

To: Beth Pittinger
From: Patrick Parsons (Univ. of Pittsburgh, School of Law, Intern, Fall 2007)
Re: Police Pursuit: Nationwide Trends and Policy Recommendations

Historical and Factual Background

Much of the work done on police chases is derived from a 1997 National Institute of Justice Study. The Study was conducted by Geoffrey P. Albert and focused on police pursuit policy and the effects of either restrictive vs. permissive policies on pursuit.

The NIJ study, along with subsequent studies first view national pursuit policy in abroad categorical way, deriving statistics from analysis of over 737 law enforcement agencies. The useful statistics are as follows:

- 91% of police agencies have a police on pursuit, however as of the 1997 NIJ study many of these policies dated back to the 1970's
- Of the 91%, 48% of those agencies had revamped their policies as of 1997
- Of the 48% of agencies that revamped their policies, 87% of the agencies made their police chase policy more restrictive

NIJ Case Studies

One of the most interesting facets of the NIJ study was their examination of the effects of pursuit policy through two case studies. The cities used were Miami, Florida and Omaha, Nebraska. While at first glance these are two strikingly different cities, they are very similar in their timing of implementing a new pursuit policy. However, what makes the comparison exceedingly useful is the fact that while both cities implemented a new policy, the types of

policy are very different. In Miami, the new policy was more restrictive. Furthermore, when a new “violent felony only” policy was adopted in Miami, the number of pursuits decreased 82%. On the other hand, when Omaha liberalized their pursuit policy to allow for pursuits involving offenses that would have been previously prohibited, the following year the number of pursuits went up 600%.

While these studies are illustrative of the power of policy in controlling the number of pursuits, it is also very limited in a practical sense. Through the study, it’s very easy to see that by adjusting the boundaries in which departments allow police chases, they can drastically alter the frequency with which such chases occur. However, this type of approach does little to address the many variables that go along with police chases. A “type of offense” oriented policy cannot address factors such as road type, time of day, and speed of pursuit. It’s easy to imagine that in some cases a felony pursuit would simply be too dangerous to be attempted. On the other hand, it’s very possible that there are instances where it would not be overly dangerous to pursue someone for a suspected misdemeanor or nonviolent felony. The following sections will address other cities’ responses to this question, and explore different ways of making police pursuit policy both flexible and effective.

Countrywide Policy and Procedure

Countrywide, most police departments instruct their officers to engage in pursuit only when “the benefits of immediate apprehension immediately outweigh an unreasonable danger to the public or the officer.” In many cases, this phrase alone constitutes the entirety of a department’s policy. As one could imagine, this can be problematic. In the heat of the moment, how often will an officer decided to disengage a pursuit? Is the officer involved in the chase the

best person to be gauging danger vs. benefit? It's foreseeable that some other mechanism must be engaged to streamline and regulate officers' decision-making related to chases.

Different cities provide different solutions to the problem. Detroit and Philadelphia use a listing procedure, where there is a definitive list of reasons why an officer can engage in a pursuit. Oakland, California allows pursuits, but only at speeds up to 20 miles per hour over the speed limit. Los Angeles, California requires all officers engaged in a pursuit to file a report. In the report they must justify the pursuit, and if they cannot do so, they face disciplinary action. Los Angeles also mandates the assistance of helicopters in all police chases. Finally, the City of New Orleans requires an officer to obtain radioed supervisory permission before engaging in a pursuit.

Civil Liability

Legally speaking, police officers incur no civil liability to the pursued, their families, dependants, etc by initiating high speed chases so long as the action of those officers in pursuit does not "shock the conscience." Police officers have a generally accepted qualified immunity in respect to those that they chase. Moreover, "shocking the conscience", in regards to police pursuit is defined as "purpose to cause harm unrelated to the legitimate object of arrest."

Sacramento v. Lewis. 532 U.S. 833. (1988). This high standard eliminates much of the liability for both officers and their respective municipalities.

