

POLICE PURSUITS
CASE STUDIES AND PURSUIT POLICIES

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ABSTRACT

Vehicle pursuits are a daily part of law enforcement. Unfortunately, they are one of the most dangerous aspects of police work. These pursuits can and often turn deadly. However, it is a necessary part of police work just as the use of a firearm.

This paper will look at fundamental questions involving police pursuits such as: Should police vehicle pursuits be banned? When should a pursuit take place? How can pursuits be made safer? And how can law enforcement agencies limit their liability arising from pursuits?

Also discussed is the impact of vehicle pursuits on law enforcement and governmental agencies. The impact includes the dangers posed to life and property. Governments and law enforcement agencies are also affected by the civil liability as a result of pursuits. Alternatives to traditional pursuit techniques will also be discussed.

This research supports the adoption of a sound vehicle pursuit policy by law enforcement agencies as well as the periodic review and modification of that policy based on court rulings and other factors. It also supports the use of alternative methods of pursuits based on the best fit for the agency. The resulting actions will make pursuits (which are inherently dangerous) much safer

for officers, those being pursued and innocent citizens while limiting civil liability for government agencies.

TABLE OF CONTENTS

Abstract.....	Page	1
Table of Contents.....	Page	3
Introduction.....	Page	4
Background.....	Page	6
Literature Review.....	Page	8
Procedures.....	Page	19
Results.....	Page	20
Discussion.....	Page	23
Recommendations.....	Page	24
References	Page	25

INTRODUCTION

The policies on police pursuits vary from agency to agency. However, each agency must determine a policy that best fits the needs for the community it serves. The policy should weigh the need for a pursuit versus the danger that pursuit poses to the community. Several factors must be taken into account when making this determination. The Detroit Police Department as well as many other police departments across the country, has revised its manual in the area of vehicle pursuits. There are many sound reasons for reviewing and updating law enforcement policies and procedures regarding pursuits.

The main reason for the updated policy is to safeguard lives and property which is a fundamental objective for every law enforcement agency. If a procedural change can save lives of the citizens that police officers are sworn to protect then of course it should be implemented.

Law enforcement agencies and municipalities should also be aware of court decisions surrounding pursuits and make necessary modifications based on court rulings.

In addition to pursuits, there are other tools available to law enforcement depending on the needs of the community. This paper will also examine some of the alternatives to pursuits.

This paper will discuss:

- The definition of a police pursuit
- The ramifications of the pursuit
- How court decisions affect pursuits
- Select pursuit policies and how they can be made safer
- Alternatives to police pursuits

BACKGROUND AND SIGNIFICANCE

In recent years, police vehicle pursuits have come to the forefront of policing. Factors such as extensive media coverage, litigation, in car video cameras and advances in technology along with many other factors have led to more attention being focused on police pursuits.

Society is driven by what is seen in movies, television and read in newspapers. Police pursuits are often displayed as glamorous, full of excitement and glorified. Over the past few years, police pursuits have been the focus of many reality television shows. Newspaper articles are written about them and they are carried (sometimes live) on television news broadcasts. But whatever the reason for the fascination, law enforcement has had to respond to the increased attention and the increase in public scrutiny concerning the manner in which these pursuits are handled.

The big questions surrounding police pursuits are:

- When should an officer pursue?
- How can pursuits be made safer?

Dangers of Pursuits

When vehicles are driven at a high rate of speed,

they become more difficult to maneuver and control. The violator is focused on eluding the police while the police are focused on stopping the pursued vehicle. The lack of attention to their surrounding environment and the speed of the vehicles makes the pursuit increasingly dangerous. The results can be deadly in some cases.

The risks involved in police pursuits puts the officer, person(s) being pursued and the general public at great risk of serious injury or even death. Each year, hundreds are killed or injured.

Nationwide, there are 250,000 police pursuits annually. The number of fatalities each year as a result of police pursuits is about 500. Over 57,000 people are injured in data collected by the United States Department of Justice.

According to the United States Department of Justice, a collision will occur in 32% of pursuits. Twenty percent will result in property damage while 13% will result in personal injury. A fatality will occur in 1% of pursuits. Approximately 70% of all pursuit related injuries and fatalities will involve the occupants of the pursued vehicle, while 14% will involve law enforcement and 15% will involve innocent parties. Police were successful in apprehending the suspects in more than 72% of the pursuits.

