



# FBI

May 1988

## Law Enforcement Bulletin

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### Taking Aim at Truancy

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# FBI

## Law Enforcement Bulletin



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William S. Sessions, Director

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Truancy officers work with all age groups in an effort to promote goodwill throughout the entire school system. (See article p. 8.)

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# Legal Issues of Pursuit Driving

***"[The duty placed] on all law enforcement officers to operate their vehicles with a due regard for the safety of others . . . can best be accomplished through sound policy development, realistic training, and effective supervision."***

By

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*Law enforcement officers of other than Federal jurisdiction who are interested in any legal issue discussed in this article should consult their legal adviser. Some police procedures ruled permissible under Federal constitutional law are of questionable legality under State law or are not permitted at all.*

The purpose of this article is to discuss the legal issues involved in police vehicular pursuits and identify the factors that should be considered by law enforcement organizations in policy development, training, and supervision of pursuit situations. High-speed pursuit driving often poses a greater risk to innocent citizens than police use of a deadly weapon. One author suggests that a motor vehicle can constitute the deadliest weapon in a police department's arsenal and that "when a police

officer engages in a high-speed chase in a high-powered police car, that vehicle becomes a potential deadly weapon."<sup>1</sup> The hazards inherent in a vehicular pursuit to officers, suspects, and other motorists must be balanced against the need for immediate apprehension.

Despite some differences in State laws, the basis for most pursuit-related liability is negligence.<sup>2</sup> Pursuit litigation usually focuses on whether the police acted prudently and reasonably under the circumstances. Most State laws provide that police drivers operating a pursuit vehicle are under a legal duty to drive with due regard for the safety of others and may be liable for the consequences of their negligent or reckless conduct.

The first section of this article discusses some general principles of lia-

bility applicable to police pursuits, including: (1) Duty owed, (2) proximate cause, (3) immunity, (4) Federal Civil Rights Act, (5) suits by injured officers, and (6) criminal prosecutions. The second section discusses eight factors that determine liability in a particular pursuit situation. The final section discusses departmental responsibility for liability reduction in the areas of (1) policy development, (2) training, (3) supervision, and (4) evaluation and documentation.

## GENERAL PRINCIPLES OF LIABILITY

The legal theory underlying most pursuit-related lawsuits is that the police were *negligent* in conducting a pursuit. A negligence action is based on proof of the following four elements: (1) The officer owed the injured party a *duty* not to engage in certain conduct,



SA Schofield

(2) the officer's actions violated that duty, (3) the officer's negligent conduct was the *proximate cause* of the accident, and (4) the suing party suffered actual and provable damages.<sup>3</sup> Negligence litigation focuses on the alleged failure of an officer to exercise reasonable care under the circumstances.

#### Duty Owed

Courts must first determine the duty owed in a pursuit situation by examining the officer's conduct in light of relevant laws and department regulations. As a general matter, police have no duty to refrain from chasing a criminal suspect even when the risk of harm to the public arising from the chase is foreseeable, and the suspect is being chased for a misdemeanor.<sup>4</sup> In *Smith v. City of West Point*,<sup>5</sup> the court stated that police "... are under no duty to allow motorized suspects a leisurely escape."<sup>6</sup> However, police do have a duty of care with respect to the manner in which they conduct a pursuit. This duty is derived from State statutes, court decisions defining reasonable care, and departmental pursuit policies.

Statutes in most jurisdictions confer a special status on police and other authorized emergency vehicles exempting them from certain traffic regulations, such as speed limits, traffic signals, and the right of way.<sup>7</sup> Statutes exempting emergency vehicles from ordinary traffic regulations generally make the privilege conditional upon: (1) The existence of an actual emergency, (2) use of adequate warning devices, and (3) the continued exercise of due care for the safety of others. Whether a governmental unit or its officers may be held liable depends in large part on the

construction of such statutes. As a general rule, police drivers are not liable for negligence as a matter of law solely because they disregard a traffic regulation during an authorized emergency run. However, these statutes provide no protection against liability for an officer's reckless driving. Drivers of emergency police vehicles have a statutory duty to drive with due regard for the safety of others.

