

THE LIABILITIES OF VEHICLE PURSUITS

ARE THEY WORTH IT?

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The purpose of this paper is to discuss the liabilities of vehicle pursuits and determine whether or not they are worth it. Vehicle pursuits happen every day and can be one of the most dangerous things a police officer does. Vehicle pursuits are dangerous not only to the police and suspect; but also to the public. As police officers, it is our duty to arrest the bad guy. Sometimes the police can make the arrest without any problem. Other times they may have to fight the bad guy or chase them down on foot. Sometimes they make the traffic stop that they think is going to be “routine”, and the next thing they know, the vehicle is taking off. Before they know it, they are in a vehicle pursuit. Other times, like when they know they are pulling over a suspect wanted for some type of crime, the police can anticipate that a pursuit may follow. Hopefully, the police have a policy in place that will help them determine whether to pursue or not. Maybe they have an alternative to pursuing the vehicle, or a way to end the pursuit quickly.

There are several aspects of a pursuit to look at:

- **What is a vehicle pursuit?**
- **Dangers**
- **Policy**
- **Civil Liability**
- **Solutions**

What is a vehicle pursuit?

According to the Fort Smith Police Department “Pursuit Driving” Policy (1102.30), a vehicle pursuit is defined as:

an active attempt by a law enforcement officer operating an emergency vehicle, utilizing simultaneously all emergency equipment (blue lights and siren), 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 or attempting to elude the officer. (Pursuit Driving, 1102.30)

Safety

Vehicle pursuits can be extremely dangerous for everyone involved, including innocent bystanders. More than 5,000 bystanders and passengers have been killed in vehicle pursuits since 1979. Most of these pursuits began for minor traffic infractions. The bystanders and passengers in chased cars account for nearly half of all people killed in police pursuits from 1979-2013. (Frank, December 2015)

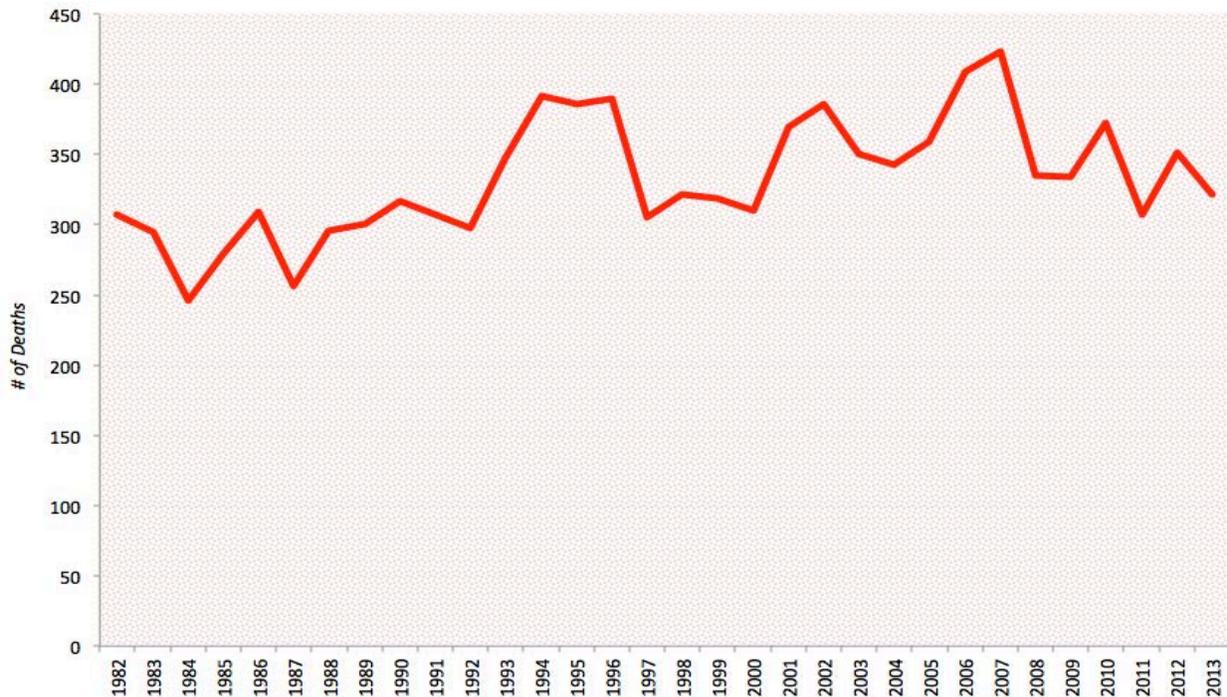
The Justice Department called pursuits “the most dangerous of all ordinary police activities” in 1990 according to USA Today. (Frank, July 2015). According to the National Highway Traffic Safety Administration (NHTSA), the number of chase-related deaths in 2013 was 333. According to USA Today, 385 people died in chase related crashes in 2014. Of the 385 people killed, approximately 73 were people in their own cars that were hit by a fleeing

