

MOTOR VEHICLE PURSUIT:

MANAGING YOUR DEPARTMENT'S RISK

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When a law enforcement administrator makes a list of the things he or she is most concerned about, motor vehicle pursuit is always near the top. The potential for officer injuries, lawsuits, damaged equipment, and negative public relations, can be very intimidating, particularly when pursuit management strategies are limited.

One of the most frequently overlooked issues in the pursuit debate is the need for alternative pursuit management techniques. All too often, departments view pursuit as an “either/or” proposition. Departments frequently characterize pursuit-related decisions in terms of simple “yes or no”, “right or wrong” alternatives. In reality, a pursuit is a dynamic, fluid situation that is constantly evolving. It represents a series of decisions, some right, others wrong, but most manifesting varying degrees of correctness, depending upon the evolving circumstances of the moment.

In fact, the standard by which a pursuit will be evaluated is not one of “right or wrong”, but of applicable federal and state law, augmented by department policy. Should a seizure occur during the course of a pursuit, as is frequently the case, the standard is usually one of objective reasonableness of an officer's actions, based upon his or her perceptions at the moment each action is taken. This standard is analogous to the use of force standard set forth by the United States Supreme Court in *Tennessee v. Garner*,¹ and *Graham v. Connor*.²

TRADITIONAL METHODS: THE EXTREMES

There are essentially three strategies utilized by departments for managing the risks of pursuit:

- very limited restrictions, or none at all;
- general restrictions on pursuit termination techniques, such as roadblocks or ramming;
- very tight restrictions on pursuit in general, limiting both type and duration of pursuit, as well as the techniques to be employed.

Usually these restrictions are stated in policy, although not always. In essence, these three alternatives provide officers with little assistance in the management of pursuits. At either extreme, they are either forbidden to pursue at all, or are allowed to pursue to whatever degree they decide is appropriate, but without being trained or equipped with tools and tactics for managing the outcome. In between is a middle ground where, while there are some restrictions on forcible termination techniques, there is little training and direction on how and when to apply those tactics.

In fact, the application of these controls is often inadequately supported with technology, policy, training and supervision. When this occurs, departments greatly increase the very risk they are attempting to control.

ONE ALTERNATIVE TECHNOLOGY

While technology is not always the answer, there are alternative pursuit management tools that departments should consider. Controlled deflation devices (i.e. spike strips, etc.) are being adopted by many agencies across the country. Although these tools are not yet in widespread use in Michigan, they are becoming increasingly common in some areas.

There are several manufacturers producing controlled deflation devices for law enforcement. Although there are differences in design, the underlying principle is essentially the same. The device is deployed across the path of a fleeing vehicle. When the vehicle rolls over the device, hollow “spikes” penetrate the tire and remain in place, creating several rapid, yet controlled leaks. The spikes are hollow to allow for the controlled deflation of the tire (solid spikes are likely to cause a blowout, or other mishap).

From a practical standpoint, three safety issues arise from the use of controlled deflation devices. First, they should be deployed in a location where, should a vehicle go out of control, minimal collateral damage can occur (e.g. not near playgrounds, or close to environmental features such as cliffs, bridges, or tight roadway curves).

Secondly, such devices should not be utilized to stop motorcycle or bicycle pursuits, unless deadly force would otherwise be justified due to the violently felonious nature of the fleeing suspect’s actions. Very slow pursuits with such vehicles may provide an opportunity for such deployment, but care should be taken due to the unstable nature of two-wheeled vehicles.

Lastly, officers should exercise personal caution when deploying controlled deflation devices. Manufacturer’s safety guidelines should be closely followed. Some devices require the wearing of protective gloves or eyewear during deployment. Additionally, care must be taken to avoid wrapping deployment cables or cords around the hand of the deploying officer. And finally, as with all stationary roadblocks, officers must be careful to stand well clear of the deployment zone as the fleeing violator approaches and passes through the roadblock.

There have been very few reported injuries or crashes in controlled deflation incidents, and existing caselaw arising from such incidents is virtually non-existent. While there is at least a possibility of an unfortunate outcome, in light of the alternative – continued pursuit, possibly at high speed – the low frequency of problems arising from the use of controlled deflation devices seems an acceptable risk.

SPECIALIZED TECHNIQUES FOR PURSUIT MANAGEMENT

When considering methods for the management of pursuits, many departments utilize either blocking or contact techniques. Generally, these techniques are used in attempting forcible termination of a pursuit. In that regard, they usually constitute a seizure under the fourth amendment to the United States Constitution, and therefore will be evaluated according to a standard of “objective reasonableness”.³

Blocking techniques are tactics such as “boxing in”, and both moving and stationary roadblocks. Typically, stationary roadblocks utilize vehicles parked across the roadway, although sometimes the aforementioned controlled deflation devices are used..

