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Civil Liability for Law Enforcement Pursuit Driving (I)

While there is a line in the Bible that states that sometimes the wicked flee "when no man pursueth," (Proverbs 28:1, King James Version), law enforcement officers know only too well that there are numerous instances in which motorists flee, despite the fact that they are being pursued, and are lawfully being commanded to pull over and stop, for purposes of investigation, for purposes of citation for traffic offenses, or for arrest for more serious crimes.

Sometimes, the result of such pursuits, which may proceed at high-speed through areas with heavy motor traffic or persons on foot, is injury or death to the occupants of the pursued vehicle, to the occupants of other vehicles, or to pedestrians.

The number of deaths is spelled out in "Motor vehicle crash deaths related to police pursuits in the United States," by F. P. Rivara and C. D. Mack, [Harborview Injury Prevention and Research Center](#) and Departments of Pediatrics and Epidemiology, University of Washington, Seattle. *Injury Prevention* (April 2004) 10: 93-95. [Abstract](#). Full text is available [online](#). (Requires registration and \$8 payment).

The study examined all traffic fatalities in the U.S. from 1994 to 2002 and determined that 2,654 fatal crashes resulted from police pursuits, involving a total of 3,146 deaths. According to the study, 1,048 of the decedents were not in fleeing vehicles, but rather were occupants of another vehicle, pedestrians or bicyclists. Forty police officers died in the course of such pursuits.

The following article examines some of the case law on the question of civil liability for death or injury arising out of such pursuits.

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1. Some Specimen Policies and Other Helpful Resources.

While policies on police pursuit driving must be carefully crafted to incorporate particular local and state circumstances and law, as well as federal constitutional law, in consultation with competent legal counsel, it may be helpful to examine what other departments have done. Accordingly, this article is accompanied by some example policies of various police departments, as well as some other helpful resources, which may be accessed by clicking [here](#).

2. Two important prior U.S. Supreme Court decisions.

There are two important prior U.S. Supreme Court decisions which form the basis for any discussion of federal constitutional law as it relates to police pursuit driving, under, respectively, the 14th Amendment and the Fourth Amendment to the U.S. Constitution.

The first is [Sacramento v. Lewis](#), #96-1337, 523 U.S. 833 (1998). In that case, the Court held that a police officer does not violate substantive due process under the 14th Amendment to the U.S. Constitution by causing death through deliberate or reckless indifference to life in a high-speed automobile chase aimed at apprehending a suspected offender. 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.

In this case, the plaintiff's decedent was riding as a passenger on a motorcycle that refused to pull over when a deputy sheriff motioned its driver to do so. A second deputy sheriff engaged in a high speed pursuit and crashed into the motorcycle after it tipped over, killing the passenger.

The trial court granted summary judgment for the defendant officer, but a federal appeals court reversed, finding that a claim for violation of substantive due process was stated by an allegation that the officer acted with "deliberate indifference to, or reckless disregard" of the person's right to life and personal security. Among other assertions, the plaintiff stated that the deputy "apparently disregarded" a departmental general order which might have kept the chase from occurring. The order required the officer to communicate his intention to pursue

the vehicle to the dispatch center and to consider whether the seriousness of the offense warrants a high-speed chase. The appeals court found that there was "no apparent danger involved in permitting the boys to escape," but a "risk of harm to others in continuing the pursuit," and found that the case should proceed to trial.

In overturning this ruling, the U.S. Supreme Court found that the proper blame for the incident could be placed on the motorcycle driver's lawless and "outrageous" conduct in attempting to elude pursuit. It also rejected the argument that the claim was governed by the Fourth Amendment protection against unreasonable search and seizure. The Court noted that the officer did not intentionally seek to terminate the plaintiff's freedom of motion.

The Court found that imposing liability on officers for death or injury resulting from high speed pursuits based on a standard of "deliberate indifference" would ignore the fact that officers must make decisions as to whether to pursue an offender "in haste, under pressure, and frequently without the luxury of a second chance." An officer deciding whether to give chase "must balance on one hand the need to stop a suspect and show that flight from the law is no way to freedom, and on the other, the high-speed threat to everyone within stopping range, be they suspects, their passengers, other drivers, or bystanders."

When "extended opportunities to do better are teamed with protracted failure even to care, indifference is truly shocking. But when unforeseen circumstances demand an officer's instant judgment, even precipitate recklessness fails to inch close enough to harmful purpose to spark the shock" required for liability in this case. "Just as a purpose to cause harm is needed for Eighth Amendment liability in a [prison] riot case, so it ought to be needed for Due Process liability in a pursuit case. Accordingly, we hold that high-speed chases with no intent to harm suspects physically or to worsen their legal plight do not give rise to liability under the Fourteenth Amendment, redressable by an action under [42 U.S.C.] Sec. 1983."

