



# Loss Control TIPS

## Technical Information Paper Series

*Innovative Safety and Health Solutions*

---

## Police Department High Speed Pursuit

### Introduction

A major area of liability concern for many municipalities is Police Department high speed pursuit. Statistics from The Hartford indicate that ten times more people are killed in high speed pursuits than are killed by police weapons. Eighty percent of those killed by police high speed pursuit are innocent bystanders. The Hartford has paid claims arising from pursuits that were terminated two to three miles prior to the resulting accidents. In one example, a claim arose from a pursuit that ended in an intersection accident. The plaintiff ran a red light and became involved in an accident with the chasing police vehicle. The officer was pursuing with no siren, no emergency lights, and was told to break off the pursuit. The result: one dead, two children who are left in vegetative states, and one grandmother who will never walk again. The claim settled for \$4.2 million. High speed pursuits have become one of the most frequent types of law enforcement liability claims.

### Develop Formal Policy and Procedure

Each public entity should develop formal, written policy and procedures covering the area of high speed pursuit. Once the policy and procedure are developed, they must be disseminated to all persons who may be involved in the activity. In addition, formal training sessions should be held to assure that everyone understands their responsibilities. Such training should be fully documented.

Keep in mind that the development of policies and procedures comes with attendant responsibility. Just because the policy and procedures have been developed, are in writing, and training has been given, doesn't mean they will be followed. Where there is a discrepancy between what is written and what is actually occurring in the field, the courts will review the operational procedure. Once the procedures are in place, the responsibilities are that everyone must be properly trained to use them and *the indicated standards of performance must be met*. To do less, leaves the public entity vulnerable to suits arising from the Federal Civil Rights Act of 1871, Title 42 U.S. Code, Section 1983. Under the section, the public entity can be found guilty of constitutional deviations if they are "deliberately indifferent" to the "adequate training" of their officers in the "light of the tasks assigned."

### Three Critical Questions

Before any policy and/or procedure is developed, the public entity must realize one thing. High speed police pursuit is not something that most jurisdictions will be able to, or even desire to, eliminate. The whole idea of allowing a perpetrator to escape, without giving chase, is repugnant to most law enforcement officers. A large part of an officer's job involves finding *and apprehending* law breakers.

Therefore, because the idea of risk avoidance is probably not a viable alternative for this exposure, developing a means of controlling the exposure becomes critical.

In setting up the policies and procedures, three critical questions should be addressed.

**First, under what conditions may a pursuit take place?** In making this determination, the public entity must weigh the risks of allowing the violator to escape against the risks of harm to the pursuing officer and his equipment, the risk of harm to the violator, and the risk of injury or property damage to the general public. These parameters also should be defined by more than the posted speed limit. In fact, setting a specific, numerical speed limit can, in itself, create liability issues. For example, if the policy sets pursuit at 20 mph over the speed limit, this speed could prove to be disastrous in a 15 mph elementary school zone. However, driving 40 mph over the speed limit on a deserted highway may not offer nearly that level of exposure. It is more desirable that policy wording addresses speeds that are compatible with individual situations.

**Second, once the pursuit is undertaken, who takes control of the decision-making process of the pursuit?** Because the pursuing officer(s) may be too emotionally and physically involved to make cool and informed decisions, this should be transferred to the commanding officer or other experienced person in the station who has radio communications with the pursuing officer(s). Once a pursuit is begun, this person should immediately be notified and given full control of the situation. This officer should have the benefits of greater experience and being remote from the strong psychological influences of the situation. Variables such as, weather conditions, visibility, nature of the offense, location of the pursuit (i.e. residential neighborhood, rural area, high speed expressway), time of day, and training of the pursuing officer, will affect the decisions of the controlling officer.

**Third, at what point should the pursuit be terminated, and who makes the decision to break off the pursuit?** The commanding officer at the station should have the sole authority and responsibility for the decision to end the pursuit. The variables listed above certainly have a direct bearing on the decision of whether to continue the pursuit or not.

## Obsolete Techniques

Some police pursuit techniques have become obsolete:

1. Use of the police vehicle for ramming.
2. Use of the police vehicle as a moving roadblock.
3. Parallel pursuits.
4. Use of multiple vehicles in the pursuit.
5. Continuation of the pursuit after visual contact is lost.

The major concern in using these techniques is the increased probability of an accident, and the attendant liability.

With regard to the use of the police vehicle for ramming or use of the police vehicle as a moving roadblock, in an article on "Police Liability: The Crisis in Police Pursuit Driving," G. Patrick Gallagher addresses this situation in the following manner: "Brower (v. Inyo) examined a roadblock set up in a high speed chase, and said that 'governmental termination of freedom of movement through means intentionally applied' such as ramming, roadblocks, and the use of deadly force against cars or drivers can be considered a 'seizure.' Possible civil rights violations would be generated by applying the test of 'reasonableness' to the 'seizure.' "

Gallagher goes on to say, "The trend seems quite plain—the police car and its ability to use force to terminate a chase or seize an alleged offender can be considered the use of deadly force 'subject to the reasonableness requirement of the Fourth Amendment.' Because of the foregoing, these methods are significantly outmoded.

