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Restrictive Policies for High-Speed Police Pursuits

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Restrictive Policies for High-Speed Police Pursuits

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NCJ 122025

Prepared for the National Institute of Justice, U.S. Department of Justice, by the Institute for Law and Justice, Inc., under Grant No. OJP–85–C–006. Points of view and opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice.

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Introduction

Police throughout the country engage in hundreds of high-speed automobile chases every day. Enough of these result in serious property damage, personal injury, and death to make police pursuit a major public concern. In the October 1988 term, the Supreme Court of the United States handed down two decisions of importance in defining restrictive policies for high-speed pursuits.

In *Brower v. County of Inyo*,[1] the Court held that creating a roadblock in the path of a fleeing driver and pursuing him into it constitutes a "seizure" within the meaning of the fourth amendment to the United States Constitution. In *City of Canton v. Harris*,[2] the Court wrote that failure to train officers in a particular duty, where the need for training is obvious and lack of training is likely to result in violation of constitutional rights, can make a municipality liable. The example chosen by the Court was training in the use of deadly force, which it had held to be a fourth amendment seizure in *Tennessee v. Garner*.[3] Read together, the three cases lay a foundation for liability in high-speed pursuits if municipalities have failed to adopt reasonable policies or provide adequate training. To provide a context for understanding and evaluating pursuit policy, this *Issues and Practices* will first define pursuit, then analyze the policy and liability issues it raises. After briefly reviewing the applicable research, the report examines restrictive policies governing vehicle pursuits in four law enforcement agencies. Finally, the report suggests major issues that police agencies should address in developing pursuit policies.

Chapter 1
Definition of Pursuit

For the purposes of this study, pursuit may be defined as *an active attempt by a law enforcement officer on duty in a patrol car to apprehend one or more occupants of a moving motor vehicle, providing the driver of such vehicle is aware of the attempt and is resisting apprehension by maintaining or increasing his speed or by ignoring the law enforcement officer's attempt to stop him.*[4]

The definition establishes four key points:

- That the law enforcement officer is in a patrol car and should therefore be recognizable as a law enforcement officer.
- That the driver is aware that the law enforcement officer is trying to stop him and resists the attempt.
- That the reason for the pursuit may embrace traffic offenses, including speeding itself, and felonies.
- That vehicle speed may vary. Though risk is ordinarily perceived as rising in proportion to speed, even low or moderate speeds can create substantial risk in congested areas.

Chapter 2
Policy Issues

A clearly defined pursuit policy achieves several ends:

- It gives officers a clear understanding of when and how to conduct a pursuit.
- It helps reduce injury and death.
- It maintains the basic police mission to enforce the law and protect life and property.
- It minimizes municipal liability in accidents that occur during pursuit.

There can be little question that a police agency should have an explicit vehicle pursuit policy. The question is, what kind of pursuit policy will best serve the agency's interests? Devising such a policy requires that police and municipal administrators balance conflicting interests: on one side, apprehension of known offenders; on the other side, the safety of police officers, of fleeing drivers and their passengers, and of innocent bystanders.

High-speed pursuits expose any police department to high risk of loss of life, serious personal injury, and serious property damage. If the injured or killed are police officers, the police department suffers direct loss. If the injured or killed are private citizens, the department or the government it serves may be liable for damages, including property damage, in civil actions. When the injured parties are innocent bystanders, liability is particularly difficult to elude.

On the other hand, if a law enforcement agency does not engage in high-speed pursuits, its credibility with both law-abiding citizens and violators of the law will suffer greatly. Public knowledge that a police department has a policy prohibiting pursuit may well encourage people to flee, decreasing the probability of apprehension.

In the literature on pursuit policy, there are three policy models:

Discretionary—allowing officers to make all major decisions relating to initiation, tactics, and termination.

Restrictive—placing certain restrictions on officers' judgments and decisions.

Discouraging—severely cautioning against or discouraging any pursuit, except in the most extreme circumstances.[5]

The four departments examined in our study have adopted restrictive policies that place their officers under carefully defined constraints and that subject pursuits to close supervision and review. Their experience may help other departments now reexamining their policies.

Chapter 3
Liability Issues

The extent of a municipal government's liability for personal injuries or property damage caused by high-speed pursuits depends first upon the State laws. To the extent that a State has waived sovereign immunity for itself and its municipal governments, it may be liable for negligence. But it is potentially liable in Federal courts under 42 U.S.C. & 1983 for deprivation of civil rights, for what are sometimes referred to as constitutional torts.

The civil rights protected by 42 U.S.C. & 1983 include the right not to have life, liberty, or property taken without due process of law, a right secured by the 14th amendment to the Constitution of the United States, and the right of a person not to be unreasonably seized, a right guaranteed by the fourth amendment.

In Federal civil rights cases to date, several principles have been developed. The Supreme Court will not use 42 U.S.C. & 1983 for simple negligence cases.[6] Nor will the court use it where there is adequate relief to injured parties under State law.[7] Municipalities can be found liable under 42 U.S.C. & 1983 only where the municipality itself causes the constitutional violation at issue.[8]

Three cases, two of them heard by the Supreme Court in its October 1989 term, bear directly on issues of this study. The court held in *Tennessee v. Garner*[9] that, except in certain circumstances, the use of deadly force to apprehend a fleeing, unarmed suspect is unreasonable seizure under the fourth amendment. In this case, a police officer had shot and killed a teenager suspected of burglary as he attempted to escape. The Supreme Court had little difficulty concluding that the use of deadly force is a fourth amendment seizure, but found that determining its unreasonableness required balancing its extreme nature—the ultimate form of seizure of a person—against the law enforcement interests being served. The Court rejected the use of deadly force to prevent the escape of all felony suspects, regardless of the circumstances. "It is not better that all felony suspects die than that they escape," the Court said.[10] The Court carefully analyzed the common-law rule that authorized the use of deadly force to apprehend a felon, and a Tennessee statute that authorized the use "of all the necessary means to effect the arrest." The Memphis Police Department policy was slightly more restrictive than the Tennessee statute, but still allowed the use of deadly force in cases of burglary.[11]

The Supreme Court considered the deadly force rules followed by the States, finding that the common-law rule regarding deadly force remains in effect in less than half the States. The Court also examined policies adopted by police departments: "Overwhelmingly, these are more restrictive than the common-law rule."[12] Citing reports and studies by the Commission on Accreditation for Law Enforcement Agencies and the International Association of Chiefs of Police (IACP), the Court found that only 7.5 percent of police departments permit use of deadly force against any felon, and that 86.8 percent explicitly do not.[13]

