

Vehicle Pursuits

Legal Issues of Police Pursuits

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POLICE OFFICER LIABILITY IN PURSUIT OF OFFENDERS

Police officers are called upon for many situations that arise within the scope of the responsibilities of their sworn duties. The most commonly and legally recognized responsibility is for police officers to stop and apprehend offenders who may fight and/or flee apprehension. Officers are duty bound to affect an arrest of both passive and violent offenders and often find themselves in either foot pursuits, vehicle pursuits or both.

In an effort to avoid capture, many criminals are willing to risk their lives and the lives of others. These criminals lead many police officers through high-speed chases resulting in potential injury and civil liability. Because of these actions and increasing media attention, pursuits have caused public scrutiny encouraged by civil litigation and sensational news reports throughout the country demanding attention to police pursuits. It is clear that reform is needed; however, initial reform efforts should center upon deterrence rather than the imposition of restrictions or further civil liability for law enforcement and municipalities. The reformation of penalties for drivers who flee or attempt to elude a pursuing police vehicle will deter dangerous chases and will minimize the risk of injury to innocent third parties and police and municipality civil liability. As a supervisor's one of the most difficult law enforcement activities is to train and manage officers in pursuit policies and the use of force in an attempt to protect society and

officers from injuries or death and the department and officer from civil and criminal liability.

Police officers' and supervisors' views

According to a study in Alpert (1997) Police officers and supervisors in four police departments (Metro-Dade; Omaha; Aiken County, South Carolina; and Mesa, Arizona) were asked whether they would engage in or approve a pursuit under low- and high-risk conditions (see tables 3 and 4). The major finding is that the percentage of all officers willing to engage in a pursuit, and of all supervisors willing to approve a pursuit, increases as the severity of the crime increases. In other words, the need to immediately apprehend a dangerous suspect is the most important concern for law enforcement personnel. Police said that the most important risk factors to consider during a pursuit were traffic conditions and weather. Advances in technology could lead to changes in risk factors

Table 3: When Police Officers Say They Would Engage in Pursuits

Violation	Level of Risk*	
	Low	High
Traffic Violation	43%	10%
Property Crime: Misdemeanor	42%	17%
Property Crime: Felony	64%	34%
Stolen Vehicle	65%	37%
DUI	70%	43%
Violent Felony: No Death	87%	80%
Violent Felony: With Death	96%	95%
Officer Shot	96%	95%

* Risk was defined by level of traffic congestion, weather conditions, type of road (e.g., whether surface street, highway, or interstate), and area of pursuit (e.g., whether urban rural, or commercial). In filling out the questionnaire whether they felt their risk was high or low

Table 4: When Supervisors Say They Would Approve Pursuits*

Violation	Level of Risk**	
	Low	High
Traffic Violation	31%	7%
Property Crime: Misdemeanor	38%	13%
Property Crime: Felony	59%	27%
Stolen Vehicle	59%	23%
DUI	71%	38%
Violent Felony: No Death	91%	77%
Violent Felony: With Death	98%	94%
Officer Shot	97%	96%

* Supervisors' responses are from the three largest departments surveyed.

** For an explanation of risk level, see Table 3

Each year several hundred people (including some police officers) are killed, and many others are injured during the course of pursuits. Pursuit-related accidents, injuries and deaths cause significant emotional and economic distress for officers, and frequently result in very negative public relations for departments. Occasionally, officers are criminally prosecuted following pursuit-related crashes. Of course, one of the most common negative outcomes of pursuit is civil litigation arising from the attendant crashes, injuries and/or deaths. Clearly, both police officers and police managers need to take steps to reduce the risks inherent in motor vehicle pursuits. Police officers are called to task on many situations that arise within the scope of the responsibilities of their sworn duties.

When flight is made by means of foot, generally the offender and officer are the most likely to have the risk of injury or death depending on the circumstances. When

flight is made by a motor vehicle, this pursuit often takes place at high speeds, in a wide range of environmental conditions, usually placing not only the offender at risk, but also the police officer(s) who are duty bound to apprehend the suspect and the people who reside and commute in the area where the pursuit takes place.

Aside from the number of deaths and injuries sustained, potential civil liability is a possibility in all police pursuits. The offenders themselves and innocent bystanders are the most likely plaintiffs in any civil action resulting from police pursuits. Although individual police officers are not likely sources of recovery, they are likely defendants.