Court decisions defining the reasonable care standard constitute a second source from which to derive a duty owed by police pursuit drivers. Most courts have translated the reasonable care standard into a duty to drive with the care which a reasonable prudent officer would exercise in the discharge of official duties of a like nature.<sup>8</sup> Reasonable care is a relative term depending on the exigencies of the situation and the degree of care and vigilance which the circumstances reasonably dictate.

A third source from which to derive a duty owed by police pursuit drivers is department policy. A law enforcement organization's policies, procedures, and training material concerning high-speed pursuits are generally admissible as evidence in lawsuits against the department or its officers for the negligent operation of a pursuit vehicle.<sup>9</sup> For example, in order to ascertain the standard of care applicable to a particular pursuit situation, a court could admit into evidence a police department regulation defining the proper speeds at which police cars responding to emergency calls were supposed to enter intersections when proceeding against red traffic signals. Depending on the jurisdiction involved, departmental pur-

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***"Drivers of . . . police vehicles have a statutory duty to drive with due regard for the safety of others."***

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suit policies may be merely a guideline to assist juries in determining the reasonableness of pursuit conduct, or they may actually constitute a duty owed, the violation of which would be negligence.

#### **Proximate Cause**

Liability must be based on proof that police conduct in breaching a duty owed was the proximate cause of a pursuit-related accident. Proximate cause is difficult to establish in cases involving the intervening negligence of other drivers, such as where a fleeing motorist collides with an innocent person. In such cases, some courts impose liability on the police if the accident was a foreseeable consequence of police negligence.<sup>10</sup> For example, if police pursue without activating their lights and siren and an innocent citizen enters an intersection without being warned of the pursuit and collides with the pursued vehicle, the police may be liable because the accident was the proximate and foreseeable result of their failure to adequately warn other drivers of the pursuit. In *Nelson v. City of Chester, Ill.*,<sup>11</sup> it was held that the city's breach of its duty to properly train its police officers in high-speed pursuit might be found to be the proximate cause of the pursued driver's death, notwithstanding the contributing negligence of the pursued driver.

However, the majority view is that the police are not liable for accidents caused by the intervening negligence of fleeing violators. In *Dent v. City of Dallas*,<sup>12</sup> the court held that the police violated no legal duty to arrest or apprehend a fleeing motorist who subsequently collided with an innocent cit-

izen, because the sole proximate cause of the accident was the suspect's negligent conduct in fleeing and not the officer's conduct in electing to pursue and that "courts will not make police officers the insurers for the conduct of the suspects they pursue."<sup>13</sup> When a pursuit-related accident involves the fleeing motorist and not the police, most courts conclude that the proximate cause was not the manner in which the police conducted the pursuit but rather the manner in which the pursued driver negligently operated his vehicle.<sup>14</sup>

#### **Immunity**

Legal barriers to civil actions such as immunity have been removed in many jurisdictions by a combination of legislation and judicial decisions, even though the extent of immunity continues to vary.<sup>15</sup> Statutes in most States have limited sovereign immunity to discretionary as opposed to ministerial decisions. Accordingly, the decision to pursue is viewed as discretionary, rendering the public entity immune, but the manner of pursuit is a ministerial decision for which there is no general grant of immunity. *Rhodes v. Lamar*<sup>16</sup> used this bifurcated approach to hold that the decision to institute a pursuit is a discretionary decision for which a sheriff enjoyed sovereign immunity, but liability was not precluded if the pursuit was conducted in a manner that violated a reasonable duty of care.<sup>17</sup>

It should be noted that the extent that immunity will bar pursuit-related litigation varies in different jurisdictions and often depends on whether police conduct is deemed negligent or reckless.<sup>18</sup> Moreover, some jurisdictions

provide that the purchase of liability insurance waives the protection of immunity to the extent of the insurance coverage.<sup>19</sup> In the final analysis, the extent of immunity in a particular jurisdiction can only be determined by carefully reviewing applicable State laws and relevant court decisions, a task beyond the scope of this article.

