

Legal Aspects of Law Enforcement Driving

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OBJECTIVE 1.2 Identify statutory law, case law, agency policy, and principles of liability governing emergency driving.

Emergency Driving Under State Law

INTRODUCTION

All states give officers a limited exemption from certain traffic laws for emergency driving. This exemption recognizes the social importance of rapid response and apprehension of fleeing criminals. Any driving at high-speeds and contrary to normal rules of the road carries a risk of injury to others. That risk of injury is weighed against the need for quick response and arrest of violators. Emergency exemption statutes reflect this balancing of competing social needs: safety on public roadways balanced against protecting against criminals.

EMERGENCY EXEMPTION STATUTES

Pursuit of a violator and going to the scene of an emergency are the two categories of emergency driving most common to law enforcement. Important differences exist for each category, but state statutory law usually covers both categories in a single emergency exemption statute. A typical emergency exemption statute is patterned after §11-106 of the Uniform Vehicle Code and has these features:

1. The vehicle must be an authorized emergency vehicle equipped with specified warning lights and siren. Law enforcement vehicles often are given the exclusive right to display colored lights, but many states specify red lights for fire, rescue, ambulance, and law enforcement vehicles.
2. To claim the exemption, the authorized emergency vehicle must be responding to an emergency call or in pursuit of an actual or suspected violator of the law.
3. The exemption may allow the authorized emergency vehicle to park or stand, exceed speed limits, proceed past red traffic signals and stop signs, and disregard rules governing direction of travel or turning.
4. The exemption applies only if required warning devices are being operated. Depending on the state, the required warning devices may be BOTH warning lights and a siren, or warning lights

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but not a siren, or a siren but not warning lights. In a few states, the speed exemption does not require either warning lights or a siren, but the right-of-way exemption requires activation of both warning lights and a siren.

5. Nearly all emergency exemption statutes provide for a “*duty to drive with due regard for the safety of others,*” and many of the statutes go on to deny protection from the consequences of a reckless disregard for the safety of others. In many states, the statute grants the privilege to disregard speed limits but only “*so long as the driver does not endanger life or property,*” and grants the privilege to proceed past red traffic lights and stop signals, “*but only after slowing down as necessary for safe operation.*”

Two conditions found in a typical state emergency exemption statute are critically important for law enforcement drivers:

1. Failure to activate required warning devices - warning lights and/or a siren – often disqualifies an officer from the exemption.
2. Even if required warning devices are activated, driving that disregards a clear danger to the safety of others may subject the officer to liability.

WARNING DEVICES

State emergency exemption statutes differ on the warning devices required during law enforcement emergency driving. Some states, like Alabama and New York, require both warning lights and a siren. Other states, such as Arizona and Connecticut, require activation of a siren but not warning lights. And still other states, such as Illinois and Indiana, require activation of either warning lights or a siren. Finally, a few states, such as North Carolina, require one or both for claiming the right-of-way at intersections but do not require either lights or a siren for the speed limit exemption. A listing of emergency exemption provisions for the 50 states and the District of Columbia appears in **Appendix A**.

For those states requiring some form of warning devices, failure to activate the requisite warning devices may cause the officer to lose the protection of the emergency exemption statute.

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Case Twelve: Responding To Call Without Lights Or Siren

MATTERA v. AVIS RENT A CAR SYSTEM, INC., 245 A.D.2d 274, 665 N.Y.S.2d 94 (N.Y. App. Div. 1997).

Two New York detectives were responding to the scene of a buy-and-bust operation where a suspect was being held. The detective who was driving made a left turn and collided with an oncoming car. The driver of that car sustained personal injuries.

Observing that the record showed the detective was not operating lights or a siren at the time of the collision and that his car was unmarked, the New York appellate court stated:

“On these facts, the privilege afforded to operators of authorized emergency vehicles engaged in an emergency operation pursuant to Vehicle and Traffic Law §1104 is inapplicable...this was not such an emergency operation.”

The court found the detective negligent as a matter of law.

See also *Williams v. Crook*, 741 So.2d 1074 (Ala. 1999) (holding that officer responding to domestic disturbance report loses immunity since he exceeded speed limit without complying with audible and visual signal requirements of state emergency exemption statute).