In certain circumstances, the departments who employ police officers can be vicariously liable for the actions committed by their officers and are a more likely source of civil and punitive damages. Further, in 1989, in a decision with a particular impact on pursuit litigation, the United States Supreme Court acknowledged that a municipality could be liable for failure to adequately train police officers in procedures such as pursuit driving (City of Canton v Harris).

If the plaintiff chooses state court, the most likely theory of recovery is the tort of negligence. In order to prove negligence, the plaintiff must prove that the officer or municipality owed a duty to the plaintiff, the perpetrator breached that duty and as a proximate cause of the breach, the plaintiff suffered damages. A string of Alabama cases address negligence as a cause of action in police pursuits. In Madison v. Weldon (1984), the Supreme Court acknowledged a "liberal standard of care." This case involved an injured truck passenger who brought a negligence action against police officers involved in a high-speed chase of an offender when the offender's vehicle collided with the truck. Initially, in exempting the police officers from statutory speed

limits in certain situations, the court refers to an important Alabama Statute. Alabama Code, §32-5-96 (1975) provides:

The speed limitations as set forth in this article shall not apply to vehicles when operated with due regard for safety and under the direction of state troopers, police or road or other officers of the law, as herein provided, in the case of apprehension of violators of the law or of persons charged with or suspected of any such violation, nor to fire departments or fire patrol vehicles when traveling in response to a fire alarm, nor to public or private ambulances when traveling in emergencies. The exemption shall not however protect the driver of such vehicles or his principal from the consequences of reckless disregard of the safety of others, as provided by law.

The Alabama Supreme Court also noted that the trial court erred in its failure to clearly distinguish “between the standard of care to be applied for officers' own personal acts and the standard of care of the officers for their official acts in pursuing a law violator” (Madison v. Weldon, 1984, p. 26). The court, in quoting a Florida Supreme Court case, Miami v. Horne (1967), concluded the following:

“The rule governing the conduct of [a] police [officer] in pursuit of an escaping offender is that he must operate his car with due care and, in doing so, he is not responsible for the acts of the offender. Although a pursuit may contribute to the reckless driving of the pursued, the officer is not obliged to allow him to escape” (Madison v. Weldon, 1984, p. 27).

Jurisdictions outside of Alabama have also acknowledged, to an even greater extent, that the actions of a pursuing police officer can be the proximate cause of

injuries. Victor E. Kappeler (1997) suggests that this is a growing trend among state courts. He explains, in applying the concepts of proximate cause, courts examine the situational factors surrounding the conduct that led to an injury. Rather than making a pronouncement that police conduct in a third-party pursuit situation cannot be the proximate cause of injury, these courts adopt a case-by-case approach. In doing so, the courts do not automatically confine proximate cause to the zone of physical contact between the police vehicle and the injured party, holding instead that the conduct of a pursuing police officer may be the proximate cause of injuries sustained in an accident even where the police vehicle did not directly become involved in the collision (p.131).

The Supreme Court of Tennessee concluded that, “an officer's decision to commence or continue a high-speed chase... may form the basis of liability in an action brought by a third party who is injured by the fleeing suspect, if the officer's decision was unreasonable” (Haynes v. Hamilton County, 1994, p.610). This decision requires a closer look at the police officer engaged in the pursuit. The court included determinative factors that should be considered in order to determine whether or not the officer's decision was “unreasonable” including police policies, speed, area of pursuit, weather and road conditions, presence of traffic and pedestrians, alternative means of apprehension and the overall danger posed to the public by pursuing the suspect (Haynes v. Hamilton County (1994). Overall, a growing number of state courts have held that a pursuing officer's actions can be a proximate cause of continued flight and any resulting injuries of the offender or third parties. Although also applicable in state court proceedings, Title 42 U.S. Code § 1983 or the Federal Civil Rights Act generally provides a remedy for violations of rights secured by the United States Constitution and