#### **Federal Civil Rights Act**

Pursuit-related liability under the Federal Civil Rights Act, 42 U.S.C. 1983, requires proof that an officer's conduct violated a constitutionally protected right.<sup>20</sup> In *Cannon v. Taylor*,<sup>21</sup> the U.S. Court of Appeals for the 11th Circuit concluded that "a person injured in an automobile accident caused by the negligent, or even grossly negligent, operation of a motor vehicle by a policeman acting in the line of duty has no Section 1983 cause of action for violation of a federal right."<sup>22</sup> Automobile negligence actions are grist for the State law mill, but they do not rise to the level of a constitutional deprivation.<sup>23</sup> The common thread running through the cases is that negligent conduct during a pursuit does not suffice to trigger jurisdiction under 1983.<sup>24</sup>

Courts also reject 1983 suits based on a claim that the decision to pursue was an illegal seizure under the fourth amendment. In *Galas v. McKee*,<sup>25</sup> a pursued driver crashed and brought a 1983 action to recover for his injuries. The court held that the police decision to continue the pursuit at high speeds was not an unreasonable seizure because no seizure had in fact occurred; a vehicular pursuit does not constitute a completed seizure by physical force or show of authority.<sup>26</sup>

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***“Liability must be based on proof that police conduct in breaching a duty owed was the proximate cause of a pursuit-related accident.”***

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However, certain techniques employed by police during a pursuit may raise constitutional issues cognizable under 1983. For example, in *Jamieson By and Through Jamieson v. Shaw*,<sup>27</sup> the court held that the constitutionally permissible use of force standard set forth by the Supreme Court in *Tennessee v. Garner*<sup>28</sup> was violated when a passenger in a fleeing vehicle was hurt when the vehicle hit a so-called dead-man roadblock after officers allegedly shined a bright light into the driver's eyes as the vehicle approached the roadblock. In *Brower v. County of Inyo*,<sup>29</sup> a high-speed pursuit over 20 miles ended when the fleeing suspect was killed when his vehicle hit a tractor-trailer which police had placed across the road as a roadblock. The court held that police use of a roadblock could constitute a constitutional violation of substantive due process if it was designed as an intentional deathtrap where the approaching driver does not have a clear option to stop because the roadblock is concealed around a curve or inadequately illuminated.

#### **Suits by Injured Officers**

The extent to which police officers can sue a fleeing motorist or other citizen for injuries incurred during a pursuit varies in different jurisdictions but generally requires proof that the person sued either failed to yield to an authorized emergency vehicle, was responsible for instigating the pursuit by choosing to disregard an officer's request to stop, or was negligent in allowing his vehicle to be stolen, such as leaving keys in the ignition. Some suits are barred by the so-called "fireman's

rule," which precludes recovery for a firefighter or policeman when the cause of action is based on the same conduct that initially created the need for the police response. Under this rule, officers who voluntarily confront the hazards of vehicular pursuits for which they are specifically compensated are sometimes barred from suing the fleeing motorist for his negligent or reckless conduct.<sup>30</sup> The "fireman's rule" may not bar an officer's lawsuit in jurisdictions that have statutes specifically designed to protect officers in pursuit situations. For example, in *City of Redlands v. Sorensen*,<sup>31</sup> the court held that a police officer could recover for his injuries from the driver of a speeding vehicle who violated a statutory obligation to stop in response to the red lights and siren on the police vehicle. In *Gail v. Clark*,<sup>32</sup> a Wisconsin officer who suffered severe injuries in an accident with a fleeing motorist recovered on a negligence theory from the motorist and a convenience store that sold him beer. In *Humphrey v. Coleman*,<sup>33</sup> an Oregon court ruled that an officer injured in a high-speed chase can recover, if the fleeing motorist should have reasonably foreseen that his conduct in refusing to stop would likely result in the officer having an accident.

