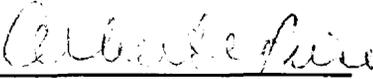


**Police Pursuits and Emergency Vehicle Operation:  
Insight into Policy Questions and Development**

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## **Research Question**

The issue of police officers pursuing suspected criminals in motor vehicles is quickly becoming the number one cause of civil litigation in the United States. This is due to the number of collisions involved in police pursuits. Thus it has left law enforcement agencies with several questions in the development of policy governing pursuits and emergency vehicle operation.

There are several relevant issues that need to be examined within the realm of police pursuits and emergency vehicle operation. The most important questions are: Is it possible for law enforcement administrators to greatly reduce or even eliminate the potential civil consequences and physical threats generated by offenders fleeing police officers with the development of sound policy? Secondly, can administrators develop a defensible policy to assist police officers in determining when to initiate and when to terminate a pursuit with the direction of previous court decisions to guide them in that policy development? Third, one may ask, what are the implications for society if constraints are placed on officers in the pursuit of offenders?

This study addresses each question through a broad range of exploratory case studies, historical data analysis, evaluating existing and developing laws, and examining policies and procedures at a national level. Conclusions will be based on an ultimate goal which is the elimination all of the physical and monetary risks that arise from police pursuits and the operation of emergency vehicles, while simultaneously providing police officers the ability to continue to pursue and apprehend criminal suspects.

## **Methodology**

The focus of research will be in the arena of police pursuit situations and emergency vehicle operation. The research is focused with the laws set forth by the State of Michigan as well as the Federal laws pertaining to pursuits and emergency vehicles. Each collision is unique in its own way. Therefore one may find it difficult to make general or broad statements about this topic. An evaluation investigating "totality of circumstances" plays a key role when a pursuit occurs or when there is a collision with involving an emergency vehicle. Through the use of video taped pursuits, as they occurred the research was able to utilize an exploratory focus on those pursuits while applying a model policy developed based upon prior decisions of our legal system hoping to guide administrators in a useful direction in providing training to officers. Since our court system provides law enforcement agencies with the expectations regarding the behavior of police officers in areas such as making arrests or searching homes from past cases, it is only appropriate to look toward that guidance in seeking the answers to pursuit questions. An investigation into prior court decisions regarding pursuits and the development of a model policy to guide law enforcement agencies is the pathway to achieve the goals of this research. Thorough research of court decisions is desired for providing direction in the proper conduct when faced with a potential pursuit situation. Armed with the knowledge and information from several state and federal court decisions, this research developed a model policy directed at the State of Michigan. Ultimately,

this research can assist and guide administrators in the development of their own policies across the country.

## **Review of Pursuit Literature**

It's become almost common place on our televisions each night. Hollywood glamorizing police officers pursuing criminals through our communities at speeds that would make many racing professionals nervous. Unfortunately, this is not only occurring on the Monday night movie but in most every city in the United States several times each week. Drivers refusing officers attempt to stop them and speeding away at a high rate, turning off the car's lights in an attempt to elude apprehension. At some point the pursuit will end, at times with an innocent third party injured or even dead. Sadly enough, the person fleeing the officer most likely, won't be held responsible for the collision that occurred as much as the officer wanting to apprehend that suspect fleeing.

It's not speed alone, its what waits around the next corner or curve, it is what we do not know that makes these pursuits so dangerous. At a speed of 120 miles per hour, a patrol car reminds an officer of every bump and pothole that has been neglected. An officer must focus on everything that is happening in the area and pray experience and his or her equipment can react. Then the tragedy: an explosion of dust in the distance, and as the patrol vehicle rounds the corner, the vehicle being pursued slammed into a car's driver side of an innocent person. Situations such as this could be avoided if only the proper tools were in place to deal with the problem.

The arena of police pursuits has been gaining more and more attention nationally because of the number of fatalities that have occurred as a result of criminal offenders fleeing apprehension. The blame seems to be pushed toward

the police officers in pursuit, not the individual fleeing apprehension. One daughter of a fatal crash victim pushed the responsibility for her mother's death toward the police officers pursuing young car-jackers stating that the police do not have to chase kids in stolen cars (Krodel 9a). Changes must be made to greatly reduce the fatalities, while simultaneously allowing officers the opportunity to perform the duties expected of them without the fear of civil litigation or even criminal prosecution. As one will see, the number of instances an innocent third party is injured is rare.

The development of a clearly defined policy will assist officers in the arena of police pursuits. Many jurisdictions are resorting to the ideal that pursuits are to be eliminated altogether, prompted by several organizations that are even petitioning to have laws passed making a pursuit illegal. One must remember that it is illegal to flee police and to follow that law with legislation that makes it illegal for police to pursue may create a new set of problems. What are called for are changes in the law and aggressive prosecution of the fleeing wrongdoers.

All actors involved in any attempt to apprehend fleeing suspects must quickly evaluate each pursuit and determine its desirability. If the pursuit is to last for any length of time, steps should be immediately taken to end it quickly and as safely as possible. The role of the supervisor in each pursuit is of the highest importance. He or she can disconnect themselves emotionally from the incident in order to make the most rational decisions as to the continuance or termination of the endeavor.

The purpose of this research is to offer a source of general guidance to law enforcement officers who may become involved in a pursuit as well as administrators setting policy. Through the review of past court decisions concerned with the realm of police pursuits, a model policy has been developed for use by all officers and administrators that may become connected with a pursuit some day. One will be able to examine the history of the pursuit, as well as the issues of municipal and personal culpability. Policy concerns and development based on court history and the final development of a model policy directed at Michigan are included. Alternatives to pursuits as well as tools to end pursuits will be examined to search for the best and safest avenues to stop fleeing offenders.

One must keep in mind that some pursuits will not be viable to continue, but when a decision to pursue is made, every effort should be made to end it as quickly and safely as possible to avoid death and injury to innocent people.

### **Pursuit History**

***Pursuit; Any active attempt by a law enforcement officer on duty in a clearly marked patrol vehicle, and in uniform, using overhead emergency lights and siren, to apprehend one or more occupants of a moving motor vehicle, providing the driver of such vehicle is aware of the attempt and is resisting apprehension by any means, or ignoring the law enforcement officer's attempt to stop him.***

This definition points out several important characteristics required for qualifying as a pursuit. First, it is apparent that in applying this definition, it must be obvious that a police officer is attempting to stop a suspect. Secondly, a pursuit does not necessarily have to have an excessive speed involved to meet the requirement for a pursuit, although they are often mistakenly referred to as high-speed chases. One may remember the recent pursuit of O.J. Simpson by Los Angeles Police officers. A suspect may simply be unwilling to stop upon an officers order. Lastly, all of the emergency lights and siren must be in use on the emergency vehicle.

The reasons for current attention to police pursuits is the threat of loss of life created when a police officer pursues a suspect in a motor vehicle. The problem facing law enforcement agencies today is, attempting to balance a police officers concern for the safety of the public during a pursuit, while simultaneously balancing the need to pursue criminal suspects, also to ensure public safety. The negative side to pursuits is the loss of life, serious injury, property damage and monetary cost of civil litigation when pursuits end in tragedy.

In New Jersey, police pursued a van that was believed to be stolen. During that pursuit the stolen van collided head-on with a bus from a local church that was fully loaded and then into a second civilian automobile. This pursuit resulted in at least one death and several injuries (Fay 1). In Michigan, a 41-year-old woman was killed during a pursuit of a stolen truck when she was hit head-on. The family of the deceased women seeks 17.5 million dollars for

wrongful death. The family's attorney called the pursuit illegal and unnecessary (Ilka 1). An elderly driver and two passengers were killed in a pursuit after a bank robbery in Beverly Hills, California ("Women Killed" 1). In Detroit, Michigan, two bystanders were killed, the result of a pursuit after an armed robbery of a convenience store. The innocent victim's vehicle was nearly cut in half according to reports (Hurt and Grant 2).

On some occasions, even the police themselves are seriously injured or even killed as the result of a pursuit. In Detroit, two officers were fatally injured as a result of a pursuit when their patrol cars collided at an intersection during a pursuit of a reckless driver (Grant 1). In Detroit, a woman was killed when two teenagers that were suspected of car jacking fled Highland Park police officers. The teens rammed two cars prior to broadsiding the 43-year-old victim (Siegal 1A).

There is also a positive side to pursuits that is often ignored. Police officers are effective at catching suspects during pursuits. One must also consider the vast number of pursuits that result in captures without innocent victims being injured or killed. A man who allegedly killed a person in a shootout at a gas station in Maryland. A pursuit began and the fleeing driver was forced off the road in an unpopulated area. The suspect was wounded during an exchange of gunfire with police (Shury and Cody 2). Police in Texas killed a bank robber after they boxed in the suspect during a pursuit. When the car was stopped, the suspect was ordered to drop a gun he held, but instead pointed the weapon at those officers. Six police officers discharged their weapons, killing the

man (Whelan and Ruisard 1). In Wisconsin, police were able to capture two suspects wanted in connection with the rape of two college students. The pursuit reached speeds of 110 miles per hour before the car crashed into the back of a semi-tractor. Evidence was found linking them to several other crimes including a burglary and a separate rape incident. The suspects were fleeing in a stolen car (Forcier 1). The 28 year-old driver of a pickup was arrested after he lost control of his vehicle during a pursuit. The pursuit began after a convenience store robbery. The suspects 17 year old passenger and accomplice committed suicide after the pursuit through Kalamazoo, Michigan ("Teen Shoots" 1). In Genesee County, Michigan, police pursued and captured a suspect wanted in at least four armed robberies, three of which occurred in one night. The pursuit ended in a crash resulting in minor injuries to only the suspect. In Flint, Michigan officers were able to pursue and apprehend two suspects wanted for armed robbery. The pursuit resulted in the arrest of both suspects with no crashes and only minor injuries inflicted by a police dog when one of the suspects, armed with a handgun, failed to comply with orders to surrender by police.

These are just a minute portion of the pursuits that occur every year. Many states are finally answering the cries of law enforcement personnel to strengthen laws regarding pursuits. State Senator Byron Dorgan, D-ND, has introduced legislation requiring states to toughen laws regarding pursuits, but at the same time limit pursuits by officers. Senator William Van Regenmorter, R-MI, has looked into similar bills. State Representative Kirk Profit, Democrat -

Ypsilanti, Michigan has successfully passed a law making fleeing police a felony in Michigan.