motorist, and 77 were passengers in the fleeing vehicles. Twelve of those killed were children under age 14, including an infant who was under a year old. Five of those killed were police officers. Those numbers have been contested by another USA Today report, saying that the amount of fatalities in vehicle pursuits has not been counted correctly and there could be hundreds more. Either way, there are hundreds of people killed each year by vehicle pursuits.

(Frank, December 2015)

Reported High-Speed Police Chase Deaths

From 1982 to 2013 alone, 10,642 people died as a result of high-speed police chases in the U.S.



(Crockett, July 2015)

According to the Officer Down Memorial Page, 27 police officers have been killed in vehicle pursuits from January 1, 2010 until March 26th, 2016. An average of 4.5 officers a year were killed in vehicle pursuits during that time. As you can tell from the statistics listed above, vehicle pursuits are dangerous for several reasons. Many times there is a desperate criminal

fleeing from police that may feel they have nothing to lose. Other times, the fleeing criminal may be under the influence of alcohol or drugs and have difficulty driving under normal conditions, let alone in a high speed pursuit.

There are also concerns for other motorists on the road. An innocent motorist could be driving down the street following every traffic law and still be involved in an accident with a fleeing vehicle. Many times, the motorist may not even realize a pursuit is taking place near them, and they may not be able to avoid the accident. The location where the pursuit is occurring is another safety concern. Fort Smith is an urban area with several busy streets that are full of traffic most of the day. There are times where traffic is bumper to bumper. This makes it very dangerous when pursuing a vehicle. When you get into the more rural areas, the speeds may be higher due to the open road. It may also cause the suspect to take more chances, such as going into the oncoming traffic lane on curves not expecting to meet any vehicles. This could become very dangerous if they do meet a vehicle on that curve.

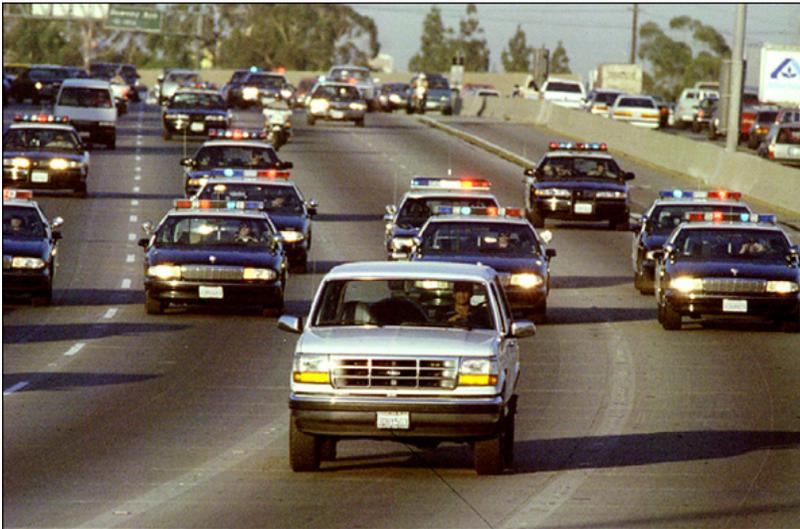
One of the most dangerous parts of a pursuit is the moment the pursuit stops and the police have to apprehend the suspect. Hopefully, there will be more officers than suspects when the pursuit comes to an end, but unfortunately, that is not always the case. Most of the time, if the suspect is desperate enough to lead you on a vehicle pursuit, they are willing to continue running on foot or attempt to fight the officer and do whatever they can to avoid being arrested.