Tennessee v. Garner

Thus, in *Tennessee v. Garner*, the Supreme Court concluded that deadly force may not be used unless the officer has reason to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others, or it is necessary to prevent the escape.[14]

Brower v. County of Inyo

High-speed chases have frequently been analogized to the use of deadly force, and in *Brower v. County of Inyo*,[15] the Supreme Court considered a high-speed police pursuit culminating in the death of the fleeing driver. In this case, officers chased the driver of a stolen car into a roadblock other officers had created by parking a tractor-trailer across a two-lane highway in the middle of the night. All members of the Court agreed that Brower had been "seized" within the meaning of the fourth amendment, but there was a five-to-four split on whether an element of governmental intent is required for violation of the fourth amendment. Distinguishing the case from an accidental or negligent seizure as occurs if a brake slips in an unoccupied police car, accidentally pinning a passerby against a wall, Justice Scalia, writing for the majority, said:

> It is clear, in other words, that a fourth amendment seizure does not occur whenever there is a governmentally caused termination of an individual's freedom of movement (the innocent passerby), nor even whenever there is a governmentally caused and governmentally desired termination of an individual's freedom of movement (the fleeing felon), but only where there is a governmental termination of freedom of movement *through means intentionally applied* [emphasis in original].[16]

Justice Stevens, joined by Justices Brennan, Marshall, and Blackmun, concurred in the judgment that using the roadblock had constituted a fourth amendment seizure, but declined to join that part of the Court's opinion that seemed to "establish the proposition that 'violation of the fourth amendment requires an intentional acquisition of physical control.'"[17] Because the majority in *Brower* does consider the intention behind the particular tactic used, it involves itself with questions of policy, which is the primary concern of this *Issues and Practices.*

City of Canton v. Harris

City of Canton v. Harris[18] dealt with a question of liability for inadequate training. Combined with *Garner* and *Brower*, *Harris* bears directly on the liability issue. Two passages bring the point home. Considering circumstances in which training might be inadequate to protect constitutional rights, the Court said:

> But it may happen that in light of the duties assigned to specific officers or employees the need for more or different training is obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policy makers of the city can reasonably be said to have been deliberately indifferent to the need.[19]

A footnote to the passage reads:

> For example, city policy makers know to a moral certainty that their police officers will be required to arrest fleeing felons. The city has armed its officers with firearms, in part to allow them to accomplish this task. Thus, the need to train officers in the constitutional limitations on the use of deadly force (see *Tennessee v. Garner*, 471 U.S. 1 (1985)), can be said to be "so obvious," that failure to do so could properly be characterized as "deliberate indifference" to constitutional rights.[20]

Deliberate indifference to constitutional rights may be a standard few plaintiffs will ever meet. Indeed, Justice O'Connor did not believe that Mrs. Harris, the plaintiff in the *City of Canton*, could meet the deliberate indifference standard. But the risks inherent in high-speed pursuits are well known and cannot be taken lightly. As the facts of *Brower v. County of Inyo* make clear, high-speed pursuit can turn out to be the use of deadly force, as did the use of firearms in *Tennessee v. Garner*. Moreover, under *Garner*, a municipality may be liable for failing to have a policy limiting high-risk pursuits to circumstances justifying the risk. And under *City of Canton*, local governments may find themselves liable for failure to provide training that constrains this application of deadly force.

Chapter 4
Prior Research and Data

Center for Environment and Man Study

Previous pursuit studies have both examined police pursuit data and explored implicit policy issues. In 1969 and 1970, the Center for the Environment and Man, under contract with the Department of Transportation (DOT), conducted extensive field studies resulting in these findings:[21]

1. The majority of pursuit-related fatalities are incurred by the fleeing driver, passengers, or uninvolved bystanders.
2. The event that triggers pursuit is a traffic violation in more than 90 percent of the cases.
3. Young (under 24) male drivers with poor driving records are most likely to attempt to flee from a police officer.
4. Alcohol plays a role in more than half the cases in which a driver attempts to evade apprehension.
5. A significant number of known offenders (roughly 15 percent) were driving without valid licenses at the time they attempted to evade apprehension.
6. Approximately half the offenders had at least one prior license suspension on their records.
7. Only a relatively small number (3 to 8 percent) of pursuits involve stolen vehicles.
8. The majority of pursuits occur at night or on weekends.

California Highway Patrol Study

In 1983, the California Highway Patrol (CHP) gathered data on itself and 10 other agencies for a 6-month period. CHP reached these conclusions:[22]

- Contrary to a 1968 study [by Physicians for Automotive Safety] that reported that 7 out of 10 (70 percent) police pursuits result in an accident, the 1983 CHP study found that less than 3 in 10 (29 percent) involve collisions.
- Although past studies claim that up to 20 percent of pursuits cause death, the CHP study found that only 1 percent result in death.
- Past studies also claim that 5 out of 10 (50 percent) pursuits end in serious injury. In the CHP study, however, only 11 percent ended in an injury of any type, including minor injuries.

- The majority of influencing factors such as time of day, locale, and violator's age, had no effect on the apprehension rate, accident rate, or severity of accidents.
- Pursuits result in an apprehension rate of approximately 77 percent.
- Most pursuits are 10 miles or less and last 10 minutes or less.[23]

One limitation of the CHP study is that it is a highway patrol study. Most highway patrol pursuits take place under conditions differing substantially from those of urban pursuits. A 10-mile pursuit within a major city could well bring the participating cars past hundreds of passers-by.

A Canadian Perspective

In 1984, the Solicitor General for Ontario, Canada, established a special committee to study police pursuit driving. It examined policy, law, statistics, training, and radio communications. A majority of the committee concluded that "vehicular police pursuit is too hazardous to undertake as frequently as present policy permits."[24] The report continued:

> The statistics reveal an incidence of pursuit-related death, injury, and property damage disproportionately high to justify the immediate physical apprehension of motorists who flee the police for simple traffic offences. The statistics further indicate that a felon is rarely apprehended either purposefully or unintentionally as a result of vehicle pursuit by the police.