Research found that rarely in Michigan, a pursuit results in a death. The percentage of deaths in pursuits for 1994, based upon data from the Michigan Office of Highway Safety Planning and the National Highway Traffic Safety Administration, of 1198 drivers fleeing police that ended in a collision, 19 fatalities occurred. Of the 19 fatalities, 16 were the offender fleeing the officer, which represents less than 1.6 percent of all pursuits ending in a fatality. The percentage of third party fatalities was 3 people or .25 percent for that same year. In 1995 the percentage rose to just over 1.6 percent with .24 percent being innocent third parties with 1230 crashes from fleeing police with 20 total fatalities and approximately 2 percent for 1996 with .7 percent being innocent bystanders. Again, in 1996 a total of 1230 crashes resulted from fleeing police with the total number of fatalities being 25 of which 13 were in the fleeing vehicle. In contrast, the Michigan Office of Highway Traffic Safety Planning attributes 1403 fatal accidents on Michigan roads to the use of alcohol (1997). Certainly there are pursuits where no accident occurs and there is always a possibility of under reporting of accidents involving fleeing police. However, based upon the lengthy type of investigation conducted in Michigan of fatal accidents, it is highly unlikely that a fatal crash involving a pursuit would not be noted on the crash report supplied to Michigan's Office of Highway Traffic Safety.

As previously stated, recent legislation has toughened fleeing and eluding laws in Michigan. Previously, Michigan law cited fleeing in this manner;

## **257.602a Misdemeanor to elude officer.**

Section 602a (1) A driver of a motor vehicle who is given by hand, voice, emergency light, or siren a visual or audible signal by a police or conservation officer, acting in the lawful performance of his or her duty, directing the driver to bring his or her motor vehicle to a stop, and who willfully fails to obey that direction by increasing the speed of the motor vehicle, extinguishing the lights of the motor vehicle, or otherwise attempting to flee or elude the officer, is guilty of a misdemeanor.

(2) Subsection (1) does not apply unless the police or conservation officer giving the signal is in uniform and the vehicle driven by the police or conservation officer is identified as an official police or department of natural resources vehicle.

(3) A person who violates subsection (1) within 5 years of a prior conviction of a violation of subsection (1) is guilty of a felony.

(4) The driver of a motor vehicle who attempts to flee or elude a police or conservation officer in violation of subsection (1) and while attempting to so flee or elude causes serious bodily injury to a person, is guilty of a felony.

(6) As used in this section, "serious bodily injury" means serious impairment of a body function or permanent serious disfigurement.

As of June 1, 1997 this law was amended making fleeing and eluding a felony. The amendments read as follows;

(1) Fleeing and Eluding is a 4th degree felony for a first conviction.

(2) Fleeing and Eluding is a 3rd degree felony, if the violation is one or more of the following: 1) the violation results in a crash, 2) is in a speed zone under 35 MPH, or 3) the person has had a prior 4th degree Fleeing and Eluding conviction.

(3) Fleeing and Eluding is a 2nd degree felony if one or more of the following exist: 1) the violation results in a serious injury, 2) the individual has one or more prior convictions for any degree Fleeing and Eluding, 3) the individual has two or more prior convictions for a 4th degree Fleeing and Eluding.

(4) Fleeing and Eluding is a 1st degree felony if the violation results in a death.

This bill was introduced by Rep. Kirk Profit, D-Ypsilanti, Michigan as the first of a three part bill dealing directly with police pursuits. It was recognized by Rep. Profit that the so-called “no pursuit” policy being adopted by law enforcement agencies in response to large liability awards creating an objectionable feeling within the law enforcement community (Krodel 9a). House Bill 4039 would create the “Law Enforcement Pursuit and Response Policy Act”. This would allow for the establishment of a panel within the Michigan Law Enforcement Officers Training Council required to develop a model policy governing emergency operation pursuits involving police vehicles. This would also allow law enforcement agencies to adopt that policy or develop their own and have it reviewed and commented on by that panel. The third part of the bill will provide immunity to police officers involved in pursuits when correctly following approved policy. This clearly offers useful direction for addressing in pursuit issues, but still on a national level, leaves officers and municipalities with a lot of questions. The reason being is because each pursuit is unique and has to be viewed by itself, individually. It would be impossible to write policy governing the way officers conduct each and every pursuit situation, unless policy stated that officers were not to become involved in a pursuit under any circumstances. Clearly this could severely affect law enforcement’s ability to protect and serve as well as the overall safety of our communities. Further restrictive policies tend to remove the discretion officers and supervisors must retain for effective law enforcement. For example, when pursuits are of no danger to bystanders, officers then should not be prevented from that pursuit.

Ironically enough, the first actual police pursuits occurred in Detroit. In the early 1900's, bicycles were a common form of transportation. There was a strictly enforced 6mph speed limit on a bike in Detroit and the Police Department hired expert bicyclists, known as "Scorchers" to chase down the speed limit violators due to a public outcry for their apprehension. In 1909, Detroit Police Chief Frank Crowels paid \$350 dollars out of his own pocket for a 1909 Packard to modernize his force (Wheels). Today, offenders of a legal code are still pursued, but there is a difference. In modern times we have provided a paved escape route and automobiles that can easily attain speeds exceeding one hundred miles an hour with little hesitation.

### **A Policy Question**

Whether police should be allowed to engage in these high-risk pursuits is a pressing policy question. One of the largest problems in police pursuit policy is the lack of consistency among agencies. However, development of consistent policy is a difficult task. Every jurisdiction has it's own unique set of geography and demographics that make the application of a single policy an unlikely event.

Is it possible that a less restrictive policy should be developed to allow police to not necessarily continue a pursuit, but allow officers to take the steps to end the threat of the pursuit while also apprehending a suspect? There is little controversy that pursuits are dangerous, yet often times officers have opportunities to end that threat, before it begins with techniques like the tactical vehicle intercept or precision immobilization technique, or boxing the suspect in.

The broad application of the Brower and Garner Court decisions by administrators, which will be discussed in depth has produced policies that forbid many of these maneuvers citing they can be viewed as deadly force. In actuality, with proper training, these, and many other techniques are extremely effective and pose minimal threat of injury. Ultimately, the pursuit is what is dangerous and terminating it with safe evasive maneuvers is often ignored by many policies.

Many people have called for lawmakers to eliminate the police pursuit, making it illegal altogether, or limiting it to known violent felonies, such as the organizers of Solutions to the Tragedies of Police Pursuits (Landry 6). The families of victims of drunk driving fatalities could dispute this. In most circumstances, a drunk driver is an inherently dangerous person that needs to be apprehended, since alcohol related deaths in motor vehicles are more than 41 percent of all fatalities in 1996 on our nation's roads according to the National Highway Transportation Safety Administration (1997). One also must consider that when a driver flees for what on the surface may be a simple traffic violation may in fact be a dangerous person. There is obvious reluctance on the part of legislators to make pursuits illegal because of the impact it would have on crime and the sense of helplessness with which it would leave law enforcement officers. It could leave suspects with the feeling that as long as they accelerate fast enough, the police would be unable to pursue them. As directed by the Supreme Court in *Tennessee V. Garner*, we must carefully balance the interests of the suspect closely, with the interests of the public in the need for effective law

enforcement.<sup>1</sup> There is little controversy that police pursuits is a difficult issue to resolve, and it will plague our criminal justice system for years to come.

## **Liability Issues**

There have been several recent Supreme Court decisions having a direct impact on the police and their ability to apprehend criminals. The Court handed down three decisions directly questioning police policies that have been broadly applied to pursuing fleeing offenders.

First, the Court held that creating a roadblock within the path of a fleeing offender constitutes a "seizure" within the meaning of the Fourth Amendment to the United States Constitution in *Brower v. County of Inyo*. In that case, police were pursuing a driver of a stolen car (Brower) for approximately twenty miles. Other officers in the area had created a roadblock by parking a tractor-trailer across the two-lane highway behind a curve, hiding its existence from Brower. The roadblock was left unilluminated and it was further alleged that a patrol car was directed in such a manner that the headlights of the vehicle would blind Brower upon his approach to the venue.<sup>2</sup> This case brought forward an issue under the Fourth Amendment to the Constitution, which provides:

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

It was stated in *Tennessee v. Garner*, that a police officer fatally shooting a fleeing suspect constitutes a seizure within the meaning of the Fourth

Amendment. It was further noted that at any time an officer restrains the freedom of a person to walk away, that person has been seized.<sup>3</sup> The spirit of the Fourth Amendment is directed at the misuse of governmental power. An important analogy considered by the Court of Appeals was a situation during a police pursuit, a suspect unexpectedly loses control of the vehicle and crashes. It was stated by the Court of Appeals and supported by the Supreme Court that in that instance, no unconstitutional seizure has occurred. A constitutional violation under the Fourth Amendment requires an intentional acquirement of actual physical control. In favor for the majority, Justice Scalia said:

It is clear, in other words, that a Fourth Amendment seizure does not occur whenever there is a governmentally caused termination of an individual's freedom of movement, nor even whenever there is a governmentally caused and governmentally desired termination of an individual's freedom of movement, but only where there is a governmental termination of freedom of movement *through means intentionally applied*.<sup>4</sup>

It was further found that if instead of a roadblock, the police car had produced a crash by sideswiping the fleeing vehicle, producing the fatal crash, a seizure within the limits of the Fourth Amendment would also be true. It was added that a roadblock is designed to produce a stop, either voluntarily or by physical contact if compliance is not found. A roadblock itself is a consequential show of governmental authority, and that it was shown there was an intention by the officers to stop Brower with that physical barrier, and that ultimately Brower was stopped by those means intentionally applied.<sup>5</sup>

However, the court also found that a seizure alone is not enough to invoke liability under 42 U.S.C. § 1983. The Fourth Amendment protects ones

right against “unreasonable” search and seizure.<sup>6</sup> The court allowed for the right to recover for damages for Brower’s death only due to the nature in which the roadblock was constructed, which was likely to kill Brower if he failed to stop voluntarily. A voluntary stop may have been unlikely due to the fact that Brower most likely was unaware of the existence of the barrier.<sup>7</sup>

The second and more important decision was handed down in the *City of Canton v. Harris*. Geraldine Harris was arrested and taken to the Canton Jail. At some point, this arrest affected her emotionally yet the jail did not provide any medical assistance. After her release, Harris required hospitalization and outpatient treatment. Here the Court stated that the failure to train officers in a particular duty, where the need for such training is obvious, and the lack of such training is likely to result in a violation of constitutional right can make a municipality liable.<sup>8</sup>

Justice White held that inadequacy of police training may serve as a basis for §1983 municipal liability only where failure to train amounts to “deliberate indifference” to the rights of persons whom police come into contact.<sup>9</sup> The issue decided by the court is not as broad as it may seem. When determining an issue of liability for failing to properly train police officers, one must correlate the sufficiency of the training provided in relation to the duties of a particular officer. The fact that an officer may be insufficiently trained alone will not suffice in fastening liability to a municipality. An officer may have inadequacies resulting from other factors other than a defective training program.