It is important to remember good tactics as a police officer at the end of a vehicle pursuit. When the vehicle comes to a stop, most officers want to “rush” the vehicle and get

control of the suspect. It is better to conduct a felony stop at that point, and remain at the police vehicle and order the suspect out and onto the ground to take them into custody safely. Officers have to manage the adrenaline rush they receive during a pursuit to fight off tunnel vision and make sure they use good tactics when the pursuit is over. It means staying at their vehicle and conducting the felony stop instead of rushing the vehicle to get the bad guy to take them into custody. That is why pursuit training is critical in an organization. It is hard to learn how to manage adrenaline and prevent tunnel vision unless officer's experience it.

One of the most publicized police pursuits is the OJ Simpson pursuit on June 17th, 1994. Television networks and cable news channels aired two hours of nonstop coverage of the incident. OJ Simpson was charged in the killing of his ex-wife Nicole Brown Simpson and her friend Ronald Goldman. Instead of surrendering to authorities, Simpson fled at the last minute

with his friend Al Cowlings.



Cowlings drove the famous white Ford Bronco while Simpson hid in the back. The pursuit led to his mansion where he eventually surrendered to authorities.

Luckily, the pursuit ended

safely without anyone getting injured, but it took several law enforcement officers and crisis negotiators to come to a peaceful conclusion. (Wells, June 2014)

This is a good example that not all vehicle pursuits are “high-speed” pursuits. Sometimes suspects will continue driving at low speeds, but still fail to yield to police. This can be done for several reasons. Sometimes the suspect may be intoxicated and not even realize the police are trying to stop them. Other times the suspect is trying to make it home to save a tow bill because they know they are going to jail. Police officers should use the same tactics and officer safety whether the pursuit is “high-speed” or “low-speed”.

Policy

Several departments have policies that control how they handle vehicle pursuits. Pursuit driving policies are very important to an agency so the officer’s will know what they can and cannot do when it comes to vehicle pursuits. The operation of emergency vehicles is governed by Arkansas Criminal Statute § 27-51-202, which authorizes emergency vehicles, meaning vehicles with blue lights and sirens activated, to exceed the posted speed limit. It does not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons. It also does not relieve the driver of any emergency vehicle from the consequence of a reckless disregard for the safety of others.

The Fort Smith Police Department has a clear vehicle pursuit policy (Pursuit Driving 1102.30). It lists several factors that should be considered by officers and supervisors in making the decision to continue or terminate a police pursuit. According to the policy those factors are:

- Environmental factors such as rain, fog, ice, snow, darkness or roadway conditions that would increase the danger of a pursuit
- The officer's familiarity with the area and their ability to accurately notify Dispatch of their location and direction of travel
- Congestion caused by traffic or pedestrians, especially during rush hour or school hours
- Whether the pursued vehicle proceeds the wrong way on any freeway, divided highway, or one-way street
- The pursuing officer knows, or has reason to believe, the fleeing vehicle is being operated by a juvenile who has committed a traffic violation, misdemeanor or nonviolent felony, and is driving in such an unsafe manner that it is obvious he does not have the maturity to deal with the danger involved. (Pursuit Driving 1102.30, IV. A. 1-5)

