

Police Pursuits – Managing Risk and Providing Accountability with a Well-Drafted Pursuit Policy

There are few activities police officers do while conducting enforcement activities that give as much of an adrenaline rush other than a good car chase. One of the few experiences where your training, experience and ability all come together for the purpose of ensuring the apprehension of a suspect who committed a crime. Knowing this presented a challenge when writing this article. Experience has proven that agencies must have a comprehensive pursuit policy that limits the initiation of a pursuit and narrowly tailors an officer's ability to continue the pursuit. As a Police Chief, however, is it right for you to draft a pursuit policy that provides strict limitations? The answer is simple –yes. The reason for such a policy is based on our most important duty as a police leader – officer safety. Too often I hear officers and command staff say that we draft policies to reduce liability. While reducing liability is an important consideration, our primary concern should be the safety of our staff and the citizens we serve.

Over my career as a litigator I have had the unfortunate experience of being involved in litigation cases against my clients where an innocent person was severely injured as a result of a police pursuit. Did that mean the pursuit was wrong, no. Did that mean the officers were not justified in pursuing the individual, no. It just means that pursuits are very high risk to officers and citizens alike. Even as I sit here writing this article I have learned that four officers were killed this year as a result of vehicle pursuits. While I can't share all of my experiences I will share one where officers followed procedure and the suspect struck a twenty-one year old college student doing about 100MPH. As a result of her injuries she became a quadriplegic. An NCAA star athlete, who was just in the wrong place at the wrong time. I remember on the day of settlement for the litigation case, as I listened to the number "12 million dollars," trying to wrap my head around explaining that to my clients. The Judge made it easy for me when he pulled me aside and said, "do you see the victim - someone is paying for that." That's why I write this article today. Not to stop police pursuits, but to make sure we fully understand the risk associated with the conduct. That is why our main objectives in drafting a good pursuit policy should be to manage the risk and conduct a "cost-benefit" analysis that weighs the importance of apprehension against the possibility of serious physical injury or death to our officers or the innocent motorist. So, with these objectives in mind, let's look at important factors to consider in your Pursuit Policy.

Initial Concerns – Agency Policy

Your agency should regulate and limit police pursuits, but not because we are looking to lower enforcement efforts or curb an officer's ability to "do the job." We limit the discretion to engage in vehicle pursuits because they are one of the most dangerous activities an officer can undertake, and we want to make every effort to assure the safety of our personnel and citizens. To that end, it is important in the Policy Statement to announce that no officer or supervisor should be criticized or

disciplined for a decision not to engage in a vehicle pursuit, based on the risk involved, even in circumstances where the directive would permit the commencement or the continuation of the pursuit.

We should not assume that all persons fleeing from the police have committed a felony. In fact, the data shows that many vehicle pursuits are initiated based on a traffic offense or minor misdemeanor. In a recently released DOJ study,¹ the agency reviewed a number of factors involved in police pursuits. The study found that over 69% of pursuits were initiated based on a motor vehicle offense, while less than 10% of the pursuits were initiated because the fleeing operator was suspected of committing a violent felony.

At DLG, we believe that the danger involved in conducting the pursuit far outweighs the need to apprehend the operator in those cases involving traffic offenses or minor crimes. According to the DOJ study, there were more than 6,000 fatal crashes as a result of police pursuits in the twenty-year period ending in 2015. Tragically, over a third of these fatalities involved innocent motorists or pedestrians, and over 60 officers were killed. Furthermore, in the heat of the chase the psychological phenomenon of “Tunnel Vision” can cloud your judgment and prod you to continue the chase beyond the point where common sense and good judgment would call for the chase to be terminated. Frankly, in a common-sense risk analysis, the death or serious injury to an officer or innocent citizen does not equate with the need to apprehend a motorist suspected of committing a property crime or traffic offense.

For these reasons, your agency policy should specifically outline the allowable criteria for initiating a pursuit. We believe the criteria should be based on:

- A reasonable suspicion to believe the driver or occupant has committed or is attempting to commit a crime of violence,
- Whether officers can articulate the exigent need to apprehend the suspect because of the potential for harm to the public (public risk); and
- The pursuing officer's conclusion that the imminent threat of death or grave bodily harm to the officer and the public created by the pursuit is less than the immediate or potential danger to the public should the suspect remain at large.

Absent extreme circumstances, there are a number of other circumstances where vehicle pursuits should be prohibited. These situations include:

- When there are non-police personnel or civilians in the vehicle;
- Pursuits of motorcycles or off road vehicles;
- During severe weather conditions; and
- When the police vehicle does not have working emergency lights and sirens.

