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Vehicular Pursuits: Policy Analysis and Recommendations for the Missoula Police Department

by

Nickolas J. Kuntz

B.A. The University of Montana, 2004

Presented in partial fulfillment of the requirements

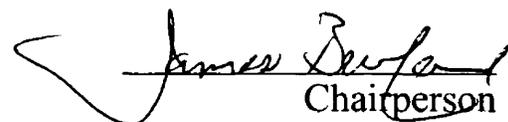
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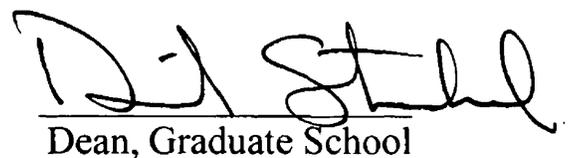
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Vehicular Pursuits: Policy Analysis and Recommendations for the Missoula Police Department

Committee Chairperson: Dr. Jim Burfeind 

Vehicular pursuits is one of the most controversial topics in law enforcement today. Patrolmen and administrators struggle with the question of whether or not the need to apprehend the suspect outweighs the risks of endangering the public and the police through a high-speed pursuit. Due to a rise in the number of pursuit-related injuries and fatalities each year, law-enforcement administrators have come under increasing pressure to restrict their pursuit policies.

The purpose of this research project is to analyze the Missoula Police Department's pursuit policy with regard to the previous research on the subject of vehicular pursuits. Also, the paper gives a brief summary of a specific pursuit technique, the pursuit intervention technique, and provides recommendations on how to implement this technique into the Missoula Police Department's pursuit policy.

This paper concludes that the Missoula Police Department needs to restrict their policy and make it more clear and comprehensive. This will prevent unnecessary injuries and fatalities caused by police pursuits. It will also eliminate the ambiguity presented by the vague nature of the current policy.

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I would like to thank my family, who has provided unyielding support through all of my endeavors, allowing me to pursue my spontaneous and often unorthodox ambitions. I must also acknowledge their steadfast work ethic, which has shown me how much you can accomplish if you just keep working.

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Introduction

Vehicular pursuits is one of the most hotly debated topics in law enforcement today. While the media typically portrays these events as exciting joyrides, the public and law enforcement communities realize the grave dangers that they pose. The basic argument concerning pursuits revolves around whether or not the need to apprehend a suspect outweighs the risks of endangering the public and the police through the chase. Should a law enforcement officer be allowed to pursue a fleeing suspect in a vehicle? If so, for what violations? Under what conditions? When should an officer be allowed, or ordered, to terminate a pursuit? The topic of police pursuits raises an additional issue as well, that of police use of force, especially deadly force. When the pursuit results in a fatal crash, the courts may find the pursuing officer liable due to the use of excessive force.

The argument in favor of pursuits is that the freedom of officers to pursue law violators is crucial to the deterrent capability of patrolmen. This deterrence is not only for traffic control, but for all of the crime control responsibilities of the police. If officers are not allowed to chase suspects, then what will ever stop a potential criminal from violating the law? As Sacramento County Sheriff Glen Craig argued in an article by Barbara Dority (1998: 4) titled, "More Power, Less Responsibility," if officers are not allowed to pursue suspects ". . . nobody will ever get chased—then you'll have a society in which the only people against whom the law will be enforced are those who voluntarily comply." Finally, proponents of police pursuits believe that officers should not be responsible for the outcome of the reckless behavior of the person pursued, because it is the officer's job to do whatever it takes to get this dangerous suspect off the

streets (Becknell 1999). They maintain that officers should be immune to any litigation resulting from pursuit-related injuries and fatalities.

The argument against pursuits is that high-speed chases result in an unacceptable number of injuries and fatalities. Critics argue that the cost of human life is too high to endanger for the possibility of catching a suspect. They believe that the primary function of the police should be to protect and serve citizens and that these citizens “have a right to expect them to employ whatever measures are necessary to avoid hurting or abusing anyone” (Dority 1998: 4).

Despite the existence of the two opposing viewpoints, most previous literature has concluded that pursuits create far greater risks than benefits to the officers, the suspects and the public (Alpert 1997, Alpert 2000, Becknell 1999, Dority 1998, Hill 2002, Palmer 2003, Rivara, 2004, Singh 2004, Yates 2004). This research, therefore, suggests that law enforcement agencies should adopt more restrictive policies. Also, research suggests that policies should be tailored to the specific jurisdiction to which they apply. Thus, if state law prohibits uncontrolled contact between a police cruiser and a fleeing vehicle, this contact should be explicitly prohibited in an agency’s pursuit policy as well.

The purpose of this research project will be to analyze the Missoula Police Department’s pursuit policy with regard to the previous research on the subject. I will first summarize the conclusions of previous research on police pursuits, and then introduce Missoula’s pursuit policy, followed by comments and recommendations. Finally, I will explore a specific pursuit technique, called the Pursuit Intervention Technique (PIT), and make recommendations to the Missoula Police Department as to whether or not they should employ this tactic. This technique is a controlled contact

maneuver that is intended to spin the suspect's vehicle 180 degrees and cause the engine to stall.

Studies on Police Pursuits

Current Policies

Law enforcement agencies currently use one of three types of policies for pursuits: judgmental, restrictive, and discouragement. A judgmental policy allows the pursuing officers to make all of the major decisions relating to initiation, tactics and terminations of the pursuit. A restrictive policy places certain restrictions on the officers' judgments and decisions. Finally, a discouragement policy severely cautions against, or discourages any pursuit, except in the most extreme situations (Becknell 1999).

Judgmental policies have been criticized for allowing the officer too much discretion, thus leading to decisions that are not guided by protocol. Discouragement policies, on the other hand, may be seen as impeding too much on the officers' duty to apprehend suspects. Therefore, most researchers and police administrators argue that a restrictive policy may effectively balance the costs and benefits of engaging in police pursuits (Becknell 1999, Alpert 2000).

One example of this effectiveness is the Los Angeles Police Commission's reaction to the death of a child in a pursuit-related accident in 2003. The Commission ordered a nationwide comparison of pursuit policies to ensure that the Los Angeles Police Department was in good practice. While the research found that the LAPD had one of the more restrictive policies in the country, the Commission decided to alter the policy, removing the officers' ability to initiate a pursuit based on a misdemeanor offense. This decision was based on the belief that high-speed pursuits present too much potential danger to the police, the public, and the offender to risk for the capture of a suspect who

has committed a non-serious crime. The result has been a dramatic drop in officer, bystander and suspect injuries (Board 2005).

Statistics

Compiling statistics on police pursuits can be problematic for several reasons. The term “pursuit-related crash” poses a problem because many officers will make the determination that a crash occurred right after a pursuit was terminated. This is presumably because they had turned off their lights and siren moments before the crash. This results in the crash not being considered pursuit-related, thus possibly underestimating the number of pursuit-related crashes. Furthermore, according to John Hill (2002), many officers simply fail to report pursuits that either ended in crashes or those in which offenders were not apprehended (Hill 2002). While these statistics are therefore subjective, they remain highly informative:

- 75% of pursuits resulted in the capture of a suspect (Dunham 1998: 30).
- 40% of pursuits end in collisions and 20% result in an injury (Singh 2004: 1).
- Conservative estimates state that police pursuits result in 350 deaths per year and 55,000 injuries (Hill 2002: 1).
- Only 39% of pursued drivers have a valid driver’s license and those pursued are 60% more likely to have had other motor vehicle convictions (Rivara 2004: 93)
- 42% of the those killed are bystanders (Hill 2002: 2)
- A majority of police pursuits involve a stop for a traffic violation (Hill 2002: 2).
- One percent of all officers who die in the line of duty lose their lives in vehicular pursuits (Hill 2002: 2).

These statistics point to the grave consequences associated with pursuits and lead to some obvious observations. First, the high rate of collisions that occur due to pursuits points to the fact that chasing fleeing suspects is a dangerous endeavor. Second, the significant rate of bystander deaths shows that catching these suspects comes at a steep price for many citizens who have nothing to do with the case in point. Third, the fact that most pursuits start over a traffic violation suggests that this high bystander mortality rate may be in large part due to minor violations of the law. Fourth, considering that most pursued drivers have prior motor vehicle convictions means that chasing them at high speeds may create exponential adverse effects because these drivers are either willing to take excessive risks, or are simply bad drivers. Finally, since the problems associated with reporting pursuits and the context of these pursuits provides us with incomplete statistics, agencies must ensure that they have formal reporting standards and there must be discipline associated with failing to meet these standards.

Legal Considerations

When formulating a pursuit policy, law enforcement administrators must take into consideration constraints and allowances set forth by U.S. appellate court decisions as well as courts within their own jurisdiction. Federal courts have reviewed a number of pursuit cases, and typically review the agency's pursuit policy prior to making a decision (Pipes 2001). Therefore, an agency's policy should be written with consideration to local, state, and federal laws regarding vehicular procedures. Becknell and his colleagues (1999) analyzed data from the Police Executive Research Forum to discover the impact of policy restrictiveness, training, and evaluation restrictiveness on different outcomes of pursuits. These outcomes included: rate of pursuits, accidents, deaths, use

of force, and litigation. While other findings will be discussed later, the findings regarding litigation are most relevant in terms of legal considerations. This study found that agencies that were typically not involved in legal disputes, or those that won in court, were not forced to improve their own procedures for pursuits. On the other hand, those agencies that lost liability claims were ordered by the court to amend their pursuit policies, making them clearer and more restrictive. The agencies that lost tort liability claims were those that had judgmental policies. Therefore, having a more restrictive policy will enhance an agency's immunity to litigation.

Typically, lawsuits stemming from police pursuits allege civil violations of the Fourth and Fourteenth amendments. Under the Fourth amendment, a physical seizure occurs when “. . .an officer applies force to a person in order to stop their movement or restrain their liberty by a means intentionally applied” (Legal 2004: 1).

The best example of physical seizure in the pursuit context comes from *Brower v Inyo County* (1989). In this case, officers placed a trailer truck as a roadblock around a curve, with their lights facing the oncoming suspect. The suspect, presumably blinded by the lights, hit the trailer and was killed. The U.S. Supreme Court ruled in favor of Brower, stating that a seizure occurs “when there is governmental termination of freedom of movement through means intentionally applied” (Pipes 2001: 2). This decision represents an instance when police activity brings about an intentional result. This is because when the police placed the trailer around the corner as a roadblock, and shined their lights toward the suspect, it can only be assumed that they intended for the suspect to crash into the trailer. The appellate courts have, however, rejected Fourth amendment claims when action during a pursuit brings about unintended results. Therefore, third-

party victims are not able to bring about Fourth Amendment claims alleging unreasonable seizure arising from an action taken by police.

Another type of claim that arises due to police pursuits is based on due process. These claims allege that the officer deprived the person injured of life or liberty without the due process of law (Legal 2005). The landmark Supreme Court case for this type of claim is *County of Sacramento v. Lewis* (1998). This case involved Lewis, a 16-year old motorcycle passenger, who died when he fell off of the bike into the path of pursuing police car. The pursuit reached speeds of 100 miles per hour through a residential neighborhood. Since the officer did not intentionally strike Lewis, the Lewis estate could not make a claim based on the Fourth Amendment. Therefore, they based the suit on due process.

The appeals court ruled in favor of Lewis because the pursuing deputy had violated his agency's general order concerning police pursuits. The Supreme Court held that the failure of the deputy to adhere to his agency's pursuit policy was irrelevant. They ruled that ". . .law enforcement officials cannot be held responsible for injuries caused to innocents by high speed chases unless their actions are so egregious that they shock the conscience." (Dority 1998: 3). This "shock the conscience" standard gave the police immense protection from federal civil litigation due to police pursuits.

Finally, in *Terrell v. Larson* (2004), the U.S. Court of Appeals held that an officer's *deliberate indifference* may be enough to shock the conscience of the court. This ruling, therefore, solidified the "shock the conscience" objective set down by the Supreme Court in *Sacramento v. Lewis* (1998). This holds officers more accountable,

meaning that they must be at all times cognizant of the potential dangers that pursuits may bring to themselves, the public, and the suspect.

Agencies may still be accountable, however, by not providing adequate training. One important U.S. code that applies to states regarding police pursuits is Title 42, U.S. Code, 1983. It states that

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 an action at law, suit in equity, or other proper proceeding for redress.