In the previously decided case of [Brower v. County of Inyo](#), No. 87-248, 489 U.S. 593 (1989), in contrast, the U.S. Supreme Court analyzed the death of a pursued motorist under the Fourth Amendment's requirement that searches—and particularly seizures—not be unreasonable.

The decedent had been driving a stolen car at high speeds to attempt to escape from pursuing police vehicles, and he was killed when his car crashed into a police roadblock.

A lawsuit for alleged violations of his constitutional rights asserted that the defendant officers, acting under color of state law, violated his Fourth Amendment

rights by subjecting him to an unreasonable seizure through the use of excessive force.

Specifically, the lawsuit argued that police placed an 18-wheel truck completely across the highway in the path of the pursued vehicle, behind a curve, with a police car's headlights aimed in such a fashion as to blind the pursued driver as he approached.

Under these circumstances, the lawsuit further asserted, the fatal collision was "proximately" caused by the actions of the police. Both the trial court and federal appeals court rejected the claims in the lawsuit, with the trial court reasoning that the roadblock was not unreasonable under the circumstances, and the appeals court reasoning that no "seizure" had occurred at all.

The U.S. Supreme Court disagreed, finding that, under the Fourth Amendment, a "seizure" occurs whenever governmental action is taken to terminate a person's movement through "means intentionally applied." Because the lawsuit alleged that the decedent had been stopped by the roadblock, which was intentionally put in place to stop him, it definitely operated as a "seizure."

In circumstances in which police allegedly intentionally set up a roadblock in such a manner as would be likely to kill a pursued motorists, the issue, therefore is whether or not it is reasonable to do so.

3. Other federal court decisions on law enforcement pursuit driving.

Federal appeals courts and trial courts have applied and refined the principles set forth in Sacramento v. Lewis and Brower v. County of Inyo in numerous cases.

In Slusarchuk v. Hoff, No. 02-3601, 346 F.3d 1178 (8th Cir. 2003), a federal appeals court essentially held that the initial motivation of officers in seeking to make a stop of a motorist, even if arguably improper, may not be enough, standing alone, to make them liable for damages flowing from the motorist's decision not to obey what is facially a lawful order to pull over, and instead to flee. The court held that, whether or not police officers initially decided to stop a motorist on the basis of impermissible "racial profiling," once he refused to stop, they had probable cause to seek to stop him and arrest him for the crime of fleeing, and they were therefore entitled to qualified immunity from liability for the death of a vehicle occupant caused by a collision with the pursued car and injuries to another occupant of that vehicle.

The qualified immunity analysis revolved around whether the officers were entitled to such immunity for their pursuit of the motorist after he refused to stop.

In [Sacramento v. Lewis](#), 523 U.S. 833 (1998), the appeals court noted, the U.S. Supreme Court held that "in a high-speed automobile chase aimed at apprehending a suspected offender," only a "purpose to cause harm unrelated to the legitimate object of arrest will satisfy the element of arbitrary conduct shocking to the conscience."

The 8th Circuit subsequently ruled that this legal standard applied to all Sec. 1983 substantive due process claims arising out of the conduct of officers engaged in high-speed auto chases aimed at catching a suspected offender, regardless of whether the chase conditions gave the pursuing officers "time to deliberate." [Helseth v. Burch](#), 258 F.3d 867, 871 (8th Cir. 2001) (en banc), cert. denied, 534 U.S. 1115 (2002).

The appeals court found no such intent to harm here. When the pursued motorist refused to stop after the officers activated their emergency lights, they had probable cause to arrest him for committing a felony in their presence, regardless of the initial reasons for the attempted stop.

Thus, the pursuit was "aimed at apprehending a suspected offender" and did not objectively evidence "a purpose to cause harm unrelated to the legitimate object of arrest."

Similarly, in [Graves v. Thomas](#), No. 05-7084, 450 F.3d 1215 (10th Cir. 2006), the court ruled that, regardless of police officer's subjective motive in attempting a traffic stop of a teenage driver, his decision to make the stop, and to engage in a high-speed pursuit when the driver refused to pull over and sped off, did not shock the conscience. There was no showing that the officer intended to inflict harm on the driver. The officer, police chief, and town were not liable for the driver's subsequent death when he lost control of his car during the chase. See also, [Sanders v. City of Union Springs](#), No. 2:04-cv-757, 405 F. Supp. 2d 1358 (M.D. Ala. 2005), finding that a police officer was not liable in a federal civil rights lawsuit for either the death of a child passenger in vehicle pursued after it fled a license checkpoint or injuries to passengers in a car struck by the pursued vehicle when he was only attempting to seize the driver of the fleeing car, did not know the child was in the pursued vehicle, and the collision was an unintended consequence of the pursuit.