Case Thirteen: Passing Motorist Without Lights Or Siren

JOHNSON V. GONZALEZ, 223 Ga. App. 646, 478 S.E.2d 410 (Ga. Ct. App. 1996), *cert. denied*, 1997 Ga. LEXIS 322 (Ga. 1997).

While on routine patrol, a county police officer received an urgent “Code 2” call to respond to a scene of domestic disturbance. The officer attempted to pass a motorist on the left as the motorist began making a left turn. The officer struck and injured the motorist. The motorist sued the county and the police officer, alleging that the officer was operating his vehicle with reckless disregard for the safety of others at the time of the collision.

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The Court of Appeals of Georgia departed from earlier appellate decisions which held that an officer's failure to use both lights and sirens when responding to calls did not amount to an act of reckless disregard. The court held:

"A jury must decide whether [the officer's] decision to overtake [the motorist's] vehicle, without activating his emergency lights or siren, was merely negligent or whether it constituted a reckless disregard for the safety of others."

See also *Beatty v. Charles*, 936 S.W.2d 28 (Tex. Ct. App. 1996) (holding that jury must resolve factual dispute over whether officer ran red light without lights and siren while responding to request to assist shot officer). But see *Young v. Woodall*, 343 N.C. 459, 471 S.E.2d 357 (N.C. 1996) (holding evidence that officer exceeded speed limit and failed to activate lights and siren while in pursuit of vehicle with only one working headlight did not amount to gross negligence).

In those states requiring that emergency vehicles use *both* lights and sirens, courts typically find the use of one without the other does not meet the requirements of the state emergency exemption statute. In the next case, a St. Louis police officer loses the protection of the Missouri emergency vehicle statute, which requires both lights and a siren, when he activates his lights but fails to use his siren during an emergency run.

Case Fourteen: Running Red Light With Lights But No Siren

MCGUCKIN v. CITY OF ST. LOUIS, 910 S.W.2d 842 (Mo. Ct. App. 1995).

Responding to an emergency call, a St. Louis police officer proceeded through an intersection with the intention of making a left turn when he struck a motorist driving through the intersection. The motorist sustained multiple injuries and sued.

At trial, the motorist's evidence showed that the officer proceeded through the intersection against a red light with his emergency lights flashing but without any siren sounding. The officer, on the other hand, claimed that he had both lights and sirens activated and that he proceeded through the intersection with a green light. The jury returned a verdict for the motorist, and the St. Louis board of police commissioners appealed.

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The Missouri Court of Appeals examined the Missouri emergency vehicle statute and found that “an emergency vehicle can proceed past a red stop signal, after slowing as may be necessary to ensure safety, while operating both its flashing lights and its audible signal.” The court further stated:

“The statute thus places limitations on an officer’s ability to operate his vehicle in whatever manner he deems necessary, as it requires he use both light and siren before he can disregard traffic rules that bind all drivers... Once an officer complies with those two mandates, he brings himself under the protective umbrella of the statute and can then exercise his judgment in responding to the situation as the circumstances may warrant. However, until an officer is in compliance with the statute, he is bound by the same rules of the road as other drivers, and is afforded no special immunity for negligent acts or omissions committed by him.”

The court held that, in finding for the motorist, the jury believed the evidence showing the officer proceeded through a red traffic signal without the use of his audible signal. Therefore, the officer was not protected by the exemptions of the emergency vehicle statute, and the motorist properly recovered against the board of police commissioners.

See also *Bradshaw v. City of Metropolis*, 293 Ill. App. 3d 389, 688 N.E.2d 332 (Ill. App. Ct. 1997) (holding that officer responding to 9-1-1 call with lights but no siren may be liable for negligence); *Taylor v. City of Oklahoma City*, 914 P.2d 1073 (Okla. Ct. App. 1995) (holding that officer responding to emergency call with lights but possibly without a siren may be liable for negligence); *Berz v. Ohio Department of Highway Safety*, 66 Ohio Misc.2d 66, 643 N.E.2d 181 (Ohio Ct. Cl. 1992) (holding officer partially at fault for injuries to motorist struck by patrol car where officer turned on lights but not siren in high-speed response to collision).