#### **Criminal Prosecutions**

States provide for various criminal sanctions, ranging from misdemeanor to felony, for individuals who instigate a pursuit by fleeing from the police.<sup>34</sup> A fleeing motorist is also subject to enhanced criminal prosecution if a pursuing officer or other person is killed or injured during a pursuit. For example, in *Commonwealth v. Berggron*,<sup>35</sup> the

court held that a fleeing motorist could be convicted of negligent homicide for the death of an officer during a high-speed chase. The officer was in a marked cruiser with warning devices activated and tragically skidded and hit a tree while pursuing the defendant. The court held that the officer's pursuit was a foreseeable consequence of the defendant's conduct in fleeing and was the proximate cause of the officer's death.<sup>36</sup>

Police officers are also subject to criminal prosecution for their conduct during a pursuit. In *State v. Simpson*,<sup>37</sup> a pursuing officer was convicted of reckless driving for attempting to pass in a "no passing" zone in reckless disregard for the safety of others. Police officers may be authorized to disregard certain traffic regulations during a pursuit, but they cannot recklessly endanger the safety of others by relying on the fact other motorists will always yield the right of way to an emergency vehicle.

#### **FACTORS DETERMINING LIABILITY**

Pursuit-related litigation usually involves an inquiry into whether the manner in which the pursuit was conducted was reasonable under the circumstances of that case. The various factors that determine liability are nothing more than common sense considerations of whether and how to pursue. Each pursuit situation is different and requires a particularized assessment. Set forth below is a brief discussion of eight factors that most frequently determine the extent of pursuit-related liability. Law enforcement organizations should carefully consider these factors in de-

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veloping pursuit policies and training programs.

### **Purpose of Pursuit**

This factor relates to the need or reason for a pursuit. Does the purpose of the pursuit warrant the risks involved? What is the nature and seriousness of the suspected offense? Is the fleeing motorist suspected of committing a serious crime or only a misdemeanor? Is the motorist already operating his vehicle in a reckless and life-threatening manner or has he only committed a minor traffic violation? Is there a need for immediate apprehension or has the suspect been identified so that he could be apprehended at a later time?

### **Driving Conditions**

This factor involves a general assessment of equipment, weather, roadway and traffic conditions, and the experience and personal ability of the drivers involved. Considering the performance characteristics and general state of repair of the police vehicles involved, are they capable of traveling safely at a high rate of speed? Have the pursuit vehicles been inspected to ensure that they do not have dangerously worn shocks, tires, or brakes that grab during hard braking? Weather conditions that may affect visibility should be considered, such as bright sun or fog that make it difficult for other motorists to see the flashing warning lights on an approaching police vehicle. Is the roadway wet and conducive to hydroplaning or otherwise slippery due to ice or possibly a combination of hot weather and oil? Is the pursuit area congested with vehicular traffic and pedestrians or is

traffic density light, making it reasonable to assume that other vehicles or pedestrians will hear the warning signals of an approaching police vehicle and yield the right of way. The personal abilities of the drivers depend on their prior experience and training in pursuit driving, their familiarity with the area and roads involved, and any physical or emotional limitations, such as fatigue and reduced psychomotor coordination or visual acuity due to sickness or medication.

### **Use of Warning Devices**

The use of adequate visual and audible warning devices, such as flashing lights and siren, is not only a statutory mandate for most pursuit situations but also assures to the greatest extent possible that other vehicles and pedestrians are alerted to approaching emergency vehicles and to the need to yield the right of way. Overreliance on warning devices to clear the way for pursuit vehicles is problematic, because many drivers are visually distracted or drive with their windows up or radio playing and are not aware of approaching emergency vehicles. Many departments prohibit unmarked vehicles not equipped with emergency lights and siren from participating in a high-speed pursuit. If a particular emergency, such as a crime in progress, requires a so-called "silent run" and the nonuse of the siren and lights, police drivers should be instructed to make appropriate adjustments in driving speed and other driving procedures.

### **Excessive Speed**

Whether a particular speed is excessive depends on the purpose of

the pursuit, driving conditions, and personal ability of a police driver to control and effectively maneuver his vehicle. Speed when crossing an intersection against a light or sign is an especially critical consideration, since statistics suggest that most pursuit-related collisions occur at intersections.<sup>38</sup> Liability may be based on the failure to sufficiently decrease speed when approaching an intersection so that a complete stop can be made to avoid a collision.