laws in the federal arena. The United States Supreme Court provides guidance in the area of pursuit liability with its decision in Sacramento County v. Lewis (1998). The United States Supreme Court adopted a “shocks the conscience” approach to police pursuit liability. Specifically, the court concluded “while prudence would have repressed the reaction [to initiate pursuit], the officer's instinct was to do his job as a law enforcement officer, not to terrorize, cause harm, or kill” (Sacramento County v. Lewis, 1998, p. 1721). With the imposition of the “shocks the conscience” standard presented by Sacramento County v. Lewis (1998), it appeared that federal courts would be friendlier forums for law enforcement officers. However, the United States District Court for the District of Minnesota recently revisited this issue and while the court acknowledged “in cases involving split-second judgments, difficult law enforcement choices, and sudden instincts, police officers must be given broad discretion to act,” the court also insisted that, in a chase which last over six minutes and measured over six miles, the facts of the case took the “decision making process outside the realm of `split second judgment” (Feist v. Simonson, 1999, pp. 1145-1146). The court observed that at many points throughout the pursuit, the officer had an opportunity to “balance the law enforcement goal of apprehending [the offender] for use of a stolen vehicle (a low-level penalty likely carrying no prison time) against the threat to the general public” (Feist v. Simonson, 1999, 1146). This District Court's decision questions the protection provided to law enforcement officers in Sacramento County v. Lewis (1998), particularly in those pursuits in which officers are allowed time to decide whether to continue to pursue.

Lewis v. Sacramento County

In this landmark case (*Lewis v. Sacramento County*, 98 F. 3d 434, 436 (CA9 1996). (No. 96-1337), Two teenagers on a motorcycle were the subjects of a high-speed pursuit by a county sheriff's deputy. The chase ended when the motorcycle went over a crest in the road and came to a halt. The deputy saw the motorcycle as he came over the crest of the hill but was unable to stop his vehicle. One of the teenagers was struck at a speed of approximately 40 miles per hour, resulting in his death. The motorcycle driver suffered no major injuries.

The parents of the deceased teenager filed suit against the county, the county sheriff's department and the sheriff's deputy, alleging deprivation of their son's 14th Amendment due process rights in violation of section 1983 of the federal civil rights statute. The district court ruled in favor of the county, the sheriff's department and the deputy on the civil rights claims.

The 9th Circuit Court of Appeals affirmed the district court's judgment in favor of the county and the sheriff's department, but held that the deputy sheriff is not entitled to qualified immunity and that the question of whether he acted in reckless disregard of the teenager's right to life and personal security would have to go to trial.

The Supreme Court was called upon to address the technical issue of whether the legal standard of conduct necessary under the civil rights statute to establish a violation of due process was in place when the deputy struck and killed the teenager. The amicus curiae presented by the lawyers of the Lewis estate acknowledges that "Police pursuit has costs and benefits. Weighing these against each other is a task better suited to other branches of government. Pursuits do result in some accidents and

a few deaths, but they also result in the capture of a large number of felons, even though the felony status of the pursued person may not be apparent at the time the pursuit is begun. Furthermore, the cost of a highly restrictive pursuit policy would be a license to escape merely by driving recklessly. If pursuit policy is to be driven by fear of lawsuits, that policy will be weighted toward minimizing risks for which the agency can be sued, such as pursuits, while exposing the public to greater risks for which it cannot, such as the felons and intoxicated drivers who would otherwise have been caught.”

This is one of the commonly argued points that law enforcement agencies cite as being necessary carry out within the scope of the officers duty for that very reason. If offenders are not allowed to be pursued, then it would serve as free license for the offenders to escape apprehension thru flight, and the knowledge of the officers restriction will be enough for other potential offenders to risk the possibility of evading capture, knowing the officers are unable to provide chase.

In the Lewis v. Sacramento case, the motorcycle was driven by Brian Willard. The decedent, Philip Lewis, was a passenger. Willard evaded the officer’s attempt to detain him and accelerated away. This would appear to be a misdemeanor violation of California Vehicle Code §2800.1(a), in which that section of Code prohibits fleeing if a distinctively marked vehicle, operated by a peace officer, has its red lights on and sounds a siren "as may reasonably be necessary." Under these circumstances, the siren appears not to have been necessary, however. In Deputy Smith courts testimony:

"The pursuit lasted about seventy-five seconds and covered approximately 1.3 miles. Posted speed limits were as low as 30 miles per hour. The average speed of the

vehicles was calculated to be 60 miles per hour with high speeds of up to 100 miles per hour. The pursuit went through four stop lights and three ninety degree turns."

In other words, Willard committed a violation of California Vehicle Code §2800.2, an offense under California law. That would be punishable by either felony punishment (state prison) or misdemeanor punishment (county jail or fine) in the discretion of the court.