In addition to a restrictive pursuit policy, the Commission recommended:

1. The strict enforcement of section 101 of the Highway Traffic Act permitting the police to charge a vehicle owner and placing the onus of responsibility on a vehicle owner, where the operator of the vehicle knowingly fails to stop for the police after the committal of an offense.
2. The enactment of legislation permitting the courts to impound a vehicle that has been used by a motorist to willfully flee from the police.
3. The adoption of a camera system that can photograph the license plates of a vehicle in the act of committing a traffic offense and simultaneously record its speed.
4. The establishment of a helicopter police patrol.[25]

The Beckman Report

In 1985, Erik Beckman of Michigan State University published *A Report to Law Enforcement on Factors in Police Pursuits*.[26] Because this study is based on 424 pursuits conducted by 75 law enforcement agencies for 6 months, the data may be biased toward serious incidents. Be that as it may, Beckman found that:

- No pursuit speed, distance, or duration is safe.
- Pursuits involving high speed, long distances, and intoxicated drivers take place primarily at night.
- Regardless of all other factors, the majority of suspects are captured.
- A fleeing driver is not usually a dangerous felon.
- The event preceding the pursuit is unrelated to the outcome.
- The officer's perception of the event preceding the pursuit is usually confirmed by the booking charges.
- When the officer does not have a backup unit, the chance of the suspect's escaping is increased.
- Pursuits generally end with the surrender of the suspect, either voluntarily or after an accident.
- Use of roadblocks and ramming by police increases the capture rate while reducing the overall injury rate.

Beckman's data showed property damage in about 1 out of 5 pursuits, injuries in 1 out of 7, and deaths in 1 out of 35. Most likely to be injured or killed were suspects, other motorists, and police, in that order. Beckman recommended written pursuit policies reinforced through training and supervision, balanced between known offense and degree of hazard, and restricted to some degree. He also recommended that special attention be paid to the use of ramming and roadblocks. In an earlier article, Beckman had advocated State statutes governing high-speed pursuits, or, in the absence of State action, adoption of policies at the local level.[27] He enumerated 17 issues a good policy should address, all of which are reflected in the latter portions of this paper.

The Alpert-Anderson Study and the Alpert-Dunham Studies

In an article entitled "The Most Deadly Force: Police Pursuits," Geoffrey P. Alpert and Patrick R. Anderson analogized high-speed pursuit to police use of deadly force.[28] They were struck by the fact that most research on deadly force is devoted to firearms, even though the motor vehicle is the deadliest weapon in the police arsenal. Alpert and Anderson examined who is responsible for what in a high-speed pursuit, and identified six distinct areas of responsibility:

1. Agency policies, practices, and customs.
2. Required training.
3. Actions of officer initiating the pursuit.
4. Actions of backup officers.
5. Actions of the supervisors.

6. Actions of the administrator, who will measure officers' actions against departmental policy.

While advocating development of clear pursuit policy, Alpert and Anderson stressed the necessity of training and supervision. "In other words, a strong, clearly defined policy can be undermined if no one enforces it, or if those who violate it are not properly disciplined."[29]

In a series of later articles, two of them cowritten with Roger G. Dunham, Alpert has examined pursuit data from Dade County, Florida. In the first, Alpert found two trends worth investigating.[30] First, while most pursuits were initiated for traffic violations, many thus apprehended were charged with serious felonies unrelated to the traffic offense, suggesting that some were fleeing from something more serious than the traffic charge. Second, while accidents occurred in slightly more than half the pursuits, most were minor and resulted in no serious injury. Accidents did, however, occur in two-thirds of the pursuits involving serious offenses, indicating that either offenders or police were willing to take more chances when pursued or pursuing for serious offenses.[31] In discussing these trends, Alpert again stressed training, but pointed out that training is more problematic in departments whose departmental policy allows officers broad pursuit discretion. It is much easier to train under a restrictive policy because training then consists primarily of teaching the policy.[32] In the second article,[33] Alpert and Dunham examined 952 pursuits over 3 years, including the pursuits in Alpert's first Dade County study. Of these 952 pursuits, 642 (68 percent) offenders were arrested, 298 (31 percent) escaped, and 7 (.7 percent) died. Over half (512) the pursuits were initiated for traffic violations, with 305 pursuits resulting in traffic arrests, and with a slightly greater number (314) in felony arrests. About a third (310) ended in accidents, with 160 pursuits involving personal injuries.

The third study looked more closely at 323 Dade County pursuits in 1987, a subset of the data from the preceding study.[34] A theme of the Alpert-Dunham collaborations is that policy should be based on research and that the research data do not confirm conventional wisdom as to the high degree of danger involved in pursuit. Most pursuits do not last very long, do not reach high speeds, do not lead to accidents, but do end with arrests. But by Alpert and Dunham's own calculations, accidents are still 65 times more likely to occur in pursuit driving than in other police driving.

Alpert and Dunham believe that the ratio of cost (accidents, injuries) to benefits (arrests) is more favorable than conventional wisdom would suggest. Nevertheless, our study prompts serious reservations about the Alpert-Dunham conclusions. First, they tend to minimize the potential impact of the costs incurred. A county board facing a $5-million judgment will not find much consolation in statistics demonstrating that accidents creating such liability occur only once in a thousand pursuits.[35]

Second, a wide range of injuries is possible in automobile accidents. Accurate risk assessments must evaluate both the range and severity of these injuries. The Alpert-Dunham data do not estimate the severity of injuries and the resultant costs.

Third, while the Alpert-Dunham analysis distinguishes traffic arrests from felony arrests, it does not discriminate between types of felony arrests. Nor does it tell us anything about defendants who died or why they were being pursued. Under *Tennessee v. Garner*,[36] it is clear that force must be proportionate to the danger the fleeing person represents. To be representative, studies should take this principle into account in estimating the cost-benefit ratio of high-speed pursuits.

Chapter 5
Pursuit Policies in Four Jurisdictions

This study enlarges the picture provided by prior empirical data by analyzing pursuit data in four law enforcement agencies that have recently adopted restrictive pursuit policies: Nassau County, New York; St. Petersburg, Florida; Mesa, Arizona; and Phoenix, Arizona.

The Nassau County Police Department implemented its revised vehicle pursuit policy in 1982, the other three in 1986. The four departments created policies that stated the circumstances under which pursuits may be undertaken and specified the procedures to be followed. Differences in pursuit data gathered before and after these policy changes would illustrate the impact of the new policies and permit assessment. Unfortunately, the inadequacy of prechange data precluded such assessments.

