black motorcycle matching the description given by DPS approached from the west, crossed over into the westbound traffic lanes, and disregarded the red signal light as well as the traffic traveling north and south through the intersection. Corporal McGee’s in-car radar registered the motorcycle’s speed at 80 miles per hour as it crossed the intersection. The motorcycle swerved back into the eastbound lanes in order to avoid colliding with a vehicle facing westbound in the center turn lane. Corporal McGee immediately initiated the emergency lights and siren on her marked police cruiser as the red signal light turned green. Before McGee could get through the intersection, the motorcycle swerved right as the vehicle in the turn lane initiated a left turn onto Old Springtown Road. The motorcycle struck the right back quarter panel of the turning vehicle with such force that it spun the car 180 degrees. The motorcycle operator was propelled over 40 feet in the air and came out of his boots and pants. The motorcycle operator was declared dead at the scene, and the medical examiner stated that he probably died instantly. The 9 year old boy passenger in the rear seat of the car

received serious (not life threatening) injuries. The motorcycle operator was driving with a suspended operator's license, had outstanding arrest warrants, and possessed a small amount of marijuana.

It was later confirmed that the motorcycle involved in the incident in Springtown incident was the same motorcycle pursued by the DPS trooper. The pursuit had been broken off by DPS nine minutes and 12 miles from the accident scene. The pursuit had been terminated, but the violator continued his reckless and criminal activity (C. S. McGee, personal communication, September 7, 2009).

CONCLUSION

The ability of law enforcement to pursue violators is a valuable tool necessary to apprehend violators and decrease any threat to public safety. Removal or excessive restriction of this tool could encourage violators to engage in dangerous behavior intended to prevent intervention or apprehension by law enforcement. Further, there is no evidence to support the theory that the violator will cease their illegal and/or dangerous behavior if the police do not initiate pursuit or terminate the pursuit.

Once it was made known that police were prohibited from pursuing, a violator would need only to operate their vehicle in a more erratic or dangerous manner to increase the possibility of escaping capture. A mere traffic law violator might be encouraged to increase their speed, disregard a traffic control device, or make rapid or life threatening maneuvers, which could increase the risk to innocent by-standers in hopes that police would cease their attempt to seize the violator.

Each agency should create a pursuit policy that adheres to current legal parameters. The agency must then be certain that all officers know and understand the

policy. Above all, the agency must provide all officers with quality training in pursuit driving techniques and the best available technology. It is imperative that each officer be familiar with the abilities and limitations of the equipment they are operating as well as comprehend their own personal ability and limits.

Recent court rulings indicate that if officers fail to pursue or decide to cease pursuing, there is no certain expectation that the violator will desist from their criminal or dangerous behavior. The violator is just as likely to continue to present a threat to the safety of innocent bystanders. It could be said that the officer did not initiate the pursuit with their decision to chase; the violator initiated the pursuit when they refused to stop.

The police have sworn an oath and have been trained to enforce law. They have been tested physically and mentally. There must be trust in their skill and character to perform the duties entrusted to them. Properly equipped and trained officers need the authority to exercise individual discretion regarding their involvement in high-risk pursuits.

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