It should be noted that that in this case the driver (Willard) who was being pursued by the police was Neither the Court of Appeals' opinion nor the Brief in Opposition indicates any justification whatever for Willard's actions, although the facts of the incident are such in which Willard "went over a crest in the road, attempted to make a hard left turn, and skidded to a halt."(98 F. 3d, at 437). Officer Smith came over the hill and was unable to stop in time. His car hit Philip Lewis, who died at the scene. Willard was not injured significantly as a result of the collision.

There are many other notable cases that also call for public outcry against high speed pursuits, with the argument being that the danger to the general public is placed at risk all across the nation every day as suspects attempt to flee law enforcement, and officers are called upon to react to and attempt the apprehension of those who knowingly choose to evade detainment and/or arrest by the pursuing officer(s).

In the Sacramento vs. Lewis case, U.S. Supreme Court ruled in favor of law enforcement officers nationwide with a 9-to-0 decision. The Opinion of the Court stated that 'unless police acted with "a purpose to cause harm," high-speed chases that cause death or injury do not violate the Constitution' .

The decision came as a sigh of relief to law enforcement personnel across the nation. Robert Scully, a retired officer and executive director of the National Association of Police Organizations, said after the verdict, "“NAPO applauds the Supreme Court’s decision supporting the right of law enforcement officers to pursue those suspected of breaking the law. Under this decision, Federal courts will no longer be able to second-guess, years later the decision of police officers on the scene to pursue suspects.” Scully further stated that “the Supreme Court has adopted our view that having lower courts substitute their judgment for those of police officers on the scene, who have to make split-second judgments, is an extremely poor way to make public policy. Rejecting the Ninth Circuit Court of Appeals’ policy of favoring suspects over the police, the Supreme Court has made this a fine day for law enforcement nationwide who put their lives on the line every day.”

Dangers of Police Pursuits and the need for Policies

The real dangers of police pursuits become more obvious when looking at the statistics. According to Hill (2002), the number of pursuits continues to increase, as well as, the number of pursuit-related injuries and deaths. Some estimates put the number of deaths each year between 400 and 500, but most say there is an average of one person killed every day as a result of a police pursuit. On average, from 1994 through 1998, one law enforcement officer was killed every 11 weeks in a pursuit, and 1 percent of all U.S. law enforcement officers who died in the line-of-duty lost their lives in vehicle pursuits. Innocent third parties who just happened to be in the way constitute 42 percent

of the persons killed or injured in police pursuits, and 1 out of every 100 high-speed pursuits result in a fatality. However, according to Floyd (2004), in 2004 there were 154 line-of-duty deaths. There were two primary causes for death: 57 of the officers were shot to death, and 51 died in automobile accidents. Dr. Geoffrey Alpert is a nationally recognized expert in police pursuits and a professor in the College of Criminal Justice at the University of South Carolina. Alpert (1997) states that 91 percent of the agencies that responded to his national survey had written policies governing pursuits, but many of them were implemented in the 1970's (p. 2). Obviously, pursuit policies in effect in the 1970's will not serve today's law enforcement needs. Alpert went on to say 48 percent of the agencies reported having modified their pursuit policy within the past 2 years, and most of those (87 percent) noted that the modification had made the policy more restrictive than before. This illustrates that agency administrators are recognizing the need to have updated policies concerning police pursuits. Van Blaricom (2003, p. 3) states that there are three types of pursuit policies: discretionary, restrictive, or discouraging. A discretionary policy leaves the decision making up to the officer involved in the pursuit. This is not normally desirable because it is difficult to make rational decisions when personally involved in a high stress situation. A discouraging policy essentially prohibits all pursuits. This policy is not generally favorable because it encourages violators to flee without fear of being caught and does not take into account the fact that there will always be some violent crimes that require immediate apprehension of the violator. Finally, a restrictive policy balances the need of the pursuit against the risk it imposes on the general public, the officer, and the violator.

Technologies, Training and Theories

After looking at all the statistical data regarding the dangers of police pursuits, the question becomes, 'What can we do to reduce the risks?' There have been several technological advances in recent years that attempt to answer that question. Probably the most commonly used device in operation today is a tire deflation device. This device is placed in the path of a violator's vehicle. When the violator runs over the "spike strip," as they are commonly referred, there are several hollow spikes that enter the violator's vehicle's tires, causing the air to escape in a controlled manner until they are fully deflated, hopefully bringing an end to a pursuit. There are also several disadvantages to this system. First, the deploying officer has to try to anticipate the path of the pursuit. In most cases this is difficult and almost always guessed wrong placing the deploying officer at the wrong location. Second, the offender recognizes the device if it has been deployed and the offender simply avoids the device without running over it. Third, if the offender does actually run over a deployed device, the tires may be deflated however; it does not always mean the pursuit will come to a safe end.