Nevertheless, the policies themselves are worthy of study. To facilitate comparison of the four department policies, the accompanying tables summarize their common elements. In the text that follows, we discuss issues not easily accommodated in the tables.

Rationale

Only Nassau County sets forth a lengthy rationale for its pursuit policy in its pursuit regulation. The other three confine themselves to brief statements like this one in the Phoenix directive: "The Police Department's primary concern in pursuit situations is the protection of the lives and safety of all citizens and officers." The present pursuit policy of Nassau County, adopted in 1982, is a revision of a policy originally adopted in 1977. The earlier policy likened a police car to a service revolver, saying that in a high-speed pursuit, "the patrol car is potentially more dangerous than the service revolver." Nassau County's 1982 pursuit policy echoes public concern about the perils of high-speed chases:

> Across the nation each year, there are many police vehicle pursuits that are considered to be unjustifiable. Some involve accidents in which police officers and innocent people are seriously injured or killed, and most involve, at least, great danger of injury and death. This has led some police professionals to conclude that police should never engage in vehicle pursuits.
>
> It is the view of the Department that although many pursuits incur too much risk to be justified, occasionally there are urgent circumstances when a proper law enforcement response requires a pursuit, and the degree of risk involved becomes justified . . . . This policy is to be used as a guide to making intelligent and acceptable decisions on whether or not to pursue. The primary goal is to *avoid excessive or unjustifiable risks.*

The key factors to be considered when initiating or continuing a pursuit are justification, public and personal safety, alternatives, and control. Be aware that it is not a disgrace to break off a pursuit that has become too dangerous; such action is *proper police procedure* [emphasis in original].[37]

Radio Communications

Each policy studied prescribes radio procedure in detail. In the typical procedure, the pursuing officer notifies the dispatcher of the pursuit and the following facts:

- The violation justifying pursuit.
- Location, direction, and approximate speed of car pursued.
- Description of the vehicle and its occupants.
- Progress of the chase.
- Location of stopped vehicle.

Phoenix and Mesa add that officers should roll up their windows and operate the siren manually to ensure the dispatcher can understand their transmissions. Nassau County's directive goes into detail on microphone technique. The dispatcher or communications operator must:

- Notify other units of the pursuit.
- Notify patrol supervisor in precinct where pursuit is taking place.
- Request assistance from air support unit.
- Direct units to communicate car-to-car when necessary.
- Notify neighboring jurisdictions of a pursuit approaching their boundaries.

In Phoenix and Mesa, only the officer in the pursuit unit is to make radio transmissions. Other units are to monitor the pursuit. But circumstances may make it appropriate for a supervisor, an air support unit, or a backup to make transmissions.

Nassau County provides that a communications bureau supervisor directly supervise and coordinate all radio control of the pursuit. This supervisor is to evaluate the circumstances and terminate any pursuit that is not, in his judgment, justified.

Termination of Pursuit

Pursuits may be terminated by apprehension of the offender, by decision of the pursuing officer, or by order of a supervisor. Nassau County discusses apprehension in detail, stressing that the violators should be assumed to be dangerous. The specific conditions for termination are set forth in appendix B.

Boxing-In, Ramming, and Roadblocks

Each jurisdiction has explicit rules on tactics for stopping the pursued vehicle. St. Petersburg defines three tactics:

1. **Boxing-In.** The surrounding of a law violator's vehicle with pursuit vehicles which are then slowed to a stop along with the law violator's vehicle.
2. **Ramming.** The deliberate act of hitting a law violator's vehicle with a pursuit vehicle for the purpose of functionally damaging or forcing the violator's vehicle off the roadway.
3. **Roadblocks.** A barricade or other obstruction across a roadway set up to stop or prevent the escape of a fleeing vehicle. As can be seen from appendixes A through D, the four departments severely restrict, if not prohibit, these tactics.

Firearms

Nassau County flatly prohibits use of firearms in a pursuit. A brief paragraph states both the rule and its rationale:

> Firearms should not be used in an attempt to stop a pursued vehicle. This applies to officers at roadblocks, as well as to pursuing officers. Fortunately, such action is rarely taken, because most officers realize it is extremely dangerous and ineffective. A car traveling at high speed with a wounded or dead person at the controls, would be far more dangerous than the pursuit, and a danger that none of us can justify.

The other three departments are silent on use of firearms in high-speed pursuits.

Aircraft Rules

Three of the four departments studied have specific rules governing departmental aircraft in pursuit. Phoenix and Mesa have identical rules, which follow:

When an aircraft is available to assist, the following guidelines will be used:

1. When the aircraft has advised that the suspect vehicle is in view, officers in primary vehicles will turn off their emergency lights and slow to a safe operating speed.
2. The aircraft will continue to advise of the suspect vehicle's location and approximate speed.
3. Support units should attempt to be in a position to apprehend the suspect when the suspect vehicle stops.
4. The aircraft will maintain a safe height to allow the operator to observe the suspect vehicle.

5. The aircraft should be operated so that the suspect does not know that he is being observed.

Nassau County's pursuit policy directs that its helicopter advise communications on whether any unit should abandon pursuit and at what locations other units may most effectively set up an interception.

Alternatives to Pursuit

Nassau County emphasizes alternatives to pursuit, two of which are *no pursuit* and *following at safe speed. No pursuit* is the recommended policy when a violator has too much lead time or when the violator's identity is known and his behavior is not endangering others. In the latter case, he can be apprehended at some other time. The other three jurisdictions have variations of this rule.

Nassau County offers three examples of situations in which following at a safe speed is preferable to a high-speed chase: (1) when hostages are involved, (2) when an occupant is already known to be the subject of an alarm, and (3) when pursuit is in heavy traffic. In these instances, the officer is to call for assistance. Nassau County's discussion of alternatives ends with these comments on not engaging in or continuing pursuit:

> Discontinuing the pursuit does not mean giving up. It is possible that the pursuit will be reestablished by the pursuing officer or, through the use of the radio, by other police units. Also, the subject of a pursuit might be identified, and subsequently apprehended from information obtained from a description of the pursued vehicle or its plate number.
>
> *Discontinuing the pursuit is not a reflection of an officer's courage or ability.* In most cases, if an apprehension is not made quickly and at a reasonable speed, the *most intelligent action* for the officer is to discontinue the pursuit. This is the professional approach [emphasis in original].