### **Disobeying Traffic Laws**

Pursuit vehicles are statutorily obligated to use due care for the safety of others when disobeying traffic laws, such as operating a vehicle on the wrong side of the road, passing on the right, going the wrong way on a one-way street, passing in a "no passing" zone, or proceeding against a traffic signal. These dangerous and high-risk driving maneuvers must be cautiously executed because police are generally held liable for any resulting accidents.<sup>39</sup>

### **Roadblocks**

Special care is required when using roadblocks to ensure that innocent persons are not placed in a position of danger and that the fleeing motorist is afforded a reasonable opportunity to stop safely.<sup>40</sup> To reduce the risk of liability, it is recommended that roadblocks only be used when authorized by a supervisor and only as a last resort to apprehend a fleeing motorist who is wanted for a violent felony and who constitutes an immediate and serious threat. The roadblock should be placed in a highly visible area to give approaching drivers ample time to stop,

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***“ . . . it is not a valid defense against departmental liability to argue that a breach of a duty to train officers in pursuit driving was due to inadequate resources or a lack of training facilities.”***

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motorists can be warned of the roadblock by appropriately placed lights and flares, and a police dispatcher should communicate to other officers the need to direct innocent citizens away from the location of the roadblock.

#### **Use of Force**

In some cases, it may be appropriate for police to use force during a pursuit by means of either a firearm or stopping techniques such as ramming, bumping, boxing, or a so-called spike strip which punctures the tires on the pursued vehicle. Such use of force should only be used when authorized by a supervisor and only in circumstances where such force is clearly authorized by law and departmental policy.

#### **Continuation of the Pursuit**

The decision to continue a pursuit in a reckless manner can create liability. A pursuit should be terminated when the hazards of continuing outweigh the benefits and purpose for the pursuit. The pursuit should be terminated when the level of danger created by the pursuit outweighs the necessity for immediate apprehension. If it is reasonable to conclude that the fleeing motorist will not voluntarily stop and that there is no realistic way to stopping him without recklessly endangering others, the pursuit should be terminated because the risks are greater than the government's interest in pursuing. Dangerous pursuits should be terminated where the fleeing suspect has been identified and there is no continuing need for immediate apprehension. Because some officers may be reluctant to terminate a pursuit out of fear that fellow officers will view the voluntary termination as an act

of cowardice or timidity, it is advisable for departments to place the responsibility for supervising and terminating a pursuit on supervisory personnel not directly involved in the pursuit. Continuation of the pursuit across jurisdictional boundaries is a related factor to consider. Many States have so-called "fresh pursuit" statutes which authorize officers from foreign jurisdictions to enter and continue to pursue, but only if the officer believes that the fleeing motorist committed a felony in the foreign jurisdiction.<sup>41</sup>

#### **DEPARTMENTAL RESPONSIBILITY FOR LIABILITY REDUCTION**

To reduce the risks and liability associated with vehicular pursuits, law enforcement organizations must carefully evaluate their pursuit policy, training, supervision, and post-incident evaluation. Liability reduction is accomplished through sound management controls and a reduction in the number of pursuit-related accidents.

#### **Policy Development**

The function of a well-written pursuit policy is to state the department's objectives, establish some ground rules for the exercise of discretion, and educate officers as to specific factors they should consider when actually conducting a vehicular pursuit. Where feasible, a comprehensive policy statement should give content to terms like "reasonable" and "reckless" and provide officers with more particularized guidance. There is no model pursuit policy; instead, a policy should be tailored to a department's operational needs, geographical peculiarities, and training capabilities. A written policy also provides a basis for holding offi-

cers accountable for their pursuit-related conduct.