While the officers have little liability towards those being pursued, the same does not go for innocent bystanders. In fact, courts have recently established a trend of holding municipalities civilly liable to those injured but not responsible for police chases. This is especially true for those chases where departments cannot justify the gain of catching the chased

person against the risk posed to the public. For instance, courts have awarded a plaintiff who was injured as a bystander in a police chase in Newark, New Jersey, \$3.6 million dollars. Another woman in Jacksonville was given \$200,000 for similar circumstances. Finally, a Nevada municipality settled a similar suit for \$2.6 million dollars.

As stated before, the underlying premise of most pursuit policies is high speed chases should only be initiated if the value of catching the fleeing individual is greater than the risk exposed to the public. However, the vast majority of high speed pursuits are escalations of traffic stops. Therefore, typically, a city will incur civil liability for those bystanders killed in a pursuit unless it can prove that the pursuit itself was not for enforcement of a traffic violation but instead for some other offense that necessitated the capture of the fleeing individual. Especially in the wake of an innocent death, this is very difficult to do. It then follows that there is a huge fiscal incentive for police departments to institute a more restrictive pursuit policy. A more restrictive policy would decrease the civil liability of a department and save the municipality money in future legal actions.

Policy Recommendations

There are three ways to rework current police pursuit policy to ensure a safer and more regulated means of pursuit.

The first option of reworking the current policy is to restrict pursuits by providing tangible guidelines as to when police pursuits can take place. This strategy is effective because it completely dissociates the officer from the decision to engage in pursuit. Examples of this kind of policy are those applied in La, New Orleans, and Philadelphia. These policies either explicitly prohibit certain kinds of pursuit, or proscribe situations where pursuit is permissible.

The most effective way to see why these policies are necessary is to provide an example. For instance, let's say a police officer sees a driver driving extremely aggressively and committing several traffic offenses. Maybe this officer has been cut off by drivers like this before, and is irritated by the behavior. Because the suspect driver has committed a traffic violation, the officer attempts to pull this nuisance driver over by engaging both his light bar and siren. All of a sudden, the nuisance driver begins to accelerate. This is the key moment in pursuit decision making. If there are strict guidelines saying there will be no pursuit for traffic offenses, then the officer will not engage. Moreover, necessitating reports like those required by LAPD will strengthen compliance to the policy. On the other hand, if the only training the officer has to go on is weighing benefit of apprehension against possible danger, an impassioned officer is likely to pursue. This policy of removing the officer from the decision making is advantageous because it removes emotion and personal feelings from the decision-making process, and allows the police department to proscribe exactly when they, as an agency, feel it appropriate to engage in a pursuit.

On the other side of the pursuit policy spectrum is allowing officers complete discretion on when to engage in pursuit. However, this option is only a possibility with increased and varied pursuit training. While officers typically do receive training on pursuit, it's usually only on tactics and rarely on decision-making. While pursuit tactics are an absolutely necessary part of a police officer's repertoire of skills, it is just as important to train officers when not to pursue. If this kind of training is adequately provided, then the officer in the hypothetical situation above can make his own decision as whether or not the pursuit could happen.

Ideally, the right police pursuit policy should be a synthesis of the above two policies. The policy should fundamentally start out with restrictions. However, if the officers are trained

properly, they can be allowed more leeway in decision making. This is important because no two pursuits are alike, and sometimes it is safer to engage in the activities prohibited by more restrictive “listing policies.” On the other hand, sometimes pursuits that are not explicitly prohibited by a list should be discontinued because of exigent circumstances like the proximity of schoolchildren or an unusually high amount of pedestrian traffic in the area. The key to this synthetic policy is a more enlightened officer that along with underlying restrictions can effectively gauge situations and decide for him or herself when to engage in a pursuit.

Conclusion

The key to an effective pursuit is balancing the societal benefit of the apprehension against the possible dangers caused by the chase. While this simple scale is illusionary of the greater ideal, it is relatively useless as a tool in the field. In the heat of the moment, it is almost unfair to expect officers to try and weigh these factors and come up with an impartial decision as to whether or not to pursue. This is why it is necessary for police departments to partially remove officers from the decision, and at least partially relegate that decision to either an impartial supervisor or to the restrictions provided by a written policy. Furthermore, more decision-making power can be provided to the individual officer making the pursuit policy more adaptable to individual situations, however for this option to work the officer must have training not only on pursuit tactics but also extensively on pursuit decision-making.

#