In [Troupe v. Sarasota County, Fla.](#), #04-10550, 419 F.3d 1160 (11th Cir. 2005), the court found that officers who shot at car containing suspect attempting to flee **from** service of felony drug arrest warrant were not liable for subsequent death of one of his passengers and serious injuries to another when his car later crashed into a wall. The cause of the death and injuries was the suspect's decision to flee, not the officers' use of deadly force. Shooting at the suspect was reasonable when

an officer believed that the suspect was trying to run him over.

In a case not involving a pursuit, but still applying the principles in Sacramento v. Lewis, and helpful in understanding them, the U.S. Court of Appeals for the Eighth Circuit, rehearing a case en banc, ruled by 10-3 that "intent to harm" is the appropriate legal standard for liability for motorist's death caused by collision with police vehicle going through red light at high speed while responding to a domestic disturbance call. The prior adoption of a lesser "deliberate indifference" legal standard by a three-judge appeals panel was overturned. The majority of court also found that the deputies would be entitled to summary judgment, under the circumstances, even under the lesser "deliberate indifference" standard. Terrell v. Larson, No. 03-1293, 396 F.3d 975 (8th Cir. 2005).

4. Liability for law enforcement pursuit driving under state law.

Many lawsuits are also filed in state court seeking to assert claims for wrongful death or injuries, based on arguments that officers, while engaged in vehicular pursuits, drove negligently, willfully and wantonly, recklessly, or in violation of applicable departmental policies and procedures or state law.

The standard required to establish liability under state law varies considerably, and in many instances also involves the scope of various immunities available under the law of a particular jurisdiction. Whether liability can be established may, in some cases, depend on whether police officers, at the time of the accident, have complied with such requirements as activating warning lights and/or sirens.

Some recent state law cases of interest include:

* McGrath v. City of Omaha, No. S-04-1239, 713 N.W.2d 451 (Neb. 2006), in which a court ruled that a police officer was not negligent in pursuing a vehicle which subsequently struck another car and injured the driver, but, under a Nebraska state statute, the city was strictly liable for damages suffered under these circumstances. The city, however, was entitled to deduct from its liability the amount of insurance payments received by the injured motorist.

* Mumm v. Mornson, #A04-729, 708 N.W.2d 473 (Minn. 2006), holding that police officers had a non-discretionary duty under their department's pursuit policy to discontinue the vehicular pursuit of a suspect whose identity was known, in the absence of specified serious felonies, and were therefore not entitled to official immunity under Minnesota law for failing to discontinue their pursuit in a lawsuit brought by the widow of a pedestrian killed as a result of the pursuit.

* Athay v. Stacey, #31164, 128 P.3d 897 (Idaho 2006), ruling that a deputy

sheriff did not act with reckless disregard for safety when he joined a high-speed pursuit of a motorist behind two other police vehicles, and the pursued car collided with another vehicle. There was no indication that the pursued suspect even knew that there was a third police vehicle chasing him. There was also no evidence that the pursued motorist's conduct changed after the third police vehicle joined the chase, so this deputy was properly granted summary judgment.

*[Patrick v. Miresso](#), No. 45803-0505-CV-223, 848 N.E.2d 1083 (Ind. 2006), stating that the Indiana Tort Claims Act did not provide governmental immunity to officer or city for the officer's purported negligent operation of his car against a red light while engaged in pursuing a suspect, resulting in injuries to another motorist.

*[Charles County Commissioners v. Johnson](#), No. 104, 900 A.2d 753 (Md. 2006), concluded that a genuine issue of whether police vehicles actually blocked traffic going northbound on a road during a high speed chase, resulting in injuries to a motorist, barred summary judgment for defendants in negligence lawsuit.

* [Baltimore v. Hart](#), 891 A.2d 1134 (Md. App. 2006), upholding a jury award against a city in a case where a motorist was injured from a collision with a police cruiser engaged in a high-speed pursuit. The court ruled that a police department order stating that, during such pursuits, officers were required to bring their vehicles to a full stop when they crossed an intersection against traffic control devices was admissible evidence. The court also found that the jury in the case had properly been instructed that the officer was bound by the department order and that it could consider the order when deciding whether the officer acted in a reasonable manner.

*[Hanse v. Phillips](#), No. A05A0955, 623 S.E.2d 746 (Ga. App. 2005), finding that an officer was entitled to official immunity under Georgia state law from liability for injuries to three passengers and death of driver in vehicle struck by car fleeing from him during high-speed pursuit. The officer's decision to engage in the chase was discretionary, and there was no evidence that the officer went beyond the scope of that discretion by any wrongful act or any intention to cause harm to the deceased motorist or his passengers.