LITERARY REVIEW

According to the Detroit Police Department manual, a police vehicle pursuit is defined as, "An active attempt by a uniformed officer operating a marked vehicle to apprehend the driver and/or occupants of a motor vehicle who, having been given an audible and visual signal by the officer directing the operator to bring the vehicle to a stop, resists apprehension."

The El Paso County Sheriff's Office describes a police pursuit as, "The use of a police vehicle in a Code 3 (lights and siren) manner to pursue someone who willfully and knowingly uses illegal or evasive driving tactics in order to avoid detention, apprehension or arrest."

The Los Angeles area records more high-speed pursuits than any other jurisdiction in the country. In 2002, 700 police pursuits were documented. Since 1977, 415 individuals have been killed or injured as a result of police pursuits as documented by the Los Angeles Police Department.

In the year 2001, the State of Pennsylvania reported 2,314 pursuits, 700 resulted in crashes. This represents a 6.6% increase over the 2,171 reported in 2000. In both 2000 and 2001, eleven fatalities were reported. The most common reasons for the pursuits were traffic violations followed by stolen vehicles according to Quinn (2003).

According to Kalil, (2003) in a three-year period ending June 30, 2001, the Las Vegas Police Department was involved in over 600 police pursuits which resulted in 3 fatalities.

The Minnesota Bureau of Crime Apprehension records indicated that in 1997, Minnesota reported 956 police pursuits. Two fatalities and 172 injuries were reported. Eighty-eight of which were received by the violator.

Civil Liability Issues

In all pursuits, law enforcement officers must balance their duty to apprehend fleeing drivers versus the risk imposed to the community at large. Since law enforcement officers are charged with the task of enforcing laws and apprehending criminals, there is a strong tendency to pursue the violator regardless of how minor the violation. In most cases, the officer has to make a split-second decision on whether to initiate a pursuit.

As a result of pursuit related accidents, many people have filed civil lawsuits against the officer and the agency that employs them. Most civil lawsuits stemming from police pursuits were files in state courts. The suits were brought based on state torts which claimed the pursuing officer was negligent. It used to be that persons injured as a result of a high-speed pursuit could not sue due to governmental immunity doctrines. Trial lawyers have attempted for years

to have these cases heard in federal court. The basis for the federal claim by trial attorneys was that the officer had violated the injured person's Constitutional rights. They alleged violations of the Fourth Amendment which involves a citizen's right against unreasonable seizures and the Fourteenth Amendment which related to a citizen's right to fundamentally fair treatment by the government. The trial lawyers eventually were able to have their cases heard in federal court under Constitution rights violations. Some relevant cases involving lawsuits stemming from police pursuits include:

Brower v. County of Inyo – This case involves the use of roadblocks by police to stop a fleeing vehicle. The police set up a roadblock using an 18-wheeler on a blind curve which resulted in injury to the driver of the pursued vehicle. The U.S. Supreme Court ruled in favor of Brower claiming the roadblock amounted to an unreasonable seizure.

Galas v. McKee – This case examined the issue of police pursuits for traffic offenses and involved an officer that attempted to pull over a speeding motorist. The violator was a 13 year old who refused to stop and eventually crashed the vehicle resulting in serious lifelong injury. The U.S. Court of Appeal ruled that high speed pursuits were "an acceptable method of apprehending violators and did not violate the Fourth Amendment.

Fagan v. City of Vineland – This case involves an officer who observed a passenger standing up in the vehicle through a t-top roof. The driver of the vehicle refused to stop for police, disregarded several stop signs and increased their speed. The driver eventually struck another vehicle. Two people in the innocent driver's vehicle died and 1 person in the pursued vehicle was injured. The Third Circuit Court ruled the conduct of the police did not "shock the conscience."

By the late 1990's, it had been long established that injuries or deaths from pursuits could result in suits against officers and their governmental employers under the Due Process Clause of the Fourteenth Amendment. However, there was no single standard by which police conduct would be measured. A review by Saval (1998) shows that the courts used one of three standards:

- Gross negligence
- Reckless of deliberate indifference
- Shocks the conscience

Gross Negligence is defined by Professors Prosser and Keeton (1984) as conduct which may amount to more than mere "inadvertence or inattention, but less perhaps than conscious indifference to the consequences."