Interjurisdictional Rules

St. Petersburg, Phoenix, and Mesa have rules governing pursuits moving either into or out of their jurisdictions. These rules require communication between jurisdictions and coordination by supervisors.

Supervisory Role

Each policy defines supervisory responsibilities. Nassau County is somewhat different in that it, in effect, places a communications bureau supervisor in charge of a pursuit.[7] That supervisor is to notify and exchange information with the desk officer of the command, or commands, involved in the pursuit.

Review Procedures

Each of the four policies studied has a detailed management review procedure. Mesa's policy is typical. It requires that the following questions be answered:

1. What was the reason for the pursuit?
2. What were the conditions of the pursuit [e.g., traffic condition(s), time of day, vehicle speed(s), number of Mesa officers involved, and number of Mesa vehicles involved]?
3. During the pursuit, did the actions of the involved officer(s) conform to established department policy?
4. Were there any exceptions to the policy? If so, what were they and why did they occur?
5. Was any action taken against the suspect vehicle (e.g., ramming or roadblock)? If so, what circumstances necessitated this action?
6. If personnel or vehicles from other agencies assisted in the pursuit, how many personnel and vehicles responded and what role(s) did the assisting agencies have in the pursuit?
7. Based on the information compiled for this report, did the reporting supervisors find that the pursuit was handled properly or should it have been handled differently? Briefly justify this finding.

The Phoenix procedure specifies that the purpose of the review is to determine if:

1. The pursuit was necessary and within departmental policy.
2. Training needs should be considered.
3. Policy changes need to be considered.

Chapter 6
Policy Impact

As part of this study, the four police departments were asked to provide data on all vehicle pursuits before and after introduction of their revised policies. In Nassau County, data collection prior to the revised policy proved impossible since detailed data on incidents prior to 1982 no longer existed. In St. Petersburg and Mesa, the collection effort resulted in a problem common to new policies: implementation of the policy results in more reported incidents than took place prior to the policy. In St. Petersburg, the number of official vehicle pursuits jumped to 31 in 1987, compared to 13 in 1986 and 14 in 1985. Similarly, in Mesa, there were 29 reported vehicle pursuits in 1987 compared to 15 in 1986.

These increases are artificial since the departments know of unreported pursuits that took place prior to the policies. Meaningful before/after comparisons of the volume and characteristics of pursuits are not, therefore, possible in these jurisdictions.

There is a similar situation with the Phoenix data. Since the revised Phoenix department policy was implemented in mid-1986, we asked the department to provide data on pursuits in 1985 and 1987. In 1985, the department recorded 176 vehicle pursuits, compared to 157 in 1987, a 11-percent decrease. Department officials believe that the revised policy has had a greater impact than indicated by this decrease. Since not all pursuits were documented, they believe that the number of pursuits in 1985 is underestimated, so that the decrease is greater than indicated by these figures. Reasons for pursuits vary, as shown in table 1:

Table 1
Reasons for Pursuit

	Traffic	Stolen Vehicle	Fleeing Scene	Prior Crime	Other	Total
St. Petersburg	16%	58%	19%	0%	7%	100%
Nassau County	42	20	10	11	17	100
Phoenix	52	13	9	13	13	100
Mesa	69	10	7	7	7	100

In St. Petersburg, stolen vehicles are the primary reason for pursuits, while traffic violations are predominant in the other sites. Though comparisons are not reliable, the "after" data from these sites helps develop a portrait of the characteristics of suspects arrested under the revised policies. A composite from all four sites is shown in figure 1.

Figure 1
Composite Pursuit Data From Four Study Sites For Arrested Suspects

- Most suspects in the pursuits are young:
  - —23.1 percent 18 years old or younger
  - —36.1 percent between 19 and 25 years of age
  - —23.1 percent between 26 and 30 years of age
  - —9.6 percent between 30 and 35 years of age
  - —8.2 percent 35 years old or older
- Virtually all suspects are male (96 percent).
- Approximately 17 percent have suspended driver's licenses.
- About 14 percent are involved with alcohol and about 3 percent with drugs.

Chapter 7
Recommended Elements of Pursuit Policy

An examination of these department policies demonstrates that four major elements should constitute a police department's pursuit policy:[38] (1) a specific pursuit directive, (2) training, (3) alternatives to high-speed pursuit, and (4) a review process.

Pursuit Directives

The pursuit directive should address the following issues:

- Defining high-speed pursuit, distinguishing it from any other form of pursuit, so that there is no doubt as to what the policy covers.

- Stating the rules for initiating a high-speed pursuit by answering the following questions:

  What kind of cars may be involved; e.g., marked, fully equipped patrol cars?
  How many cars may be involved and their roles; e.g., primary, backup, support, standby?

- Naming the types of offenses for which high-speed pursuit is allowed or not allowed.

  Pursuit for traffic offenses?
  Pursuit for any criminal offense?
  Pursuit for felonies only?
  Pursuit for violent felonies only?

- Explicitly describing environmental conditions in which pursuit may or may not be conducted.

  Time of day?
  Weather?
  Type of neighborhood?
  Type of road and road conditions?
  Other traffic?

- Setting the speeds police vehicles may travel in relation to existing speed limits.

- Explicitly describing tactics that may or may not be used.

  Use of roadblocks?
  Ramming pursued vehicle?
  Running pursued vehicle off the road?
  Use of firearms in pursuit?

- Formulating State radio communication rules.

  Who may be on the air?
  What kinds of things are to be said?
  What is the role of the communications supervisor?

- Defining supervisory role.

  Who is in a supervisory role?
  How soon is supervisor to be involved?
  What is the role of the communications supervisor?
  Where should supervisor be during pursuit?

- Spelling out termination rules.

  Who may terminate high speed pursuit?
  What are the conditions for termination?
  —High risk to offender?
  —High risk to pursuing officer?
  —High risk to the public?
  —Identification of offender?

- Stating rules for interjurisdictional pursuit.

- Providing report and review process.

  Require report on every high-speed pursuit?
  Require supervisory review of every high-speed pursuit?
  Provide system for any disciplinary action that may be necessary?
  Provide system for compilation and review of all pursuit data to assess effectiveness of pursuit policy and ascertain need for change?
  Provide system for compilation and review of all pursuits by each officer to ascertain individual training needs and provide a basis for assignment, entrustment, and retention decisions?