Legal commentators continue to debate the relative merits and disadvantages of a written departmental policy concerning vehicular pursuits.<sup>42</sup> In *Dodge v. Stine*,<sup>43</sup> the U.S. Court of Appeals for the Seventh Circuit noted that the decision whether to formulate a written pursuit policy and what the form and content of that policy should be is a discretionary act for which the department is immune from liability. Nonetheless, most experts recommend that law enforcement organizations adopt written pursuit policies that impose specific controls on the operation of pursuit vehicles, despite the fact empirical research has not established a conclusive correlation between the number of pursuit-related accidents and the existence of a written policy.<sup>44</sup> One expert points out that the absence of a strong and convincing policy on police pursuits forces officers to react intuitively, which may increase the likelihood of unnecessary accidents and liability.<sup>45</sup>

#### **Training**

Lack of adequate training may contribute to many pursuit-related accidents. The natural tendency for many police drivers is to become emotionally involved and lose some perspective during a pursuit; they are also required to drive different police vehicles with unique handling characteristics under various road and weather conditions. It is easy to lose control of a vehicle that is driven beyond its or the driver's capabilities, and law enforcement organizations can be held liable for failing to provide adequate driver training to prepare officers to safely handle vehicles

in pursuit situations.<sup>46</sup> The extent and type of training required depend on a department's operational needs and objectives. A minimal level of cost-effective training can be accomplished by emphasizing defensive driving techniques and carefully instructing officers about departmental pursuit policies and relevant State regulations concerning the operation of emergency vehicles. More sophisticated training might include emergency vehicle operation courses that provide officers with a working knowledge of their skill limitations through practical driving experience in locked skid and skid recovery techniques and high-speed cornering and braking. While the type of training required depends on a department's operational needs, it is not a valid defense against departmental liability to argue that a breach of a duty to train officers in pursuit driving was due to inadequate resources or a lack of training facilities.<sup>47</sup>

### Supervision

Police departments are responsible for providing adequate supervision of officers involved in a pursuit. Experts who have studied the emotionalism and psychology associated with pursuits recommend that as soon as possible after a pursuit has been initiated, an officer not involved in any of the pursuit vehicles be tasked with the responsibility for supervising the pursuit.<sup>48</sup> An officer not immediately involved is in a better position to oversee objectively the pursuit and decide whether the pursuit should continue and under what circumstances. The supervisor should track the location of the pursuit, designate the primary and secondary pursuit vehicles, and maintain tight controls on

the desire of other officers to get involved or parallel the action. Effective communication between the pursuing vehicles and the supervisor is essential. The failure to transmit information concerning the location of a pursuit or the condition of the pursued driver may contribute to a subsequent accident.

### Evaluation and Documentation

Law enforcement organizations should provide for an ongoing process of evaluation and documentation of pursuit-related incidents. All pursuits, including those successfully terminated without an accident, should be routinely critiqued to determine whether departmental policy was followed and the extent to which any policy modification, training enhancement, or other remedial action is warranted. A thorough after-the-fact investigation of a pursuit-related accident should include the activities of officers not directly involved in the accident who may be implicated as witnesses in subsequent litigation. Pursuit-related litigation is often initiated years after an incident, and departments can only refute allegations of negligence if they maintain contemporaneous documentation of the accident investigation and other records relevant to pursuit training and supervision. A formal monitoring mechanism, such as a pursuit-incident review board, provides managers with a basis for holding officers accountable for their pursuit-related conduct and provides the means to periodically reevaluate the effectiveness of pursuit policies and training programs.

### CONCLUSION

Vehicular pursuits are an inherently dangerous but necessary part of law

enforcement's obligation to promote law and order in our society. Unfortunately, some accidents are unavoidable, and some pursuit-related liability is probably an inevitable consequence of law enforcement responsibilities. The law places a duty on all law enforcement officers to operate their vehicles with a due regard for the safety of others. That mandate can best be accomplished through sound policy development, realistic training, and effective supervision.

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#### Footnotes

<sup>1</sup>Alpert and Anderson, "The Most Deadly Force: Police Pursuits," 3 Justice Quarterly 1 (March 1986).

<sup>2</sup>See Farber, "Negligent Vehicular Police Chase," 41 Am. Jr. Proof of Facts 2d 79.