States differ in how soon an officer engaged in an emergency run or pursuit needs to begin

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activating warning devices to be protected by the state emergency exemption statute. In the next case, the Alabama Supreme Court ruled that the exemption statute requiring operation of warning lights and siren also applies during the initial "catch-up" phase of a pursuit.

Case Fifteen: Fatality During Catch-Up

SMITH v. BRADFORD, 512 So.2d 50 (Ala. 1987).

An Alabama officer struck and killed a 13-year-old child on a bicycle after the officer turned around and sped up to catch a violator in the opposite travel lane. The officer was not operating warning lights or a siren at the time of the collision.

The estate of the deceased child brought a lawsuit against the officer on two counts: negligence and wantonness.

At trial, the officer was allowed to prove that he was trained by his agency to delay activating warning lights and a siren until the officer could read the violator's license plate. This "catch-up" policy was intended to reduce the likelihood a violator would try to flee upon seeing distant warning lights. The jury returned a verdict for the officer on both counts.

The child's estate appealed to the Alabama Supreme Court, claiming that the delay in activating the warning devices could not be justified by training or policy of the law enforcement agency.

The court agreed that Alabama statutory law on emergency driving was violated by not activating required audible and visual signals. The exemption from normal speed limits applies only if both warning lights and an audible signal are being used. Not activating this equipment could constitute wantonness. The child's estate argued that evidence of the catch-up policy was irrelevant to wantonness. The court agreed and ruled that the admission of the evidence was prejudicial:

"We fail to see how the evidence of 'catch-up' training or instruction could be at all relevant to this count of wantonness...The prejudice which can result from the admission of such evidence is obvious."

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The court reversed the judgment of the trial court and remanded.

Similarly, an Ohio court held that an officer's "eleventh hour" activation of his cruiser's lights and siren was too late to be of any use in warning other motorists.

Case Sixteen: Eleventh Hour Activation of Lights And Siren

MCGUIRE v. LOVELL, 128 Ohio App. 3d 473, 715 N.E.2d 587 (Ohio Ct. App. 1998), *discretionary appeal allowed*, 82 Ohio St. 3d 1482, 696 N.E.2d 1088 (Ohio 1998), *appeal dismissed*, 85 Ohio St. 3d 1216, 709 N.E.2d 841 (Ohio 1999).

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While off-duty and on the way to work, an Ohio officer overheard a dispatch on his police radio concerning a burglary in progress. The officer called dispatch and offered assistance. Even though dispatch did not answer, the officer considered himself on duty and responding to an emergency call.

The officer proceeded to the scene of the burglary in progress. A few blocks before an intersection, the officer accelerated in speed and turned on his flashing lights and siren. Upon entering the intersection against a red light, the officer collided with a pickup truck. A passenger in the pickup truck brought a suit in negligence.

The Ohio Court of Appeals held that a jury must decide whether the officer was on an emergency call or not since there is a question as to whether the officer was actually called to duty. However, even if it is determined that the officer was engaged in an emergency call, there is a question of fact as to whether the officer's conduct in response to the emergency call was wanton or willful conduct. The court stated:

“Here, when viewing the evidence most strongly in favor of [the plaintiff], a trier of fact could conclude that [the officer's] eleventh hour activation of his emergency lights and siren, just prior to entering the intersection, was too late to be of any use to [the plaintiff] or the other truck occupants. Though it appears undisputed that [the officer] did activate his warning devices, the circumstances under which they were employed could lead to different conclusions.”

However, some states such as Ohio do not always require activation of warning devices for the run or pursuit to be deemed an emergency. See *Moore v. City of Columbus*, 98 Ohio App. 3d 701, 649 N.E.2d 850 (Ohio Ct. App. 1994), *discretionary appeal not allowed*, 72 Ohio St. 3d 1422, 648 N.E.2d 514 (Ohio 1995) and *Hall-Pearson v. City of South Euclid*, 1998 Ohio App. LEXIS 4796 (Ohio Ct. App. 1998). *Moore* is discussed in Objective 1.1. Moreover, several states including Michigan and Texas have formally recognized the necessity for a silent run in certain emergency situations. For example, the Michigan emergency exemption statute specifically allows an officer to retain the emergency exemptions without sounding an audible signal “if the police vehicle is engaged in an emergency run in which silence is required.” Mich. Comp. Laws §257.603(5).