The policy also lists several procedures governing vehicle pursuits (Pursuit Driving 1102.30, IV. B. 1-5). It specifies that vehicles not normally utilized in a patrol function, like unmarked cars, are prohibited from participating in any vehicle pursuit unless properly equipped with blue lights and sirens. It also specifies that no more than two Fort Smith Police Department marked emergency vehicles will be involved in the immediate pursuit unless allowed by an on duty supervisor. The policy also states that all units equipped with audio/video recording equipment should have the equipment activated during the pursuit.

The policy specifies what information needs to be relayed to dispatch. According to the policy, an officer involved in a pursuit will activate the police vehicle's emergency lights and siren and notify dispatch of the unit identifier, location and direction of the suspect vehicle, the charges involved and the license number, vehicle description, and number of occupants. (Pursuit Driving, 1102.30, IV. B. 5. a) This is extremely important for officer safety. From an officer safety standpoint, the back-up officers cannot help if they do not know where the officer is located. It is important for the officer to relay their location so other officers can respond to the area to assist. It is also important to give the vehicle information to dispatch. This can help dispatch check to see if it is a stolen vehicle, find out information about the registered owner, and possibly find out why the suspect is fleeing and where they may be going if they are attempting to make it to their home. It is also important in case the police lose the vehicle so they will have something to follow up on.

The policy also allows for support and back-up units to respond to the area of the pursuit to assist in things like traffic control, evidence recovery and to be ready to join the pursuit if one of the pursuing officer's vehicles becomes disabled. (Pursuit Driving 1102.30, IV. B.) Sometimes during vehicle pursuits, the suspect may try to get rid of evidence, such as drugs or weapons, and then give up. The suspect sometimes does this to get rid of a more severe charge. If the person they are chasing is a felon, they do not want to get caught with a firearm because that is a serious charge. That's why it is important to have officers respond to the area to collect evidence. If drugs or guns are thrown out on a busy roadway with lots of traffic, it may not last long before a passing car knocks it off the road.

The policy prevents police vehicles from the Fort Smith Police Department from ramming suspect vehicles, boxing in or surrounding a suspect vehicle or using rolling road blocks, overtaking, driving next to, or forcing suspect vehicle vehicles off the roadway, or using a roadblock and forcible stopping for the purpose of ending a pursuit. (Pursuit Driving 1102.30, IV. B.) Some police agencies allow officers to ram suspect vehicles or use rolling road blocks to end a pursuit. Other agencies train their officer's in pursuit intervention techniques, commonly known as the PIT maneuver. The Fort Smith Police Department does not, and has a policy in place to make sure officers know it is not allowed.

The policy also lays out several guidelines telling officers when they should immediately terminate a pursuit (Pursuit Driving 1102.30, B. 11):

- When any police supervisor terminates the pursuit
- If the officer knows the suspect's identity and knows the suspect is wanted only for a traffic violation, misdemeanor, or nonviolent felony
- The distance between the officer and suspect is so far that in order to continue the pursuit, it would place the officer or public in unreasonable danger
- The primary officer loses visual contact with the suspect for an extended period of time (15-20 seconds)
- When there is a clear and unreasonable danger to the officer, fleeing suspect, and/or any other persons due to the excessive speed, reckless driving techniques, or the erratic driving by the suspect which exceeds the performance capabilities of the vehicle or driver