* [Wade v. City of Chicago](#), No. 1-04-0642, 847 N.E.2d 631 (Ill. App. 2006), ruling that an officer who pursued motorist into crowded downtown area could not be held liable for injuries a pedestrian suffered when the pursued **driver took his** car onto the sidewalk. The officer, who did not even exceed the speed limit while following the car, could not be said to have acted in a "willful and wanton manner" under Illinois law, as required for liability.

* [Conklin v. Garrett](#), No. 12-04-00344-CV, 179 S.W.2d 626 (Tex. App. 12th

Tyler 2005), in which an officer was found to have failed to show that he pursued a suspect in good faith during a high speed chase, as required for an official immunity defense under Texas state law in a lawsuit filed by a motorist whose car was struck by the pursued suspect's vehicle. The officer, in his summary judgment affidavit did not state any facts to show that he assessed the risk of harm to members of the public if he continued his pursuit.

* [Seide v. State of Rhode Island](#), No. 2003-521, 875 A.2d 1259 (R.I. 2005), stating that the question of whether a police high-speed chase of a stolen tow truck was reasonable was for a jury, and expert testimony was not required to determine whether the officers acted in reckless disregard for the safety of others in chasing the vehicle, which collided with a car, seriously injuring one of the occupants. Issues of highway safety and traffic laws, the court said, were not matters outside of the common knowledge of the jury. A new trial was ordered on plaintiff's claims, overturning a trial court's judgment as a matter of law for the defendants.

* [Chenoweth v. Estate of Wilson](#), #27A05-0406-CV-313, 827 N.E.2d 44 (Ind. App. 2005), in which a police officer was found to be engaged in attempting to enforce the law when he pursued a van whose driver he suspected was drunk, which resulted in the pursued van colliding with another motorist's vehicle, causing the driver's death. Under these circumstances, the officer, police department and town were immune from liability under Indiana state law.

* [Gaudino v. Town of East Hartford](#), No. 24660, 865 A.2d 470 (Conn. App. 2005), ruling that motorists who alleged that they were injured in a collision caused by the police engaging in a high-speed pursuit of another motorist could not pursue, under Connecticut state law, a claim against the town for indemnification of the officers without directly bringing claims against the town's employees or agents (the officers). The defendant town's motion for summary judgment was therefore granted.

* [Blackston v. Georgia Department of Public Safety](#), No. A05A1319, 618 S.E.2d 78 (Ga. App. 2005), holding that an officer's action of conducting a high-speed pursuit of a speeding motorist constituted a "method of providing law enforcement" coming within an exception to state liability under the Georgia Tort Claims Act, Ga. Code Ann. Sec. 50-21-24(6), so there was no liability for the Georgia Department of Public Safety for injuries a motorist suffered in a collision with the vehicle being pursued by a state highway patrolman. The argument that the patrolman had violated written procedures and a state statute in engaging in the pursuit did not alter the result.

* [Moore v. County of Suffolk](#), 783 N.Y.S.2d 72 (A.D. 2nd Dept. 2004), in which an arrestee who admittedly fled from officers to avoid arrest for possession

of controlled substances, and then was struck and injured by a police car as he crossed in front of it, committed a serious offense of resisting arrest, which barred him from seeking damages for his injuries under New York state law. (While this case does not involve the pursuit of a vehicle, the principles would seem to apply, assuming that a motorist was engaged in resisting arrest at the time of an injury arising from a pursuit).

* [Durbin v. City of Winnsboro](#), No. 06-03-00046-CV, 135 S.W.2d 317 (Tex. App. 2004), in which the court ruled that a lawsuit by parents of a motorcyclist who died in an accident while being pursued by a police officer was not a claim for intentional misconduct when plaintiffs asserted that the officer purposefully bumped motorcycle to end the pursuit, as it was not claimed that the officer intended to injure the motorcyclist. The lawsuit was not, therefore, barred by the Texas state Tort Claims Act, V.T.C.A. Civil Practice & Remedies Code Sec. 101.021

* [Standard v. Hobbs](#), 589 S.E.2d 634 (Ga. App. 2003), ruling that a county's purchase of liability insurance on vehicle used by sheriff's deputy in a high-speed chase waived any defense of sovereign immunity on claims asserted by motorist for injuries to herself and her daughter when struck by vehicle deputy was pursuing. Summary judgment was still properly entered for deputy, however, as the plaintiff failed to show that the deputy acted in reckless disregard of proper procedure during the pursuit.

In a [second article](#) in this series, we examine a U.S. Supreme Court case decided in April of 2007.

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