Any individual acting under the color of the state that violates a citizen's federal constitutional or statutory protection will be held liable. This code is important because in *City of Canton Ohio v. Harris* (1989), the court held that "the inadequacy of police training may serve as the basis for 1983 liability only where the failure to train amounts to deliberate indifference to the rights of persons with whom the police come into contact." Thus, ensuring adequate training for pursuits may be worth millions of dollars in liability.

Prior research points out that policies should be designed with regard to laws that apply to the jurisdiction of the agency. Therefore, when developing a pursuit policy, an agency must first examine relative statutory law. According to the Montana Code Annotated (MCA 61-8-107), the driver of a police vehicle, while in pursuit of a suspect, may:

- Park or stand, irrespective of the provisions set out in the traffic regulation chapter;
- proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;

- exceed the speed limits so long as he does not endanger life or property;
- disregard regulations governing direction of movement or turning in specified directions

The code only grants these exceptions when the officer is making use of audible or visual signals. Also, these provisions do not relieve the driver from the “duty to drive with *due regard* for the safety of all persons, nor shall the provisions protect the driver from the consequences of his or her reckless disregard for the safety of others” (MCA 61-8-107). Therefore, the standard that officers must adhere to under Montana law is the “due regard” for the safety of others. This may be interpreted as being even stiffer than the deliberate indifference standard set out in *Terrell v. Larson* (2004). There has not been a tort case in Montana brought against an officer in a pursuit that tests this “due regard” clause. Thus, an agency should be on the safe side and ensure that officers have adequate training that allows them to make rational decisions under pursuit conditions.

Use of Force

There are several important issues concerning pursuits and police use of force. One issue deals with what degree of force a vehicular pursuit entails. Becknell, Mays and Giever (1999) argue that since pursuits involve using instruments of potential deadly force (speeding emergency vehicles) they should be classified as a form of force that necessitates the same types of restrictive policies and procedures as any other deadly weapon. They believe that because pursuits create high anxiety and the potential for destruction and injury, they should be treated as a potential form of deadly force. This would require greater restrictions on pursuits and more in-depth evaluations and investigations into those pursuits that are engaged in. While this position is represented most often in the research available, one study holds a slightly different stance.

In a 1998 report to the National Institute of Justice concerning police pursuits, the Pursuit Management Task Force addressed the issue of pursuit practices and the role of technology in high-speed pursuits. The Task Force surveyed police agencies and officers throughout the western United States to determine the types of technologies agencies would be likely to use for capturing fleeing suspects. In addition, they examined data collected by the State of California concerning pursuits for the years 1994 through 1996. Finally, the Task Force used a contract firm to conduct and analyze surveys of community members and frontline law enforcement officers to determine their attitudes and beliefs about pursuits and related technologies.

The Task Force recommended that greater immunity should be given to police officers who engaged in “reasonable” pursuits. Furthermore, they argue that stiffer penalties should be handed down to those who attempt to elude police in vehicles. While the latter argument is beyond the scope of this paper, the point is to emphasize that perhaps police should be given greater immunity instead of less. They do not, however, provide a definition of their use of the term “reasonable.” Also, their opinion of increasing immunity is a minority in the previous literature on police pursuits.

Another important issue concerning use of force in pursuits is that of excessive force applied *after* the pursuit has been terminated. The Police Executive Research Forum conducted a comprehensive study on police pursuits from case-study research in three different jurisdictions: Miami-Dade, Florida, Omaha, Nebraska, and Aiken County, South Carolina (Alpert et al. 2000). At each jurisdiction, they examined descriptive statistics detailing the characteristics of samples of pursuits, including the number and

duration of pursuits, the reasons for starting pursuits, and the outcomes. This study discovered three findings regarding pursuits:

- pursuits are dangerous
- pursuits must be controlled, and
- involvement in a pursuit increases participants' adrenaline and excitement.

These three aspects will vary with each pursuit, but the authors argue that they will inevitably exist to some degree. They believe that increased excitement and adrenaline are likely to affect driving decisions in three ways. First, being involved in a chase will negatively impact rational decisions. Second, the excitement is likely to impair the ability to drive tactically and intelligently. Third, the increased adrenaline is likely to affect the way the officer physically handles the suspect after the chase has been terminated. This last factor, they argue, leads to an excessive amount of force used in the arrest, which in turn increases the likelihood of injury to the suspect.

Interestingly, police report records analyzed in this study vastly underestimate the incidents following a pursuit in which force was used as compared to the data from interviews with offenders. In contrast, however, data from officer interviews and supervisor interviews match the results from the offender interviews. This reveals a discrepancy between reported use of force and actual use of force. This discrepancy may be due to the fact that "use of force" is a subjective concept. It could also be a result of underreporting of officers. Thus, stringent reporting protocol regarding pursuits should be utilized and enforced by department administrators.

One way to alleviate this use of force problem is to have the suspect arrested by an officer who was not the primary pursuit officer. This second officer will not have had

the increase in adrenaline and will therefore be less likely to use any more force than is necessary to make the arrest. Another implication is to provide thorough training on pursuits that will expose officers to the atmosphere of a pursuit under controlled circumstances. Training should also incorporate teaching officers how the atmosphere of a pursuit can affect their mental state and how they can control their emotions.

Attitudes of Police and the Public

In order to understand the entire picture regarding police pursuits, researchers must examine the attitudes of the police, the public and the fleeing suspects. Alpert et al. (2000) conducted surveys regarding attitudes concerning police pursuits with three different law enforcement agencies: one in South Carolina, one in Nebraska and one in Maryland. They also conducted public opinion polls in these three areas on the same topic. The public opinion questions were asked before and after the interviewers had given the respondents information about statistics on police pursuits. The surveys administered to the law enforcement agencies were given to recruits, officers and supervisors. In addition, the recruits were given surveys before and after going through law enforcement training.

The most significant finding is that the percentage of officers willing to pursue increases as the seriousness of the crime increases. Thus, the need to immediately apprehend a suspect for a serious crime is the most important concern for law enforcement personnel when deciding whether or not to pursue. Also, officers from the different agencies reported similar findings regarding their attitudes toward pursuits. Police personnel were found to view violent felonies as the most important offense to justify a risky pursuit. Also, they viewed traffic conditions as the most important risk

factor for the police, the public, and the suspect. Finally, the study found that training influences recruits' willingness to pursue. The recruits were significantly less likely to pursue a suspect for all of the different offenses after receiving training than they were before the training.

The results from the public surveys show findings similar to those of the officer surveys. Public opinion shows that the public overwhelmingly support pursuits for serious crimes. Also, the data reveal that support diminishes with the seriousness of the original offense. Interestingly, the study shows that public support diminishes when citizens receive information about the dangers of pursuits. Therefore, as citizens become more informed, they are less likely to support the use of pursuits to chase suspected criminals.

The Pursuit Management Task Force's report to the National Institute of Justice (1998), mentioned previously, also analyzed officer and public opinion toward pursuits. The researchers administered surveys to agencies, line officers and the general public in nine western States. The results show strong similarities between the attitudes of officers and the public. The findings presented in this article are also similar to those of Alpert and his colleagues (2000). The public opinion surveys show strong support for reasonable pursuits. However, the data display a high number of "don't know" answers regarding the application or suitability of various types of pursuit technologies. The line officer surveys also show strong support for reasonable pursuits, with strong agreement for effective supervision of such pursuits.

The attitudes of officers and the public regarding pursuits provide valuable information for those devising pursuit policies. The most important factor in determining

support for pursuits is the seriousness of the offense. This is true for the public as well as the officers. Therefore, if an agency is writing a pursuit policy, it may be wise to restrict pursuits for offenses involving traffic violations as these are relatively minor offenses. As statistics show, most pursuits begin with traffic violations. Thus, restricting pursuits for traffic violations would significantly cut down on the amount of pursuits engaged in.

These two studies also show the impact of education on attitudes toward pursuits. Recruit surveys showed that they were less likely to engage in pursuits after they had received formal training. Likewise, the public was less likely to support the use of pursuits once they had been educated about pursuit statistics. These findings suggest a need for overall education on police pursuits. Educating officers will decrease the chances that they will engage in unnecessary and dangerous chases. Also, more informative research concerning public opinion will be made possible by providing more information to the public concerning police pursuits. This is because citizen surveys provide little information when they are ill-informed about the research topic.

Offenders' Perspective

In order to fully understand the context surrounding pursuits, research should examine attitudes of the offenders. Understanding these attitudes may give insight as to why suspects flee and what the different actions undertaken by the officer will produce in terms of offender reactions. This will give patrolmen a better understanding of how their reactions can alter the behavior of the fleeing suspect. Dunham and his colleagues (1998) interviewed jail inmates in Omaha, Nebraska, Miami, Florida, and two counties in South Carolina, concerning recent pursuit experiences. Their initial screening question was, "Have you fled from the police in your vehicle in the last twelve months?" (1998: 4).

This research provided a number of findings. First, the research failed to support the hypothesis that escapees were more desperate or were involved in more serious offenses than those who were arrested. Second, the findings also failed to support the hypothesis that escapees would have had more experience at fleeing the police than those offenders who had been apprehended. The more practiced fugitives were no more likely to escape than those with chase experience. Third, the number of pursuits reported by suspects was greater than the number reported by police. This suggests that the police may not have reported instances when the suspect was not apprehended

One important statistic revealed by the survey is that 72% of the suspects said they were concerned for their own safety. On the other hand, 63% said that they were concerned for the safety of the public. This means that officers must be cognizant of public safety, as 37% of the offenders are not. Also, a number of factors were identified that influenced the willingness of suspects to take extreme risks to escape. Previous experience of being chased by the police, thinking about the potential punishment during the chase, concern for one's own safety and the safety of others, and driving under the influence of alcohol or drugs all increased the odds of risk-taking. Finally, they found that the officer's actions may have influenced those of the subject. If the officer continued to chase, the suspect was likely to continue to flee. Conversely, if the officer terminated the chase, the suspect was more likely to slow down in a short distance. This essentially means that the officer may be able to indirectly control the speed of the suspect through his own pursuit tactics.

Dunham, Alpert, Kenny and Cromwell (1998), investigated police pursuits from the perspective of the offenders. In reporting their findings, they argue that, "Perhaps the

officer's most powerful tool to protect public safety would be to turn off his emergency equipment." (1998: 11). While this advice certainly does not apply in all cases, knowing how pursuing officers' actions influence the actions taken by the suspects provides a wider scope of knowledge concerning police pursuits.

Alternatives and Technologies

Research has shown that high-speed chases can be very dangerous and costly events. Therefore, new technologies and alternatives have been introduced that aim to decrease the dangers associated with these pursuits. The PMTF (1998) found that more than 50% of all pursuit collisions occurred during the first two minutes of a pursuit. Also, more than 70% of collisions occurred before the sixth minute of a pursuit. This means that technologies and interventions must be able to be utilized early in a pursuit situation in order to prevent collisions.

One device currently being used by agencies is a spiked strip (Hill 2002). Officers deploy the strips in the path of the fleeing suspect creating a controlled loss of air from the suspect's tires. Once the offender crosses the strips, the deploying officer pulls them from the roadway so that pursuing police cruisers can pass unharmed. The Pursuit Management Task Force (1998) found these to be the most frequently used and most effective technology readily available.

Another developing technology is a radar warning system that police can activate that sends a signal to any motorist with a radar detector of an approaching police pursuit. The motorist can then pull over to the side of the road, clearing them of the impending dangers. Other ideas include an electronic device that shoots a burst of microwave energy at the fleeing suspect. This causes the vehicle's electronic system to fail, thus

disabling the offender's car. Helicopters have also been used with good results in pursuits. The vantage point and versatility of the helicopter allows them to keep an eye on the suspect without endangering innocent bystanders. Also, ground officers can slow down and retreat to reduce accident risks when a helicopter is being used for a pursuit (Hill 2002). Unfortunately, utilizing helicopters may be inconceivable for most agencies due to financial constraints.

In addition to developing technologies aimed at making pursuits safer, a couple of pursuit techniques have been introduced. One agency has adopted the Vehicle Intercept Program as an alternative to high-speed chases (Eisenberg 1996). Vehicle interception aims at containing offenders before they can attempt to flee the patrolmen. This technique uses law enforcement automobiles to block a suspect's vehicle that is slowing, stopped, or just beginning to move. Cars traveling at ten miles an hour or more are not considered intercept candidates. Also, only felony suspects and impaired drivers who pose a threat to public safety qualify for interception.