The court referred to *Monell v. New York Department of Social Services* in making its decision. It was stated that a municipal policy or custom must be the motivation behind the constitutional violation to make a city liable under § 1983. City policy can only be derived from “deliberate” or “conscious” choices made by a municipality reflected in a failure to train employees. Alleging that a training program represents city policy would not be satisfied under the *Monell v. New York Department of Social Services* decision, the municipality must have played a significant role in causing a constitutional violation. Quoting the *Monell* decision, it was stated that , “It is only when the execution of the government’s policy or custom inflicts the injury, that the municipality may be held liable under § 1983.” The constitutional violation must have been created by policy set forth by a municipality. Only where a municipal’s failure to train its employees in a relevant respect evidences a “deliberate” indifference to a persons constitutional rights, can such inadequacies be thought of as city policy or custom that is actionable under § 1983. It is best stated by Justice Brennan’s opinion in *Pembaur v. Cincinnati*. He stated that municipality liability under § 1983 only attaches where a deliberate or conscious choice to follow a course of action is made from among various alternatives by city policy makers. Justice Rehnquist added to this by stating that only where failure to train reflects a deliberate or conscious choice by a municipality, in *Oklahoma City v. Tuttle*.<sup>10</sup>

In the courts opinion regarding *Canton v. Harris*, it wrote that the “failure to train” claim must prove that the lack of training was the “cause” of the constitutional injury at issue. Any lesser requirements of fault and causation in

this context would “open municipalities to unprecedented liability under 1983” and pose serious federalism concerns.<sup>11</sup>

The “shocks the conscience” standard states that there are instances that behavior of an officer can be horrifying in the mind of the court. This standard was derived under the Supreme Court decision under *Rochin v. California*. This case dates back to 1949 and was not decided by the Supreme Court until 1952. The circumstances were that three deputies of the Los Angeles County Sheriff’s Department obtained information that Rochin was selling narcotics from his home. These deputies entered through an open outer door, and forced open Rochin’s bedroom door was his wife and he was found partially clothed. A deputy took note of two unknown capsules on the nightstand and asked Rochin whose they were. Rochin quickly ingested the capsules, however not without a battle with the deputies attempting to force Rochin to spit them out of his mouth. The deputies took Rochin into custody and transported him to a hospital where the deputies ordered a physician to “pump” the prisoner’s stomach against Rochin’s will. The deputies retrieved two capsules that were later identified as containing morphine. Rochin was found guilty and sentenced to sixty days for possession of morphine.<sup>12</sup> Interestingly enough, the District Court of Appeal affirmed the conviction even after the determination that the deputies were guilty of breaking and entering, assault and battery in Rochin’s room, as well as assault and battery, torture and false imprisonment at the hospital. One of the presiding judges referred to the situation as containing a “shocking series of violations of constitutional rights”.<sup>13</sup> The case was granted certiorari by the

Supreme Court addressing questions raised in regards to the range of the due process clause of the Fourteenth Amendment.

The court found that the due process clause offers no definite or clearly stated practicality. The due process of law must be on the basis of the appraisal of individual cases impartially considered reflecting the needs of both a changing nation as well as the prolongation of law. The court found that the manner in which the deputies gathered evidence, does not encroach just some small lines of ones ideas of fair play. Nor does this merely lead to realization that the criminal justice system may in fact be overly aggressive in fighting crime. The court stated that the conduct of the deputies in this case “shocks the conscience”. The court further compared the conduct of those officers as a form of torture that was closely related to the “rack and screw” and was certain to make even the most conservative weary.<sup>14</sup> The court continued by stating that by allowing such activity to take place that they are in obvious opposition would be to further allow for brutality the “cloak of law”.<sup>15</sup> Justice Black concurring said;

What the majority hold is that the Due Process Clause empowers this Court to nullify any state law if its application , ‘shocks the conscience’, offends ‘a sense of justice’ or runs counter to the ‘decencies of civilized conduct.’ The majority emphasize that these statements do not refer to their own consciences or to their senses of justice and decency. For we are told that ‘we may not draw on our merely personal and private notions’; our judgements must be grounded on ‘considerations deeply rooted in reason and in the compelling traditions of the legal profession.’ We are further amonished to measure the validity of state practices, not by our reason or by the traditions of the legal profession, but by ‘the community’s sense of fair play and decency’; by the ‘traditions and conscience of our people’; or by those canons of decency and fairness which express the notions of justice of English-speaking peoples’. These canons are made necessary, it is said, because of the ‘interests of society pushing in opposite directions’.<sup>16</sup>

The Rochin case was not a pursuit situation, nor was a third party involved, therefore leaving much room for questioning its application in pursuit cases.

*Tennessee v. Garner* contains a third consideration in making decisions in pursuits. In this case, a burglary suspect was shot and killed by a police officer. Two Memphis police officers responded to a night time house burglary. They found a broken window and a suspect, later identified as Garner, flee toward a fence. One officer yelled to halt but Garner began to climb the fence. The officer, feeling that he would be unable to catch Garner fatally shot Garner in the back of the head.<sup>17</sup>

In the broad scope of law enforcement today, it would seem extremely poor judgement to impose lethal force upon an unarmed suspect fleeing a burglary. However, this case is not as simple as it may seem on the surface. Garner was described by the officer as 5'5" to 5'7" tall and maybe 17 or 18 years old. The officer also saw no sign of a weapon and was reasonably certain that Garner was unarmed. In fact, Garner was 15 years old, about 5'4" tall and weighed in the neighborhood of 100 pounds.<sup>18</sup> The officer provided no articulable reason for shooting Garner other than to prevent his escape. The Supreme Court determined that the use of deadly force is a seizure within the bounds of the Fourth Amendment and subject to the reasonableness requirement.<sup>19</sup> The court also held that the use of deadly force may only be applied to prevent the escape of a suspect if the officer has probable cause to believe that if the suspect is not captured, they pose a significant threat to that officer or others of

serious physical injury or death.<sup>20</sup> This is important due to the fact that particular tactics utilized in terminating a pursuit may be viewed as deadly force. However, it also leaves us with the question of whether a suspect fleeing police in a motor vehicle is a significant threat of serious physical injury or death to others. It would appear to be reasonable for one to say that if particular techniques in vehicle contact to stop a fleeing suspect are forms of deadly force, then the same would be true of the suspect fleeing police coming into contact with police or other motor vehicles.

The use of deadly force, as previously stated, is a seizure in regard to the the Fourth Amendment of the Constitution and is subject to reasonableness in that regard. In the discovery of reasonableness, the court must consider the range of encroachment upon the right's of a suspect in comparison to the interests of the government in effective law enforcement. The court did however state that it is constitutionally unreasonable to kill all felony suspects, regardless of the circumstances surrounding the incident. Officers may question exactly when a seizure relating to the Fourth Amendment occurs. It has been said in *United States v. Brignoni-Ponce* that if a person no longer has the freedom to walk away from an officer, that person is the subject of a seizure under the Fourth Amendment.<sup>21</sup> The Garner Court also recognized that it is not clear when minimal interference by police officers becomes a seizure, there is no doubt that when apprehension is effected by the means of deadly force, a seizure has occurred and subject to reasonableness. The court also finds that the totality of the circumstances may justify a particular seizure. The most important holding of

the court is stated that if an officer has probable cause to believe that a suspect poses a significant threat of serious physical injury or death to the officer or others, it is constitutionally reasonable that an officer employ deadly force to prevent the escape of a suspect.<sup>22</sup> The question of felony suspect versus a misdemeanor should be disregarded to some extent. Officers have consistently thought of felons as more dangerous in comparison to those suspects in misdemeanor offenses. The idea is wrongly applied, as discussed in *Welsh v. Wisconsin*, where the court noted that in white-collar crime, the possibility of serious physical injury is virtually non-existent, as compared to a drunk driving suspect.<sup>23</sup> The Court did recognize that assessing the amount of danger a suspect poses is not an easy task, yet officers must make, in equally uncertain circumstances, closely related judgements that are also extremely difficult.<sup>24</sup> In the Garner decision, the Court noted that the only justification the officer offered in the shooting and subsequent death of Garner was the need to prevent his escape. It is therefore obvious that the ability to articulate the need to employ deadly force is of the utmost importance, in both a civil and criminal respect. With all of these things in mind, one must consider the dangerousness of a suspect fleeing police, disregarding traffic laws, traveling at high rates of speed, may in fact pose a significant threat of serious physical injury or even death if the police fail to stop that individual. This may also leave us with a further question in regard to the police failing to stop an inherently dangerous person. Is the failure to apprehend a dangerous suspect a position of negligence on the part of law enforcement?

The holdings of the Supreme Court has virtually eliminated the pursuit of fleeing criminal suspects by many law enforcement administrators due to the broad application of these and other court decisions. Several jurisdictions have implemented policies that do not allow officers to pursue fleeing offenders, while many others are highly restrictive.

Unfortunately, the Supreme Court has yet to hear cases that specifically questions the legal standard of conduct in police pursuits and it seems the court has avoided this issue for years. However, for the first time the Supreme Court has agreed to hear a case from California on a pursuit in 1997. Unfortunately, the Federal Circuit Courts have failed to reach any consistency in their decisions, and the standards to determine culpability that could be applied to all law enforcement agencies. Under the current conditions every law enforcement administrator should research its own state's applicable court decisions for policy development.

The State of Michigan poses a different view of pursuits. Many states, such as Georgia offer governmental immunity when acting as a state employee and carrying out official duties. However, this does not exonerate police officers from being held liable for the damages of a pursuit. This simply allows cases to be moved into the federal arena under 42 U.S.C. § 1983, which states:

*Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of*

*Congress applicable to the District of Columbia shall be considered to be a statute of the District of Columbia.*

Michigan holds governmental agencies responsible for bodily injury and property damage for negligent operation of a motor vehicle of which that agency is the owner under M.S.A. 3.996(105) and M.C.L.A. 691.1405 which states that:

*Governmental agencies shall be liable for bodily injury and property damage resulting from the negligent operation by any officer, agent, or employee of the governmental agency, of a motor vehicle of which the governmental agency is owner.*

Therefore, municipalities are not immune from tort liability under M.C.L.A. 691.1407 while engaged in a governmental function.

## **Emergency Vehicle Operation**

Michigan statute specifically addresses the operation of emergency vehicles for all areas of emergency service. The law provides very specific expectations of the operators of emergency vehicles.

### **257.632 Vehicle in pursuit of criminal, fire apparatus, ambulance.**

Sec. 632. The speed limitation set forth in this chapter shall not apply to vehicles when operated with due regard for the safety under the direction of the police when traveling in emergencies or in the chase or apprehension of violators of the law or of persons charged with or suspected of a violation, nor to fire department or fire patrol vehicle when traveling in response to a fire alarm, nor to public or private ambulances when traveling in emergencies. This exemption shall apply only when the driver of the vehicle while in motion sounds an audible signal by bell, siren or exhaust whistle as may be reasonably necessary or when the vehicle is equipped with at least one lighted lamp displaying a flashing, oscillating, or rotating red or blue light visible under normal atmospheric conditions from a distance of 500 feet to the front of such vehicles, unless the nature of the mission requires that a law enforcement officer travel without giving

warning to suspected law violators. This exemption shall not however protect the driver of the vehicle of the consequences of the reckless disregard for the safety of others.

Michigan statute further provides a definition of authorized emergency vehicles and their requirements to be met for operation.

### **257.603 Traffic Regulations; government vehicles, authorized emergency vehicles, workers upon surface of highways.**

Sec. 603. (1) The provisions of this chapter applicable to the drivers of vehicles upon the highway apply to the drivers of all vehicles owned or operated by the United States, this state, or a county, city, township, village, district, or any other political subdivision of the state, subject to the specific exemptions set forth in this chapter with reference to authorized emergency vehicles.