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DUE REGARD/RECKLESS DISREGARD STANDARD

The state emergency exemption statutes impose a duty to drive with due regard for the safety of others and typically do not protect emergency drivers from the consequences of a reckless disregard of the safety of others. Even if warning lights and siren are operating, an officer cannot drive in a manner that unduly risks death or serious injury for others. Many factors directly influence the risk created by emergency driving, and these factors include:

1. Speed of vehicles
2. Traffic density
3. Weather conditions
4. Obstructions to vision
5. Road surface and design
6. Frequency of signaled street and highway intersections
7. Condition of emergency vehicle's brakes, steering, and suspension
8. Training and experience of the emergency driver

A pursuit that starts under reasonably safe conditions can become willfully reckless if speeds are too high, traffic density increases, major intersections are approached, and rain or snow begins to fall. A change in any one or more of these variables may change the reasonableness of the pursuit.

Even if lights and sirens are activated, excessive speed may create an undue risk of injury to the public, as the following two cases demonstrate.

Case Seventeen: Excessive Speed in Swerving to Exit Ramp

TUCKER v. TOWN OF BRANFORD, 1998 Conn. Super. LEXIS 1139 (Conn. Super. Ct. 1998).

An officer joined the pursuit of a fleeing stolen car and soon became the primary chase vehicle. The dispatcher informed the chase vehicles that a weapon was involved and that the car was wanted for a shooting. Going eastbound on an interstate, the pursuit reached speeds of approximately 80 mph in the vicinity of Exit 58.

A motorist traveling eastbound in the right lane of the interstate saw the flashing lights of the police cars in her rearview mirror. Aware of her obligation to move as close to possible to the

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right-hand edge of the roadway, the motorist decided to enter Exit 58.

At this moment, the fleeing car was traveling in the left lane of the interstate in front of the officer. The fleeing car suddenly turned right in front of a tractor trailer to attempt to exit at Exit 58. The fleeing car struck the motorist in the gore area of Exit 58 before she could stop or exit. The motorist's vehicle spun out of control down the exit ramp and struck the metal guard of the breakdown lane.

Seconds later, the officer attempted to turn across the right lane of the interstate to pursue the fleeing car into Exit 58. Confronted with the dust and debris from the collision, the officer lost control of his vehicle and skidded into the breakdown lane, striking the motorist's vehicle. The impact of this collision caused the motorist's car to roll over an embankment, coming to rest upside down on its roof in a body of water. The motorist was rescued and subsequently brought suit against the officer and his employing town.

In his defense, the officer claimed that he was exempted from the motor vehicle statutes and regulations cited by the motorist because at the time of the collision he was operating an emergency vehicle with its lights and siren activated in compliance with the state emergency vehicle statute. In ruling for the motorist, the Superior Court of Connecticut stated:

"...[the officer] was traveling at approximately 80 miles per hour, entering a ramp, which was limited to a 25 mile per hour entry speed...[The officer] was authorized to exceed the speed limit imposed by law only so long as he did not endanger life or property before so doing...Due regard for the safety of all persons was required of him by [the state emergency exemption statute]. The officer was negligent in that he failed to keep and maintain a proper lookout with regard to his speed and with regard to the weather, traffic and road conditions there obtaining. The officer was also negligent in that his speed exceeded the speed which a reasonably prudent police officer engaged in a high speed chase would have maintained in making such a sudden turn across traffic."

See also *City of Worthington v. O'Dea*, 115 Ohio App. 375, 185 N.E.2d 323 (Ohio Ct. App. 1962) (holding officer's speed of 65 mph in approaching flashing yellow light to be excessive and beyond reasonable control).

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Case Eighteen: Excessive Speed In Responding To Alarm

KAPLAN v. LLOYDS INS. CO., 479 So.2d 961 (La. Ct. App. 1985).

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A deputy received a radio call informing him that a silent alarm had gone off at a local nightclub. Another sheriff's department unit had already been dispatched as the primary unit, and the deputy was to be the backup. The dispatcher ordered him to proceed to the nightclub under "Code 2" which required the use of flashing lights with only intermittent use of the siren.