Another controversial technique that has been introduced is referred to as "Pursuit Intervention Technique," "Precision Immobilization Technique," or "PIT." This technique involves easing up to and making contact with a fleeing suspect's car in an effort to cause the target's car to snap sideways and come to a halt (National 1996). Obviously, if one is going to attempt this technique, training must be required and thorough. This method will be analyzed in further detail later in the paper.

Numerous technologies and intervention techniques are currently being developed in an attempt to reduce the dangers inherent in high-speed chases. These range from simple

spiked strips to microwave bursts. If an agency is going to consider one of these options, however, they must take into account the costs and benefits of each method individually.

Summary

Before suggesting policy implications, it is necessary to summarize the findings of the different studies on police pursuits.

- The majority of research on the topic favors more restrictive policies.
- Statistics show a high rate of collisions associated with pursuits (40%), a high rate of deaths per year (350 or more), and a high rate of innocent bystander deaths (42% of those killed).
- Most of pursued drivers have prior motor-vehicle related convictions.
- Many pursuits go unreported, suggesting problems with reporting policies or procedures.
- Officers may be liable if they show “deliberate indifference” in their pursuit actions
- Agencies may be liable if their failure to train an officer amounts to deliberate indifference to the rights of persons with whom the police come into contact.
- The standard in Montana is that officers must drive with “due regard” for the safety of all persons.
- Involvement in a pursuit increases an officer’s adrenaline and excitement.
- Seriousness of the offense is the most important factor regarding whether or not to pursue for both officers and the public.
- Training impacts an officer’s willingness to pursue.
- Officer’s actions influence the suspect’s actions.

- Research has failed to show that having a more restrictive policy results in an increase in the number of offenders who choose to flee (Palmer 2003).

However, Pipes and Pape (2001: 5) suggest explain that “. . . anecdotal evidence suggests that such policies do not result in a change in the number of suspects who choose to flee.

Policy Implications and Conclusions

Motor-vehicle pursuits is a hotly contested topic in law enforcement today. Chasing a suspect in a police cruiser places the officer, the public and the suspect at risk of bodily harm or death. While there are a number of different factors that need to be taken into consideration when deciding whether or not to pursue, this decision should not be left solely to the patrol officer. This decision should be controlled by a comprehensive policy, thorough training, and direct supervisor contact. While restricting an officer's discretion in a pursuit situation may be argued to reduce the deterrent effect of the police, the majority of research on the subject argues that the benefits of a more restrictive policy vastly outweigh the costs (Alpert 1997, Alpert 2000, Becknell 1999, Dority 1998, Hill 2002, Palmer 2003, Rivara 2004, Singh 2004).

According to the findings from previous studies on police pursuits, law enforcement administrators should take into consideration a number of different factors when implementing a pursuit policy. First, the policy should be clearly written in order avoid ambiguity and should take into consideration state laws regarding police pursuit. An effective policy should allow officers to pursue only those suspects whom they have reasonable grounds to believe have committed or attempted to commit a violent felony. Second, training requirements should be implemented and built around the specific policy

of the agency. This training should be ongoing, include classroom instruction, teach officers risk assessment techniques, and inform the officers about the mental impacts of a high-speed chase. Third, a supervisor who has been trained in risk assessment must take control of the pursuit, inform the officer's decisions, and terminate the pursuit when necessary. Fourth, officers should be held accountable for their actions and should be required to fill out comprehensive reports concerning their involvement in pursuits. These reports should be evaluated by administrators, who then provide feedback to the officers concerning their actions.

The dangers of high-speed pursuits are too great to be undertaken every time a driver attempts to elude the police. By creating more restrictive pursuit policies, agencies can reduce the amount of pursuits their officers are involved in. This reduction in pursuits will ultimately lead to safer streets, less collisions, and less litigation for law enforcement agencies. The second half of this paper applies what the previous research has suggested about police pursuits to a specific law enforcement agency, the City of Missoula Police Department. The goal is to increase the efficiency and safety of the patrolling officers' actions when they encounter a pursuit situation.

Missoula's Policy and Recommendations

Policy

The Missoula Police Department's pursuit policy can be classified as a judgmental one. As stated previously, a judgmental policy allows the pursuing officers to make all of the major decisions relating to initiation, tactics, and termination of the pursuit. According to the consensus of the recent research on the topic, judgmental policies allow the pursuing officers too much discretion. The result of this discretion is an increase in risk to the public and the officer, as well as the offender. By restricting its pursuit policy, the Missoula Police Department can enhance the safety of the Missoula citizens without adversely impacting the deterrent ability of the officers.

Another problem with the Department's policy is that it is too vague. In section one of Roman numeral IV, the policy states that shift commanders are responsible for monitoring response modes, and shall have the authority to downgrade or upgrade modes and/or terminate the pursuit. Since there is no other section delineating pursuit guidelines for the patrolling officer, this essentially means that unless otherwise told, the officer can pursue whomever and whenever they wish. The policy needs to include clear guidelines that establish the actions that the patrolmen may use and the circumstances in which they may use them. A clearer, more comprehensive policy will eliminate any confusion the pursuing officer may have, and let him or her know beforehand which techniques or actions are acceptable in different situations.

The Missoula Police Department's Vehicle Pursuit Policy follows. Strengths and weaknesses will then be analyzed. Finally, two potential model policies will be presented. These policies could be utilized by the Missoula Police Department for

updating their own policy. The first model policy comes from Alpert et. al (2000: 166). This policy is highly restrictive and allows officers to pursue only those suspects who have committed or attempted to commit a violent felony. The second model policy comes from the Police Policy Studies Council (Ashley 2005). This policy recommends a Pursuit Management Continuum that guides the different actions of the officer depending on the seriousness of the offense. The full versions of both of these policies can be found in the appendix on page forty-five.

City of Missoula
Police Department
Vehicle Pursuit Policy
Emergency Vehicle Warning Device Appendix

Effective date: June 13, 2002

I. Purpose

The purpose of this policy is to establish guidelines for the use of emergency vehicular warning devices.

II. Policy

It is the purpose of this policy to ensure that all members of the Missoula Police Department adhere to Montana state statutory restrictions on the use of emergency warning devices and that such devices are employed only in prescribed conditions and circumstances and in ways that will minimize the risk of crashes or injuries to employees or the public.

III. Definitions:

Emergency Vehicle: An authorized law enforcement vehicle equipped with emergency lights, siren and other emergency warning devices required by law and used for emergency response situations.

Emergency Warning Devices: Devices placed in/on each agency emergency vehicle that emit audible or visual signals in order to warn others that law enforcement services are in the process of being delivered.

Response Mode: Shall relate to the response of an emergency vehicle, either by the use of audible or visual emergency signals, a combination of these signals or neither one.

Code 1: Shall mean a response by officers with obedience to all traffic laws. (No emergency equipment in use.)

Code 2: Shall indicate emergency lights are utilized but the siren is not in use. In this case, officers responding will use the utmost caution if exceeding the speed limit and/or not adhering to traffic control devices. Officers shall be governed in their operation of police vehicles by Montana Code Annotated section 61-8-107 and 61-9-402.

Code 3: Shall be full use of all emergency warning devices, (lights/sirens), and officers shall be governed in their operation of police vehicles by MCA section 61-8-107 and 61-9-402.

IV. Procedures:

A. Assigning/Determining Response Modes to Calls for Service

- 1. Shift Commanders are responsible for monitoring response modes for calls for service and shall have the authority to downgrade or upgrade response modes and/or to terminate the pursuit.**

B. Use of Emergency Warning Devices While in Emergency Response Mode.

- 1. During an emergency response, emergency lights and/or siren and other emergency signal devices shall be activated as required by law.**
- 2. When responding in an emergency response mode, emergency signal devices may be deactivated at a distance from the scene, (to be determined by the vehicle operator) so as to not alert subjects to law enforcement proximity.**
- 3. When emergency signal devices are deactivated, the operator of the emergency vehicle shall comply with all traffic laws and proceed in a manner consistent with normal traffic flow.**
- 4. The spotlight is primarily utilized to facilitate building and stationary vehicle checks and shall not be directed at the windshield or vision of oncoming traffic.**

C. Use of emergency warning devices while conducting traffic stops.

1. Audible and/or visible warning devices shall be used to make adequate notice of intent to stop a motor vehicle and to provide a safe environment for the vehicle operator, officer and public, during the duration of the stop.

D. Discretionary use of emergency warning devices.

1. Officers may activate emergency signal devices when required while responding to any perceived emergency.
2. When involved in a pursuit, the officer shall advise communications personnel of the nature of the emergency and the emergency response mode that has been taken.
3. Permissible uses of emergency warning devices during non-emergency response situations include, but are not limited to:
 - a. Using emergency lights as “beacons” to protect disabled motorists;
 - b. Using emergency lights when it is necessary to use agency vehicles as protective barriers;
 - c. Traffic stops
 - d. Operators of emergency vehicles shall deactivate emergency warning devices as soon as possible.

Analysis and Recommendations

The main recommendation for this policy is to implement a section that sets restrictions on when the officer is allowed to pursue. The policy states that the shift commanders are responsible for monitoring response modes, and that they have the authority to upgrade or downgrade such modes. However, there should also be a section that informs the officers of the different actions and techniques they can utilize under varying circumstances. This will eliminate any confusion presented by a vague policy and

will prevent the occurrence of dangerous high-speed pursuits for suspects who have committed minor offenses.

There are two effective options for updating this pursuit policy. One option would be to only allow pursuits for certain offenses. For instance, the Missoula Police Department could restrict pursuits for only those suspects who have committed a violent felony. This would eliminate the use of a potentially deadly weapon (motor vehicle) as a means to capture suspects whose actions do not necessitate deadly force. This would also virtually eliminate the Department's susceptibility to tort claims by injured suspects and bystanders, because it would be extremely difficult for an officer to "shock the conscience" of the court (Legal 2005) when they are attempting to catch a fleeing violent felon.

For those administrators who are reluctant to adopt this strict of a policy, there is another equally effective option that allows different types of pursuit techniques under different situations. For example, in the case of a suspect who has committed a minor offense, the officer would be able to utilize less invasive tactics, such as trailing behind at a safe distance while using both the lights and sirens to indicate that the suspect should stop. For a more serious offender, meanwhile, the officer would be allowed to use more invasive techniques, such as controlled contact. This type of policy would essentially match the seriousness of the offense with the invasiveness of the pursuit tactics employed, similar to the way that the use of force is monitored.

Another recommendation for this policy is to write it more clearly and more comprehensively. The writing is currently too vague, which could result in confusion and frustration on the part of the pursuing officers and supervisors when the pursuit is taking

place. The first step in this process should be to explain that while officers are granted certain immunities during emergency driving conditions, these immunities are granted in order to save lives, and not to put them at risk. Second, the policy should include a clear definition of a vehicular pursuit. An example of a definition of pursuit is the one used by the International Association of Chiefs of Police (Traffic 1995:1). This definition states that a pursuit is

. . .an event that is initiated when a law enforcement officer, operating an authorized emergency vehicle, gives notice to stop (either through the use of visual or audible emergency signals or a combination of emergency devices) to a motorist who the officer is attempting to apprehend, and the motorist fails to comply with the signal by either maintaining his or her speed, increasing speed, or taking evasive action to elude the officer's continued attempts to stop the motorist.

By including a clear definition of what a pursuit is, the policy will further eliminate any ambiguity. Finally, the policy needs to include a list of, and definitions for, the different pursuit tactics that the officers are allowed to employ. If the officer is allowed to use a stationary roadblock, this should be stated and a definition of what a stationary roadblock is should be included. Conversely, if the officer is not allowed to use a stationary roadblock, this should be stated as well. A clearer and more comprehensive policy eliminates ambiguity and more fully informs the officers and supervisors involved in a pursuit.

Police Executive Research Forum (PERF) Model Policy

The PERF model policy, written by Geoffrey Alpert, Dennis Kenney, Roger Dunham, and William Smith (2000), is a clear and comprehensive model policy that restricts pursuits to only those situations in which the suspect has committed a violent felony or when there is reasonable expectation of an apprehension of the suspect. This

type of policy would eliminate the occasions when a high-speed chase would be undertaken for non-violent offenders. This policy, therefore, would reduce the amount of pursuit-related casualties, making the Missoula Police Department less susceptible to liability claims.

Mission Statement. The first section of the PERF model policy is the mission statement. Much like the first section of Missoula's policy, the mission statement explains that it is the purpose of this policy to establish guidelines for the use of emergency vehicle operations. However, this mission statement also reminds the officers that the emergency vehicle's operating exemptions, that are provided to them by law, are provided to help save lives and not to put them at risk.