(2) The driver of an authorized emergency vehicle when responding to an emergency call, but not when returning from an emergency call, or when pursuing or apprehending a person who has violated or is violating the law or is charged with or suspected of violating the law may exercise the privileges set forth in this section, subject to the conditions of this section.

(3) The driver of an emergency vehicle may do any of the following:

- (a) Park or stand irrespective of this act.
- (b) Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation.
- (c) Exceed the prima facie speed limits so long as he or she does not endanger life or property.
- (d) Disregard regulations governing direction of movement or turning in a specified direction.

(4) The exemptions granted in this section to an authorized emergency vehicle apply only when the driver of the vehicle while in motion sounds an audible signal by bell, siren, air horn, or exhaust whistle as may be reasonably necessary except as provided in subsection (5) when the vehicle is equipped with at least one lighted lamp displaying a flashing, oscillating, or rotating red or blue light visible under normal atmospheric conditions from a distance of 500 feet in a 360 degree arc unless it is not advisable to equip a police vehicle operating as an authorized emergency vehicle with a flashing, oscillating or rotating light visible in a 360 degree arc. In those cases, a police vehicle shall display a flashing, oscillating, or rotating red or blue light visible under normal atmospheric conditions from a distance of 500 feet to the front of the vehicle. Only police vehicles that are publicly owned shall be equipped with a flashing, oscillating, or

rotating blue light that when activated is visible under normal atmospheric conditions from a distance of 500 feet in a 360 arc.

(5) A police vehicle shall retain the exemptions granted in this section to an authorized emergency vehicle without sounding an audible signal if the police vehicle is engaged in an emergency run in which silence is required.

(6) The exemptions provided for by this section apply to persons, teams, motor vehicles, and other equipment while actually engaged in work upon the surface of a highway but do not apply to those persons and vehicles when traveling to or from work. The provisions of this chapter governing the size and width of vehicles do not apply to vehicles owned by public highway authorities when the vehicles are proceeding to or from work on public highways.

## **257.2 Authorized emergency vehicle.**

Sec. 2 "Authorized emergency vehicle" means vehicles of the fire department, police vehicles, ambulances, privately owned motor vehicles of volunteer or paid firemen, or privately owned motor vehicles of volunteer ambulance drivers or licensed ambulance drivers or attendants as are authorized by the department of state police.

One must be conscious of the laws governing the operation of emergency vehicle in each state. The main points to be concerned with are the requirements needed to be considered an emergency vehicle as well as the standard of care expected of the operator. As one can see, in Michigan the operator is expected to respond to emergencies providing due regard for the safety of others. The most rapid and the safest response in emergency situation should be the goal of all operators of emergency equipment. Operators of emergency vehicles must remember simply, that if an officer, emergency medical technician, or firefighter becomes involved in an accident responding to an emergency, they are no longer able to assist anybody and may also have created a worsened situation.

## Court Decisions

There tends to be large discrepancies among circuits as to the most appropriate legal standard of conduct to apply in pursuit litigation. As the research continues, it causes even greater confusion. Some circuits look at and apply the “deliberate indifference” standard, from the *Canton v. Harris* decision, while others employ “shocks the conscience” standard derived from the *Rochin v. California* decision. These two standards appear to be the only standards being used, but the Supreme Court has yet to advise the circuits which is the most appropriate legal standard, leaving us with a large gray area in the development of a pursuit policy. However, the U.S. Supreme Court has for the first time has granted a Writ of Certiorari for a pursuit case. The case, *Sacramento County, California v. Lewis* is dealing directly with the issue of police pursuit and which standard will apply in an officer’s conduct in initiating and continuing a pursuit. The petitioner presented the question to the Supreme Court as to the legal standard of conduct necessary to establish a violation of due process. The petitioner asks the Supreme Court to determine if that legal standard of conduct should be “shocks the conscience” or “deliberate indifference” or “reckless disregard”.<sup>25</sup>

The facts of the case in brief are that two deputies of the Sacramento Sheriff’s Department were clearing a call when one of the deputies attempted to stop a speeding motorcycle by pulling his patrol vehicle closer to the second deputy’s police vehicle and activating his overhead lights. The motorcycle containing two people maneuvered between the two patrol cars and sped away.

The second deputy activated his emergency equipment and pursued the motorcycle attempting to stop it. The motorcycle continued on ignoring the deputy breaking several laws and in the opinion of the deputy, endangering the public with the manner in which the motorcycle was being operated. The operator at a point locked the brakes on the motorcycle and slide to the ground. The brake light was defective on the motorcycle, and as a result, the deputy either collided with the sliding motorcycle or the passenger was ejected from the motorcycle into the path of the pursuing deputy's patrol car, killing the passenger.<sup>26</sup>

Initially, the Ninth Circuit affirmed the grant of summary judgement in terms of qualified immunity for the municipality, but reversed the claim of qualified immunity for the individual officer.<sup>27</sup> Interestingly enough, the district court simply assumed that the officer had violated the suspect's constitutional rights without actually determining if that was in fact true. However, the Ninth Circuit granted a summary judgement in favor of the officer because the court found that there was not a clearly established law in terms of the suspects Fourteenth Amendment rights. The Ninth Circuit further granted summary judgements in favor of the Sacramento County and its Sheriff's department in terms of the suspect's claim of "failure to train" in the context of police pursuits.<sup>28</sup> The court did find that it was true that the officer did not have any formal training in police pursuits. However, the officer did receive training in high speed driving, which to some extent does overlap with pursuit driving. Therefore, the court found that the officer's training was not inadequate enough to invoke a liability

claim under § 1983. The last consideration was the question of the sheriff's policy on pursuits. The court found that the policy exceeded California law and expressly itemized details officers should consider in the initiation and continuation of a pursuit.<sup>29</sup>

The Ninth Circuit relied on *Wood v. Ostrander* in determining a claim under § 1983. The plaintiff has the burden of proving that the person committing the act was acting under the color of law and the action caused the violation of the complainant's rights. These facts were unchallenged in the case<sup>30</sup>. The court referred to *Daniels v. Williams* in stating that intent is not necessarily required for a claim under § 1983, however more than simple negligence is required. The court further stated that a "conscious disregard" of public safety is broadly points toward reckless and deliberately indifferent conduct.<sup>31</sup> However, the court passed on deciding an issue of recklessness based solely on an individual's conduct.<sup>32</sup>

The Ninth Circuit also cited *Wood II*, stating that a deliberate indifference or callous disregard was enough for a § 1983 claim. However, the court conceded that they failed to repair the required level of culpability in claims involving due process issues. Interestingly enough, the court made reference to one's common sense regarding those claims. The court said; "The inherent danger facing a women left alone at night in an unsafe area is a matter of common sense." The Ninth Circuit further took note that all courts should take pause in second-guessing speedy decisions made in the heat of the moment, by the police in the interest of public safety. However, even those decisions, if found to be arbitrary, may invoke the protections of the Fourteenth Amendment. The

court also said that they have not concluded that the minimum standard is deliberate indifference or reckless disregard in all due process violations, but is the standard in the setting of high-speed police pursuit.<sup>33</sup> Departmental policies are relevant because they are written to assist officers in decision making when the level of risk is extraordinary to the actors involved.

The court opined that the simplest way to end any danger provided by the petitioners would have been to terminate the officer's pursuit. Further, the officer was continuing at such a speed, it would have been impossible to halt the vehicle's motion within the range of the vehicle's headlights. The court concluded by stating that the officer's actions in the pursuit were deliberately indifferent or in reckless disregard of the petitioner's due process rights under the Fourteenth Amendment.<sup>34</sup>

On appeal to the Supreme Court the petitioner argues that in order to be protected by the due process clause, intentional abuse of authority on behalf of the government, which is "arbitrary" or "shocks the conscience" is the standard. The petitioner relies on the decision of the Supreme Court in *Collins v. City of Harker Heights, Texas*. The Court found that in cases where the state actor created the danger, conduct must be found to be "arbitrary" or "conscience shocking" to establish a due process violation. The Court further cited that the basis of the due process clause was to prevent the abuse of power by the government. It was further said that the prevention of using power as a tool of persecution as well as means of securing individuals against discretionary implementation of governmental power. The purpose of the due process clause

is not to establish the least amount of safety and security, but to limit the government's power to act. Thus, petitioners insist that intent is a requirement, otherwise the Fourteenth Amendment would become a source of tort law. Petitioners further assert that by establishing any standard of conduct less than "shocks the conscience" would be in opposition of the Courts long standing policy.<sup>35</sup>

The respondents argue that if the argument is justified, than the original purposes of the due process clause is at question. More distinctly, defining the limitations in which the government enforces the law. Respondent's brief argues that recklessness is adequate for the establishment of an arbitrary abuse of power within the scope of due process. The respondents argue that this is more than a simple traffic crash citing negligence on behalf of a particular involved party. It surely is possible for anyone to drive in a careless fashion, however, only are the police afforded the right to drive at high speed in situations under the protections of the law.<sup>36</sup>

Respondents further argue that the use of the reckless standard will not burden the courts with common law torts but will provide the desired level of deterrence in the use of police power. Further, the petitioners stated in trail court, the plaintiffs must prove at least recklessness. The Ninth Circuit agreed and found that that charges of recklessness was easily achieved by the officer's actions. The petitioners now would prefer to raise that level of conduct to "shocks the conscience" in an effort to remove any claims made by the fleeing suspect's estate. The respondents further cite that the "shocks the conscience" standard is

almost unworkable do to its subjective nature and ambiguity. Lastly, the respondents feel that the use of the “shocks the conscience” standard will fail to provide the level of restraint needed to protect individuals against the arbitrary actions of the government.<sup>37</sup>

### **Michigan Litigation**

In Michigan, individuals are protected by state law against the reckless operation of governmentally owned and operated motor vehicles. This typically is the source of action against officers and municipalities in police pursuit situations. In *Fiser v. City of Ann Arbor, Michigan*, officers began a pursuit after one witnessing the suspect disregard a traffic signal. The pursuit was alleged to have reached speeds of 110 mph through residential and business districts of the city. At some point, the suspect lost control of his car and was further struck by a pursuing officer. As that officer attempted to effect an arrest, the suspect sped away nearly running down and killing the officer. A second officer took pursuit of the suspect, following him the wrong way down a one-way street and eventually losing sight of the suspect’s car. A short time later, a police sergeant spotted the suspect and began to pursue him. The sergeant pursued the suspect for about six blocks in a 25-mph zone at approximately 55-mph. The roads were wet due to an earlier rain. As the suspect approached a busy intersection, he was unable to brake or accelerate rapidly enough and hit the plaintiff broadside.<sup>38</sup> If the court finds that the defendants did not violate the standard of care owed to the plaintiff, than summary judgement could be properly made for the

defendants. Further, the court can grant judgement for the defendants if they find that there was no injury sustained by the plaintiff, or that the defendants actions was not the cause of that plaintiff's injury. Also, if the connection between the plaintiff's injury and the negligence on behalf of the defendants is too insignificantly connected, a judgement in favor of the defendants may be properly granted. Further, all reasonable men must agree on the conclusion of any of the above factors in the opinion of the trial judge.<sup>39</sup> The Fiser Court held that police officers owe a duty to act with due regard to the safety of others. The standard of conduct determining a claim of negligence applied to the Fiser case, derived from *Mckay v. Hargis* was stated as "that care which a reasonably prudent man would exercise in the discharge of official duties of like nature under like circumstances". The court further found that although officer may be allowed too disobey the rules of the road, emergency vehicles must be operated with due regard for the safety of others.<sup>40</sup> An emergency situation is but one factor to be considered in the determination of the reasonableness of an officers conduct in a pursuit. Other factors are the speed of the pursuit, area of the pursuit, weather and road conditions, pedestrian and other traffic, the presence or absence of visible and audible warnings and the reasons for the pursuit.<sup>41</sup>