Traveling at a high rate of speed, the deputy spotted plaintiff's car stopped in the turn lane across an approaching intersection. When plaintiff began to turn out of the center lane, the deputy applied his brakes but the speed of his patrol car prevented him from braking in time. The plaintiff sued the deputy, the sheriff's department, and the department's insurer.

At trial, the deputy testified that he was traveling between 50 and 60 mph. However, a credible eyewitness testified that the deputy was traveling in excess of 75 mph right before the collision. The posted speed limit on that street where the collision occurred is 40 mph, and the sheriff's department's own policy does not allow the operation of a patrol car at more than 20 mph above the posted speed limit.

The Louisiana Court of Appeals held that the deputy breached his duty to drive his patrol car with due regard for the safety of others by "driving at an excessive rate of speed even for an emergency vehicle responding to an emergency call."

Even in criminal cases where the state emergency exemption statute is not specifically at issue, excessive speed during a fatal pursuit may be a factor in a jury's decision to convict a pursuing officer of reckless homicide.

Case Nineteen: Reckless Homicide Conviction for Excessive Speed

COMMONWEALTH OF KENTUCKY v. ALEXANDER, 5 S.W.3d 104 (Ky. 1999).

While responding to an emergency call, a county deputy activated his cruiser's lights and siren and traveled at a high rate of speed. A motorist failed to yield the right-of-way to the deputy by not stopping at a stop sign before turning left onto the road on which the deputy was traveling. The cruiser and the motorist's vehicle collided, and the motorist was killed.

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At the time of the collision, the dispatcher and the county police department had canceled the emergency call, but it was disputed whether the deputy heard the radio transmissions of the cancellation.

At trial, a jury convicted the deputy of reckless homicide. An appellate court reversed, but the Supreme Court of Kentucky reinstated the judgment of the trial court.

The court reviewed the evidence, in particular, reports and testimony from members of the county accident reconstruction unit (ARU) who investigated the collision:

“After reviewing the videotape from [the deputy’s] cruiser, which had recorded the events leading up to the accident, the ARU concluded that [the deputy] had been traveling between 95 and 100 miles per hour at the time he approached the intersection...Therefore, [the deputy] caused the collision due to his excessive speed.”

The court also recounted the testimony of several ARU members who stated their belief that the deputy “was at fault due to his excessive speed in an urban area.” The court disagreed with the appellate court and held that this opinion did not go to the ultimate issue of whether the deputy was guilty of reckless homicide and therefore the opinion did not invade the province of the jury.

Failure to slow down, particularly before proceeding against a red light or stop sign as cautioned by many state emergency exemption statutes, may also create undue risk of injury to others.

Case Twenty: Failure To Slow In Approaching Red Light

GORDON v. COUNTY OF NASSAU, 689 N.Y.S.2d 192 (N.Y. App. Div. 1999).

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A New York officer heard a broadcast over the police radio that a fellow officer and an ambulance had been dispatched to a medical emergency at a nearby church. Since he was in the vicinity, the officer proceeded toward the scene at a high rate of speed and collided with plaintiff's car. Plaintiff suffered personal injuries and sued.

The New York appellate court held that, in light of the facts that the officer "did not engage his emergency siren before colliding with plaintiff's car, and although he was approaching a red light he did not attempt to decelerate...a rational juror could conclude that the officer acted with reckless disregard for the safety of others."

See also *Andrews v. Jitney Jungle Stores of America, Inc.*, 537 So.2d 447 (Miss. 1989) (holding that officer had duty to slow down as necessary for safety upon approaching a red light at intersection).

Buildings, trees, signs, or hills may prevent motorists from seeing an approaching emergency vehicle. No matter how many flashing lights are activated, a blind intersection is dangerous. Large buildings or other obstructions can also make a siren difficult to hear. Emergency lights and sirens are much less effective as a warning to others when used in an urban setting or on roadways with hills and curves that could block views and muffle sounds.

Case Twenty-One: Obstructed Vision At An Intersection

HORN v. CITY OF LAFAYETTE, 578 So.2d 232 (La. Ct. App. 3d Cir. 1991), *writ of error denied*, 584 So.2d 1165, 1167 (La. 1991).

A Louisiana officer on an emergency call was operating warning lights and a siren as he approached an intersection controlled by a traffic light. The traffic light was yellow as the officer approached but turned to red before the officer entered the intersection.