Definitions. The second section provides a list of necessary pursuit-related definitions. While Missoula's policy also provides a list of definitions, there are additional terms that could be defined in order to prevent misunderstanding. For instance, if the Department decides to restrict their policy to suspected violent felons, they will want to add the definition of a violent felony and a list of those felonies. This ensures that pursuing officers know when they can enter into a pursuit. Also, the list of definitions should include pursuit techniques and devices that the officers are allowed to utilize, such as roadblocks and spiked strips.

Pursuit Considerations. The third section, pursuit considerations, is the most important part of this model policy. According to this policy, a pursuit is justified only when an officer knows, or has reasonable grounds to believe, that the fleeing suspect has committed or attempted to commit a violent felony, or when there is reasonable expectation of an apprehension of the suspect. They also set out a list of additional

factors to be considered. The first factor is that the initial decision to start a pursuit should rest primarily with the officer who has initiated the stop. The officer should take into consideration the crime for which the suspect is wanted, and the risk the pursuit poses to the community. Next, they state that the officer should continually consider the risks created by the pursuit, and that the element of personal challenge should never enter into the decision to continue a pursuit. Finally, a supervisor may override an officer's decision to continue a pursuit.

Procedures and Tactics. The next section of the model policy is the procedures and tactics section. They state that when an officer engages in a pursuit, there should be no more than two emergency vehicles involved in the pursuit without a supervisor's permission. This keeps at a minimum the amount of speeding vehicles on the roadway. Next, the unit closest to the fleeing vehicle will be known as the primary unit, while the secondary unit will remain a safe distance behind, but close enough to provide support and communicate with dispatch. Finally, the officer must give consideration to the suspect's reckless driving. If the suspect is not going to terminate voluntarily, the officer and supervisor will have to be able to justify a continued pursuit.

Primary Unit's Responsibilities. The following section designates the primary unit's responsibilities. The first responsibility of the primary unit is to notify dispatch and provide the following information: unit identification, violent felony for which the officer is pursuing, suspect vehicle description, location, direction and speed of the vehicles, description of the occupant(s) and whether the suspect is known to the officer. Based on this information, the supervisor will make the decision to either continue or terminate the pursuit. If the supervisor decides that the pursuit should be continued, the

policy lists a number of procedures that the primary officer can and can not engage in (pg. 170). Whether a department has a restrictive policy or not, the policy should include a pertinent list of procedures such as these.

Supervisor's Responsibilities. After the primary unit's responsibilities section, the policy lines out the supervisor's responsibilities. These responsibilities consist of the supervisor maintaining total control over the pursuit activities. The supervisor must monitor the pursuit, provide the primary unit with appropriate direction, and terminate the pursuit when necessary. A trained supervisor controlling the activities of the pursuit keeps the officers safe and within the boundaries of legal operating procedure.

Pursuit Termination. The final section of the PERF model policy is pursuit termination. They provide eight different factors that influence the termination of a pursuit:

1. The primary unit's driver and the shift supervisor shall continually evaluate the risks and the likelihood of apprehending the suspect.
2. If the pursuit conditions become too risky for safe continuation, it is futile to continue.
3. A supervisor orders it terminated.
4. If information indicates that pursuit is out of policy.
5. When normal communication is broken.
6. When officers lose visual contact of the suspect, or cannot determine the suspect's direction of travel.
7. When air support has made visual confirmation of the suspect vehicle.
8. When the suspect is known and could be apprehended later.

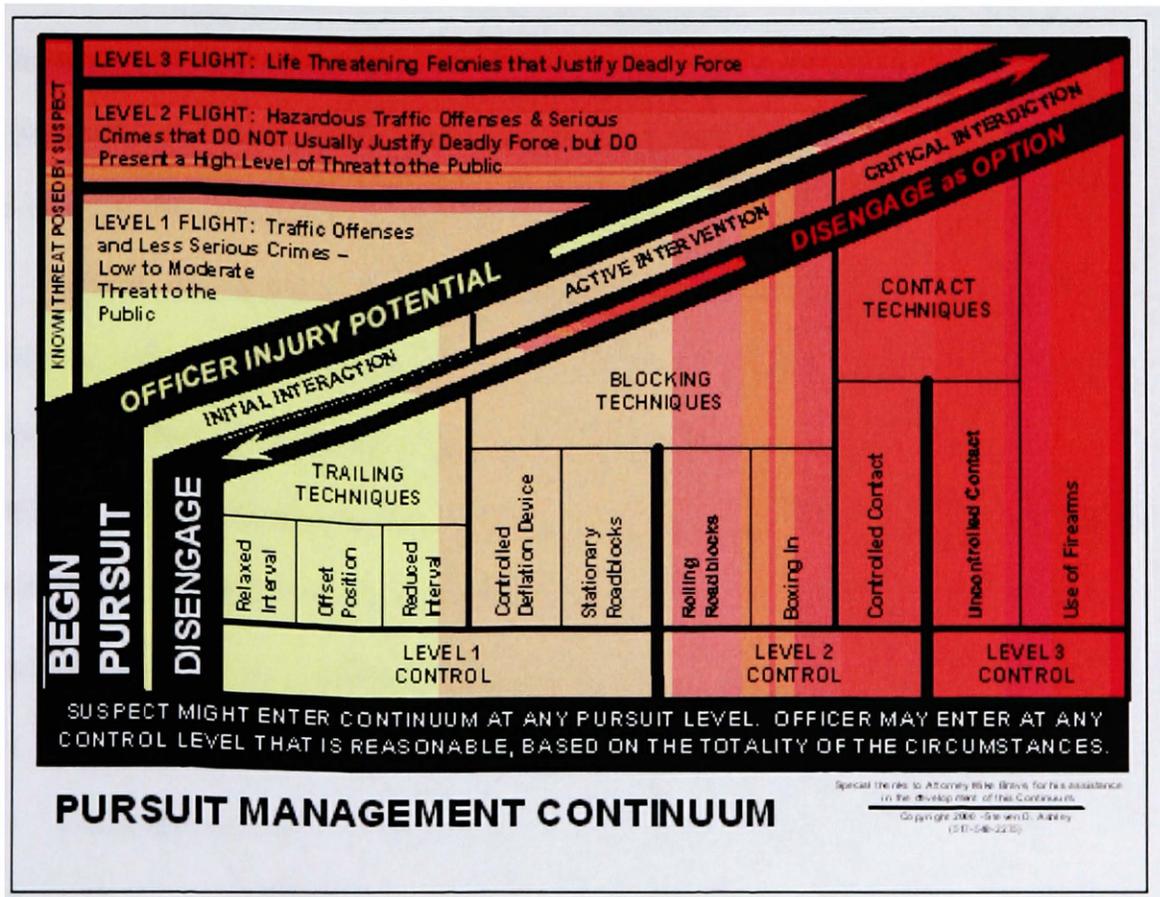
In addition to these guidelines, the policy explains that it is preferable that the driver of the primary unit does not take the suspect into custody. If at all possible, an officer from a backup unit or a nondriving officer should physically take the suspect into custody. This will ensure that the primary officer's increase in adrenaline does not lead to excessive use of force. Finally, the pursuit should be evaluated and officers found in violation of the pursuit policy should be disciplined according to the department's discipline policy.

The PERF model policy provides one example of a restrictive policy that the Missoula Police Department could choose to adopt. This policy is written clearly and unambiguously, and restricts pursuits to certain, dangerous situations. This policy would make the Missoula Police Department more immune to litigation and reduce the number of pursuits engaged in by not allowing pursuits for minor violations of the law. Many law enforcement professionals, however, believe that this pursuit policy is too restrictive and allows law violators to go free by simply evading the police. If an agency does not want to adopt a policy that is as restrictive as the PERF policy, they can choose to implement the policy written by the Police Policy Studies Council (Ashley 2005). This policy is less restrictive and allows the officers to use different pursuit techniques depending on what crime the suspect has committed.

Police Policy Studies Council

Administrators may not wish to limit their pursuits to only those suspects who have committed a violent felony. In this case, there is an equally viable option for making the pursuit policy safer and more comprehensive. The Police Policy Studies Council (Ashley 2005), has written a model policy that works much the same as a use of

force continuum. According to this model, called the Pursuit Management Continuum, officers may use pursuit tactics and techniques that are more invasive as the pursuit causation factors become more dangerous to the public. This type of policy will help to alleviate ambiguity by establishing easily comprehensible guidelines. It will also lessen the potential for litigation arising from police pursuit activity by allowing only those tactics that are necessary, and match degree of threat posed to the general public by the fleeing vehicle. Finally, the Continuum provides a more tangible basis for evaluating officer deviations from department policy. The following is a graphic representation of the Pursuit Management Continuum introduced by the Police Policy Studies Council.



The use of the Pursuit Management Continuum is based on a few important concepts. First, an officer can terminate a pursuit, or de-escalate the control mechanisms,

at any time they reasonably believe it to be necessary. Second, escalation and de-escalation on the Continuum is keyed to the level of pursuit causation factors at work. In other words, officers must match their level of control to the level of threat posed by the suspect. Third, officers should stay at, or below, the control level that matches the pursuit level. It should be the suspect's actions in escalating the pursuit level that prompts the officer to escalate the control level. Finally, officers should only utilize tactics and techniques with which they have been trained.

The continuum classifies the degree of public harm risk, as well as the tactics utilized to control pursuits, according to three different levels: level one control, level two control, and level three control. In general, pursuits at a certain level of public harm risk justify the use of control techniques from the corresponding level. For example, level one pursuits are countered with level one control.

A level one pursuit is a pursuit initiated to apprehend a suspect who has committed a simple traffic offense or a less serious crime. These types of offenses present a low level of risk to the public, and include vandalism, minor theft, and disorderly conduct. Due to the low level of public harm posed by the suspect, hazardous pursuit tactics should not be used at this level of pursuit. The following is a list of techniques generally acceptable in these instances:

1. **Trailing:** the simple act of following along behind the violator while giving both visual and audible indication that the driver should stop.
2. **Offset pursuit position:** this consists of moving the police vehicle one half a vehicle width to either side while continuing to trail.

3. **Reduced Interval:** this technique involves more closely following the violator, either while trailing or while utilizing the pursuit position.
4. **Controlled Deflation Devices:** also called spike strips, these devices create a controlled deflation of the suspect's tires.
5. **Stationary Road Block:** the placement of one or more vehicles in the traveled portion of the roadway. Officers may want to leave a restricted route through the roadblock, as a complete blockage represents a higher level of control, and could be viewed as constitutionally unreasonable.

Level two pursuits are initiated for very hazardous traffic offenses, such as driving while intoxicated or reckless driving, or for more serious crimes, such as assault. These pursuits are initiated for offenses that pose a high level of danger to the public, but not high enough so that deadly force is required. Techniques that are generally acceptable for level two pursuits are:

1. **Rolling Road Block:** the placement of one or more vehicles in the path of the violator's vehicle, in order to cause it to slow or stop.
2. **Boxing In:** A technique where two or more units move into positions around the fleeing vehicle, forming a box. Once the box is formed, all of the officers slow down, causing the suspect to slow down as well.
3. **Controlled Contact:** Intentional contact between the officer's vehicle and the suspect's vehicle. The Pursuit Intervention Technique is an example of controlled contact. In this case, the contact is intended to cause the violator to "spin-out," but in a controlled manner. The use of these techniques requires extensive training and careful planning.

Level three pursuits are initiated for life threatening felonies that justify the use of deadly force in the apprehension of the suspect. Examples of these crimes include: armed robbery, assault with a deadly weapon, rape, and murder. Level three techniques are extremely hazardous and should only be utilized in emergency situations. The techniques and tactics acceptable in these instances are listed below.

1. **Uncontrolled Contact:** This technique, also referred to as ramming, represents a higher level of intentional contact between the officer's vehicle and the fleeing suspect. This maneuver is usually attempted at higher speeds than controlled contact techniques. Uncontrolled contact presents a higher degree of danger to the officers and may constitute deadly force.
2. **Use of Firearms:** The Police Policy Studies Council states that there are some situations when firing a weapon at a fleeing violator may be necessary. However, due to the hazard posed to the public, this should be a last resort and should be exercised with extreme caution.

The Pursuit Management Continuum matches the level of control exerted by the officer to the degree of risk posed by the fleeing individual. This makes the officer's actions more defensible in a court of law because the officer's actions will be viewed as reasonable in light of the risk posed to the public. Furthermore, the Continuum eliminates ambiguity by clearly establishing techniques that may be utilized according to the offense committed by the fleeing suspect. This takes the guesswork out of pursuits and gives officers a solid protocol to follow in pursuit situations.

