



Mark W. Clark for POLICE

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Time to Change Our Pursuit Policies

Complicated guidelines that require officers to make decisions during the heat of the moment are not working.

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Police pursuits can cause catastrophic injuries and the deaths of innocent drivers, passengers, and pedestrians. Conservatively, it is estimated that in the United States one person dies every day as a result of police pursuits. Innocent third parties who just happened to be in the way constitute 42% of persons killed or injured in police pursuits. Further, one out of every 100 high-speed pursuits results in a fatality.

Criminals have been running from law enforcement officers since the first organized police forces. However, prior to the industrial revolution and the advent of motor vehicles, there was little danger to the public when sheriffs and members of their posse pursued offenders on horseback. The danger of motor vehicle chases became apparent during Prohibition when illegal bootleggers transporting moonshine liquor fled from police officers in “souped up” bootleg vehicles ending in crashes. Some of these bootleggers became the first NASCAR race car drivers in 1948.

There is a legitimate interest and desire by the government and the public to apprehend criminal offenders, which includes those who flee from law enforcement officers. The crux of the issue in police vehicular pursuits is determining which criminals should be pursued and which criminals should not be pursued by police vehicles.

In the past five years there has been public outcry for reform and transformation of law enforcement agencies. Some of these movements have caused a dismantling of police departments. At the center of this movement have been graphic videos that evidence the use of excessive and unnecessary force by a few errant police. This has spurred a nationwide focus on the force used by officers to effect the arrest of a criminal offender.

Police pursuits are drawing the same level of scrutiny and concern. There has been public outcry and also discussion within the ranks of law enforcement to limit potentially dangerous police pursuits. There has to be a balance struck between the need for public safety and the need to apprehend criminals who flee.

Crashes during police pursuits that injure innocent persons are caused by the fleeing suspect's vehicle or the pursuing police vehicle. Even if the officer's vehicle is not physically involved in the crash with an innocent driver or pedestrian, there can be civil liability and even criminal liability against an officer whose actions demonstrate conscious indifference or reckless disregard for the public's safety during a police pursuit.

“Reckless Disregard”

It is becoming more common for prosecutors to file criminal charges against police officers who act with reckless disregard for public safety when initiating or perpetuating police pursuits that result in serious bodily injury or death to innocent third parties.

In January 2023 an officer from a small department in Louisiana pursued a suspect who had stolen his father’s car through Baton Rouge at speeds ranging from 80 to 110 miles per hour. The officer ran a red light causing his cruiser to T-bone a car driven by a high school cheerleader. The crash killed two teenage girls in the front seat and seriously injured a young man in the back seat. Baton Rouge District Attorney Tony Clayton formally charged the officer with two felony counts of Negligent Homicide and one count of Negligent Injuring.

At a press conference, District Attorney Clayton said, "The actions were more than mere negligence" and said the evidence showed that [the officer] had approximately 13 seconds to stop, once he realized the vehicle was ahead, but did not. "Five seconds from impact his car was registered at 100 miles per hour, and the impact speed was not much less than that," Clayton said. "Just because you have a gun doesn't mean you have the right to recklessly use it, right? It's the same with a car. It's a 2,000 pound speeding bullet."

Risk Analysis

When engaging in any vehicle pursuit, we must ask this critical question, “is the risk of injury or death to innocent persons worth pursuing the fleeing criminal?”

Many departments have modified and expanded their policies and rules involving police pursuits. Most of these pursuit policies are too lengthy, too convoluted, and too hard to follow, especially during an incident.

Some pursuit policies require officers to weigh and analyze risk factors before engaging or continuing police vehicle pursuits. Other policies require officers to continue to assess the risk of the chase and balance the need to apprehend against risk factors such as time of day, road conditions, weather, density of vehicular and pedestrian traffic, and the ability to close the gap with violator, in order to justify continuing the pursuit.

The law expects police officers to factor and analyze the risk created by the suspect’s driving, the potential actions of innocent bystanders and others who may become involved, and the influence of the officer’s actions on the suspect’s driving. The officer should consider the likelihood of apprehension in the decision to continue a chase. In short, the officer must balance the goals of law enforcement with the public’s safety.