Jones v. Sherrill – In this case the officers observed a person driving in an unsafe manner. The driver refused to stop and the officers gave chase for over 9 miles at speeds up to 135 miles per hour. The driver of the pursued vehicle struck another vehicle and killed the driver of the innocent vehicle. The court ruled that the officers ' conduct did not sufficiently meet the Due Process Clause and their actions did not rise to the level of gross negligence.

Deliberate Indifference or Reckless Disregard as defined in *Medina* (1992) states that officers must “deliberately and consciously ignore an obvious risk that he has created and subsequently caused the plaintiff harm.”

Medina v. Denver – This case involves a stolen vehicle being chased by police. The driver of the stolen vehicle was injured when he lost control of the vehicle while attempting to avoid a police roadblock. The involved officers reported their speed as less than what they actually drove, ignored commands to discontinue the pursuit and drove through highly populated residential areas. In this case, the court showed reckless intent and found the officers culpable under the Due Process Clause.

Shocks the Conscience consists of behavior defined as “an intent to harm physically or to worsen their legal plight” as decided in the *Lewis* case below (1998).

Sacramento v. Lewis – In this case, officers observed a speeding motorcycle.

The operator of the motorcycle refused to stop resulting in the pursuit. The chase, which lasted under two minutes, terminated when the driver of the motorcycle lost control. The driver and passenger of the motorcycle were thrown from the bike. The pursuing officer attempted to stop but struck and killed the passenger as he lay on the ground. The court ruled the officer's conduct did not meet the shocks the conscience test. The significance of this case is that unless it could be proven that the officer intended to harm the suspect or worsen their plight, it would be extremely difficult to prove liability under the Fourteenth Amendment.

Fiest v. Simonson – In this case an officer attempted to pull over a suspected stolen vehicle. The vehicle refused to stop and after a lengthy high speed pursuit which went the wrong way on several one way streets, the pursued vehicle struck another vehicle on the shoulder at a speed around 100 miles per hour. The driver of the innocent vehicle was struck and killed. The court ruled that the officers had many opportunities to weigh the danger of the chase. The court ruled that due to the dangers involved, the officers should have discontinued the pursuit and found their actions did shock the conscience and violated the innocent driver's Fourteenth Amendment right to Due Process.

Government and supervisory liability may also be established under the "shocks the conscience" test when governmental policy or custom violates the

Fourteenth Amendment. To prove a claim based on an unconstitutional government policy, it must be proven that:

- An official policy or unofficial custom of unconstitutional misconduct exists.
- A deliberate indifference to or tacit authorization of such conduct.
- The policy or custom was the driving force behind the constitutional violation.

Government employers and supervisors may also be liable under the Due Process clause for constitutional injuries caused by a failure to train and/or a failure to supervise. The failure to train or supervise must cause a constitutional injury and amount to “deliberate indifference”.

Pursuit Policies

Since it has been shown that police policies and customs can be the basis for civil liability involving violation of the Fourteenth Amendment Due Process clause, law enforcement agencies around the country are taking a closer look at their current procedures involving pursuits.

In recent history, officers were taught pursuit driving techniques in the academy but seldom had any additional training. The training, which was usually hands on driving techniques, was taught while officers were still in the training academy and included no classroom instruction on how and when to pursue. Upon completion of the training, most agencies did not offer any additional

training. The result was most veterans had no pursuit training for many years and no classroom instruction on police pursuits. Until recently, most law enforcement manuals including their pursuit policies were outdated, mostly written in the late 60's and early 70's.

In real life situations, without additional classroom and hands on training, law enforcement officers are ill equipped to handle pursuit situations. Most officers who become involved in pursuits do not weigh the circumstance surrounding the pursuit. There is a strong tendency for officers to pursue at any cost. This means not taking into account any factor including the reason for the pursuit, external factors such as weather and road conditions and the likelihood of a later apprehension.

Ohio Department of Natural Resources

Primary considerations in determining whether to pursue:

- Seriousness of the offense

- Possibility of apprehension

- Area of pursuit

- Current traffic conditions

- Current road and vehicle conditions

- Condition of officer's vehicle

- What if any assistance is available to the officer?