While vehicles can be used, controlled deflation devices are preferable, due to the reduced risk of a crash between the fleeing vehicle and the blocking mechanism.

Intentional contact between vehicles is another method sometimes utilized to bring a pursuit to a conclusion. Historically, this meant “ramming”, and was usually accomplished by crossing your fingers and attempting to strike the fleeing vehicle in such a way that the contact caused the violator to lose control, while allowing the officer to maintain control of his or her vehicle. Aside from the obvious unpredictability of intentional contact at any significant speed, differences in vehicle size and weight made this technique difficult to do safely and effectively.

In the past, intentional contact has frequently been characterized as deadly force. Two recent federal appellate cases have acted to mitigate this view. In the first, the court stated that, while a fatality may result from an intentional collision between two automobiles, it is far from the norm, and therefore deadly force should not be presumed to be the level of force applied in such incidents.⁴ In the second, another court recognized this principle, but added that collisions between automobiles and motorcycles frequently lead to a fatal outcome, and therefore a presumption that deadly force was used in auto/motorcycle intentional collisions is more appropriate.⁵

During the past few years, controlled contact techniques have begun to grow in popularity. Such tactics as the Precision Immobilization Technique (PIT Maneuver) are now being taught, and used effectively, in various parts of the country. Originally developed by the Fairfax County, Virginia, Police Department, the PIT maneuver is taught as a low speed (less than 35 mph), precision technique, requiring a clear location and careful timing.

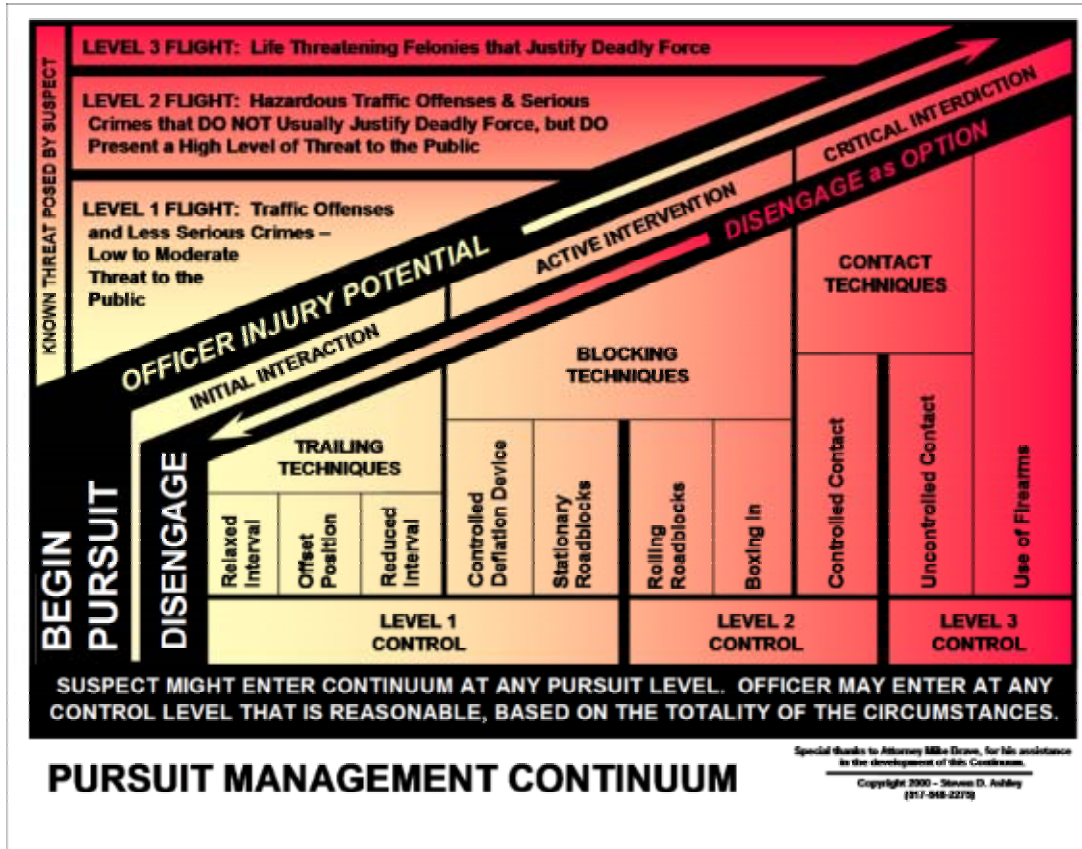
Agencies in southern California have made widespread use of the PIT maneuver, and have found it to be both relatively safe, and generally effective in application. It does, however, require thorough training and careful management of the pursuit environment to assure the safest possible outcome.