Another device that is available is called an auto-arrestor system. The device is placed on the roadway similar to the tire deflation device. When the violator's vehicle runs over this device, it sends an electrical impulse that disables the vehicle's electronic system, thereby bringing the vehicle to a slow stop. This device has the same disadvantage when it comes to anticipating the direction of travel of the violator's vehicle, and is not widely available.

Another problem with both of these systems is the time it takes to get the device set up. Normally, there will be several minutes between the time an officer notifies his supervisor of a pursuit in progress and the supervisors ability to anticipate the direction of travel of the pursuit and intercept the pursuit with one of the devices. OnStar has come out with new technology they are calling Remote Ignition Block which works similar to the auto-arrestor system. Its technology uses GPS to prevent the vehicle from starting again once the ignition has been turned off. This technology can be designed to kill power to fleeing vehicles and in turn simply shut off the engine and slowly make the vehicle come to a rest, hopefully on the side of the road. According to the minute of a pursuit this illustrates that any pursuit technology must be rapidly deployed in order to have an impact on preventing pursuit-related collisions. The PMTF concluded that there was no single technology that offered a universal solution to pursuits (p. 2). National Institute of Justice's Pursuit Management Task Force (PMTF) (1998), more than 50 percent of all pursuit collisions occurred during the first 2 minutes of a pursuit. More than 70 percent of all collisions occurred before the 6.th

Another possible solution lies in the legislative body. Although some states classify fleeing from police in a vehicle as a felony, the State of Arkansas currently classifies fleeing in a vehicle as a misdemeanor in most cases. According to the Arkansas Criminal Statute (5-54-125), fleeing in a vehicle or conveyance is a misdemeanor unless, "under circumstances manifesting extreme indifference to the value of human life, a person purposely operates the vehicle or conveyance in such a manner that creates a substantial danger of death or serious physical injury to another person or persons." In some jurisdictions, proving that someone created a substantial

danger of death or serious physical injury can be difficult. Unless they have a near collision with another motorist or pedestrian, most vehicle pursuits are going to be misdemeanors. If tragedy occurs during the pursuit, more serious charges could be filed against the fleeing violator. If the legislators would show that they are serious about the problem of police pursuits by making any act of fleeing in a vehicle a felony, maybe offenders would think twice about the consequences before making the decision to try to run from the police.

If technology or legislation is not the answer, then we must turn to training and policies. The current level of driving training for police officers is virtually non-existent at most police agencies. In Arkansas, a state that allows up to a year before formal academy training, police recruits receive limited emergency vehicle operation training and very little during the basic police academy. Even states with training seem to forget about retraining or certification after initial training. Think about officers training for vehicle stops and pursuits compared to qualifications with an officer's duty weapon. Once out of the academy, the training is not sufficient. Alpert (1997) states: *"Although 60 percent of the agencies reported providing entry-level training at their academies, the average time devoted to these skills was estimated at less than 14 hours. Once in service, the amount of additional training offered averaged only slightly more than 3 hours per year and focused on the mechanics of defensive and/or pursuit driving rather than on issues that should be considered when deciding to continue or terminate pursuits. Respondent agencies may have spent at least some time teaching officers how to pursue, but training devoted to when, or why, to pursue appears to have been minimal or non-existent."*

Conclusion

Certainly, pursuits are a part of the job police officers perform. The decision of a police officer to pursue and the supervisor to allow the continued pursuit of one resisting arrest is a complicated. A detailed thought process that few non-law enforcement civilians can understand, are tasks that officers are called upon to perform. What can be done by citizens? Civilians must maintain faith in the ability and training of law enforcement officers and their agencies, while at the same time realizing the tragic implications that high-speed chases may bring. Media glorifies pursuits and will donate as much time to reporting it as a presidential debate or address. Society needs to be aware and practice safety instead of armchair quarterbacking. Pursuits are dangerous but also a need to prevent the escape of offenders who just victimized someone else. Hopefully future training and technologies will detour offenders from fleeing by means of vehicle and the courts will **punish** those who do more severely. I believe you put the blame on the courts if they not apply proper punishments and hold the offender accountable and not the officers who for the most part are just doing their job.

Research

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