- Knowledge of the identity of the driver and/or occupants

The Las Vegas Metropolitan Police Department recently revised their vehicle pursuit policy that now requires patrol supervisors to authorize pursuits and mandates greater reliance on police helicopters. The new policy also dictates that a supervisor not actively involved in the pursuit control it and decide if the pursuit should be terminated.

The University of North Carolina, Department of Public Safety only allows officers to initiate a pursuit for serious felonies. Any other pursuit must be authorized by a squad supervisor. Pursuits are prohibited when:

- The vehicle is not equipped with emergency equipment

- The vehicle is in need of obvious maintenance

- Driving conditions are unfavorable

- The police vehicle is carrying civilian passengers

- The identity of the violator has been established and they can be apprehended later with no danger to the public

- The operator of the pursued vehicle is a juvenile and is wanted for a misdemeanor or non-serious felony.

The El Paso County Sheriff's Office states that officers shall continually evaluate the pursuit and the circumstance involving it, weighing the seriousness of the offense against safety factors.

The Detroit Police Department recently revised its pursuit policy to state that pursuits may only be initiated when the officer has probable cause to believe a felony has been, is being or is about to be committed (except Fleeing and Eluding). Or if the offender poses an imminent risk of danger to the public if allowed to escape.

Alternative to Pursuits

Since pursuits are inherently dangerous, other methods are being employed to lower the risk of death, injury and property damage. With advances in technology, other much safer methods of apprehension are being explored.

Some of which include:

Retractable spiked barrier (stop) strips – This method is employed by placing a barrier across the roadway in front of the pursued vehicle. Just before the target vehicle passes over the barrier, spikes are activated which punctures the tires which then deflate rapidly but evenly. This allows the vehicle to reduce its speed without loss of control by the driver. The lower speed will make the pursuit safer.

Auto Arrestor System – This device deploys a short pulse of electrical current. The current will burn out or disrupt critical electrical components of the vehicle. They can be deployed

through fixed predetermined areas or the use of a rocket powered unit which is deployed from the officer's vehicle. The effect is similar to the pursued vehicle running out of gas. The vehicle can coast to a stop while the driver maintains control.

Helicopters – The use of helicopters in vehicle pursuits is regarded as one of the safest alternatives. When an officer initiates a pursuit, a police helicopter will immediately arrive at the scene and take control of the pursuit. This allows pursuing officers in vehicles to reduce their speed while the suspect vehicle remains in view from the air. The reduction in speed by the pursuing officers will usually result in a reduction in speed by the pursued vehicle. Additionally, the absence of lights and sirens will give the illusion the vehicle is no longer being tracked. However, not every law enforcement agency has a helicopter at their disposal. Many law enforcement agencies have limited resources and cannot afford the cost to purchase and maintain a helicopter. The average cost to operate a helicopter is about \$500 per hour. But for those agencies that can afford them, they are an excellent resource.

PROCEDURES

By examining civil liability cases involving pursuits and looking at selected portions of pursuit policies by several law enforcement agencies, the conclusions drawn show why pursuit policies have been updated and how they are affected by court decisions.

RESULTS

Since it has been shown that one third of all pursuits terminate in some type of collision, should pursuits be banned? Clearly the answer is no. This being the case, offenders would be free to commit crimes without fear of being pursued by police. This would cause a state of lawlessness whereby the offender would merely have to refuse to stop their vehicle for police. Giving law enforcement officers free reign to chase regardless of the circumstances is not the answer either. Consider a case where a person commits a minor traffic violation and refuses to pull over for police. The offender is known to the officer and continues to drive at a high rate of speed on icy roads in a heavily populated area. In this situation, a pursuit is certainly not justified and causes an unnecessary risk to the public at large.

The problems associated with vehicle pursuits have been clearly identified in this paper. Media portrayal of vehicle pursuits shows it as being glamorous and glorified from the view of the pursued vehicle and the law enforcement officer. The physical dangers to those who chose to flee from the police, the officers themselves and innocent citizens is often ignored or neglected.

Civil liability is an important factor which drives policy on pursuits and underscores the need for agencies to review and update their policies on a regular basis.

A pursuit policy should be clearly defined and should address issues such as:

Weighing the need for the pursuit against the risk imposed by the pursuit itself.

Is the reason for the pursuit sound?

Is the identity of the person sought known?

Could the offender be apprehended at a later date without causing additional safety hazards to the public?