Summary

According to previous literature on police pursuits and pursuit policies, the Missoula Police Department could benefit from revising their pursuit policy. The main recommendations are to make it more restrictive, and to include clear, comprehensive guidelines for the officers to follow when they are in a pursuit situation. This would reduce the number of unnecessary pursuits and make the Department less susceptible to tort liability claims.

I have provided two different model policies that serve as good examples of clear, restrictive policies. The first one restricts pursuits to situations in which the suspect has committed or attempted to commit a violent felony and the second designates different tactics and techniques that may be utilized by pursuing officers depending on what level of danger the pursuit presents to the public. The Missoula Police Department could reduce pursuits and protect against litigation by adopting one of the two of these policies, or by borrowing certain aspects from either one.

Pursuit Intervention Technique

Introduction

One of the objectives of this research project is to provide a recommendation to the Missoula Police Department, based on a review of available research, as to whether or not the Department should allow pursuing officers to utilize the Pursuit Intervention Technique (PIT). An exhaustive search of empirical literature on police pursuits found that no peer-reviewed research has been done on this technique. The available information on PIT is descriptive, and based on opinions of law enforcement and Criminal Justice professionals. Therefore, I will base my recommendation to the Department on a combination of the literature review on police pursuits in general and the opinions of professionals in the field.

This maneuver, also known as “Precision Immobilization Technique,” “Tactical Vehicle Intervention,” “Tactical Ramming”, and “Legal Intervention,” was developed in the 1980s by BSR Incorporated, an advanced driver training school in West Virginia. It gained popularity in the 1990s and has been refined from its original version, which consisted of more violent ramming than controlled contact. The first law enforcement agency to teach the technique was the Fairfax County Police Department in Virginia (PIT 2005). Today many agencies use this maneuver, including the San Bernardino County Sheriff’s Department, the Los Angeles Police Department, the Los Angeles County Sheriff’s Department, Oklahoma Highway Patrol, and the Midwest City Police Department in Oklahoma.

These agencies, as well as many other professionals, believe that when executed properly, PIT is an intermediate force option that can safely end a pursuit. According to

Geoffrey Alpert, chairman of the University of South Carolina's Department of Criminology and Criminal Justice, "The PIT maneuver, if done properly, is the most effective and non-evasive way to end a chase" (Winton 2005: 2). In a few cases, however, the maneuver has come under fire. In Georgia for instance, a 21-year-old woman and 17-year-old boy were killed when a state trooper used the maneuver on their SUV after a high-speed chase in 2004. Critics point to this incident as an obvious example of why PIT should not be used. Proponents, on the other hand, argue that the conditions of the pursuit were not suitable and that the technique should never have been used in the first place. Alpert adds, "It is a phenomenal tool if done well. But, like any tool and tactic, it can be abused" (Winton 2005: 2).

Performing the Pursuit Intervention Technique

This maneuver begins when the pursuing vehicle pulls alongside the fleeing vehicle so that the front portion of the pursuer's car is aligned with the rear portion of the fleeing vehicle. The pursuer initiates contact with the target's side, and then steers sharply into the target. When the fleeing vehicle's tires start to skid, the officer breaks quickly and continues turning in the same direction until clear of the target. When done properly, the technique causes the fleeing vehicle to spin and come to a stop.

This maneuver can only be used in places where there are no other vehicles around and where there are no curbs that might cause the suspect's vehicle to flip over. Also, the technique should not be used when the vehicles are traveling at speeds in excess of 35 miles per hour. Finally, the target vehicle can be no bigger than the police cruiser (Valdez-Dapena 2005).

Legal Opinions

Intentional contact between vehicles has typically been considered deadly force. However, recent litigation has mitigated this precedent. In *Adams v. St. Lucie County Sheriff's Department* (1993), the United States Court of Appeals ruled that, "While fatalities may result from intentional collisions between automobiles, they are infrequent, and therefore deadly force should not be presumed to be the level of force applied in such instances" (Yates 2005: 2). Therefore, controlled contact, such as the Pursuit Intervention Technique, will not be viewed by the courts as deadly force in pursuit situations.

Then, in *Donovan v. City of Milwaukee* (1994), the Appellate Court recognized this principle, but added that collisions between automobiles and motorcycles frequently lead to the death of the motorcyclist, and therefore a presumption that deadly force was used in such intentional collisions is more appropriate (PIT 2005). This essentially means that the PIT maneuver will not be viewed as deadly force unless it is used on a fleeing motorcycle. These two cases can be interpreted by police administrators to mean that the use of controlled contact is accepted for all vehicles except for motorcycles.

Other Considerations

Utilization of PIT requires careful consideration of all the different factors involved in a pursuit situation, including: location, traffic, pedestrians, speed, suspect's offense, and the type and size of the suspect's vehicle. Because of the potential liability, most departments limit its use to only high-risk scenarios. Most departments specify that the PIT should only be used to stop pursuits that are immediately dangerous and ongoing. Also, when possible, three pursuers should be present when a pursuit is executed. One of

the officers performs the technique, and the other two react to the suspect's actions. Finally, most departments stipulate that a supervising officer must decide when the Pursuit Intervention Technique is to be used.

Recommendations

Based on previous research and the opinions of experts in the field, the Missoula Police Department should implement and utilize the Pursuit Intervention Technique. This maneuver, when performed properly, provides a swift and relatively harmless option to ending a potentially deadly pursuit in a matter of seconds. I believe, however, that if the Missoula Police Department decides to implement PIT, it must amend its pursuit policy, setting guidelines that designate when an officer can pursue, and when the officer can use the PIT. This technique should not be used on any suspects who have committed, or are suspected of committing, misdemeanor offenses.

The technique could be easily written into a policy such as the highly restrictive PERF model policy, or the Pursuit Management Continuum. As the PERF policy only allows pursuits for those suspects who have committed a violent felony, the Pursuit Intervention Technique would only be allowed for these suspects as well. This would prevent any tort liability claims resulting from injury or death caused by the technique. Similarly, the technique could be allowed in level two or level three pursuits if the Missoula Police Department chose to adopt a policy similar to the Pursuit Management Continuum. This would ensure that the level of control exerted by the officers matched the level of danger posed by the fleeing suspect.

The Pursuit Intervention Technique is a viable way for Missoula police officers to end a pursuit before there is enough time to cause any injuries or fatalities. If the

technique is done properly and under the right circumstances, it has the potential to save lives and money. Therefore, if the Missoula Police Department adopts this technique, it must make its policy more restrictive, and ensure that patrol officers are given adequate training on the application of the technique.

Conclusion

One of the most difficult activities for police administrators to manage is that of vehicular pursuits. This dangerous endeavor results in the death of hundreds of citizens every year, and the injuries of countless others (Hill 2002). These accidents result in emotional distress for the officers involved, negative public relations for departments, and possible tort liability claims. It is therefore necessary for both police administrators and patrol officers to take steps to reduce the risks inherent in these pursuits. While pursuits simply cannot be abolished, they need to be restricted. It is imperative to create a balance between enforcing the law and ensuring the safety of the public. The appropriate balance, according to the existing empirical literature, would favor restrictive pursuit policies (Alpert 1997, Alpert 2000, Becknell 1999, Dority 1998, Hill 2002, Palmer 2003, Rivara, 2004, Singh 2004, Yates 2004).

Previous research points out a number of reasons why these policies need to be restricted. Most basically, high-speed pursuits are dangerous events that cause hundreds of fatalities every year (Hill 2002). Also, there is no research that supports the hypothesis that a more restrictive policy encourages suspects to flee. If a department restricts its policy, it is unlikely that there will be an increase in the amount of criminals fleeing from the police. Furthermore, a restrictive pursuit policy will enhance a department's immunity to litigation that arises from injuries or deaths caused in a pursuit. If officers are only allowed to pursue suspects who pose a serious risk to the public, any claims resulting from such pursuits will be much more defensible for the department. Finally, since a majority of police pursuits arise from traffic violations, a restrictive policy will greatly reduce the number of pursuits that officers engage in (Hill 2002). A decrease in

the number of pursuits means a decrease in dangerous situations that the patrolmen are involved in, thereby enhancing officer safety.

The Missoula Police Department currently has a judgmental policy that is written too vaguely for clear comprehension and effective control. If the Department chooses to restrict its policy, it will gain from all the benefits discussed above. Also, if they write a clearer version, there will be no room for confusion and ambiguity, resulting in more precise, policy-oriented actions. Finally, the Department could benefit from implementing the Pursuit Intervention Technique. This technique provides a fast, precise option for ending a pursuit before it causes any injuries or fatalities. If the Missoula Police Department adopts the PIT, however, it should definitely heed the recommendation of restricting its pursuit policy. This will prevent the use of such an invasive technique on suspects who have committed relatively minor crimes.

This research project has provided two different examples of model pursuit policies that the Missoula Police Department could either choose to adopt use as guidelines for revising its own policy. The PERF policy highly restricts the actions of the patrolmen, allowing pursuits only when the suspect has committed, or attempted to commit, a violent felony. This policy is written clearly and will be easy for all parties to understand. The Pursuit Management Continuum, meanwhile, classifies pursuits into three categories, according to the level of danger imposed on the public(Ashley 2005). In turn, each category is matched by a level of control that the officers may use in attempting to apprehend the suspect. This policy is also written clearly and will help officers and supervisors elevate their performance under stressful pursuit situations.

High-speed pursuits put officers, suspects, and the public in grave danger. While police officers must to be able to pursue in certain situations, their right to pursue should be limited to certain offenders and certain situations. By restricting pursuit policies, police administrators can ensure a safer environment without sacrificing the deterrent capability of the officers.

References

- Alpert, Geoffrey P., Dennis Jay Kenney, Roger G. Dunham, and William C. Smith. 2000. *Police Pursuits: What We Know*. Washington, DC: Police Executive Research Forum.
- Alpert, Geoffrey P. 1997. "Police Pursuit: Policies and Training." National Institute of Justice. Washington, DC. Pp. 1-8.
- Ashley, Steve. 2005. "Reducing the Risks of Police Pursuits." The Police Policy Studies Council. 1-13.
http://www.theppsc.org/Staff_Views/Ashley/reducing_the_risks_of_police_pursuit.htm
- Becknell, Conan, G. Larry Mays, and Dennis M. Giever. 1999. "Policy Restrictiveness and Police Pursuits." *Policing: An International Journal of Police Strategies and Management* 22: 93-111.
- Board of Police Commissioners. 2005. Los Angeles Police Commission Significant Accomplishments.
http://www.lapdonline.org/organization/bpc/significant_accomplishments.htm
- Brower v. Inyo County*, 489 U.S. 593 (1989).
- City of Canton Ohio v. Harris*, 109 S. Ct. 1197 (1989).
- Dority, Barbara. 1998. "More Power, Less Responsibility." *The Humanist* 58: 3-5.
- Dunham, Roger G., Geoffrey P. Alpert, Dennis Jay Kenny, and Paul Cromwell. 1998. "High-Speed Pursuit: The Offenders' Perspective." *Criminal Justice and Behavior* 25: 30-46.
- Eisenberg, Clyde, and Cynthia Fitzpatrick. 1996. "An Alternative to Police Pursuits." *The FBI Law Enforcement Bulletin* 65: 16-20.
- Graham v. Connor*, 109 S. Ct. 1865. (1989).
- Hill, John. 2002. "High-Speed Pursuits: Dangers, Dynamics, and Risk Reduction." *The FBI Law Enforcement Bulletin* 71: 14-19.
- Legal & Liability Risk Management Institute. 2004. "Fourth Amendment Seizures and Pursuits." Public Agency Training Council. Pp. 1-3.
- M.C.A. Title 42. Chapter 21. Section 187.
<http://data.opi.state.mt.us/bills/mca/61/8/61-8-107.htm>
- National Institute of Justice. 1998. "Pursuit Management Task Force." Pp. 1-6.

National Law Enforcement and Corrections Technology Center. 1996. "High-Speed Pursuit: New Technologies Around the Corner." National Institute of Justice. Pp. 1-9.

Palmer, Darren. 2003. "Hot Pursuit: Law Enforcement Practice and the Public Interest." *Alternative Law Journal*. 28: 32-37.

Pipes, Chris, and Dominick Pape. 2001. "Police Pursuits and Civil Liability." *The FBI Law Enforcement Bulletin* 70: 1-16.