¹ Police Vehicle Pursuits, 2012-2013; U.S. Department of Justice, Bureau of Justice Statistics; Brian A. Reeves, Ph.D. May 2017; NCJ 250545

The Need for Safety and Continuous Re-evaluation

I've heard officers tell me more than once that they can't wear a seat belt because they may have to jump out of the cruiser to pursue the offender. The simple fact is this – seat belts save officers' lives every day and no pursuit should be initiated without first buckling up, and your agency policy should require the use of seat belts. From 1980 to 2008, 139 officers were killed after being ejected from their cruiser during a crash. Many of the hundreds more who died in crashes during this period were not wearing seat belts – over 42%². While these statistics are not limited to pursuit crashes, the data shows the importance of wearing your seat belt.

Your policy should include those factors that should be considered in addition to the crime the suspect is believed to have committed. It is also important to continually re-evaluate these factors during the pursuit and the reasonableness of continuing the pursuit. Evaluation factors include, but are not limited to:

- Weather conditions, traffic density, time of day, and the type of area;
- The speed involved, condition of the police vehicle and the suspect vehicle;
- Alternate means of apprehension and whether officers have learned the identity and possible destination of the suspect

Pursuing officers and the monitoring supervisor must constantly re-evaluate these evaluation factors and not hesitate to call off the pursuit when changing circumstances require that the pursuit be ended.

Your directive should also include procedures for how the pursuit will be conducted to include:

- The number of vehicles allowed;
- Overtaking or passing police vehicles or the suspect vehicle; and
- The types of police vehicles allowed to engage in pursuits.

Forcible Stops

Your directive needs to address various stop techniques and clearly describe those pursuit-ending procedures that are allowed and those that are prohibited. Your directive should also address those procedures that can be initiated at the officer's discretion and those that require pre-approval by a supervisor. If your agency uses stop sticks or other tire deflation devices, the deployment of these devices must be approved by the supervisor and only deployed by officers who have received training in the use of this equipment.

There must also be a connection between those procedures you allow and your training program. As an example, if your policy allows the use of a PIT (Pursuit Intervention Technique) maneuver then it is imperative that officers receive training in this procedure and regularly scheduled, follow-up

² Characteristics of Law Enforcement Officers' Fatalities in Motor Vehicle Crashes; National Highway Traffic Safety Administration; DOT HS 811 411; January 2011

training. These types of forcible stops are not recommended and you should discuss with your legal counsel.

Inter-jurisdictional Pursuits

Your directive should provide specific guidelines for continuing a pursuit outside of your jurisdiction, and assisting in a pursuit that enters your jurisdiction by another agency. As an example, how does your policy address your officer's ability to assist another agency when the pursuit is based on factors that would not allow your officers to initiate a pursuit? Simply put, your agency policy should provide clear guidelines to officers that restrict their ability to assist with the pursuit, and the outside agency should be advised accordingly. This would not be as big an issue if we were more consistent in our policy language across police agencies. Accountability in these situations is important, and the supervisor is responsible for assuring that the circumstances surrounding the out-of-town pursuit meets the guidelines outlined in your agency directive.

Accountability, Reporting and Inspection Requirements

Your directive should clearly articulate the roles and responsibilities of the agency personnel involved in this activity. This includes the primary officer, assisting officers, the supervisor and, last but certainly not least, the communications personnel. Each person has a vital role to play in assuring a safe and successful conclusion to the pursuit.

As with any high-liability activity, thorough documentation is extremely important. Each officer involved in a pursuit should complete a report and any additional forms required by your agency. This includes cases where the pursuit was called off. Why, you may ask, is it important to document those pursuits that are called off? Simply put, it is important for the agency to show a history of properly conducting and re-evaluating pursuits and proactively ending the pursuits when safety factors warrant the pursuit being called off.

The supervisor is responsible for gathering the individual reports and drafting a full report and investigation of the pursuit. This includes gathering all of the appropriate data, including dispatch recordings, photographs, and any video footage of the pursuit.

Finally, your directive should clearly establish an inspection process to review pursuits. Someone in the agency should be tasked with reviewing the final report package to assure that the incident is properly documented and meets agency requirements. In addition, a command-level employee should be tasked with conducting an annual review of all pursuits. This annual review will provide important data to assess whether changes need to be made to the agency's policy or training programs.

Certainly, we have not covered all aspects of your agency's pursuit directive in this article, but we have addressed the critical areas. The responsibility for a successful and safe ending to any police pursuit squarely falls on three main players – the officers involved in the pursuit, the



Communications personnel assigned to manage the incident, and the Supervisor assigned to monitor the pursuit. Our hope is for each member of the agency to know his/her role, the inherent dangers that come with this activity, and the limitations and guidance your agency has provided to assure your safety and the safety of the citizens we serve. This can be accomplished by drafting and issuing a clear and comprehensive policy and training your agency personnel in accordance with the policy.

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