Are external factors suitable for a pursuits?

Does the police vehicle have emergency equipment?

Is it clear that the pursuit can be terminated by the primary unit or monitoring supervisor?

Training in the area of vehicle pursuits which goes beyond academy training should also be implemented. In addition to hands on precision driving, classroom instruction should be mandatory so all officers understand the conditions for which a pursuit should take place and when it should be terminated. The training should mirror that of most firearms training police.

Alternatives to pursuits should be reviewed and appropriate acceptable techniques should be employed. Not every alternative is right for every agency nor should it replace pursuits. However, effective use of these tools along with training and a sound policy will make pursuits much safer for everyone as well as

limit agency liability. The benefits of adopting a sound policy on vehicle pursuits include:

- A reduction in deaths, injuries and property damage.
- Provide a uniform policy for officers to follow.
- Minimize civil liability.

DISCUSSION

Other studies conducted in this area of research also emphasize the need for training which goes beyond the academy. Research also indicates that outdated policies be reviewed and updated. It is difficult for law enforcement officers to balance the duty to apprehend criminals with the risk imposed by engaging in police pursuits. A sound policy on pursuits will make it easier for law enforcement officers to make good decisions and is an invaluable tool in the law enforcement arsenal. The results make it safer for everyone involved including the officer, persons being pursued and the public at large.

RECOMMENDATIONS

The results of this research encourage law enforcement agencies to review their training manuals relating to vehicle pursuits. Modifications should be made based on court decisions and appropriate other factors. The policy should clearly define when to pursue and when to terminate a pursuit. A good policy will weigh the risk imposed to the general public of initiating and continuing a pursuit. The policy should take into consideration the nature of the offense as well as external factors. Pursuits should only involve marked vehicles with proper emergency equipment in good running condition. Supervisors should monitor the pursuits and terminate them if necessary. Officers should receive classroom training in the area of pursuits along with hands on driving techniques. The use of alternatives to aid in pursuits should also be explored.

REFERENCES

- Albert, G.P. (1997) *Pursuit Policies and Training*
Retrieved April 14, 2003 from the World Wide Web
<http://www.ncjrs.org/textfiles/164831.txt>
- Brower v. County of Inyo*, 109 S. Ct. 1378 (1989)
- County of Sacramento v. Lewis*, S. Ct 96-1337 (1998)
- Detroit Police Department (2003) *Manual*
- El Paso County Sheriff's Office (2001) *Manual*
- Fagan v. City of Vineland*, 22 F.2nd 1296 (1994)
- Feist v. Simonson*, 36 F. Supp.2nd 1136 (1999)
- Galas v. McKee*, 801 F.2nd 200 (1986)
- Hahn, Bratton & Baca, (2003) Press Release City of Los Angeles
Retrieved April 14, 2003 from the World Wide Web
<http://www.ci.la.us/mayor/oldpresss/ND9062.html>
- Jones V. Sherrill*, 827 F.2nd 1102 (1987)
- Kalil, J.M. (2003) *High Speed Chases: Police tighten vehicle pursuit roles*
Retrieved April 14, 2003 from the World Wide Web
[Reviewjournal.com/lvrj_home/2003/Mar-14-Fri-2003/news/20889750.html](http://www.reviewjournal.com/lvrj_home/2003/Mar-14-Fri-2003/news/20889750.html)
- Medina v. City and County of Denver*, 960, F.2nd 949 (1992)
- Minnesota Bureau of Crime Apprehension
Retrieved April 14, 2003 from the World Wide Web
<http://www.dps.state.mn.us/bca.html>
- Ohio Department of Natural Resources (199) *Directive*
Retrieved April 14, 2003 from the World Wide Web
<http://www.dnr.state.oh.us/policy/motor%20vehicle%20pursuit%20directive.htm>
- Page, Keeton et al (1984) *Prosser and Keeton on the Laws of Tort*
- Quinn, L.G. & Lewis, J. (2002) *Pennsylvania Police Pursuit Report*

Retrieved on April 14, 2003 from the World Wide Web
<http://www.state.pa.us>

Saval, Erik (1998) *Hot Pursuits: When Police Pursuits Run Over Constitutional Lines*

Retrieved April 14, 2003 from the World Wide Web
<http://www.law.msu.edu/lawrev/98-3/7-sava.pdf>