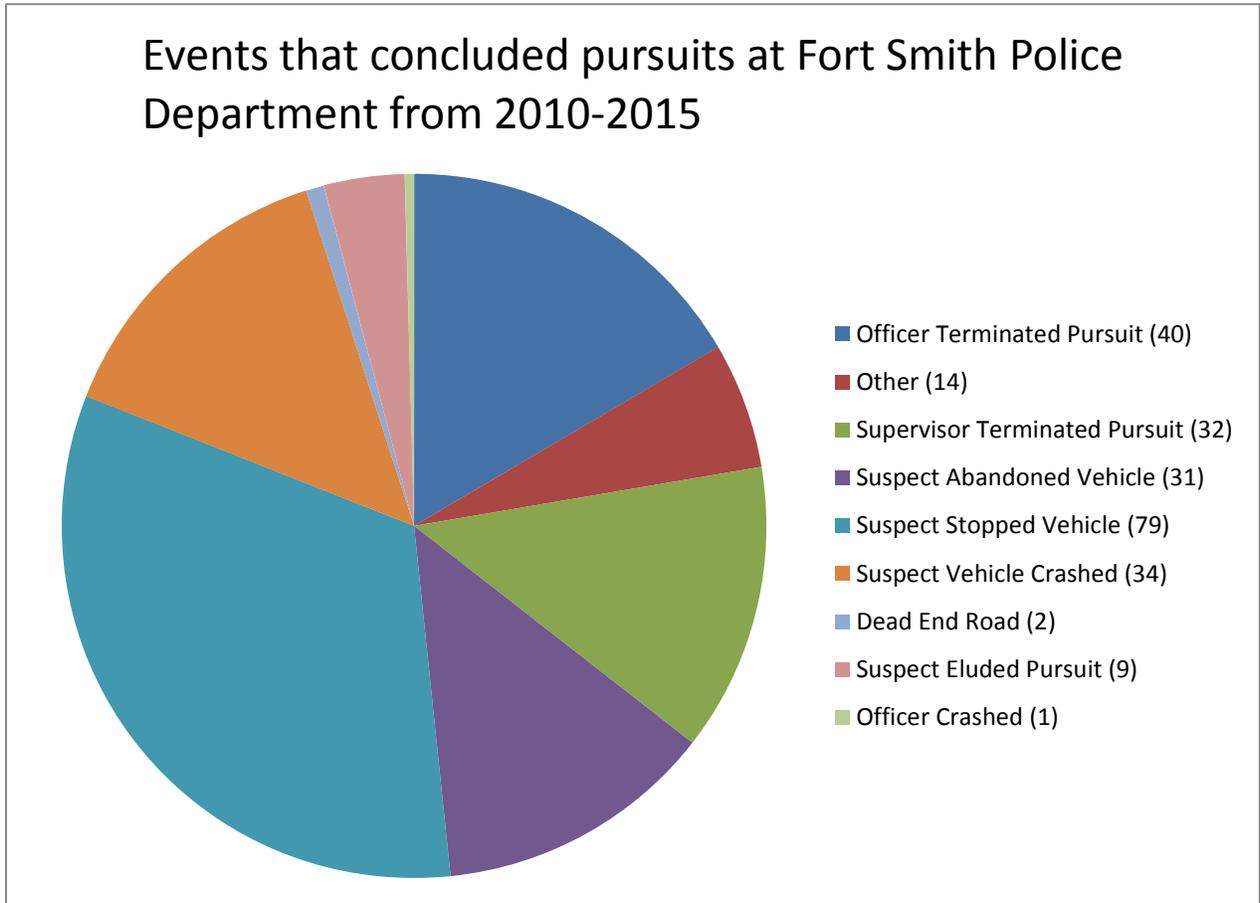
- When the danger created by the pursuit outweighs the necessity for immediate apprehension.

This policy sets several guidelines that can assist officers in determining whether to continue a pursuit or not. The policy also sets guidelines on pursuits initiated by the Fort Smith Police Department that leave that jurisdiction, as well as pursuits that begin outside that jurisdiction and then come into the city limits (Pursuit Driving 1102.30, IV. B. 11). This is important because it does not leave an officer trying to figure out if they can participate in a pursuit while a pursuit is going on. The policy clearly tells them what they can and cannot do.