"PIT Maneuver. 2005. *Wikipedia, the Free Encyclopedia*.
http://www.lapdonline.org/organization/bpc/significant_accomplishments.htm. Retrieved 10-12-05.

Rivara, Fred. 2004. "Motor Vehicle Crash Deaths related to Police Pursuits in the United States." *Injury Prevention*. 10: 93-95.

Sacramento County v. Lewis, 523 U.S. 833 (1998).

Singh, Shruti D. 2004. "City is Tapping the Brakes on Cop Car Chases." *Crain's Chicago Business* 27: 22-25.

Terrell v. Larson, 03 U.S. 1293 (2004).

Traffic Law Enforcement Packet. 2005. "Pursuit Policy." <http://nhtsa.dot.gov>

U.C.A. Title 42. Chapter 21. Section 1983.
http://www4.law.cornell.edu/uscode/html/uscode42/usc_sec_42_00001983----000-.html

Valdes-Dapena, Peter. 2005. "How Police Chases Really Work." CNN/Money.
<http://www.policedriving.com/cnn.htm>.

Winton, Richard. 2005. "LAPD Shows Two Ways to End Pursuits of Fleeing Cars." *Los Angeles Times*.

Yates, Travis. 2005. "Pursuit Intervention Technique: Myth vs. Fact."
<http://www.policeone.com>

Yates, Travis. 2004. "Law Enforcement Pursuits: Managing the Risks."
<http://www.policeone.com>

Appendix A

PERF Model Policy

Police Department Pursuit Policy Elements

1. Mission Statement

The ... Police Department's primary mission is to save lives while enforcing the law. In addition, the ... Police Department is responsible for guiding its officers in the safe and reasonable performance of their duties. To accomplish these goals, the following department policy is provided to control and regulate how officers undertake and perform emergency vehicle operations. When engaged in emergency vehicle operations, in the performance of official duties, drivers of authorized emergency vehicles are granted exemptions from certain traffic laws by statute. These exemptions are provided to help save lives, not to place them at risk.

2. Definitions

A. Pursuit-A multistage process by which a police officer initiates a vehicular stop and a driver resists the order to stop, increases speed or takes evasive action, and/or refuses to stop. Once the driver refuses to obey the police officer's order, the pursuit policy and procedures will attach.

B. Terminations of Pursuit- A pursuit shall terminate when the primary officer turns off the emergency equipment, resumes routine vehicle operation and informs dispatch. The pursuit also ends when the suspect's vehicle stops.

C. Violent Felonies-Felonies in which a perpetrator uses aggressive physical force. A violent felony includes the following offenses:

1. Homicide, in any degree
2. Kidnapping
3. Assault in the first or second degree
4. Robbery in the first degree
5. Forcible Rape
6. Forcible Sodomy
7. Arson in the first degree

D. Divided Highway- Any highway that has been separated into two or more roadways by

1. a physical barrier, or
2. a clearly indicated dividing section so constructed as to impede vehicular traffic.

E. Channeling- A progressively narrowing passageway to direct vehicular traffic into a desired lane on the roadway.

F. Compelling Path-A channeling technique with a modified roadblock located at the narrowed end. The compelling path differs from a termination roadblock in that the driver has an exit option at the narrowed end.

3. Pursuit Considerations

- A. Pursuit is justified only:
 - 1. When an officer knows or has reasonable ground to believe that the fleeing suspect has committed or attempted to commit a violent felony.
 - 2. When there is reasonable expectation of an apprehension of the suspect.
- B. Other factors to be considered:
 - 1. The initial decision to start a pursuit shall lie primarily with the officer who has initiated the vehicular stop, after considering the elements of the policy.
 - 2. These elements shall include, but are not limited to, the crime for which the suspect is wanted (the need to apprehend immediately) and the risk the pursuit poses to the community (traffic, pursuit area, environmental factors, and weather conditions).
 - 3. The officer must continually consider the risks created by the pursuit, as those risks change during a pursuit.
 - 4. The element of personal challenge to the officer must never enter into a decision to continue a pursuit.
 - 5. Terminating a pursuit shall be considered a decision made in the interest of community safety and most appropriate action to take.
 - 6. A supervisor may override an officer's decision to continue a pursuit at any time.
- C. Standards applied to pursuit evaluation, as well as the decision to continue a pursuit, shall include the following:
 - 1. If the pursuit were to result in injury or death, would a reasonable person understand why the pursuit occurred or was necessary?
 - 2. Is the need to immediately catch the suspect more important than the risk created by the pursuit?
 - 3. Do the dangers created by the pursuit exceed the dangers posed by letting the perpetrator escape?

4. Procedures and Tactics:

- A. When an officer engages in pursuit:
 - 1. No more than two emergency vehicles are to be in pursuit without a supervisor's specific permission.
 - 2. Officers shall drive emergency vehicles safely and with due regard for the safety of all motorists.
 - 3. Emergency-vehicle drivers are permitted to violate traffic regulations when necessary-to save lives, not to place them at unnecessary risk.
 - 4. The emergency vehicles shall be known as the primary unit, which will be the unit closest to the fleeing vehicle, and the secondary unit, which will remain at a safe distance behind the primary unit, but close enough to provide support and communicate with dispatch.
 - 5. The officer will give consideration to the suspect's reckless driving.
 - 6. If the suspect is not going to terminate voluntarily, the officer and supervisor will have to be able to justify a continued pursuit.

5. Primary Unit's Responsibilities

NO OFFICER SHALL ENGAGE IN PURSUIT IF HE OR SHE HAS NOT PASSED A PURSUIT DRIVING COURSE (which includes decision making) APPROVED BY THE DEPARTMENT.

- A. The primary unit's driver shall notify dispatch while in pursuit, and shall provide at least the following critical information to dispatch:
 - 1. Unit identification.
 - 2. Violent felony for which the officer is pursuing the suspect.
 - 3. Suspect vehicle description, including the license number.
 - 4. Location, direction and speed of both vehicles.
 - 5. Description of the occupant(s), and whether the suspect is known to the officer.
 - 6. Any other important information about the suspect vehicle or environment (e.g., the suspect is traveling without lights, the suspect almost hit a vehicle or fixed object, the officer lost sight of the suspect vehicle).
- B. Based on the known information, the supervisor shall make the decision to either take further appropriate action or terminate the pursuit.
- C. No officer will pass another vehicle in pursuit without a supervisor's permission.
- D. No officer will intentionally make vehicle-to-vehicle contact without the shift supervisor's permission. This action must conform to the departmental policy on use of deadly force.
- E. No officer will pursue a suspect the wrong way on any roadway.
- F. Officers will establish no roadblocks without a supervisor's specific directions. This action must conform to the policy on use of deadly force.
- G. Officers will use only fully marked police vehicles, with all emergency equipment activated, as pursuit vehicles.
- H. A motorcycle unit may become involved in a pursuit for a very brief time, will relinquish primary unit responsibility to a marked vehicle as soon as possible, and then must disengage from the pursuit.
- I. No unmarked vehicle shall be permitted to become involved in a pursuit.
- J. If a supervisor communicates with the driver of a pursuit vehicle, the driver shall acknowledge the communication.

6. Supervisor's Responsibilities

- B. The shift supervisor shall have control over pursuit activities.
- C. Once notified that a unit has become involved in a pursuit, the shift supervisor shall acknowledge his or her presence immediately, monitor the pursuit activities and provide the primary unit's driver with appropriate direction.
- D. The shift supervisor has the authority to terminate any pursuit.
- E. Options for the shift supervisor to keep in mind are, but are not limited to, the following:
 - 1. Using parallel pursuits in cases involving wrong-way drivers.
 - 2. Notifying the next jurisdiction
 - 3. Using channeling techniques
 - 4. Creating a compelling path.
- F. Post-pursuit chain of command notifications are required.

7. Dispatch's Responsibilities

Dispatch shall coordinate critical information, quickly and accurately. If any of the information the primary unit should provide is not provided, dispatch must inform the supervisor.

8. Pursuit Termination

A. Factors influencing pursuit termination:

1. The primary unit's driver and the shift supervisor shall continually evaluate the risks and likelihood of apprehending the suspect.
2. If the pursuit conditions become too risky for safe continuation, i.e., it is futile to continue.
3. A supervisor orders it terminated.
4. If information indicates the pursuit is out of policy (e.g., the crime was not a violent felony).
5. When normal communication is broken.
6. When officers lose visual contact of the suspect, or cannot determine the suspect's direction of travel.
7. When air support has made visual confirmation of the suspect vehicle.
8. When the suspect is known and could be apprehended later.

B. Action to take when a pursuit is terminated:

1. Officers will turn off emergency equipment.
2. The termination will be broadcast to dispatch.
3. Officers will return to normal patrol duties.
4. Officers will not follow the suspect but will stop or turn around. Thus, the suspect will believe he or she is safe, and will slow down, removing the risk to the public.
5. Officers may look for the suspect in alleys or places where a car may be abandoned.

9. Interjurisdictional Pursuit:

- A. The primary unit's driver, before leaving his or her jurisdiction, shall update the dispatcher with critical information.
- B. The primary police vehicle shall remain the primary vehicle in other jurisdictions.
- C. Upon being notified that the pursuit is entering another agency's jurisdiction, the dispatcher shall forward all critical information to that agency.
- D. When a pursuit enters this jurisdiction:
 1. The dispatcher shall update the shift supervisor with critical information.
 2. The shift supervisor shall determine if the pursuit is in policy.
 3. The shift supervisor shall provide the appropriate direction to units.

10. Air Support:

Once contact is made with air support, and air support has the suspect vehicle in sight, ground pursuit shall terminate, and officers shall turn off all emergency equipment and return to the speed limit.

11. Apprehension of the Suspect(s):

A. After a vehicular pursuit has ended, and the suspects are being apprehended, it is preferable that the driver of the primary unit not arrest or take the suspect(s) into custody.

B. If possible, an officer from a backup unit or the nondriving officer in the primary unit shall physically take the suspect(s) into custody.

12. Care and Consideration of Victims:

Any bystanders (or family members thereof) who are involved must be informed about the pursuit, and offered reasonable assistance.

13. Pursuit Summary Report:

The primary officer and the supervisor shall file a pursuit summary report.

14. Evaluation and Critique:

The appropriate division commander and bureau commander shall conduct a pursuit evaluation and critique. Results of this evaluation shall be distributed to all personnel involved. These results will be used to evaluate current pursuit activities.

15. Discipline:

Any officer who is found to have violated policy will receive discipline according to the department's progressive discipline policy.

Appendix B

Police Policy Studies Council

REDUCING THE RISKS OF POLICE PURSUIT

by Steve Ashley, M.S., M.L.S., ARM
PPSC Staff

One of the most difficult law enforcement activities to manage is that of motor vehicle pursuit. Each year in the United States, several hundred persons (including some police officers) are killed, and many others are injured during the course of pursuits. Pursuit-related accidents, injuries and deaths cause significant emotional distress for officers, and frequently result in very negative public relations for departments. Occasionally, officers are criminally prosecuted following pursuit-related crashes. Of course, one of the most common negative outcomes of pursuit is litigation arising from the attendant crashes, injuries and/or deaths. Clearly, both street officers and police managers need to take steps to reduce the risks inherent in motor vehicle pursuits.

Key Terms

Motor Vehicle Pursuit – The act of attempting apprehension of a fleeing vehicle, once the operator has given some indication of his or her intent not to stop or yield. This indication can be by increasing speed, bypassing traffic control devices, or other means.

Resistive Behavior – Negative behavior exhibited by an individual after an officer has indicated intent to control the individual. The negative behavior can be psychologically or physically intimidating actions or words, passive refusal to cooperate, or active resistance (physical)—including the use of weapons.

Reasonableness – That which another person or officer, with similar training, would do under similar circumstances.

Constitutional Deprivation – Government actions that are contrary to the rights and assurances granted by the Constitution of the United States. Deprivations may be either reasonable or unreasonable.

Resistance/Control Continuum – A graphic representation of the relationship between levels of resistance and levels of control. Sometimes referred to as a “Use of Force Continuum”.

Public Harm Risk – The degree of risk to the public posed by the actions of a suspect, usually equated with the initial act that gives rise to a pursuit. Generally comprised of two elements: the risk inherent in the initial act or crime committed by the suspect, and the risk faced by the public should the suspect be allowed to escape and remain at large. This

is different that the degree of risk to the public posed by the pursuit itself.