Although these “balancing” tests look reasonable when incorporated into departmental policy manuals, we need to step back and rethink whether it is realistic to expect police officers engaged in high-speed pursuits to be able to fully

process these factors and make a rational decision on whether to initiate or continue high-speed pursuits of fleeing criminals.

Police pursuits are adrenaline-charged events involving high-speed driving, emergency lights flashing, sirens wailing, and police radios blaring. These are highly energized scenarios during which cognitive rational thinking is impaired. There has been some interesting research on police officer's abilities to process information under intense stress. One study discovered that during stressful situations a police officer's vision, hearing, motor skills, and decision making are impaired.

Simplifying the Guidelines

Police officers need less complicated and more succinct guidelines to quickly determine when to pursue and when not to pursue. Nebulous pursuit policies with language such as "Officers should consider" or "Officers may want to consider" shift the burden of performing the pursuit risk analysis onto the officer, who is in the middle of a highly stressful situation.

Given the split-second time constraints, and stressors on officers during an incident, it can be extremely difficult for them to quickly determine whether they are making the right decision. However, creating simpler clear-cut pursuit policies makes it easier for officers to know what to do. Additionally, more concise and simple pursuit policies will reduce the vast majority of unnecessary dangerous pursuits.

In 1997 Geoffrey Alpert studied police pursuits in Miami, Omaha, and Aiken County, South Carolina. Alpert's data shows that approximately 45% of all police pursuits involving these agencies were initiated for mere traffic violations. Chasing a minor traffic offender at high rates of speed, endangering the public, is unreasonable and reckless.

Police administrators should consider eliminating complex cognitive balancing tests that require officers to make analytic determinations on whether a chase is proper and to re-evaluate police pursuits continually during the pursuit. It makes more sense to perform your own risk analysis, then "distill" your risk analysis into a simple straightforward three- or four-paragraph mandate on when to pursue and, more importantly, when not to pursue fleeing suspects.

Why not use a similar analysis to that applied by the U.S. Supreme Court in the *Graham v. Connor* use of force case? The third *Graham* factor—whether the suspect is actively resisting does not really apply—but the first two factors certainly are relevant to police pursuit decisions: (1) severity of the crime and, (2) whether the (fleeing) suspect poses an imminent threat of injury or death to officers or the public. We need to accept that the fact that high-speed police pursuits are a use of "lethal force" and, as such, carry a high-risk of injury and death.

If we know the identity of low-level criminals who flee, the most prudent choice is to let them go. If we have a traffic violator who refuses to sign the citation and flees, let them go. Charges can be

filed, warrants issued, and defendants ordered to appear in court to face these minor cases without the inherent danger of high-speed police pursuits.

Consider a short and simple approach to police pursuits, such as this:

TRAFFIC OFFENSES

Officers will not engage in pursuits when the only offense committed by the fleeing suspect is a misdemeanor traffic offense.

MISDEMEANORS

Officers will not engage in pursuits when the only offense committed by the fleeing suspect is a misdemeanor criminal offense.

FELONIES

Officers will not engage in pursuits when the felony offense committed by the fleeing suspect is a non-violent felony.

There will always be some gray areas such as determining when officers should pursue a reckless vehicle or drunk driver, but these can be addressed specifically.

Utilizing a more simple, clear-cut, and succinct pursuit policy will drastically reduce high-speed police pursuits and the carnage that often results from these pursuits. When Metro-Dade adopted a “Violent Felony Only” pursuit policy, in 1992, their police pursuits decreased by 82% the following year.

If police departments eliminate the factor-based cognitive analysis requiring patrol officers to decide whether to initiate or sustain a pursuit and, instead, implement simple clear-cut rules of engagement for police vehicle pursuits, this will eliminate many dangerous high-speed chases and some high-speed crashes.

Implementing short and easily understood orders governing police pursuits will greatly reduce death and injury to innocent victims while increasing public confidence in law enforcement. An additional benefit will be a substantial reduction of civil claims against the department and a reduced risk of criminal charges being levied against your officers.

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