In the determination of proximate cause, the Fiser court relied on it's opinion in *Tozer v. Michigan Central R Co.*

If a man does an act and he knows, or by the reasonable foresight should have known, that in the event of a subsequent occurrence, which is not likely to happen, injury may result from his act, and such subsequent occurrence does happen and injury does result, the act committed is negligent, and will be deemed to be the proximate cause of the injury.<sup>42</sup>

In *Banzhof v. Roche* the court found that if there is injury resulting from concurrent acts of negligence, that are both found to be proximately in contribution to the resulting injury, than recovery can be made against one or more.<sup>43</sup>

The Fiser Court further cited the *Blashfield Cyclopedia of Automobile Law* in saying “There may be more than one proximate cause for the same injury, and the mere fact that some other cause cooperates with the negligence of the defendant to produce the injury for which suit is brought does not relieve him from liability.” The court feels that in rare, if any circumstances should a question of proximate cause be determined summarily. The court states that this question is one that is typically held for a jury.<sup>44</sup>

The court agreed that the speed of the suspect may have been the result of being pursued by the police. Further, it may have been that speed that was the factor causing the suspect to loose control of his car. The court therefore held that a reasonable person may conclude that the pursuit was not too insignificantly connected of the injuries sustained by the plaintiff. In addition, the suspects acts of negligence did not disconnect the casual connection between the plaintiff and defendants.<sup>45</sup>

In general statements regarding the Fiser decision, it has been said that if police officers engage in pursuits in excess of 110 mph. While in a residential area on a rainy night, with the suspect disregarding traffic signals and driving the wrong way on one way streets in pursuit of a traffic violator, officers and the municipality can be held liable for damages to a third party.

In another Michigan case, *Jackson v. Oliver*, plaintiffs brought suit against officers after the operator of a motorcycle fleeing police died in a crash resulting from the operator's attempts to flee. Initially, State Troopers observed the plaintiff operating a motorcycle at an excessive rate of speed, on a local freeway in the early morning hours. Troopers attempted to stop the operator by signaling him to stop with the overhead lights on the police vehicle. The operator, instead of pulling to the right side of the road, accelerated and ran a red light, the Troopers began to pursue the plaintiff through business and residential areas at speeds estimated to be in the range of 100 miles per hour. A second Trooper monitoring the pursuit was enroute to intercept the motorcycle and become the second pursuit vehicle. At some point the pursuit was continuing west on a surface road and the intercept vehicle was traveling east. The operator of the pursued motorcycle crossed the center line, traveling west in eastbound traffic approaching the second pursuit vehicle head on. Both the operator of the motorcycle and the Trooper operating the second police vehicle swerved to avoid a collision. However, the plaintiff broadsided the second pursuit vehicle and was killed instantly.<sup>46</sup>

Suit was initially brought against the State of Michigan, the Michigan State Police and the Troopers individually. The trial court granted summary judgements to all parties. On appeal, the plaintiff only questioned the appropriateness of that judgement in regard to the individual troopers. The question before the court on appeal was the question of negligence and gross negligence in the operation of police cruisers by the troopers during a pursuit

and the apprehension of a fleeing wrongdoer. As stated previously, in order to establish a prima facie case of negligence, it is the plaintiff's burden to prove first, that there was a duty owed on behalf of the defendant to the plaintiff and secondly, that the duty owed was breached. Lastly, that there were damages to the plaintiff and that this breach of duty owed that was breach was the proximate cause of damages suffered by the plaintiff. The court cited duty as an obligation, to which law will give recognition and effect and as confirmation of a particular standard of conduct toward another. The court further found that questions of duty are typically for them to determine.<sup>47</sup>

In its decision the court stated that it was their belief that the Fiser decision did not apply to this case, in circumstances where injuries were incurred by a fleeing violator of the law. The court stated that "out of concern for public safety, police must sometimes allow fleeing suspects to get away. However, it would be absurd to conclude that the police, out of concern for the safety of a fleeing criminal suspect, must cease pursuit of the fleeing suspect of risk possible civil liability". Further, the court found that it was the speeding by the plaintiff that initially endangered life and property. The decedent determined the speeds he was willing to achieve in order to evade police. It was the decedent's own recklessness that took his own life which was due to the fact that he was traveling too fast, not because the police were. There is no enhanced duty, or expanded obligation of protection owed by the police when a suspect disregards their lawful authority, the police simply must not use excessive force when making an arrest. The court specifically stated that the police by not making

attempts to cause this collision, only attempting to prevent his escape was minimal force and therefore acceptable. In conclusion, the court stated; "Police officers in pursuit of a suspect do not owe the suspect a duty to refrain from chasing the suspect at speeds dangerous to the suspect."<sup>48</sup>

Many question the rise liability if collisions occur after the voluntary termination of a pursuit by officers. In *Frohman v. Detroit*, the Court of Appeals of Michigan addressed this very topic. Officers patrolling around 10:00 PM noticed a van illegally parked. Two Detroit officers approach the van and saw a man and a women engaged in sexual intercourse. One officer tapped on the window, the man went to the driver's seat, reach under the area of the ignition and started the van. He the backed into a crowd of people and ran over another officer's foot driving away. A pursuit began, and the officers were informed that the van was stolen. At some point, it is unclear but another officer took pursuit but later terminated his involvement. Another police sergeant heard the description of the van and saw it approaching in his rearview mirror. The van passed the sergeant and a 35-40 mph pursuit began for what appears to be a third time. The sergeant at some point, determined that the pursuit was no longer wise, out of concern for the safety of the general public, he voluntarily terminated the pursuit. The van continued on, running a red light and colliding with a third party vehicle, severely injuring the driver.<sup>49</sup>

The court looked to the decision in *Ross v. Consumers Power Co.* in determining immunity of employees in civil litigation. The Ross Court held that the immunity is in effect only when first, the employee is acting during the course

of their employment, or reasonably believe they are acting, within the scope of their authority. Finally, acting in good faith and performing discretionary as opposed to ministerial acts.<sup>50</sup>

The court further looked to *Zavala V. Zinzer*, in which the Michigan Supreme Court held any action to take that best insures the safety of the general public is a discretionary-decisional act. The Court said;

Police officers, especially when faced with a potentially dangerous situation, must be given a wide degree of discretion in determining what type of action will best ensure the safety of the individuals involved and the general public, the cessation of unlawful conduct, and the apprehension of wrongdoers. The determination of what type of action to take, e.g., make an immediate arrest, pursue a suspect, issue a warning, await backup assistance, etc., is a discretionary-decisional act entitled to immunity.<sup>51</sup>

The court in this case determined that the Sergeant's actions in the pursuit were infact discretionary and affords him immunity from tort liability.<sup>52</sup> However, the court did find that the initiation and termination of the pursuit was the proximate cause of the plaintiff's injuries and the City of Detroit was not entitled to a directed verdict.<sup>53</sup>

The court advised that in this particular case, it would be wrong to apply and follow the *Fiser* decision. The court said;

When a situation occurs, such as in the instant case, where an officer performs his legal duty by attempting to catch a fleeing law breaker, conducts a pursuit in what one may minimally call a negligent manner, and does not strike any vehicle with his vehicle, it is a remarkable legal principle that he can be said to have 'caused' the resultant accident. To prevent the accident, all the fleeing driver need have done is stop. For the law to incorporate the presumption that a person will violate the law and thereby hold that the officer's pursuing the violator is a proximate cause of an accident involving the fleeing person makes society the insurer of a risk no private corporation is required to assume under the law.

Furthermore, the ordinary person in society has no such obligation or even a right to pursue such a lawbreaker, whereas a police officer has.<sup>54</sup>

The court further asked the Michigan Supreme Court or Legislature to establish “a bright line test which provides that a decision to engage in a pursuit, as a matter of law, cannot be the basis of claim of negligence”.<sup>55</sup> The court felt that only when the officer’s driving is a direct cause of one’s injury, should the question of negligence go before a jury. The court further referred to the Fiser decision as ‘legal fiction’, that there is a legal expectation that a lawbreaker will flee should be revisited. The court also refers to several decision subsequent to the Fiser ruling. Unfortunately, the court felt compelled to follow the Fisor rule so as to not interfere with the policy of authoritative bodies until this precedent is changed.<sup>56</sup>

This same court reiterated those same concerns in the Froman decision when presented with *Ewing v. Detroit*. This case involved police officers pursuing a stolen car. Although the court recognized that a reasonable person could find that a stolen car does not constitute an emergency. However, the court said in it’s opinion that if they were not bound to follow the decision of the Fiser Court, they would dispute that it was the pursuit that caused the dangerous driving of the fleeing wrongdoer. The opinion further “urged the Supreme Court to reconsider Fiser.”<sup>57</sup>

In an interesting happening, two Courts of Appeal of Michigan looked at separate cases of similar circumstances involving police pursuit. The decisions of these cases were released fifteen minutes apart on the same day. Oddly

enough, coming to completely opposite conclusions. The two cases, *Cooper v. Wade* and *Henderson v. Detroit* addressed the culpability involving deaths of third party passengers in a pursued vehicle. The Cooper Court extended the Fiser rule to the passengers of the fleeing vehicle, making them in fact innocent bystanders.<sup>58</sup> The Henderson Court found that police officers could not be grossly negligent in the apprehension of a criminal when confronted with criminal activity, “even if deadly force and concomitant danger to innocent civilians inevitably results”. The court further cited that a passenger is unlike a third party in Fiser in that their presence is voluntary and has direct communication with the fleeing wrongdoer in urging compliance with the police to stop. The court also found that in this case a stolen car being driven erratically could be dangerous to the passenger whether or not the police are in pursuit. The court felt that a “bright-line rule” must be established for these situations and the judgement of police action in hindsight should cease. The court stated; “that police should only have to consider the safety of the innocent public, and not what may be going on inside the car they may be pursuing or who may be in the car”.<sup>59</sup> The court referred to *Brown v. Shavers* in stating that if instead the passenger of the car were a hostage, the use of what potentially may be deadly force would be appropriate to conclude the continuation of the felony.<sup>60</sup> The court held that a voluntary passenger in a fleeing car is not a Fiser type innocent bystander.<sup>61</sup>

The Henderson Court however, pursuant to Administrative Order 1996-4 was bound to follow the decision of the Cooper Court.<sup>62</sup> The Henderson Court did offer that they felt that the Cooper decision was wrongly concluded in

defiance of both Fiser and Jackson decisions. The Cooper Court holds that the duty of care owed to the passenger by the police is unaffected by the misconduct of that passenger in the fleeing vehicle.<sup>63</sup>

## **Policy Development**

One of the most common tools to combat liability employed in criminal justice agencies is strong departmental policy. Often times a catastrophic event must occur before actual policy evolution occurs, and that policy may only reflect that particular incident that sparked the need for a new policy or change in a already established one. Many times policies are written and forgotten, when they require constant attention to meet the needs and standards expected and required at a particular time.