Parallel pursuits raise several concerns. In these situations, more than one police vehicle is involved; this increases the potential for problems. Parallel pursuit also requires that constant communication be maintained between the operators of all units. Because of this, driver distraction is a definite possibility. The road itself can also lead to issues with parallel pursuits. Suddenly narrowing roadways may make paralleling impossible; the necessity for changing lanes can create hazards.

Similarly, the use of multiple police vehicles in the pursuit can lead to increased potential for accidents, communication issues, and control problems.

Continuation of the pursuit after visual contact is lost is not recommended because of the obvious increase in liability exposure. Once visual contact is lost, the pursuit should be terminated. If the pursuit is not terminated and an accident occurs to a third party, the public entity's liability is almost assured. The reasonable and prudent person would foresee the possibility of an accident occurring, and would therefore terminate the chase. This decision would necessarily be made in view of the fact that the person being pursued is no longer in sight. Therefore, the reason for the pursuit is ended, and to continue to jeopardize innocent bystanders is unreasonable

## Risk Management Controls

Once policies and procedures have been developed, several additional risk management controls should be considered. Gallagher lists the following four issues.

First, *defensive driver training should be provided for all instructors and officers*. This would serve two purposes. Not only would this address the pursuit driving exposure, but it would also address routine driving exposures. The latter may have more impact on the public entity than the former. For example, one study by the U.S. Department of Transportation shows the following:

### Contribution of Pursuits to Injury Accidents

Total Injury Accidents	Number of pursuits or related accidents resulting in injury to officer		Percent
<b>State Police Sub-sample</b>	1,403	303	21.6
<b>Municipal Police Sample</b>	1,293	203	15.7
<b>Totals</b>	<b>2,696</b>	<b>506</b>	<b>18.8</b>

Considering this data, it is obvious that only a relatively small percentage of pursuit injuries occur in relation to the overall frequency of vehicle accidents. Given this, the assumption is that normal defensive driver training may prove to be quite effective in reducing the ordinary fleet accident frequency.

Second, *police administrators should be encouraged to develop comprehensive policies that will withstand court tests.* The public entity's legal representative should review the policies and procedures to assure that they are consistent with current legal precedents. Additionally, as legal opinions change, these policies and procedures should be periodically reviewed and updated as necessary.

Third, *every high-speed chase should be reviewed and the officers' performance evaluated.* Possibly the risk manager or safety director should be on the review committee. These reviews should outline where policies and procedures were effective as well as where breakdowns in policy or procedures occurred. Where problems are identified, appropriate remedial action should be mandatory. This may be additional training, or, when warranted, disciplinary action. If administered properly, the review process may be an effective training device.

Lastly, *the police department should be given targeted training that highlights the issues of high-speed pursuit, and promotes a greater awareness of the dangers and the necessary steps that must be taken.* In view of the fact that pursuits can result in a court determination of the use of deadly force, it would seem prudent to provide specific training for this exposure. Although it is common that police departments faithfully conduct training in the use of deadly force concerning weapons, this is not always true of vehicle training. This training should be conducted on a continuing basis. It should not be limited to a one time presentation. This is especially true when legal opinions change and necessary adjustments to policies and procedures must be affected. Be sure to document the completion of the training and any refresher or remedial sessions.

## Summary

With regard to the high speed pursuit exposure, the first concern should be for the public entity to *develop adequate written policies and procedures and conduct adequate training.* In developing these policies and procedures the following questions must be answered:

1. Under what conditions may a pursuit take place?
2. Once the pursuit is undertaken, who takes control of decision-making for the pursuit?
3. At what point should the pursuit be terminated? Who makes the decision to end the pursuit?

*Several pursuit techniques are now obsolete,* including use of the vehicle for ramming, use of the vehicle as a moving roadblock, parallel pursuits, use of multiple vehicles in the pursuit, and the continuation of the pursuit after visual contact is lost.

Lastly, there are four basic risk management controls (provided by G. Patrick Gallagher). *Use of these and other risk management programs can do much to limit the public entity's exposure to loss from this volatile activity.*

## Reference

Gallagher, G. Patrick, "Police Liability: The Crisis in Police Pursuit Driving," pp. 110-121 in *Creative Approaches Volume II: Managing Public Agency Risks.* Public Risk Management Association, 1989.

*This document is provided for information purposes only. It is not intended to be a substitute for individual legal counsel or advice on issues discussed within. Readers seeking resolution of specific legal issues or business concerns related to the captioned topic should consult their attorneys and/or insurance representatives.*

Police Department High Speed Pursuit Page 4 © 2002 The Hartford Loss Control Department TIPS S 220-050