Pursuit Management Continuum – A specific type of Resistance/Control Continuum, reflecting the relationship between pursuit causation factors and the tactics and techniques that may reasonably be used in the apprehension of a fleeing suspect.

Initial Interaction – Techniques that represent a relatively low risk of injury to officers and the public. Often naturally occurring, these techniques do not require any special resources or personnel.

Active Intervention – Techniques that require additional personnel, specialized equipment or training, and/or advanced planning. These tactics represent a greater degree of risk to officers and the public. Additionally, these techniques usually constitute “seizures” under the Fourth Amendment to the U.S. Constitution.

Critical Interdiction – Techniques that represent the greatest degree of risk to officers. These techniques approach the use of deadly force, and should only be undertaken when high levels of control are necessary.

REDUCING THE RISKS OF POLICE PURSUIT

Consider this: You’re working midnights. It’s a couple of hours past the time you usually get your nightly “drunk driver arrest”, but it’s a slow night, so you’re doing some property checks. Suddenly, a vehicle coming toward you on a quiet residential street swerves up over the curb, and knocks down a string of mailboxes, continuing on. You turn around, and attempt to stop the swaying, slow moving vehicle. Instead of pulling over to the right, the driver accelerates, and turns down a side street. You notify dispatch, and begin to pursue.

Both your emergency lights and siren are operating, but the bad guy’s ignoring them. As the vehicle begins to come into the downtown area, early morning commuters are out and about. The fleeing vehicle swerves through the traffic, narrowly missing several vehicles and one pedestrian. Your heart’s pounding, because you realize that if the vehicle gets into the congestion of morning traffic, there’s likely to be an accident.

You can see vehicles stopped at a red light up ahead, but the fleeing vehicle doesn’t seem to be slowing down. You know that he doesn’t have room to get through, but that doesn’t seem to matter to the bad guy. You see an opportunity to ram the vehicle off the road before he hurts someone, but you’re not sure if you should take it. While you’re trying to decide on your next move, a vehicle backs out of a driveway, directly into the path of the fleeing violator. There is a loud crash, and both vehicles spin out of control into a bus-stop full of morning commuters. . . .

Its three hours later and you’re sitting in the Squad Room, trying to do your report. As your mind runs over the events of the pursuit, you begin to wonder whether you did the

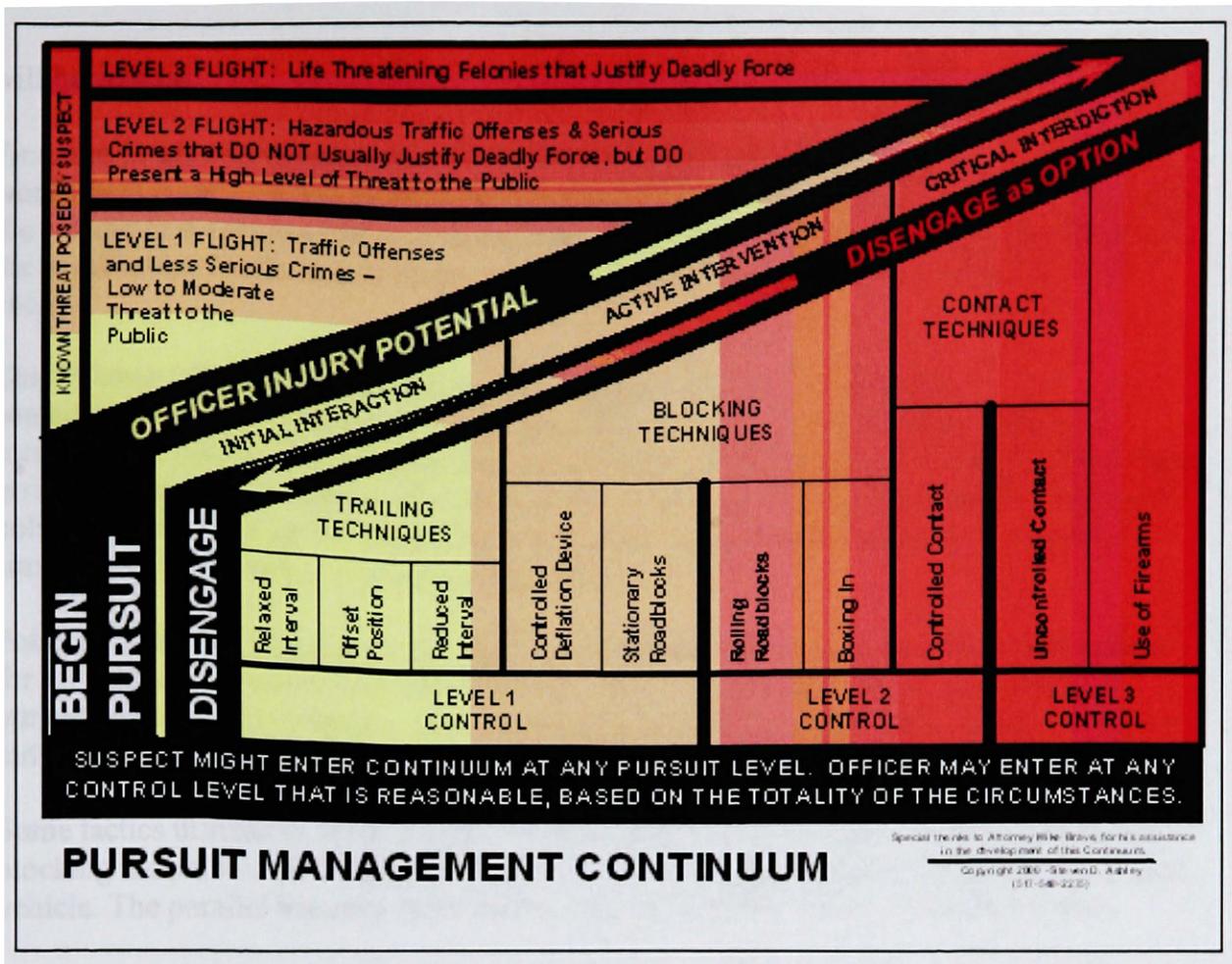
right thing, but you can't quite see how you could have responded any differently. After all, he decided to run, didn't he? You were just doing your job.

Wouldn't it be great, you think to yourself, if there was a more concrete way to figure these things out before things blew up in your face?

A police officer that engages in the pursuit of a motor vehicle participates in one of the most hazardous of all police duties. Pursuit has been vilified by plaintiff's attorneys and the media as irresponsible, reckless and unnecessarily dangerous, while at the same time the practice is defended by police officers as necessary for the apprehension of many suspects that are unwilling to immediately yield to an officer's signal to stop. Police administrators are caught in the middle, wanting to provide essential options for their officers, while meeting their obligation to direct and control a potentially hazardous activity.

The practice of vehicular pursuit is fraught with contradictions, and is therefore difficult to manage both administratively and operationally. There are many aspects of pursuit that must be considered and weighed prior to, during, and immediately following the actual occurrence of a pursuit. Each of these aspects harbors the potential for different interpretations by various elements of society.

For example, it is not uncommon for a police administrator to state in writing that his department's policy is to never allow a pursuit to be hazardous to officers or citizens. Generally the same policy document calls for the immediate abandonment of any pursuit that rises to the level of "hazardous". However, from a practical standpoint, most pursuits involve various hazardous elements, such as speed in excess of the posted limit, or disobedience of traffic control devices.



When this situation occurs, officers are put in the position of either deciding to never pursue, or of violating the policy statements of the department. Neither of these alternatives is satisfactory, and both present different types of risk for the agency. Failing to pursue violators could give rise to charges of failure to perform the mission of the department, while violation of the department’s policies subjects the officer to disciplinary action—and the department to potential litigation.

Obviously, it is necessary to develop a different approach to this and other pursuit issues.

PURSUIT AS FORCE

Whenever a law enforcement officer uses force to control resistive behavior, the legal system will attempt to answer two questions. Of these, the most fundamental is whether or not there was an appropriate and reasonable balance between the degree to which society would be exposed to harm should the force not be used and the degree of harm to society inherent in the level of force used.

The system will also attempt to determine if the officer’s use of force resulted in an unreasonable constitutional deprivation. In order to answer this question, a two-tiered test

will be applied.

First, the Court will determine if an actual constitutional deprivation occurred. In other words, was there a seizure through the mechanism of force? If so, the Court will examine the seizure to determine if it was reasonable. This test will go beyond an examination of the justification for the use of force, and will also look at the degree of force that was used.

This balance test, and the evaluation of the degree and reasonableness of any constitutional deprivation apply to any use of force by a law enforcement officer. Increasingly, they are being applied to the conduct of police pursuits, as well. While there is no existing legal definition of pursuit as force, per se, it is clear that many aspects of a police pursuit verge on the use of force, and many times the outcome of a pursuit is similar to the outcome of a physical use of force.

Police officers use force to control resistive behavior, and to gain control of individuals for the purpose of taking them into custody. This is frequently what occurs during a pursuit. A pursuit involves the use of a vehicle in order to capture and control a resistive individual, and once that individual is controlled, they are usually taken into custody.

Some tactics utilized to bring a pursuit to a satisfactory conclusion involve physically blocking the path of the fleeing vehicle, or even striking the fleeing vehicle with a police vehicle. The parallel between these tactics and other types of force is unmistakable.

Many of the tactics commonly employed by police officers during a pursuit contain some vestige of force. While this force is present to a greater or lesser degree, depending on the tactic used, the use of any generally accepted technique or method of pursuit presents a degree of risk consistent with the amount of force being used.

STANDARDS FOR PURSUIT

One of the most significant problems faced by administrators in their attempts to manage pursuit is the lack of applicable standards and terminology. The United States Supreme Court has provided guidelines for the use of force, and the use of deadly force, but has not provided clear standards and guidelines for police pursuit. Some States have case law on the subject of pursuit, but of course that case law is not binding on other States.

There have been some notable attempts to provide guidelines for pursuit training, but these attempts have generally focused on the organizational details of driver training programs, and have not focused on pursuit itself. If pursuit is addressed at all, it is as one limited aspect of an overall training program.

In order to provide a systematic approach to the management of police pursuit, it is necessary to develop and utilize a continuum similar to those developed for management of the use of force. Such a Pursuit Management Continuum© can be utilized to show the relationship between the degree of threat posed to the general public by vehicles

engaging in different types of pursuit, and the tactics and techniques typically used by police officers to control those pursuits.

Additionally, a pursuit continuum can be utilized to indicate the escalation and de-escalation of force and control inherent in various techniques, and the degree of exposure to risk presented by each, particularly in the areas of officer injury and the potential violation of civil rights.

Lastly, a pursuit continuum can offer a graphic representation of levels of resistive behavior (Types of Pursuit) and levels of control. This will aid officers and their departments in classifying pursuits and pursuit control techniques so as to make them more operationally specific.

PUBLIC HARM AND REASONABLENESS

The most critical element of any pursuit is the need to match the level of control exerted to the degree of risk posed by the fleeing individual. In other words, what is the degree of risk posed to the public by the offense committed by the individual, and what is the degree of risk posed to the public should the fleeing individual make good his or her escape, and be free to commit the offense again?

This public harm risk is different than the degree of risk posed by the pursuit itself. Most pursuits involve dangerous activities by their very nature. While some are less hazardous than others, the very act of engaging in motor vehicle pursuit involves vehicular operation outside the generally accepted parameters established for normal vehicle movement and control.

At issue is the reasonableness of an officer's actions in pursuing a fleeing violator. If an officer's actions are reasonable in light of the public harm risk that exists, then the officer's actions should be defensible in a court of law.

A PURSUIT MANAGEMENT CONTINUUM

The use of such a Pursuit Management Continuum must be based on several fundamental concepts:

- Officer's can disengage from pursuit, or de-escalate the control mechanisms being used, at any time they reasonably believe it to be necessary.
- Control alternatives presuppose proper utilization of the tactics, based on reasonable decision-making on the part of officers and supervisors, not the worst possible result scenario. While its possible to envision a scenario where lethal harm results from the application of lower level control methods, it is not the officer's intended result. Therefore, the actual outcome should have nothing to do with the reasonableness or unreasonableness of an officer's actions, given that the technique or tactic was properly and judiciously applied.

Just as one should not place firearms low on a use of force continuum, based on the fact that most shots fired by officers miss, and therefore there is no harm—one should not place stationary roadblocks high on the Pursuit Management Continuum because a suspect may choose to ram the roadblock, and die in the attempt.