Court decisions can offer administrators a powerful guide in policy development and revision. Administrators must take the time to study case decisions and determine the best way to establish defensible policy. It is not difficult to see what is expected of officers engaged in pursuits, based upon the reaction of our courts.

Decisions made by the courts not only point out when things are wrong but also when officers function correctly. They also often relate constitutional expectations on they way duties are performed. Many decisions are based on standards that must be closely examined such as “deliberate or reckless indifference”, which simply attempts to determine if the officer's actions displays a “reckless or deliberate indifference” to the risk created (Alpert 16). The

“shocks the conscience” standard is applied when governmental employees conduct turns to an abuse of their official power (Alpert 21).

By combining all of the information that the courts has provided us, administrators will be able to develop reasonable policies to significantly reduce the risks of liability. One must remember, policy should be written in the interest of protecting the municipality as well as the individual officer and the public. A model policy from this research will be provided as a guidance tool for all law enforcement agencies.

There are several types of policies, ranging from discretionary, leaving the officer with total control as to the actions to employ, all the way to restrictive. These policies put many limits on officers and their courses of action. Some of these policies may even prohibit certain behavior. The spirit behind strong policies is to offer line personnel a clear scope of expectations in the performance of their day to day duties. However, often times these policies become little more than the protector from civil liability for administrators and municipalities. This is especially evident when one reads policies containing words such as “generally” or lines reading “in most instances”.

Administrators across the board need to develop and implement clear policy that offers direction as well as protection to all actors involved. These policies must also ensure the safety of the general public as well as allow for the fulfillment of the mission of law enforcement.

## **Application**

When applying all of the information that has developed a policy, one must be able to educate officers about the need and reasons for the policy. One cannot simply write one or two line bullets expressing the way an officer should or should not act in situations. Officers will tend to be more receptive to policy when they are educated as to the need for them to act in certain ways, not only for the good of the general public and their law enforcement agency, but as well for their own personal safety and security.

The use of an exploratory method of studying situations will be a helpful tool. One can point out specific items to be considered when becoming involved in pursuits. Questions that can be addressed specifically from the use of video taped pursuits may include the weather and road conditions that are of extreme importance when engaged in a pursuit. One can also assess the geographical area in which the pursuit is covering. This will allow for the assessment of vehicle and pedestrian traffic, as well as if the pursuit is in a residential area or unpopulated localities. One can critique the radio traffic utilized by officers, determining if the broadcasting was an accurate reflection of the events of the pursuit. One can assess any other dangers or possible opportunities available leading to the termination of the pursuit, either through apprehension or termination by the officer. As events unfold, one can single out events that are within policy guidelines or beyond the scope of policy so an officer will then have a greater understanding of the reasons for the policy, instead of having to accept it without justification, which may induce ill feelings toward the directions given.

The intention of this is to have officers continuously thinking about their situation, constantly evaluating options and hopefully utilizing the safest means at hand to bring an end to any danger. Using classroom instruction regarding law, and the current expectations of the legal system regarding officers conduct, one will be able to write and implement policy with greater effectiveness. One should also add practical application to this training relating to actual driving in a controlled setting, as well as a devoting time to decision making. One should train officers as to the content and the reasons for a policy then offer them the opportunity to apply that knowledge. Follow this up with discussion on that decision-making process, in regards to whether the proper steps were taken and the pursuit policy was adhered to. Exploratory case studies and actual emergency driving exercises that invoke decision making, will make policy more receptive by line officers. One may also seek to develop a decision matrix for decision-making when involved in a pursuit. A simple algorithm leading to the decision of pursuit continuation or termination may be useful for officer in the field. An outline of a training program may look similar to Figure 1.

- A) Introduction
  - 1. Emergency Vehicle Operation Overview
  - 2. Pursuit History and Definition
- B) Laws and Case History in Pursuit Situations
  - 1. State law on emergency vehicle operation
  - 2. Constitutional Protections
  - 3. State and Federal Case History
- C) Exploratory Focus
  - 1. Video Tapes of Pursuits with Discussion
- D) Hands On - Range Driving

**Figure 1.** Shows a possible outline to follow when providing training in emergency vehicle operation. Source: Author's recommendation.

## **Training and Technology**

What factors do officers consider before participating in a pursuit? Things such as time of day, weather and road conditions, automobile and pedestrian traffic are definitely variables to consider. We must also look at the type of crime that was committed, the condition of both the fleeing and pursuing vehicle, the officer's training and experience, and the availability of alternatives.

Through technology, law enforcement has had some innovative inventions evolve for a successful end to pursuits, which simply means the suspect is in custody and nobody is hurt.

There have been major developments in the area of training in pursuit situations. The development of computer software and simulators has made for virtual reality training in the realm of police pursuits. The use of items like road spikes is gaining popularity among law enforcement agencies in successful termination of pursuits. There are new items being developed that can be launched from a patrol car, that attack the fleeing cars electrical system. The latest techniques in making vehicle contact, such as the Precision Immobilization Technique (PIT) or the non-contact Tactical Vehicle Intercept (TIV).

Many jurisdictions employ rotary wing aircraft to aid in criminal apprehension, this has been the luxury of only a select number of departments that enjoy large budgets and unlimited manpower. This is been viewed by many as the solution to pursuits. Municipalities such as Baltimore and Los Angeles routinely utilize aircraft with huge success.

Interviews and case history of all areas still must be consulted to develop better policies for police pursuits to limit the potential for disaster, while still maximizing the ability of all law enforcement officers to perform the functions they were hired to perform. Strong policies and sound training and the use of technology will assist administrators to help their officers in making sound decisions while functioning on the public's behalf and trying to keep our streets safe.

## **Liability**

In general, the liability that a law enforcement officer risks is substantial. However, the potential liability that is endured when an officer engages in a pursuit is phenomenal. An officer risks not only a civil liability, but also a possibility of being charged and prosecuted criminally for pursuits that go wrong. Many officers fear these possibilities due to the inconsistency of policies and the gray area that is found in pursuits. This has led many administrators to implement "no chase" policies in their respective agencies. Administrators, officers, and the public all seem to agree that changes must occur, yet there is little consensus on what those changes should be.

One thing is absolute not every pursuit is worth the risk but not every pursuit should be terminated. An interesting fact is that according to statistics provided by the National Highway Transportation Safety Administration, between 1990 and 1996 2,413 people died in pursuits. Of that, 110 people died in pursuits that were conducted in Michigan. The interesting thing is that 77 of

those people that died were occupants of the fleeing vehicle (Krodel 9A). That means that people that just had to stop account for 70% of the deaths in Michigan from pursuits. Michigan municipalities paid out four of the highest jury awards of the ten highest in the country in pursuit litigation. The highest award in Michigan was 6.2 million by Detroit (Krodel 1A). Michigan has lost nearly four times the number of people in alcohol related crashes in one year compared to the last six years of pursuit related fatalities.

The fear of criminal prosecution also should weigh heavy in an officer's mind. In several pursuit cases in Michigan, the prosecutor in the respective jurisdictions has considered charging officers for criminal negligence in pursuits. Emergency vehicle operators must be aware that they are not immune from criminal prosecution when operating the in a negligent manner. This tends to be somewhat rare in its occurrence, however its possibility does exist.

Many states have legislation providing immunity for collisions for its local governments for negligence. However, this does not relieve the potential for potential liability in Federal Court under 42 U.S.C. § 1983 for depriving one of their civil rights. This is also referred to as constitutional torts. Officers must be aware that 42 U.S.C. § 1983 is not applicable in simple negligence or where adequate relief has been achieved under state law. Municipalities can be found liable only where a constitutional violation caused by that municipality is at issue (Nugent, et. al. 3).

The Supreme Court made decisions on three cases having a direct effect upon pursuit cases as well as other issues pertaining to law enforcement.

*Tennessee v. Garner* gave law enforcement a clearer picture in the use of deadly force. The court held that only in certain instances can one employ deadly force in the apprehension of a fleeing suspect. In *Brower v. County of Inyo* the Supreme Court determined that creating a roadblock within the path of a fleeing motorist does constitute a seizure within the meaning of the Fourth Amendment. However, the court was split 5 to 4 on the issue of intent as a requirement for the violation under the Fourth Amendment. The issue of training has long been a focal point of suits brought against law enforcement personnel and that issue was answered by the Supreme Court in *City of Canton v. Harris*, when it wrote that;

In the light of the duties assigned to specific officers or employees the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policy makers of the city can reasonably be said to have been deliberately indifferent to the need.<sup>64</sup>

This has still left administrators with a mass of gray area. It is apparent that the standard to be applied under 42 U.S.C. § 1983 is split among the circuits in deciding pursuit cases. Some circuits are applying the standard of deliberate or reckless indifference while others apply the shocks the conscious standard. Until the issue is resolved by the Supreme Court, the criminal justice system will suffer in properly determining proper policy in police pursuits.

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### **Model Pursuit Policy for Michigan**

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All officers must be clearly aware of the dangers in engaging in a pursuit. When pursuits begin, officers must remember that they are the only party involved in the pursuit that has been trained in how to undertake the pursuit effectively while reducing its dangers as much as possible. Officers often have a large amount of experience in driving at high speeds as compared to the offender attempting to escape apprehension. One must also consider that the officer is driving a motor vehicle specifically designed and equipped to operate under extreme conditions with the ability to warn others of its approach into their venue with overhead lights and siren. The offender is not driving such a vehicle. Extreme care and caution must be exercised at all times to avoid tragedy.

There are several reasons for the development of a clearly defined pursuit policy. At the very least, it allows officers to have a clear understanding of when a pursuit should be undertaken. It aids in the reduction of unnecessary injury and death. A good policy, when properly employed, should bring the risk of any liability to its bare minimum as well as aiding in the fulfillment of law enforcement's mission of keeping communities safe.

Officers must keep in mind that the primary mission of any law enforcement agency is to protect the public. When a pursuit endangers the lives of the general public, we have failed in accomplishing our primary mission. There is not a single officer that should feel he or she is not performing their

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duties when they allow a fleeing vehicle to escape. By discontinuing a pursuit, you may have in fact fulfilled your duty to protect the public.