<sup>3</sup>See Zevitz, "Police Civil Liability and the Law of High Speed Pursuit," 70 Marquette L. Rev. 237 (1987).

<sup>4</sup>Jackson v. Olson, 712 P.2d 128 (Or. App. 1985).

<sup>5</sup>475 So.2d 816 (Miss. 1985).

<sup>6</sup>*Id.* at 818.

<sup>7</sup>See generally Annotation, "Emergency Vehicle Accidents," 24 Am. Jur. Proof of Facts 599.

<sup>8</sup>See generally Annotation, "Liability of Governmental Unit or Its Officers for Injury to Innocent Occupant of Moving Vehicle as a Result of Police Chase," 4 A.L.R. 4th 865. See also, *Breck v. Cortez*, 490 N.E.2d 88 (Ill. App. 1986).

<sup>9</sup>See generally Annotation, "Municipal Corporation's Safety Rules or Regulations as Admissible in Evidence in Action by Private Party Against Municipal Corporation or its Officers or Employees for Negligent Operation of Vehicle," 82 A.L.R. 1285.

<sup>10</sup>See *Fiser v. City of Ann Arbor*, 339 N.W.2d 413 (Mich. 1983).

<sup>11</sup>733 S.W.2d 28 (Mo. App. 1987).

<sup>12</sup>729 S.W.2d 114 (Tex. App. 1986).

<sup>13</sup>*Id.* at 117.

<sup>14</sup>See *Oberkramer v. City of Ellisville*, 706 S.W.2d 440 (Mo. 1986); *Sammor v. Mayor and Aldermen of Savannah*, 335 S.E.2d 434 (Ga. App. 1985); *Thornton v. Shore*, 666 P.2d 655 (Kan. 1983).

<sup>15</sup>For a general discussion of immunity, see Carlin, "High-Speed Pursuits: Police Officer and Municipal Liability for Accidents Involving the Pursued and an Innocent Third Party," 16 Seton Hall L. Rev. 101 (1986).

<sup>16</sup>490 So.2d 1061 (Fla. App. 1986).

<sup>17</sup>*Id.* at 1062.

<sup>18</sup>For example, in *Indiana State Police v. Swaggerty*, 507 N.E.2d 649 (Ind. App. 1987), the court held that under Indiana law, officers and their departments had no immunity for their pursuit-related negligence. In *Biscoe v. Arlington County*, 438 F.2d 1352 (D.C. Cir. 1984), Virginia's sovereign immunity did not bar liability for a pursuit which extended into another jurisdiction, because the officer's conduct was deemed ministerial and violative

**“Law enforcement organizations should provide for an ongoing process of evaluation and documentation of pursuit-related incidents.”**

of a reasonable duty of care. In *Laco v. City of Chicago*, 507 N.E.2d 64 (Ill. 1987), the court ruled that under Illinois law, an officer is not liable for pursuit-related conduct, unless such conduct constitutes willful and wanton negligence. In *Wood v. City of Linden*, 526 A.2d 1093 (N.J. 1987), the court held that under New Jersey law, an officer is immunized from pursuit-related liability for negligence if he acted in good faith but that deliberately ramming a fleeing vehicle occupied by a passenger may be reckless, thus denying the officer immunity.

<sup>19</sup>See, e.g., *Martin v. Georgia Dept. of Public Safety*, 357 S.E.2d 569 (Ga. 1987).

<sup>20</sup>42 U.S.C. 1983 provides in relevant part: “Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, 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 proceedings for redress.”

<sup>21</sup>782 F.2d 947 (11th Cir. 1986).

<sup>22</sup>*Id.* at 950.

<sup>23</sup>*Id.*

<sup>24</sup>See, *Allen v. Cook*, 668 F.Supp. 1460 (W.D. Okla. 1987).

<sup>25</sup>801 F.2d 200 (6th Cir. 1986); see also, *Jones v.*

*Sherrill*, 827 F.2d 1102 (6th Cir. 1987).

<sup>26</sup>*Id.* at 203-4.