- Incorporating references to any applicable State laws.

  Code provisions governing conduct of law enforcement officers in line of duty?
  Code provisions pertaining to citizens' responsibilities to respect lawful orders of law enforcement officers?

- Describing alternatives that can be employed by supervisors or pursuing officers.

Pursuit Training

If a department's commitment to its vehicle pursuit policy is to be taken seriously within the department or by the public, then department personnel must be thoroughly trained in both the policy and the steps to carry it out. Officers must be

trained to recognize and minimize risk. Under *City of Canton v. Harris*,[39] failure to train can be characterized as "deliberate indifference" to constitutional rights.

Some of the policy manuals reviewed in this study contained detailed instructions on how to perform certain tasks; for example, how to speak over the radio while driving at high speed with siren blaring—a matter more properly addressed in training. Some policy statements contain what are, in effect, exhortations as part of their rationales. While statement of an underlying rationale is certainly appropriate in a pursuit directive, exhortations are more effective in training and supervision. While pursuit driving and tactics are legitimate subject matter for a pursuit policy, the techniques themselves can be effectively taught only in training. This is also true of some of the topics considered under pursuit alternatives, such as how to identify the subject of the pursuit or how to take a photo of the fleeing vehicle. The training setting is also the best place to inculcate in officers an understanding of liability in pursuit driving.

Pursuit Alternatives

The essential purpose of pursuit is to apprehend a traffic law violator or criminal offender. If this apprehension can be accomplished by means other than high-speed pursuit, then law enforcement should try to use them. When offenders are known, they can probably be apprehended, without chases, in their homes or in places they frequent. Whether or not to engage in a high-speed chase then becomes a question of weighing the danger to the public of the chase itself against the danger to the public of the offender remaining at large. For anyone other than a violent felon, the balance weighs against the high-speed chase.

It is important, then, that a law enforcement agency equip itself with means of identifying a suspect without high-speed pursuit. The most obvious solution is to take a photo of the fleeing vehicle, which entails having a camera available and an officer capable of taking a useful photo with it.

A number of police agencies are experimenting with computer-controlled cameras or photo-radar systems that automatically snap pictures of speeders and send violation notices through the mail. Photographic evidence may also be an acceptable alternative to high-speed pursuits. The burden will still be, however, on the police to establish the identity of the driver of the vehicle in the photograph.

Technological means of incapacitating cars have been or are being developed. A Canadian company is marketing a hollow spike strip that can be laid across a roadway in the path of the pursued vehicle. As the car's tires pass over the strip, the spikes on the strip break loose from the strip and puncture the tires, slowly deflating them and incapacitating the vehicle. Other devices in development include cars with built-in governors that can be triggered by remote radio signals. Whether such governors will ever become universal is questionable, but coerced installation in vehicles of convicted violators as a condition of probation is conceivable.

Policy Review and Data Requirements

As pointed out in several studies, there are no reliable nationwide data on police pursuit. But this should not matter as the problems inherent in high-speed pursuit are local and should be solved locally. Pursuit policy and pursuit training are developed and implemented locally. If the overall number of deaths and injuries attributable to high-speed pursuits declines, it will not be because of national policies or programs, but because thousands of localities have addressed the problem and taken remedial action.

Figure 2
Data Elements for Pursuit Incidents

- **Number of pursuits**
- **Nature of pursuits**
  - Traffic
  - Criminal offense
    - —Misdemeanor
    - —Nonviolent felony
- **Officer(s) involved**
  - Unit/position/rank
  - Years on force
  - Sex
  - Age
  - Involvement in prior pursuits
- **Background of suspect**
  - Age
  - Sex
  - Local or out of town
  - Driving record
  - Degree of impairment
- **Incident characteristics**
  - Date and day of week
  - Time of day: degree of daylight
  - Location
    - —Initiated
    - —Terminated
  - Nature of area
    - —Residential
    - —Commercial
    - —Industrial
    - —Highway
    - —Freeway
  - Duration of pursuit
  - Travel/road conditions
  - Speed(s)/speed limit(s)
- **Outcomes of pursuit(s)**
  - Terminating event
    - —Arrest
    - —Escape
    - —Accident
  - Charges filed
    - —Traffic
    - —Criminal
  - Accident results
    - —Vehicle damage
    - —Property damage
    - —Personal injuries
    - —Fatalities
  - Third parties affected
    - —Vehicle damage
    - —Property damage
    - —Personal injuries
    - —Fatalities
- **Disciplinary action**
  - Counseling
  - Reprimand
  - Suspension/demotion
  - Dismissal
- **Civil claims**
  - Property damage
  - Personal injury
  - Wrongful death

Data collection at the local level is an essential element of policy development and implementation. Police leaders must be able to analyze what their officers are doing, whether policies are being followed, whether policies are effective, and whether changes are in order. To these ends, it is important that police agencies develop information that gives them a clear picture of what is happening in their departments. Data elements that can make up such a picture are set forth in figure 2.

Conclusion

High-speed vehicle pursuits are possibly the most dangerous of all ordinary police activities. Far more police vehicle chases occur each year than police shootings. However, development of legally sound police vehicle pursuit policies lags behind development of deadly force policies involving firearms.

While potential liability from high-speed pursuit is significant, the law does provide protection where agencies have made their best efforts to draft and implement specific pursuit directives; adequately train officers in the policy and techniques of pursuit driving; and closely supervise, review, and evaluate implementation of pursuit policies. But the most important reason for effective pursuit policies is not minimization of liability. It is to protect life and property—the basic police mission.

Notes

1. 109 S.Ct. 1378 (March 21, 1989).

2. 109 S.Ct. 1197 (February 28, 1989).

3. 471 U.S. 1, 105 S.Ct. 1694, 85 L.Ed.2d 1 (1985).

4. Edmund F. Fennessy et al., *A Study of the Problem of Hot Pursuit by the Police*, The Center for the Environment and Man, Inc. (July 1970), p. 5. Fennessy attributes this definition to Major E. W. Jones of the North Carolina Highway Patrol, but notes that it has been implicitly understood for years.

5. Geoffrey P. Alpert, "Questioning Police Pursuits in Urban Areas," *Journal of Police Science and Administration*, 15:298 (1987), p. 300. This categorization is much the same as that used by Fennessy, *supra*, note 4, pp. 99-101.