Pursuits should be kept to a minimum, however, there are extreme differences in the conditions of every pursuit and they are all unique. Officers and supervisors must make decisions quickly as to the viability of a pursuit. In many situations, the need to protect the public will outweigh the need for apprehension of the criminal suspect and those pursuits will be terminated to serve that need to protect the public. By the same token, there will be many instances a pursuit must be engaged in, also in the interest of protecting the public.

The development of the following policy was derived from several court decisions having a direct impact upon Michigan. Officers should bear in mind that they are not immune to individual civil culpability and even criminal prosecution when involved in police pursuits. This is the motivation for the development of a model policy. In no way is this policy designed to increase the level of liability placed upon police officers, the purpose is to clarify the area of pursuit and define expectations of an officer while engaged in the apprehension of a fleeing wrongdoer as well as emergency vehicle operation. Further, this is to serve as a general guide to be used in the development of any jurisdictions policy, not to suggest a blanket policy for an entire state.

A pursuit study form has been developed and included. It is strongly advised that jurisdictions add something similar to aid in seeking answers

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concerning pursuits. This idea would be best employed at the state level providing forms similar to a UD-10 Crash Report used in Michigan requiring completion on a state level.

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### **Emergency Response and Pursuit Policy**

#### **Emergency Response**

Only fully marked patrol vehicles utilizing all emergency equipment being operated only by those authorized shall be used for emergency response. The use of warning lights is to be used at all times as well as the siren unless the nature of the response requires silence. Officers must exercise due care and caution to other motorists and pedestrians at all times in emergency vehicle operation.

#### **Tactical Vehicle Intercept (TVI)**

Any fully marked patrol vehicle conforming to the standards set forth in 257.606 may perform vehicle intercepts. Only trained personnel shall engage in vehicle intercepts due to the dangers placed upon officers if it is not properly performed. Vehicle intercept should be utilized on any known or suspected felonies in an attempt to avoid a pursuit.

#### **Pursuit Basis**

Pursuits may be undertaken for civil infractions, misdemeanors, and felonies. However, officers must use common sense when engaging in a pursuit. Pursuing fleeing motor vehicles is a dangerous endeavor not only to the public we are empowered to protect, but also to every officer involved. Every

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officer should also realize and understand the tremendous risk of liability that is placed upon them, both civilly and criminally in the engagement of a pursuit. No officer should ever feel that they are neglecting their duty by terminating a pursuit. By the same token, officers are encouraged to enforce the law and take individuals into custody at any time it can be accomplished without unnecessary risk of injury to innocent people. All officers should ask themselves, based on the totality of the circumstances, if the delay in the apprehension of that fleeing person would present a greater risk to society as compared to the risks generated by a pursuit. There may very well be times that the benefits outweigh the risks, like in cases of Garner felons, which at times may result in the use of lethal force.

The primary mission of any law enforcement agency is to protect the public. All officers must be constantly thinking and acting in ways to best accomplish that mission.

### **Pursuit Considerations**

Officers are expected to evaluate at a minimum, the time of day, weather and road conditions, pedestrian and motor vehicle traffic, location of the pursuit as well as the direction it is heading. Officers should also consider their experience in pursuits as well as their knowledge of the geographic area they are in. An officer must also evaluate the crime the suspect is wanted for and the possible threat to the safety of the public if apprehension is delayed.

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### **Involvement of other units**

Only one fully marked patrol vehicle being assisted by a second fully marked patrol vehicle, both operating all emergency equipment shall undertake a pursuit when the primary offense was not a violent felony. All other units shall remain in a supporting role at a safe distance. This decreases the risks created by having several units involved. If an attempt to box-in a vehicle is made, as many as four patrol vehicles will be necessary at the discretion of the supervisor.

If the offense is a violent type felony, steps should be taken to end the pursuit quickly. The use of roadblocks, boxing in the offender or ramming may be employed. This should be done at the direction of a sworn police supervisor monitoring the pursuit. This most likely will require the use of more fully marked patrol cars all utilizing emergency equipment. Refer to the section illustrating the use of these methods.

### **Radio Procedure**

The pursuing officer must immediately advise dispatch that he or she is involved in a pursuit. The dispatcher shall then clear the air of all non-emergency traffic and allow the officer to give the following facts:

1. The officer must provide the location, direction and speed of the patrol unit in pursuit.

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2. The officer shall provide the registration number, a vehicle description and the number and description of the occupants of the pursued vehicle.
3. The initial offense resulting in the pursuit, such as traffic violation, robbery suspect, etc.
- 3a. The dispatcher will verify that the patrol supervisor is clear on those items.
4. The officer will continue to advise the progression of the pursuit and the location the vehicle stops.
5. The officer shall periodically advise of motor vehicle and pedestrian traffic in the area and road conditions. Any actions the fleeing operator takes that indicates his or her disregard for the safety of the general public should also be broadcast.
6. It shall be the responsibility of the dispatcher to notify all jurisdictions that the pursuit is approaching their boundaries.

### **Pursuit Termination**

Any pursuit undertaken by any officer must be immediately discontinued if advised to do so by the sworn supervisor monitoring the pursuit. The supervisor should consider the appropriateness of the pursuit taking into account the reason for the pursuit, time of day, pedestrian and motor vehicle traffic, road conditions, weather conditions, the officer's training and experience in pursuit and emergency driving, and the immediate reward for not delaying in the capture of the suspect.

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Pursuits will not be continued if the identity of the driver is known and the crime committed is anything less than a Garner felony. If the crime committed leading to the pursuit is a Garner felony, than appropriate measures will be taken to end the pursuit as quickly as possible while still preserving the safety of the general public.

The officer at any time during the pursuit may make the decision to terminate any pursuit if that officer deems the risks of continuing that pursuit outweigh the rewards of capturing the suspect. This decision will not be questioned or criticized by anyone.

Pursuits will be terminated when the officer loses sight of the fleeing motor vehicle or when the distance between the offender and the officer is so great it would require speeds considered to be excessive for the venue of the pursuit making it to dangerous to continue.

Pursuits of motorcycles should only be undertaken if the operator is a Garner felon. All efforts should be made to end this pursuit quickly and safely. This is due to the quick acceleration and extremely high speeds of today's motorcycles. Riders are able to create a large distance between themselves and the officer pursuing rendering its continuance useless under most circumstances.

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### **Boxing-In**

Boxing fleeing motor vehicles can be very effective in stopping a fleeing vehicle. Under close direction of the sworn supervisor monitoring the pursuit, officers are permitted to box-in a fleeing offender. The most effective or desirable location for this procedure is a limited access highway, ideally one containing barriers separating the different directions of travel. Only those trained in the proper method of boxing fleeing vehicle should be involved. The speed at which this can be attempted should be reduced. This is to ensure that if the suspect rams officers, they will be able to maintain control of their patrol vehicles.

### **Offensive Tactics**

Making arbitrary contact with fleeing vehicle should be considered lethal force and only employed as a last resort. The order to strike a fleeing vehicle should come directly from the sworn supervisor monitoring the pursuit. Only those officers trained in the proper technique should undertake such a dangerous task. One must always put the safety of the general public as the top priority when ramming any fleeing motor vehicle. This tactic should not be confused with a PIT or TVI.

### **Precision Immobilization Technique (PIT)**

May be use by those trained to do so, in fully marked patrol units while in uniform when authorized by the shift supervisor if time permits, in an attempt to

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terminate a pursuit. One must bare in mind that although this maneuver is not designed to be deadly force, if a death occurs, the court may in fact hold that deadly force was utilized, therefore subject to its reasonableness same as if the officer had shot the suspect.

### **Road Blocks**

Roadblocks should be considered lethal force and always be a last resort. The sworn supervisor monitoring the pursuit must approve roadblocks and the safety of the general public will be of primary concern. Road blocks will be limited to "Garner" type felons because it has been determined by the United States Supreme Court that a road block constitutes a seizure under *Brower v. County of Inyo*.

### **Firearms**

The use of firearms, however not prohibited is highly discouraged. The high speeds if a fleeing motor vehicle being operated by a wounded or dead offender could ultimately be even more dangerous than the pursuit itself. The sworn supervisor will determine if it is appropriate based on the circumstances of the pursuit. It is also highly discouraged that any officers discharge a firearm from any moving vehicle, due to the likelihood of missing the intended target.

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### **Aircraft**

If aircraft is available, it will always maintain the primary role in any pursuit, one fully marked patrol unit will take a position as the secondary unit in pursuits based on a serious violent felony or an immediate life threatening situation only. All other patrol vehicles will assume a supportive role.

### **Supervisory Role**

The ultimate responsibility of any pursuit is the burden of the sworn supervisor monitoring the pursuit. The supervisor is responsible to evaluate the circumstances of the pursuit and determine the necessity of immediate apprehension. That supervisor may terminate a pursuit at any time. That supervisor is expected to terminate any pursuit where the danger created by the pursuit, outweighs the benefits of immediate apprehension. The reason for this is that supervisors can be emotionally disconnected from a pursuit and make better evaluations as to it's desirability.

### **Pursuits from Outside Agencies**

Officers may assist other agencies in pursuits that enter our jurisdiction or when requested by the agency in pursuit. However, officers are still bound to the policies set by this administration.

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If the jurisdiction terminates a pursuit, no officer from this agency shall continue to pursue the fleeing wrongdoer, unless the shift supervisor deems the apprehension of the suspect necessary in the interest of public safety.

### **Pursuit Review**

Any time a pursuit is taken on, the primary officer involved in the pursuit must file a pursuit study form. This allows us to better develop policies to deal with the problem of fleeing motor vehicles. If an officer assists another jurisdiction with a pursuit they must also file a pursuit study form. Only one form per pursuit should be completed.

As soon as possible, all members involved in any pursuit and any other officers that are available should conduct a discussion regarding the good points and the bad points of the pursuit. Any need for changes in the pursuit policy should be directed toward and noted by a sworn supervisor for review by the administration of the department.

## **Glossary**

### **Boxing-In**

The act of surrounding a fleeing suspect in a motor vehicle with fully marked patrol vehicles, then slowing all of those vehicles simultaneously to reduce the speed and ultimately stop a suspect without making intentional contact with the suspects vehicle.

### **Emergency Response**

The act of responding to any situation that an officer perceives as an emergency while operating all emergency equipment in a fully marked patrol vehicle. The exception of an audible siren, in limited circumstances is authorized, as may be necessary for the apprehension of suspects that such an audible signal would give them warning and opportunity to flee apprehension. Officers are still expected to operate patrol vehicle with due regard for the safety of others.

### **Fully Marked Patrol Vehicle**

Any vehicle easily identifiable as that of the police or Sheriff, that includes police markings on each side, as well as overhead emergency lights and siren.

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### **Garner Felon**

A person, who in the opinion of an officer poses a serious threat to the safety of society if there is a delay in the immediate apprehension of that suspect.

### **Life Threatening Situation**

Any event that an officer perceives that the lives of the public or one's self is in danger of serious physical injury or death.