The policy also requires the officer to complete a memo on the pursuit which is forwarded through their chain of command for review. All pursuits are reviewed to determine if the pursuit was necessary and within Departmental policy, if there are any training needs to be considered, and if any policy changes need to be considered. (Pursuit Driving 1102.30, V. VI)

I used our Use of Force reporting system, known as Blue Team, and pulled all the pursuit statistics for the Fort Smith Police Department from January 1, 2010 through December 31, 2015. During this time frame, the Fort Smith Police Department was involved in 242 vehicle pursuits. During those pursuits, there were 10 injuries to citizens and 4 reported injuries to officers. Fortunately, none of the injuries were severe.

The pie chart below shows the events that concluded pursuits at the Fort Smith Police Department from 2010-2015.



Civil Liability

Vehicle pursuits can be very dangerous. On top of the risks of death or serious injury, there is also a potential of civil liability. Police officers can be sued by not only the suspect if a vehicle pursuit goes bad, but also innocent bystanders that may have become involved as well. This is important as a supervisor because the United States Supreme Court acknowledged that a municipality could be liable for failure to adequately train police officers in procedures such as

pursuit driving (*City of Canton v. Harris*). If you are a supervisor, you are responsible for your subordinate's actions, so it is important you make sure they are trained and aware of department policy and procedure.

There have been several court cases heard by the Supreme Court of the United States involving police pursuits. One of those cases is **County of Sacramento v. Lewis** #96-1337, 523 U.S. 833 (1998). In the case of *County of Sacramento v. Lewis*, Sacramento County Sheriff Deputy James Smith along with another officer named Murray Stapp responded to a fight call. Stapp saw a motorcycle approaching at a high rate of speed. It was operated by an 18-year old named Brian Willard and had Philip Lewis riding as a passenger. Neither subject had anything to do with the fight. Stapp yelled at the boys to stop and activated his overhead lights. He also pulled his vehicle closer to Smith's attempting to pin the motorcycle in. Instead of complying, Willard maneuvered the motorcycle between the two police cars and sped off. A high speed pursuit began with both the motorcycle and patrol car reaching speeds up to 100 mph. The chase ended after the motorcycle tipped over. Smith attempted to stop his patrol vehicle but was unable to and his vehicle struck Lewis inflicting massive injuries. Lewis died at the scene. Lewis's parents brought action against the Sacramento County Sheriff's Department and Deputy Smith, alleging a deprivation of Phillip Lewis's Fourteenth Amendment substantive due process. Originally, the District Court granted summary judgement for Smith reasoning he was entitled to qualified immunity. The 9th Circuit Court of Appeals reversed that decision and remanded it to trial. The Supreme Court heard the case and Justice Souter delivered the opinion of the court.

The issue in this case is whether a police officer violates the Fourteenth Amendment's guarantee of substantive due process by causing death through deliberate or reckless indifference to life in a high-speed automobile chase aimed at apprehending a suspected offender. We answer no, and hold that in such circumstances only a purpose to cause harm unrelated to the legitimate object of arrest will satisfy the element of arbitrary conduct shocking to the conscience, necessary for a due process violation. (County of Sacramento v. Lewis)

The Supreme Court found the proper blame could be placed on the motorcycle driver's lawless and "outrageous" conduct in attempting to flee from the officers. It also rejected the argument that the claim was governed by protection against unreasonable search and seizure, the Fourth Amendment. The Court noted the officer did not intentionally seek to terminate Lewis's freedom of motion. The court also recognized the officers must make decisions whether or not to pursue an offender "in haste, under pressure, and frequently without the luxury of a second chance." An officer deciding whether to pursue a suspect must balance the need to arrest the suspect versus the danger posed to the public by the pursuit. This is important to law enforcement because it establishes that "an officer who unintentionally harms another while performing discretionary functions should be shielded from liability if the officer could not deliberate". (County of Sacramento v. Lewis)