A motorist on the intersecting street with the green light proceeded into the intersection and collided with the officer.

A tall building on a corner of the intersection obstructed the vision of both the officer and the

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motorist. The motorist with the green light could not see or hear the approaching police car with its flashing lights and siren. The officer did not see the motorist until just before impact.

The Louisiana Court of Appeals ruled the officer was negligent in proceeding through the intersection without being able to see whether or not cars were approaching. The officer's failure to see the motorist before entering against a red light was the cause of the collision.

The court observed:

"[The officer] approached a blind corner on a red light and failed to drive with due regard for the safety of others.... [The officer] should have proceeded with extreme caution due to the high degree of risk created by entering an intersection against a red light."

Case Twenty-Two: Obstructed Vision Around A Curve

BUTCHER v. CITY OF MONROE, 737 So.2d 189 (La. Ct. App. 2d Cir. 1999), *writ of error denied*, 1999 La. LEXIS 2714 (La. 1999).

While responding to an emergency dispatch call for all units for a burglary in progress, an officer was rounding a curve at over 60 miles per hour curve when he struck a cyclist crossing the street.

At the time of the collision, the officer had activated the blue strobe light on his dashboard and was manually blinking his headlights. The cyclist suffered extensive injuries and sued the city and the officer.

The Louisiana Court of Appeals was less concerned with the fact that the patrol car was not equipped with overhead lights and did not have the siren activated than with the officer's failure to reduce his rate of speed until he could see that his path was clear:

"When responding to a burglary in progress, both speed and silence are important as a police officer approaches the scene. Therefore, a police officer should be ever

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alert and observant to insure that his way is clear. Responding to an emergency call does not relieve a police officer of his duty to drive with due regard for the safety of others.”

The court ruled that the officer “breached the duty to [the cyclist] to drive with due regard for the safety of others by driving at an excessive speed around a curve without determining that his path was clear.”

See also *Wright v. City of Knoxville*, 898 S.W.2d 177 (Tenn. 1995) (holding that officer’s diagonal turn at red light at congested intersection made it difficult for other motorists to see her approaching police car despite her use of lights and sirens and her moderate rate of speed).

Most emergency exemption statutes allow officers a limited right to disregard certain traffic laws bearing on speed limits, parking, and direction of travel and turn lanes. But does the typical state emergency exemption also allow an officer to pass where passing is otherwise prohibited? The next case answers that question.

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Case Twenty-Three: Passing In A No-Passing Zone

PHILLIPS v. COMMONWEALTH OF VIRGINIA, 25 Va. App. 144, 487 S.E.2d 235 (Va. Ct. App. 1997).

While on duty, an officer observed a vehicle whose driver he suspected was driving with a suspended license. The officer confirmed his suspicion with the dispatcher and, after following the vehicle for some distance, the officer activated his emergency equipment.

As the officer passed a tractor-trailer that was between him and the suspect vehicle, he noticed an car approaching in the oncoming lane. The driver of that oncoming car testified that the police car missed hitting him by a foot or two.

The trial court convicted the officer of reckless driving. The officer appealed, claiming that the trial court erred in not applying the higher standard of gross negligence applicable to drivers of authorized emergency vehicles under the state emergency exemption statute.

The Virginia Court of Appeals disagreed with the officer and stated:

“The conduct at issue, passing on a double yellow line, is not exempted behavior. Thus, the officer is subject to criminal prosecution as would be any other citizen... Further, no heightened standard of care is merited in a situation where no exemption applies.”

See also *State v. Simpson*, 11 Kan. App. 2d 666, 732 P.2d 788 (Kan. Ct. App. 1987) (holding officer not entitled to exemptions and upholding conviction for reckless driving and passing in no-passing zone during pursuit of speeder).

AGENCY POLICIES REGARDING EMERGENCY DRIVING

Many law enforcement agencies have standard policy manuals covering emergency and non-emergency driving. The written policy of an agency is a statement of rules set by the employer to guide officers in the performance of duty. Sometimes a rule in agency policy incorporates a rule of law. Some policy rules have nothing to do with rules of law. Many agencies have a policy rule prohibiting speeds over 15 mph above the posted speed limit while driving to the scene of a call. Speed exemption statutes prohibit unsafe speeds, but do not always specify a maximum speed limit

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for emergency driving. Therefore, driving 16 mph in excess of the speed limit may violate agency policy but may not violate state law.