### **Pacing**

Placing a police vehicle to the rear of a suspect, in a fashion so as to follow at the same speed as the vehicle one is following in an attempt to determine the speed of that vehicle from the speedometer in one's own police vehicle.

### **Precision Immobilization Technique (PIT)**

The method of making vehicle contact in an attempt to spin the pursued vehicle out in a non-lethal manner by striking the pursued vehicle in the rear quarter with the front quarter of a fully marked patrol vehicle at a low speed.

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### **Primary Unit**

Any fully marked patrol vehicle, being operated by a certified police officer in uniform that is the lead patrol vehicle in a pursuit.

### **Pursuit**

A pursuit is any active attempt by any law enforcement officer on duty, in full uniform and in a fully marked patrol car utilizing all available emergency equipment as set forth in 257.606 of the Michigan Motor Vehicle Code, to take into custody one or more occupants of a moving motor vehicle. Providing those occupants are aware of those attempts by the officer, and is resisting apprehension by disregarding the law enforcement officer's desire to stop him.

### **Roadblock**

The complete blocking of a roadway in an attempt to induce a stop of a vehicle either voluntarily or by means of a collision.

### **Secondary Unit**

Any fully marked patrol vehicle, being operated by a certified police officer in uniform that is the back up unit for any primary unit in a pursuit.

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### **Supportive Role**

Any fully marked units that are operated by certified police officers in uniform, that are not actively involved in a pursuit, but are moving toward or maintaining the general vicinity of a pursuit, while simultaneously at all times, operating their patrol car with due care for the safety of others in the area.

### **Tactical Vehicle Intercept (TVI)**

The practice of surrounding a suspect's vehicle that is stopped with fully marked patrol vehicles in an attempt to avoid a pursuit.

## **Appendix B**

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### **Pursuit Study Form**

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### **Pursuit Study Form**

One of the problems with pursuits is our lack of knowledge we have about them. In an effort to educate us all on pursuits, a short questionnaire has been developed to assist in our education about pursuits. It is imperative that accurate information is reported to achieve this goal. This information will assist in our never-ending endeavor to maintain a proper pursuit policy. All personnel must be aware that in no way can this form be used against them in any internal disciplinary action, as well as criminal prosecution. To ensure this, anonymity is utilized. Again, the best placement for this would be on a state level for better use of statistical information.

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Pursuit Study Form  
Page 1

Day of Week:

Year:

Age of initial pursuing officer: \_\_\_\_\_

Gender of initial pursuing officer:    Male            Female

Time as police officer on road patrol: \_\_\_\_\_ years \_\_\_\_\_ months

Division initial pursuing officer is assigned: \_\_\_\_\_  
*(i.e. General Patrol, Paramedics, etc.)*

Time pursuit began:  
*(Military time)*

Time pursuit ended:  
*(Military time)*

Total time of pursuit in minutes:

Venue pursuit began:

Weather conditions  
*(i.e. Warm and Dry, Icy, Snowing, etc.)*

Total number of police units involved:

Initial reason for vehicle pursuit:  
*(i.e. Traffic offense, armed robbery, etc.)*

Reason pursuit ended:  
*(i.e. Crash, terminated by supervisor, etc.)*

Range of speed of pursuit:  
*(i.e. 50-105MPH)*

Special tactics attempted unsuccessfully:  
*(i.e. Road Block, PIT, etc.)*

Special tactics successfully employed:  
*(i.e. Road block, PIT, etc.)*

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**Pursuit Study Form  
Page 2**

Was there an accident?                      yes                      no

Were there injuries to the suspect(s)?    yes                      no

Did the occupants exit the motor vehicle and allow it to crash?

List ages and sex of suspects in fleeing vehicle, level of injury and location in the motor vehicle:

- 1.
- 2.
- 3.
- 4.

Were there injuries to officers?    yes                      no

List level of injury to each officer and location in the car during pursuit:

- 1.
- 2.
- 3.
- 4.

Were there injuries to any third parties in motor vehicles?    yes                      no

List age and sex of injured third parties, their activity prior to crash and level of injury, and location in the car:

- 1.
- 2.
- 3.
- 4.



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**Notes**

- <sup>1</sup> *Tennessee v. Garner*, 471 U.S. 1, 105 S.Ct. 1694 (1985).
- <sup>2</sup> *Brower v. County of Inyo*, 489 U.S. 593, 109 S.Ct. 1378, 1379 (1989).
- <sup>3</sup> *Tennessee v. Garner*, 471 U.S. 1, 7, 105 S.Ct. 1694, 1699 (1985).
- <sup>4</sup> *Brower v. County of Inyo*, 489 U.S. 593, 596, 109 S.Ct. 1378, 1381 (1989).
- <sup>5</sup> *Brower v. County of Inyo*, 489 U.S. 593, 596, 109 S.Ct. 1378, 1381 (1989).
- <sup>6</sup> *Brower v. County of Inyo*, 489 U.S. 593, 596, 109 S.Ct. 1378, 1382 (1989).
- <sup>7</sup> *Brower v. County of Inyo*, 489 U.S. 593, 596, 109 S.Ct. 1378, 1382 (1989).
- <sup>8</sup> *City of Canton, Ohio v. Harris*, 489 U.S. 378, 109 S.Ct. 1197, 1199 (1989).
- <sup>9</sup> *City of Canton, Ohio v. Harris*, 489 U.S. 378, 395, 109 S.Ct. 1197, 1208 (1989).
- <sup>10</sup> *City of Canton, Ohio v. Harris*, 489 U.S. 378, 378, 109 S.Ct. 1197, 1199 (1989).
- <sup>11</sup> *City of Canton, Ohio v. Harris*, 489 U.S. 378, 378, 109 S.Ct. 1197, 1199 (1989).
- <sup>12</sup> *Rochin v. California*, 342 U.S. 165, 72 S.Ct. 205 (1952).
- <sup>13</sup> *Rochin v. California*, 342 U.S. 165, 72 S.Ct. 205 (1952).
- <sup>14</sup> *Rochin v. California*, 342 U.S. 165, 171, 72 S.Ct. 205, 209 (1952).
- <sup>15</sup> *Rochin v. California*, 342 U.S. 165, 173, 72 S.Ct. 205, 210 (1952).
- <sup>16</sup> *Rochin v. California*, 342 U.S. 165, 175, 72 S.Ct. 205, 211 (1952).
- <sup>17</sup> *Tennessee v. Garner*, 471 U.S. 1, 3, 105 S.Ct. 1694, 1697 (1985).
- <sup>18</sup> *Tennessee v. Garner*, 471 U.S. 1, 5, 105 S.Ct. 1694, 1698 (1985).
- <sup>19</sup> *Tennessee v. Garner*, 471 U.S. 1, 5, 105 S.Ct. 1694, 1698 (1985).
- <sup>20</sup> *Tennessee v. Garner*, 471 U.S. 1, 11, 105 S.Ct. 1694, 1701 (1985).
- <sup>21</sup> *Tennessee v. Garner*, 471 U.S. 1, 7, 105 S.Ct. 1694, 1699 (1985).
- <sup>22</sup> *Tennessee v. Garner*, 471 U.S. 1, 11, 105 S.Ct. 1694, 1701 (1985).
- <sup>23</sup> *Tennessee v. Garner*, 471 U.S. 1, 13, 105 S.Ct. 1694, 1702 (1985).
- <sup>24</sup> *Tennessee v. Garner*, 471 U.S. 1, 18, 105 S.Ct. 1694, 1705 (1985).
- <sup>25</sup> *Sacramento County, California, v. Lewis*, 1997 WL 453655 (1997).

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- <sup>26</sup> Lewis v. Sacramento County, California, 98 F.3d 434, 436 (1996).
- <sup>27</sup> Lewis v. Sacramento County, California, 98 F.3d 434, 436 (1996).
- <sup>28</sup> Lewis v. Sacramento County, California, 98 F.3d 434, 437 (1996).
- <sup>29</sup> Lewis v. Sacramento County, California, 98 F.3d 434, 437 (1996).
- <sup>30</sup> Lewis v. Sacramento County, California, 98 F.3d 434, 437 (1996).
- <sup>31</sup> Lewis v. Sacramento County, California, 98 F.3d 434, 438 (1996).
- <sup>32</sup> Lewis v. Sacramento County, California, 98 F.3d 434, 440 (1996).
- <sup>33</sup> Lewis v. Sacramento County, California, 98 F.3d 434, 441 (1996).
- <sup>34</sup> Lewis v. Sacramento County, California, 98 F.3d 434, 442 (1996).
- <sup>35</sup> Sacramento County, California, v. Lewis, 1997 WL 615765 (1997).
- <sup>36</sup> Sacramento County, California, v. Lewis, 1997 WL 453655 (1997).
- <sup>37</sup> Sacramento County, California, v. Lewis, 1997 WL 453655 (1997).
- <sup>38</sup> Fiser v. City of Ann Arbor, Michigan, 417 Mich. 461, 339 N.W.2d 413 (1983).
- <sup>39</sup> Fiser v. City of Ann Arbor, Michigan, 417 Mich. 461, 467, 339 N.W.2d 413, 415 (1983).
- <sup>40</sup> Fiser v. City of Ann Arbor, Michigan, 417 Mich. 461, 470, 339 N.W.2d 413, 416 (1983).
- <sup>41</sup> Fiser v. City of Ann Arbor, Michigan, 417 Mich. 461, 472, 339 N.W.2d 413, 417 (1983).
- <sup>42</sup> Fiser v. City of Ann Arbor, Michigan, 417 Mich. 461, 472 339 N.W.2d 413, 417 (1983).
- <sup>43</sup> Fiser v. City of Ann Arbor, Michigan, 417 Mich. 461, 472, 339 N.W.2d 413, 417 (1983).
- <sup>44</sup> Fiser v. City of Ann Arbor, Michigan, 417 Mich. 461, 472, 339 N.W.2d 413, 417 (1983).
- <sup>45</sup> Fiser v. City of Ann Arbor, Michigan, 417 Mich. 461, 475, 339 N.W.2d 413, 418 (1983).
- <sup>46</sup> Jackson v. Oliver, 204 Mich.App. 122, 514 N.W.2d 195 (1994).
- <sup>47</sup> Jackson v. Oliver, 204 Mich.App. 122, 123, 514 N.W.2d 195, 196 (1994).
- <sup>48</sup> Jackson v. Oliver, 204 Mich.App. 122, 126, 514 N.W.2d 195, 197 (1994).
- <sup>49</sup> Frohman v. City of Detroit, Michigan, 181 Mich.App. 400, 450 N.W.2d 59 (1989).
- <sup>50</sup> Frohman v. City of Detroit, Michigan, 181 Mich.App. 400, 405, 450 N.W.2d 59, 61 (1989).
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- <sup>57</sup> Ewing v. City of Detroit, Michigan, 214 Mich.App. 495, 543 N.W.2d 1 (1995).
- <sup>58</sup> Cooper v. Wade, 218 Mich.App. 649, 554 N.W.2d 919 (1996).
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- <sup>60</sup> Henderson v. City of Detroit, Michigan, 563 N.W.2d 689, 690 (1996).
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