6. *Daniels v. Williams*, 474 U.S. 327, 106 S.Ct. 662, 88 L.Ed.2d 662 (1986).

7. *Parratt v. Taylor*, 451 U.S. 527, 101 S.Ct. 1908, 68 L.Ed.2d 420 (1981).

8. *Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 694-695 (1978).

9. *Supra*, note 3.

10. 471 U.S. at 11.

11. 471 U.S. at 4-5.

12. 471 U.S. at 18.

13. 471 U.S. at 19.

14. 471 U.S. at 3.

15. *Supra*, note 1.

16. 109 S.Ct. at 1381.

17. 109 S.Ct. at 1383.

18. *Supra*, note 2.

19. 109 S.Ct. at 1205.

20. 109 S.Ct. at 1205, fn. 10.

21. *Supra*, note 4.

22. Operational Planning Section, California Highway Patrol, *Pursuit Study* (July 1983), p. 1.

23. Ibid., p. 3.

24. Ontario Police Commission, Solicitor General's Special Committee on Police Pursuits, *Report* (December 20, 1985), Executive Summary, p. 25.

25. Ibid., pp. 1-2.

26. School of Criminal Justice, Michigan State University (October 1985).

27. "High Speed Chases: In Pursuit of a Balanced Policy," *The Police Chief* (January 1983), pp. 34-37.

28. *Justice Quarterly*, Vol. 3, No. 1, p. 1 (March 1986).

29. Ibid., p. 5.

30. "Questioning Police Pursuits," *supra*, note 5.

31. Ibid., p. 304.

32. Ibid., p. 305.

33. "Research on Police Pursuits: Applications for Law Enforcement," *American Journal of Police*, Vol VII, No. 2, p. 123 (1988).

34. "Policing Hot Pursuits: The Discovery of Aleatory Elements," accepted for publication in *Journal of Criminal Law and Criminology*.

35. See *Biscoe v. Arlington County*, 238 App. D.C. 229, 738 F.2d 1352 (1984), cert. den., 469 U.S. 1159, 105 S.Ct. 909.

36. *Supra*, note 3.

37. Commissioner's Order No. 6, January 20, 1982, *Pursuit Policy and Guidelines*. Citations to the four pursuit policies examined in this study refer to the title above (Nassau) and General Order A–11, July 1986, *Operation of Department Vehicles* (Phoenix); General Order iii–12, December 1, 1984, *Police Vehicle Operation* (St. Petersburg); and POL–5.504 Pursuits, August 20, 1986, *Policy Manual* (Mesa).

38. The National Law Enforcement Policy Center of the IACP and the Bureau of Justice Assistance have also recently developed a model pursuit policy.

39. *Supra*, note 2.

Appendix A
Mesa

Definition

A pursuit is defined as an active effort by a sworn officer operating a marked police unit utilizing emergency equipment ("Code 3," lights and siren) to apprehend the occupants of a fleeing vehicle that is resisting apprehension by maintaining or increasing their speed, disobeying traffic laws or a deliberate refusal to yield to the officer's emergency vehicle, as defined in ARS 28-622.01.

Basis for Pursuit

Traffic violations, misdemeanors, nonviolent felonies, violent felonies.

Participating Units

Only marked, fully equipped patrol cars. In pursuit of suspected violent felon, one other marked patrol car may become backup car. All other units have support roles.

Radio Procedure

Prescribed in detail in policy.

Termination

Pursuits will be immediately terminated when:

- A sworn supervisor orders pursuit terminated.
- Suspect is known to officer and offense is traffic infraction, misdemeanor, or nonviolent felony.
- Distance between officer and violator is such that continuing pursuit would require speeds endangering officer and the public.
- Officer loses visual contact with suspect for extended time (approximately 15 seconds). Officer may continue to look for suspect, but at reduced speeds.
- There is clear and unreasonable hazard to officer, violator, or public.
- Danger outweighs necessity for immediate apprehension.

- Violator goes wrong way down freeway, freeway access ramp, or frontage road, divided highway, or one-way street.

- Pursuit vehicle experiences equipment failure or malfunction involving lights, siren, radio, brakes, steering or other essential equipment and there are no backup or support units to take up the pursuit.

Boxing-In, Ramming, and Roadblocks

Boxing-in and ramming to be used only against violent felons and with permission by sworn supervisor monitoring pursuit. Not to be used by officers who have not completed prescribed training. Roadblocks allowed when possible to pick safe location.

Firearms

No explicit policy on firearms in high-speed pursuits.

Aircraft

When an aircraft is available and has suspect vehicle in view, guidelines give aircraft primary pursuit responsibility, vehicles on ground support responsibility.

Supervisory Role

Supervisors are to take control by monitoring pursuit and ensuring compliance with pursuit policy. They are to terminate pursuit if apparent danger outweighs necessity of apprehension.

Review Procedures

Report required from immediate supervisor of officer initiating pursuit and District Lieutenant who was on duty at time.

Appendix B
Nassau County

Definition

Justifiable police pursuit comprises three conditions:

1. Motorist knows police officer wants him or her to pull over and stop.

2. Motorist deliberately takes action in attempt to evade officer.

3. Officer engages in attempt to overtake and stop such motorist.

Basis for Pursuit

At least reasonable suspicion that violator's driving has become reckless, or is otherwise endangering human life. Continuing pursuit requires justification based on potential threat to public and personal safety and/or seriousness of criminal activity.

Participating Units

Only clearly marked and fully equipped patrol cars may participate in high-speed pursuit.

Radio Procedure

Prescribed in detail in policy. A communications bureau supervisor directly supervises and coordinates all radio control of pursuit. This supervisor is to evaluate conditions and circumstances of pursuit and order immediate termination of any pursuit that in his judgment is not justified.

Termination

Pursuits may be terminated by apprehension of offender, by decision of pursuing officer, or by order of supervisor.

Boxing-In, Ramming, and Roadblocks

Roadblocks are "dangerous and difficult to properly establish." No roadblock may be established until both dispatcher and pursuing officer have been notified. There are three kinds of roadblock:

1. Fixed roadblocks, which block road to extent that little or no outlet remains. "Fixed roadblocks are extremely dangerous and are rarely justifiable."

2. Partial roadblocks, which consist of series of barriers blocking roadway in such a fashion that pursued vehicle is diverted and forced to slow down.