Violation of agency policy can lead to disciplinary action, including job loss. Even if state law is not violated, a violation of agency policy in many agencies is insubordination - failure to obey orders. Officers have been fired for violating policy related to emergency and non-emergency driving. Disciplinary action may be taken for violating agency policy even though the officer was not charged or convicted of violating state or local traffic law.

Even though agency policy is not law, a violation of agency policy may be evidence of negligence in a civil or criminal trial. Agency policy sets a standard of due care which a jury is entitled to consider. An injured party bringing a lawsuit will argue the officer's violation of agency policy shows a disregard for the safety of the public. See *City of Pharr v. Ruiz*, 944 S.W.2d 709 (Tex. Ct. App. 1997) (evidence that police officers failed to adhere to department pursuit policy countered officers' evidence of good faith).

On the other side, the officer may try to minimize a violation of policy by offering evidence that many other officers violated the same policy on a regular basis without suffering any disciplinary action. Essentially, the officer claims the written policy is not followed in the field. That effort is not always successful. As the following case demonstrates, agency written policy is powerful evidence in court if it appears an officer ignored it with disastrous consequences.

Case Twenty-Four: Agency Speed Cap Policy Violated In Fatal Collision

STATE v. FLAHERTY, 55 N.C. App. 14, 284 S.E.2d 565 (N.C. Ct. App. 1981).

A Charlotte, N.C., officer responding to an "assist officer" call collided with a car at an intersection, killing three of the four occupants. The officer testified he was going 45 to 50 mph and had a green light as he approached an intersection. Other witnesses estimated his speed at 60 to 70 mph and said the officer had a red light on his travel lane.

The posted speed limit at the intersection was 35 mph. The Charlotte Police Department had a General Order prohibiting speeds more than 10 mph over the limit. The officer testified that officers routinely ignored this 10 mph speed cap when going to assist another officer. North Carolina's emergency exemption statute for speed did not have a maximum speed limit but did

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require officers to drive with due regard for the safety of others.

The officer was convicted of involuntary manslaughter and sentenced to three years in prison. The North Carolina Court of Appeals reversed the conviction and ordered a new trial because of an error in jury instructions. To be guilty, the officer's driving must be in reckless disregard of the consequences, a higher standard than simple negligence. At trial after remand, the jury may conclude the officer was guilty of involuntary manslaughter even with a correct instruction on the law.

(After remand for a new trial, the officer pled guilty in exchange for a probated sentence instead of imprisonment.)

Usually agency policy restricts officers in the exercise of authority given by state law. But occasionally agency policy fails to consider the requirements of state law. In many states, emergency warning equipment must be activated to claim the emergency exemption from speed or right-of-way laws. Agency policy that authorizes speeding over the limit without activating required emergency equipment cannot justify a violation of the statute. See *Smith v. Bradford*, 512 Sp.2d 50 (Ala. 1987) discussed earlier and *Brown v. Kreuser*, 38 Colo. App. 554, 560 P.2d 105 (Colo. Ct. App. 1977) (holding that trial court did not err in excluding evidence of departmental silent run policy that required officers to respond to crimes in progress without activating warning lights or siren).

COLLISIONS BETWEEN FLEEING SUSPECTS AND INNOCENT BYSTANDERS

Courts increasingly are finding pursuing officers civilly liable for injuries suffered by a member of the public who is struck by the fleeing suspect. In these cases, courts hold that the officer's decision to continue a pursuit under dangerous conditions is negligence. A negligent failure to terminate a pursuit has been deemed by the court to be a joint cause of the collision between the fleeing suspect and the innocent bystander.

Case Twenty-Five: Liability For Suspect's Collision With Innocent Bystanders

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DAY v. STATE OF UTAH BY AND THROUGH UTAH DEP'T OF PUBLIC SAFETY, 1999 Utah 46, 980 P.2d 1171 (Utah 1999).