No matter which of these pursuit management techniques your agency authorizes for use, there are several concerns that must be addressed. In short, never authorize the use of any tactic or technique (or tool or weapon, for that matter) that you have not supported with training, policy and supervision. Even though most agencies make efforts to comply with this requirement, it is still fairly common for such things as roadblocks and “ramming” to be addressed in policy, with conditions being set for when such tactics may be used, but without provision being made for officers to be trained in their use. Because tactics such as these usually will constitute a forcible seizure and therefore a potential constitutional civil rights violation if done unreasonably, failure to train in their use may constitute “deliberate indifference”.⁶

A PURSUIT MANAGEMENT FRAMEWORK

Departments that are developing a pursuit management strategy should consider the adoption of the Pursuit Management Continuum[®] (PMC), to be used as a policy development and training tool. Use of the PMC is similar to the use of a traditional Use-of-Force continuum, in that the interaction of varying levels of resistance and control are set forth in a graphical representation that makes the relationships simpler to understand. Various types of pursuits (resistance) and common pursuit tactics (control) are illustrated, with reasonable relationships being drawn between the two.

Tactics and techniques like those described in this article can be placed on the PMC in such a way as to facilitate understanding of the underlying causal factors necessary to reasonably justify different officer actions. Of course, in order to defend the use of each of the tactics and techniques placed on the Continuum, policy, training and supervision must be put into place. When a department is unable or unwilling to support a technique with these three critical management elements, that technique should not be included on the Continuum.



MANAGING THE AFTERMATH

Once suitable technology is acquired, and appropriate policy, training and supervision are in place, the management process must remain "in gear". A suitable Pursuit Report Form should be adopted, and data should be collected on all pursuit incidents, whether or not apprehension or an injury occurred.

Data so collected should be carefully analyzed, in order to identify ways to improve your department's pursuit management program. Look for ways to enhance the process through changes in policy, further development of training programs, and increased emphasis on supervision and monitoring of pursuits. Consider the development of an "Incident Analysis Team", comprised of trained department members, supervisors and trainers. Information developed through this analysis process should be used for administrative review of your program, rather than for disciplinary purposes. To quote two well-known experts on the subject, "Even with a 100% positive outcome it is still necessary to carefully review [such incidents] to take maximum advantage of the ILV (Incident Learning Value)."⁷

A common concern of law enforcement officials is that collecting data on high-risk activity makes things easier for the plaintiff's bar. This should not be a concern. The simple fact is that such information is usually available to plaintiffs anyway, through Freedom of Information Act (FOIA) requests, and having it all in one place to begin with just makes the paperwork less bothersome for the department. Additionally, by collecting and analyzing data on each incident, and on pursuits in general, your department can more readily defend itself against future claims of reckless pursuit, or of ineffective management and supervision.

CONCLUSION

Officers can safely and effectively pursue suspects, given the necessary tools and administrative support. At a minimum, departments should identify those techniques in policy that are authorized, develop and present training programs in application of the approved techniques, and then supervise the officers' utilization of the various techniques on the street. On-going monitoring of the pursuit management initiative by both supervisors and managers, should lead to further development and fine tuning of the department's pursuit-related motor vehicle risk management program.

¹ Tennessee v. Garner, 105 S.Ct. 1694 (1985)

² Graham v. Connor, 109 S.Ct. 1865 (1989), as interpreted by Chew v. Gates, 27 F.3d. 1432 (9 CA, 1994)

³ Brower v. County of Inyo, et al, 109 S.Ct. 1378 (1989)

⁴ Adams v. St. Lucie County Sheriff's Dept., 998 F.2d.923 (11 CA, 1993), (Edmondson, J., dissenting), rev'd, 998 F.2d 923 (11CA, 1993)(en banc)

⁵ Donovan v. City of Milwaukee, 17 F.3d 944 (7 CA, 1994)

⁶ City of Canton, Ohio v. Harris, et al, 109 S.Ct. 1197 (1989)

⁷ *One Answer to Pursuits: Controlled Deflation Devices*, Michael A. Brave and Jeffrey R. Edblad, Law Enforcement Legal Defense Manual, Fall, 1996, Brief #96-3, pgs. 3-6.

REDUCE YOUR RISKS

- *Develop and implement a written policy. Train officers as to the policy and its application on the street.*
- *Train at least annually in the policy and decision-making aspects of pursuit (and other types of motor vehicle) operations.*
- *Driving is a motor skill. Train frequently (at least every two or three years, more often if possible) in all approved tactics and techniques.*
- *Carefully document all training.*
- *Supervisory personnel should closely monitor all pursuits.*
- *Collect data on all pursuits, whether successful or not. Debrief and analyze all pursuit related incidents.*

While compliance to the loss prevention techniques suggested herein may reduce the likelihood of an incident, it will not eliminate all possibility of an incident.

Further, as always, the reader is encouraged to consult with an attorney for specific legal advice.