3. Moving roadblocks, which consist of two or more department cars in front of pursued vehicle. They gradually slow down, forcing pursued vehicle to slow down by allowing no outlet. Moving roadblock is most effective on limited access highways.

Ramming a pursued vehicle is prohibited. "Vehicles rebounding or interlocking and out of control at pursuit speeds are hazards that cannot be justified." Ramming is allowed only if pursued vehicle is already out of control and might collide with another occupied vehicle or pedestrian.

Firearms

Use of firearms in pursuit prohibited.

Aircraft

Department helicopter is to advise communications bureau on whether any unit should abandon pursuit and at what locations other units may most effectively set up an interception. Helicopter can also be used in conjunction with unmarked units to maintain surveillance of vehicle where conditions make it advisable that marked units abandon pursuit.

Supervisory Role

Communications bureau supervisor is effectively in charge of pursuit. That supervisor is to notify and exchange information with Desk Officer of command, or commands, involved in pursuit.

Review Procedures

Patrol supervisor investigates all pursuits and reports in writing to his or her commanding officer. Disciplinary action will be taken whenever members unreasonably expose themselves, or public, to unjustifiable risks, or fail to comply with directives from radio dispatcher.

Appendix C
Phoenix

Definition

A motor vehicle pursuit is an active attempt by a law enforcement officer, operating an emergency vehicle and utilizing simultaneously all emergency equipment, to apprehend one or more occupants of another moving vehicle, when the driver of the fleeing vehicle is aware of that attempt and is resisting apprehension by maintaining or increasing his speed, disobeying traffic laws, ignoring the officer, or attempting to elude the officer.

Basis for Pursuit

Traffic violations, misdemeanors, nonviolent felonies, violent felonies.

Participating Units

Only marked, fully equipped patrol cars. In pursuit of a suspected violent felon, one other marked patrol car may become backup car. All other units have support roles.

Radio Procedure

Prescribed in detail in policy.

Termination

An officer should terminate when any of the following occurs:

- Suspect is known to officer and offence is traffic infraction, misdemeanor, or nonviolent felony.
- Distance between officer and violator is such that continuing pursuit would require speeds endangering officer and public.
- Officer loses visual contact with suspect for extended time (approximately 15 seconds). Officer may continue to look for suspect, but at reduced speeds.
- There is clear and unreasonable hazard to officer, violator, or public. There is unreasonable hazard when speed dangerously exceeds normal flow of traffic, or when vehicular or pedestrian traffic necessitates erratic maneuvering exceeding performance capacities of vehicle or driver.
- Danger outweighs necessity for immediate apprehension.

- Environmental conditions such as rain, fog, or darkness substantially increase risk.
- Officer is unfamiliar with area and is unable to notify dispatcher of his location and direction of pursuit.
- Road conditions are congested by traffic or pedestrians.
- Violator goes wrong way down one-way street, freeway, freeway frontage road, or divided highway.

Boxing-In, Ramming, and Roadblocks

Ramming, boxing-in, and blocking the road with police vehicles are prohibited. The only exception is boxing-in an unaware suspect to avoid a pursuit.

Firearms

No explicit policy on the use of firearms in high-speed pursuits.

Aircraft

When an aircraft is available and has suspect vehicle in view, guidelines give aircraft primary pursuit responsibility, vehicles on ground support responsibility.

Supervisory Role

Supervisors are to take control by monitoring a pursuit and taking whatever actions are necessary to ensure compliance with the department's pursuit policy. They are to terminate pursuit if apparent danger outweighs the necessity of apprehension.

Review Procedures

Formal review of all pursuits required. Supervisor of unit initiating pursuit submits written report outlining details of pursuit. Incident report is sent to Accident Analysis Committee within 15 days.

Appendix D
St. Petersburg

Definition

Operation or use of police motor vehicle in emergency mode so as to pursue felon or suspected felon who willfully or knowingly uses illegal or evasive driving tactics in an effort to avoid detention, apprehension, or arrest.

Basis for Pursuit

Reasonable cause to believe that suspect has committed, has attempted to commit, or is committing felony.

Participating Units

Primary unit (unit initiating pursuit) and secondary unit. Any unmarked unit involved shall relinquish close pursuit to marked unit as soon as possible. Sworn personnel only.

Radio Procedure

Prescribed in detail in policy.

Termination

Strong consideration should be given to terminating pursuit when:

- Pursuit enters congested area and an unreasonable hazard to public exists.
- Visibility, weather conditions and/or road conditions limit probability of safe and successful end to pursuit.
- Violator can be identified to point where later apprehension can be accomplished and violator is not threat to public.

Members shall terminate pursuit when:

- No field supervisor or higher authority can be contacted to approve pursuit's continuance.
- Field supervisor or higher authority orders pursuit terminated.
- Member(s) loses sight of violator.

- Pursuing unit(s) loses radio contact with communications center.
- Reasonable cause to believe that suspect has committed, has attempted to commit, or is committing felony no longer exists.

Boxing-In, Ramming, and Roadblocks

Violator may be boxed in only if officer reasonably believes there is substantial risk that violator will cause death or serious physical injury to others if apprehension is delayed. Ramming will be used only as last resort after all other reasonable means of stopping violator have failed, and where officer believes violator has committed, has attempted to commit, or is attempting to commit felony which involves use, or threatened use, of deadly force, and there is substantial risk that pursued law violator will cause death or serious physical injury to others if apprehension is delayed. Ramming a vehicle should be considered deadly force. Roadblocks shall not be used to stop violator.

Firearms

No explicit policy on use of firearms in high-speed pursuits.

Aircraft

No explicit policy on use of aircraft in high-speed pursuits.

Supervisory Role

Policy fixes responsibility for supervising pursuits on field supervisors or watch commander. Upon being notified of pursuit, they are to evaluate circumstances, decide whether to allow pursuit to continue, then monitor and evaluate its progress. They may cancel pursuit at any time. Field supervisors are to go to scene of terminated pursuit and take command.

Review Procedures

Primary member involved in pursuit is to initiate pursuit memorandum at end of his tour of duty, regardless of whether an arrest was made, outlining specifics of pursuit. Where secondary unit was involved, that officer is to complete supplement to primary member's memorandum, outlining specifics of his involvement. Field supervisor is also to file supplemental memorandum, specifically identifying any unusual circumstances of pursuit.