- Escalation and de-escalation on the Continuum is keyed to the level of pursuit causation factor at work. Additionally, officers must evaluate the totality of the circumstances in which they find themselves, when making decisions regarding the use of any control or force option.

Just as an officer should not use deadly force against a suspect who has indicated an intent to surrender, and who does not offer an immediate threat of serious harm to anyone—an officer should not implement a high level control option against an individual who may have started a pursuit by committing a life threatening act, but is now apparently slowing as if to stop.

- Officers should stay at, or below, the control level that matches the pursuit level (i.e. Level Two pursuit, Level Two Control). It should be the suspect's actions in escalating the pursuit level that prompts the officer to escalate the control level utilized.

- Decisions regarding the use of particular pursuit control tactics should not be based solely on the likely liability exposure, but should give significant consideration to the degree of risk faced by the involved officers. Officers should only utilize tactics and techniques with which they have been trained.

PURSUIT AND CONTROL

The degree of public harm risk can be classified at three levels, as can the techniques and tactics utilized to control pursuits. Generally speaking, pursuits at a certain level reasonably justify use of control techniques from the corresponding control level (i.e. Level One Pursuit - Level One Control).

The various control techniques can be grouped as to their general traits and common elements.

Initial Interaction Techniques -- Largely because of body alarm response (sometimes referred to as "Fight or Flight Syndrome"), these techniques can be naturally occurring—that is, they may occur without the officer intending to use them. It is not uncommon for officers to use a reduced interval, or to swing out to one side or the other (Pursuit Position), in their desire to capture the fleeing suspect. While they may be natural in some cases, officers must guard against the tendency to allow these techniques to be applied to excess. Reduced interval trailing can easily become dangerous tail-gating, and the Pursuit Position can lead to pulling alongside, thereby exposing the officers to heightened hazards.

Active Intervention Techniques – These control techniques are not naturally occurring. Active Intervention Techniques require physical intervention by officers. They therefore typically require the presence of specialized equipment, more than one police vehicle, or advanced planning.

Critical Interdiction Techniques – These higher risk techniques constitute the use of potential or actual deadly force. They possess the same traits as Active Intervention Techniques, with the added caveat that they place the officers in significant physical peril.

Level One Pursuit/Level One Control

A Level One Pursuit is a pursuit initiated to apprehend an individual fleeing after committing a simple traffic offense or a less serious crime. Generally, such offenses as vandalism, minor theft, and disorderly conduct, while misdemeanors, are considered to present a low degree of risk to the public. Pursuit for these offenses can be justified, yet many of the more hazardous pursuit tactics should not be used, due to the minimal potential for public harm posed by the offense. Techniques and tactics that are generally acceptable in these instances are:

Trailing -- The simple act of following along behind the violator while giving both visual and audible indication that the violator should stop, and advising dispatch and other units of the violator's location and actions. Care should be taken to maintain a safe interval between the violator's vehicle and the police vehicle.

Pursuit Position (Offset) -- Moving the police vehicle approximately one half vehicle width to either side (similar to the position traditionally taken when parking during a traffic stop), while continuing to Trail. This offset position allows the officer to see oncoming traffic, and to expose emergency warning lights to the view of oncoming vehicles. It should also allow the officer to more readily anticipate the violator's actions, due to the enhanced visibility offered by the position. Lastly, when approaching an intersection, the offset position may allow the officer to encourage the violator to turn in the desired direction.

Reduced Interval -- More closely following the violator, either while trailing or while utilizing the pursuit position. While this technique can present greater risk of collision, it does facilitate greater visibility of the violator's vehicle and its occupants. It can also be utilized to apply psychological pressure.

Controlled Deflation Devices – When a department has equipped and trained officers in the use of these devices (sometimes called “spike strips”), such equipment can be deployed as a method for establishing a relatively low risk “roadblock”. Officers should take care to plan adequately when selecting a location for deployment, and should move a safe distance from the deployment zone.

Stationary Road Block -- The placement of one or more police vehicles in the traveled

portion of the roadway, in order to partially block the road, and to indicate a denial of passage to the violator's vehicle. Although not absolutely necessary, officers frequently leave a restricted route through the roadblock. When the road is totally blocked, so that even a slow moving vehicle cannot go around—or through—safely, the degree of risk is heightened. When a complete blockage of the roadway is undertaken, officers should ensure that the oncoming suspect has a clear view of the roadblock, and has ample time to stop safely, should he or she decide to do so. This complete blockage usually represents a higher level of control, and could be constitutionally unreasonable unless properly managed.

Level Two Pursuit/Level Two Control

Level two pursuits are those which are initiated for very hazardous traffic offenses, such as driving while intoxicated or reckless driving, or for more serious crimes, such as assault. Level two pursuits are initiated for offenses that present a high level of danger to the public, but not such a high level of danger that deadly force is routinely justified in the apprehension attempt. Techniques and tactics that are generally acceptable in these instances are:

Rolling Road Block -- The placement of one or more police vehicles in the path of the violator's vehicle, in order to cause it to slow and/or stop. This is sometimes done by one vehicle, swerving back and forth from lane to lane (difficult, as it requires anticipation of the violator's movements), and sometimes by two or three vehicles, moving along the highway in echelon or abreast.

Boxing In -- A technique whereby two or more police units move into positions around the fleeing vehicle, forming a "box". Once the box is formed, all police vehicles slow, causing the violator in the box to slow as well. Because Boxing In, or "channeling" as it is sometimes called, requires the placement of one or more police vehicles in the path of the violator's vehicle, it is considered a form of Rolling Road Block.

Controlled Contact -- Intentional contact between a police vehicle and the violator's vehicle. Generally, Controlled Contact is undertaken at lower speeds, and is frequently intended to cause the violator to spin out of control or to leave the roadway in a slow, but uncontrolled manner. While this is the intended result, Controlled Contact collisions are sometimes unpredictable, and may be viewed as a form of Ramming by the legal system. They therefore involve application of potentially deadly force. One technique that has been developed to attempt to allow for safer Controlled Contact collisions is the Precision Immobilization Technique, or PIT Maneuver. The use of such techniques calls for training, planning, opportunity, and careful timing.

Level two control techniques are more aggressive in nature, and call for police vehicles to move in front of a fleeing violator. For this reason, they are more hazardous to the officers, and require time to plan, develop and execute.

Level Three Pursuit/Level Three Control

Level three pursuits are those initiated following the commission of life threatening felonies that usually justify the use of deadly force in the apprehension of the fleeing violator. Examples include armed robbery, assault with a deadly weapon, and murder. Techniques and tactics that are generally acceptable in these instances are:

Uncontrolled Contact – Sometimes referred to as “Ramming”. This represents a higher level of intentional contact between a police vehicle and a violator’s vehicle.

Uncontrolled Contact is frequently attempted at higher speeds than intentional collisions. Because it is so unpredictable, Uncontrolled Contact presents a high degree of risk to the officers involved, and may constitute deadly force, depending on the circumstances of the incident.

Use of Firearms – There are some situations where firing a weapon at a fleeing violator may be necessary in the immediate defense of the officer or another. In most cases, however, this is generally not good practice, due to the low likelihood of success, and the hazard posed to the public by missed shots. Additionally, if a bullet should strike the violator, his vehicle is now pilotless, and presents a significant hazard in and of itself. If the violator is not alone in the vehicle, then passengers against whom deadly force may be inappropriate are put at great risk. While some recent court decisions have indicated that police officers do not owe a duty to passengers in a fleeing vehicle, this is by no means clear in every jurisdiction.

Level three control techniques can be extremely hazardous to the officers that attempt them, and should only be utilized in emergency situations, where a human life is already at great risk. In essence, level three control techniques are almost indistinguishable from the use of deadly force, and therefore officers who are going to use them should ask themselves if the death of the violator is acceptable as an outcome to the event. If the answer is anything but an unqualified yes, then the control technique should not be used.

UTILIZATION OF THE CONTINUUM

There are three primary uses for the Pursuit Management Continuum; policy development, training, and supervision.

Policy Development and Support

The Pursuit Management Continuum contains a classification system for pursuit causation activities which, if incorporated into a department’s policy, can be utilized as an aid to decision-making on the part of street officers and supervisors.

Additionally, key elements of policy can be linked to the classification system. For example, it is fairly common for a department to restrict by policy the number of police vehicles that may engage in a pursuit. The theory is that the fewer vehicles there are involved, the lower the risk and therefore the lower the liability exposure.

However, this does not take into account the nature of the pursuit causation or the number of suspects involved. Restricting a pursuit of three armed robbery suspects to two single officer patrol units may be safer for the motoring public, but it is not safer for the officers.

Departmental policy should indicate that the nature of the pursuit causation should be considered when controlling the number of units in a pursuit. By classifying the pursuit as a Level Three pursuit, with multiple suspects, a safe number of police units and officers can be assigned to the pursuit.

Training

Utilization of the Pursuit Management Continuum as a training aid can assist in linking the concept of escalation/de-escalation of control methods to the conduct of a police pursuit. Additionally, the relationship between the pursuit causation factors (the previously mentioned public harm risk) and the techniques that are reasonable and proper should become more obvious to officers.

The Continuum can also be used to illustrate the increase in Officer Injury Potential that is inherent in escalation through pursuit control levels. As officers begin to take more aggressive actions to attempt the apprehension of a violator, they increase the degree of risk to themselves.

Lastly, the Continuum can be used to explain the potential civil rights ramifications of escalation through the various pursuit control levels. As each succeeding level is utilized, the degree of intrusion into the suspect's existence increases. While this increasing invasiveness may be reasonable and proper under the circumstances, it still may give rise to questions regarding potential civil rights violations.

Supervision

The vague descriptions of pursuit activity that are commonly used during radio transmissions could be replaced with the descriptive Pursuit Levels. Once this is done, then all parties involved would be aware of the acceptable techniques. The enhanced ability to communicate causation factors and approved techniques will eliminate some of the confusion that typically surrounds police pursuit radio communications.

An example of supervisory application of the Continuum might involve a Level Two Pursuit through heavy traffic or some other type of high risk environment. Supervisory personnel may choose to limit the officers to Control Level One, and so advise them. Use of the control levels makes direction clear and concise.

Utilization of the Continuum provides a series of benchmarks for the supervision and direction of pursuits by the first-line supervisor. By utilizing these benchmarks, the supervisor can more successfully manage the conduct of pursuits by officers, while at the same time, more accurately evaluate the performance of officers engaging in pursuit.

CONCLUSION

Police pursuit as it is currently practiced in the United States is a relatively dangerous, inexact undertaking. Officers, violators and the public are frequently at considerable risk even when management control measures are attempted. Current methods of managing pursuits are cumbersome and difficult to utilize. Communication during pursuits is hampered by the lack of a system for classification of pursuit causation factors, and the reasonable relationship of those factors to available control techniques.

Implementation of the Pursuit Management Continuum should allow many of these difficulties to be controlled. Reasonable application of pursuit control techniques, as described in the various control levels of the Continuum, should help to manage the potential for officer injury or litigation arising from police pursuit activity.

[1] *Graham v. Connor, 109 S. Ct. 1865 (1989)* -- In *Graham*, the Court set forth standards for evaluating the reasonableness of the use of force. There were three criteria stated: the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of officers or others, and whether the suspect is actively resisting arrest or attempting to evade arrest by fleeing.

[2] *Tennessee v. Garner, 105 S.Ct. 1694 (1985)* -- In *Garner*, the Court opined that deadly force could be used to protect officers or others from the immediate threat of serious physical harm, or to prevent the escape of dangerous individuals, after other means have been exhausted, and a warning has been given, where feasible.

[3] *Fiser v. City of Ann Arbor, 417 Mich. 461 (1983)* -- In *Fiser*, the Michigan Supreme Court provided guidelines for evaluating the reasonableness of a police pursuit.

[4] *National Driver Training Reference Guide* -- International Association of Directors of Law Enforcement Standards and Training, in cooperation with the U.S. Department of Transportation, 1989.

[5] *Brower v. County of Inyo, 109 S.Ct. 1378 (1989)* -- The *Brower* Court held that a seizure is a, "...governmental termination of freedom of movement through means *intentionally* applied..." (emphasis added), and further opined that a seizure has occurred when force is used. The Court defined force as an intentional act which leads to a stop or an arrest.

While compliance to the loss prevention techniques suggested herein may reduce the likelihood of an incident, it will not eliminate all possibility of an incident.

Further, as always, the reader is encouraged to consult with an attorney for specific legal advice.