Solutions

In law enforcement there will always be a potential for danger. Police officers are paid to enforce laws, arrest criminals and serve the public. Whenever an officer becomes involved in a vehicle pursuit, it can put the public they are paid to serve in danger. In a perfect world, the police would be able to end every pursuit safely as soon as it started, but unfortunately, that is not the case. There are some tools that officers can use though to help end pursuits safely. One of those tools is a tire deflation device, also known as “stop sticks.” Stop sticks are designed to be placed in the roadway ahead of a fleeing vehicle. The officer allows the suspect to run over the stop sticks and then removes them from the roadway. If the stop sticks work as designed, they slowly deflate the tire on the suspect vehicle to bring the vehicle to a stop at a slow and safe speed. Using stop sticks is extremely dangerous for the officer deploying them. It requires the deploying officer to stand next to the roadway to throw the stop sticks in front of the vehicle. The officer has to watch to make sure the suspect does not swerve to avoid the sticks and hit the officer, or swerve to intentionally hit the officer. After the suspect passes, the officer must remove the stop sticks from the road before pursuing officers also strike the device. Unfortunately, several officers have been killed or injured during these deployments.

The best solution to end vehicle pursuits is legislation. According to Arkansas Criminal Statute §5-54-125:

Fleeing by means of any vehicle or conveyance is a Class A misdemeanor with a minimum of 2 days in jail if convicted. Fleeing by means of a vehicle or conveyance is

considered a Class D Felony if, under circumstances manifesting extreme indifference to the value of human life, a person purposely operates the vehicle or conveyance in such a manner that it creates a substantial danger of death or serious physical injury to another person.

Most of the time the suspect has been charged with the felony fleeing, it is pled down to a misdemeanor, unless there was a collision involved. It would almost be worth it as a criminal to flee if they knew they were facing a serious charge because the punishment is not harsh. It would deter a lot of pursuits if the legislature would make it a felony to flee in a vehicle.

Police currently use a variety of techniques to terminate chases such as PIT maneuvers and tire deflation devices. Some larger agencies also have air assets that can be used to intercept the pursuit and follow the suspect vehicle without a patrol car having to continue to chase it. The air unit can relay information to the patrol units to tell them where the suspect goes. Unfortunately, not all agencies have air support. There is a promising new technology that could help agencies that are not equipped with air support track fleeing vehicles safely. This technology is a GPS based pursuit management system that is sometimes called “GPS bullets”. The system is composed of two small, cylinder shaped projectiles, each containing a miniature GPS tracker, tipped with an industrial-strength adhesive. The launching mechanism is powered by compressed air and mounted inside the grill of the patrol unit.

The pursuing officer operates the GPS launching system using a control panel in the vehicle. Once the GPS is activated, it uses a laser that “paints” the back of the fleeing vehicle. The officer can adjust the trajectory of the projectile and then launch the GPS tag, which

adheres to the rear of the suspect vehicle. Once the vehicle is “tagged”, the officers can stop pursuing the vehicle and follow at a safe distance while tracking the suspect’s location and rate of speed using Google Maps. (Fischback, January 2015)

Officers have a duty to enforce the law and arrest the bad guys. It is important to allow agencies to pursue vehicles, and officers have a duty to try to arrest offenders. The simple solution would be to ban vehicle pursuits, but that would almost encourage the bad guys not to pull over. Agencies should provide and require annual pursuit driving training for their officers. Agencies should also develop pursuit driving policies that clearly state what actions the officer can take during a vehicle pursuit. It is also important to make sure supervisors are trained and familiar with the policy to make sure it is followed by their subordinates. We live in a society that likes to question and second guess everything the police do now. If you become involved in the pursuit and someone gets hurt, you can almost certainly expect a lawsuit. Hopefully in the near future, there will be a technological breakthrough that will eliminate the need for high speed pursuits. But until then, it is our duty as public servants to do the best we can to protect the innocent and bring the guilty to justice.

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