

# **POLICE VEHICULAR PURSUITS**

#### **ABOUT THE AUTHOR**

Doctor Hicks is currently an associate professor of criminal justice at Loyola University in New Orleans. A graduate of Michigan State University's School of Criminal Justice, Dr. Hicks also holds masters degree in psychology and criminal justice from Illinois State University. She has published on such topics as police vehicular pursuits, skinhead neo-Nazi gangs, and police operations and administration. Professor Hicks teaches research methods, statistics, and program planning and evaluation at Loyola University New Orleans. Her areas of interest within the field of criminal justice include quantitative methods, police vehicular pursuits, law enforcement administration, and white supremacy.

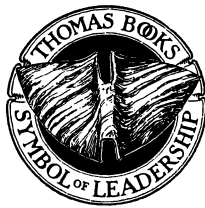
# POLICE VEHICULAR PURSUITS

Constitutionality, Liability and Negligence

*By*

WENDY L. HICKS, PH.D.

*Department of Criminal Justice  
Loyola University  
New Orleans, Louisiana*



CHARLES C THOMAS • PUBLISHER, LTD.  
*Springfield • Illinois • U.S.A.*

*Published and Distributed Throughout the World by*

CHARLES C THOMAS • PUBLISHER, LTD.  
2600 South First Street  
Springfield, Illinois 62794-9265

This book is protected by copyright. No part of  
it may be reproduced in any manner without written  
permission from the publisher. All rights reserved.

©2007 by CHARLES C THOMAS • PUBLISHER, LTD.

ISBN 978-0-398-07760-0(hard)  
ISBN 978-0-398-07761-7 (pbk.)

Library of Congress Catalog Card Number: 2007012286

*With THOMAS BOOKS careful attention is given to all details of manufacturing  
and design. It is the Publisher's desire to present books that are satisfactory as to their  
physical qualities and artistic possibilities and appropriate for their particular use.  
THOMAS BOOKS will be true to those laws of quality that assure a good name  
and good will.*

*Printed in the United States of America  
MM-R-3*

**Library of Congress Cataloging in Publication Data**

Hicks, Wendy L.

Police vehicular pursuits : constitutionality, liability, and negligence / by  
Wendy L. Hicks.  
p. cm.

Includes bibliographic references and index.

ISBN 978-0-398-07760-0 (hard)– ISBN 978-0-398-07761-7 (pbk.)

1. Tort liability of police–United States. 2. Police pursuit driving–Law and  
legislation–United States. I. Title.

KF1307.H53 2007  
344.7305'232–dc22

2007012286

## PREFACE

This book was written in an effort to fill a gap in the existing body of knowledge in the field of policing and law enforcement. As our nation's roadways continue to grow ever more congested, the myriad of legal and administrative issues inherent in police vehicular pursuits have never been more salient. To date there is no offering that attempts to assemble the many findings of previous research into the area of vehicular pursuit and the resulting liability and negligence that often accompany such operations. Research conducted on police vehicular pursuits has important ramifications for other areas of law enforcement, especially that involving the use of force. Legal rulings resulting from instances of pursuit can impact other areas of law enforcement and serve to heighten the legal risks for most contemporary law enforcement organizations. This is a timely and important topic with few textbook offerings.

W.L.H.



## CONTENTS

	<i>Page</i>
<i>Preface</i> .....	v
 <i>Chapter</i>	
1. PUBLIC AND POLICE POLICY .....	3
2. PREVIOUS RESEARCH .....	13
3. LIABILITY AND NEGLIGENCE .....	31
4. STATE TORT LAW .....	55
5. FEDERAL LIABILITY LAW .....	69
6. USE OF FORCE AND VEHICULAR PURSUITS .....	83
7. NATIONAL PURSUIT POLICY, TECHNOLOGICAL PROPOSALS, AND LEGISLATIVE ADVANCEMENTS .....	97
 <i>Index</i> .....	115





# **POLICE VEHICULAR PURSUITS**



## Chapter 1

### PUBLIC AND POLICE POLICY

In an effort to understand and appreciate the theoretical concepts governing police policy, it is perhaps best to begin with a brief discussion of public policy. The American public envisions many things when the topic of public policy is broached: military activities, social security, welfare, agricultural subsidies, or medical expenditures. Congressional representatives, presidents, governors, administrators, and even lobby groups create policy. Stated more fundamentally, public policy “is the sum of the activities of governments, whether acting directly or through agents, as it has an influence on the lives of citizens” (Peters, 1982, p. 4). Public policy has also been defined as “a course of action intended to accomplish some end” (Heclo, 1972, p. 85). In addition, Eulau and Prewitt maintained that policy is “a standing decision characterized by behavioral consistency and repetitiveness” both by those who create it and those who abide by it (Eulau & Prewitt, 1971, p. 465).

Public policy is cumulative and incremental. It is concerned more with the long-term rather than a short-term guide for behavior. Although much of the popular media attention is directed toward critiquing the federal government and its many and varied policies, it must be understood that in the United States, with a federal system of government, there are a large number of subsidiary governments also creating policy and making decisions. In a perfect political environment every subsidiary government would cooperate with every other to create consistent programs and policies. However, the actions of the many governments existing within the United States are often in conflict with one another.