<sup>27</sup>772 F.2d 1205 (5th Cir. 1985).

<sup>28</sup>105 S.Ct. 1964 (1985). The Supreme Court held that the use of deadly force to apprehend an unarmed fleeing felon was an unreasonable seizure which violated the fourth amendment.

<sup>29</sup>817 F.2d 540 (9th Cir. 1987). In *City of Miami v. Harris*, 490 So.2d 69 (Fla. App. 1985), the court held that a city can be liable under 1983 for a pursuit policy that is adopted with a reckless disregard of whether such policy would cause loss of life without due process.

<sup>30</sup>A discussion of the rationale for the “fireman’s rule” can be found in *Hubbard v. Boelt*, 620 P.2d 156 (Cal. 1980).

<sup>31</sup>176 Cal. App. 3d 202 (1985).

<sup>32</sup>410 N.W.2d 662 (Iowa 1987).

<sup>33</sup>739 P.2d 1081 (Or. App. 1987). Moreover, the fleeing motorist may be denied recovery of insurance benefits for his injuries. See, e.g., *Serio v. Allstate Ins. Co.*, 509 A.2d 273 (N.J. 1986).

<sup>34</sup>For example, the State of Washington provides that any driver who willfully refuses to immediately stop or who drives with a reckless disregard for others while attempting to elude a pursuing police vehicle, after being given a visual or audible signal to stop, shall be guilty of a class C felony. *State v. Malone*, 724 P.2d 364 (Wash. 1986).

<sup>35</sup>496 N.E.2d 660 (Mass. 1986).

<sup>36</sup>In *State v. Mounce*, 721 P.2d 661 (Ariz. App. 1986), it was held that prosecution for unlawful flight from a pursuing officer was not barred by double jeopardy by the suspect’s prior guilty plea to a charge of reckless driving.

<sup>37</sup>732 P.2d 788 (Kan. App. 1987).

<sup>38</sup>A discussion of prior empirical studies regarding pursuits is set forth in Alpert, *supra* note 1.

<sup>39</sup>See *supra* note 3.

<sup>40</sup>See Annotation, “Municipal or state liability for injuries resulting from police roadblocks or commandeering of private vehicles,” 19 A.L.R. 4th 937.

<sup>41</sup>See Note, “*State v. Harding*: Municipal Police Authority and the Fresh Pursuit Statute,” 39 Maine L. Rev. 509 (1987).

<sup>42</sup>See, e.g., Freedman, “Restrictions Urged on Police Pursuits,” 8 National L. J. 3 (1986); and Territo, “Citizen Safety: Key Element in Police Pursuit Policy,” Trial (Aug. 1982).

<sup>43</sup>739 F.2d 1279 (7th Cir. 1984).

<sup>44</sup>See articles cited *supra* notes 1, 3, and 42.

<sup>45</sup>See *supra* note 1, at pg. 6.

<sup>46</sup>See, e.g., *Nelson v. City of Chester, Ill.*, 733 S.W.2d 28 (Mo. App. 1987); *Biscoe v. Arlington County*, 738 F.2d 1352 (D.C. Cir. 1984).

<sup>47</sup>*Id.*

<sup>48</sup>See articles cited *supra* note 44.

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**PHOTOGRAPHS AND GRAPHICS**—A photograph of the author, and when applicable, his or her police chief, should accompany manuscripts. If possible, other suitable photos, illustrations, or charts supporting the text should be furnished. Black and white glossy prints reproduce best. In addition, special effort should be made to obtain a quality, black and white glossy photograph, vertical format, for possible use as a cover.

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## ***The Bulletin Notes***

On September 10, 1986, Officer Gary Herrick of the Chico, CA, Police Department responded to a knife fight call. When he arrived at the scene, Officer Herrick found the victim suffering from a slash wound to the throat and a second wound to the abdomen. After immediately placing a call for an ambulance, Officer Herrick performed first aid on the victim, restricting the flow of blood from the wounds and saving the victim's life. The Bulletin is pleased to join Officer Herrick's superiors in commending his lifesaving actions.



Officer Herrick

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