It is also important to remember that not all government policies are

implemented by government employees, whether at the federal or state level. Many government policies are implemented in the private sector by organizations or by individuals. This must be understood if an excessively narrow definition of public policy is to be avoided. Public policy does not concern only those programs that are directly administered in the public sector.

As this brief introduction to the intricacies of public policy comes to a close it is vital to turn now to the domain of police policy. Police policy is but one facet of public policy. Where public policy is concerned with the provision of many services and programs to society, police policy is concerned primarily with the provisions of law enforcement and order maintenance services. Public policy makes police services possible, while police policy ensures that this provision of services is in accord with the laws and mores of a democratic society.

In a democratic form of government, the state is considered subservient to the citizens. The purpose of government is to provide the citizenry with services and programs if society is to progress economically and technologically. Although the legislative functions of government remain with the citizens, the executive and judicial functions are, by necessity, rendered by special instruments of the government which remain subordinate to the people (Rousseau, 1948).

Thus, policing is far more than simply enforcing the laws of the land. Designed after the English system, American policing is performed by a variety of federal, state, and local agencies falling under civilian control. For the most part, state laws govern the activities of the police within jurisdiction of any particular state. As noted by George Cole and Christopher Smith (2001), state laws entrusted with the creation of sheriff's offices and local police forces emanate from state constitutions and statutes. Police administration as a function of government exists primarily in the abstract as individual agencies generally operate as autonomous units (Cole & Smith, 2001). Therefore, while the United States has a system for policing its society, it does not have a national police system such as those existing in many European and Asian countries. The system of policing in America is "the sum total of the efforts put forth by each of the multitude of agencies" (Kennedy, 1972, p. 7).

Fundamentally, police administration has been defined as "the organization, personnel, practices, and procedures essential to effective performance of the law enforcement and other traditional police

functions by those agencies to which responsibility has been entrusted” (Marx, 1963, p. 7). This definition embraces all of the activities of the federal, state, and local governments related to execution of the police function.

Guidelines and policies for proper police administration are developed by the U.S. Constitution, city charters, state statutes, and local ordinances (Cole & Smith, 2001). While officers and administrators find themselves adhering to a host of Supreme Court decisions and Constitutional provisions, local legislative bodies also develop guidelines and requisites administrators are obliged to follow. In addition, internal policies provide guidelines for officers and administrators alike as to the proper and effective performance of daily duties. To complicate an administrator’s role, modifications of existing policies and guidelines must be continuous as public pressure, political concerns, and court decisions generate new, more contemporary policies, highlighting freedom and liberty of the citizenry.

While the realm of police administration has been defined, the term “policy” is also want of an operational definition. According to Nicolaidis and Donner (1960), “Policy is a rule for action, manifesting or clarifying specific organizational goals, objectives, values, or ideals and often prescribing the obligatory or most desirable ways and means for their accomplishment. Such a rule for action established for the purpose of framing, guiding, or directing organizational activities including decision-making intends to provide relative stability, consistency, uniformity, and continuity in the operations of the organization” (p. 74).

As Pfiffner has noted, the preceding definition implies that policy is both “flexible and stable, and dynamic and static” (1960, p. 127). Policy is developed at all levels of the police organization. The chief alone does not have sole responsibility for forming and approving organizational policy. It is true that broad policies become formalized when approved by the chief, but there are many more interested parties in the primary development of policy than simply the chief. Smaller policies relating to specific functions of police operations may or may not require approval of the chief, depending on the agency. They may be formalized through approval of an appropriate command officer.

## **PURSUIT POLICY DEFINITIONS**

Due to the fact that there exist many different definitions of police pursuits, it is, perhaps, wise to provide a few working definitions of a pursuit utilized by researchers in the past. Alpert (1987) has defined a police vehicular pursuit as:

an active attempt by a law enforcement officer operating a vehicle with emergency equipment to apprehend a suspected law violator in a motor vehicle, when the driver of the vehicle attempts to avoid apprehension. (p. 299)

In a similar tone, Alpert and Fridell (1992) have defined a vehicular pursuit as:

the driver of a vehicle is aware that an officer driving a police vehicle with emergency lights and siren is attempting to apprehend him or her and the driver of this vehicle attempts to avoid apprehension by increasing speed or taking other evasive actions or refuses to stop. (p. 124)

Some consensual elements can be observed in the two definitions. However, each could be coupled to provide a more thorough definition. Therefore, a more inclusive definition is preferable. For the purpose of this text the definition provided by the National Highway Traffic Safety Administration (NHTSA) and the International Association of Chiefs of Police (IACP) will be used to operationalize the term “pursuit.” The NHTSA and IACP define pursuit as:

An event that is initiated when a law enforcement officer, operating an authorized emergency vehicle, gives notice to stop (either through the use of visual or audible emergency signals or a combination of emergency devices) to a motorist who the officer is attempting to apprehend, and the motorist fails to comply with the signal by either maintaining his or her speed, increasing speed, or taking other evasive action to elude the officer’s continued attempts to stop the motorist. (1995, p. 1)

## **CONSTITUTIONAL AND LEGAL ASPECTS**

The field of police vehicular pursuits is replete with complex, often conflicting, legal issues. The consequences of negligence can have far-reaching implications for law enforcement agencies as well as individual officers. Litigation can be financially devastating for both depart-