While monitoring traffic on an interstate, a Utah Highway Patrol (UHP) officer clocked a passing motorist at 10 mph over the speed limit. Intending to stop the motorist, the UHP drove up behind the vehicle. The motorist increased his speed and exited the interstate, ignored a stop sign and turned onto a heavily traveled two-lane road, and proceeded through several towns at speeds up to 120 mph. The UHP officer and other officers followed in close pursuit.

At one point, the fleeing motorist drove onto a freeway exit ramp and collided with a semi-trailer truck. The fleeing motorist's vehicle spun 240 degrees and temporarily came to a stop. Close behind, the UHP officer also stopped but did not draw his gun or otherwise disable the fleeing motorist's vehicle. The UHP officer did get close enough to read the vehicle's license plate number.

The fleeing motorist eluded the UHP officer and again entered the freeway traveling at speeds in excess of 100 mph. After entering an off-ramp at high speed, the fleeing motorist ran a red light and struck another vehicle. The driver of that vehicle died and his wife sustained severe injuries. The wife sued the Utah Department of Public Safety, the UHP, the UHP officer, several other law enforcement officers, and several cities for wrongful death.

The trial court granted summary judgment against the wife on the ground that her claims for severe personal injuries and the death of her husband were barred by a now repealed provision of the Utah Governmental Immunity Act. The Utah Court of Appeals affirmed but the Utah Supreme Court reversed and remanded. For the first time, the Utah Supreme Court recognized a cause of action for negligent pursuit where the pursued vehicle strikes and injures an innocent third party. The court first stated:

“Although law enforcement officers have a general duty to apprehend those who break the law, that duty is not absolute, especially where the violation is only a misdemeanor or an infraction—such as driving ten miles per hour over the speed limit—and the attempt to apprehend the person creates a serious risk of death or injury to third persons or the fugitive.”

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The court went on to state:

“After initially clocking [the fleeing motorist] at ten miles per hour above the speed limit, [the UHP officer] commenced pursuit and also inquired over the radio whether [the] vehicle was stolen. The dispatcher reported that there was no indication it was stolen, yet [the UHP officer] continued the pursuit at speeds on and off the freeway in urban areas up to 120 miles per hour. The fact finder on remand will have to determine whether it was or should have been reasonably foreseeable to [the UHP officer] that the high-speed pursuit through highly populated areas would endanger the lives of others on the road and whether, if he had terminated the pursuit, [the fleeing motorist] would likely have substantially reduced his speed and terminated his otherwise reckless driving. [The UHP officer] had a statutory duty to use care for the safety of other persons on the road... Whether he failed to comply with the statute and breached his duty is a question for the jury...”

In *Day*, the Utah Supreme Court emphasized that its decision should *not* be read to suggest that police officers are never justified in engaging in high-speed pursuits. Rather, the court cautioned that pursuing officers must always weigh the need to apprehend a suspect against the risks that a high-speed pursuit poses to innocent third parties.

Case Twenty-Six: Liability For Suspect's Collision With Innocent Bystanders

HAYNES v. HAMILTON COUNTY, 883 S.W.2d 606 (Tenn. 1994).

At 7 p.m. on a highway fronting a commercial strip, a Tennessee officer pulled in behind a Corvette with no taillights. The officer watched the Corvette accelerate to 55 mph in a 45 mph zone as it passed a car. When the officer activated his blue lights and siren, the Corvette increased its speed, reaching 100 mph or more. The pursuing officer and the fleeing suspect passed a number of cars, oncoming and in the same travel lane.

The officer slowed when they encountered heavy traffic about three miles into the pursuit. At that point, the officer saw a burst of flames ahead of him. The Corvette had crossed the center line and struck a car head-on. Three teenagers in an oncoming car were killed. The trial court dismissed a lawsuit filed by the estates of the victims against the Tennessee officer on a claim

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the officer was negligent in continuing a pursuit that a reasonably careful officer would have terminated.

On appeal, the Supreme Court of Tennessee reversed the trial court and remanded the case for retrial. For the first time, Tennessee recognized the possibility that a Tennessee officer might be liable, along with the fleeing suspect, for negligence that causes injury to a third person who collides with a fleeing suspect. The court stated:

“Accordingly, we conclude that an officer’s decision to commence or continue a high-speed chase is encompassed within the statutory term “conduct” and may form the basis of liability in an action brought by a third party who is injured by the fleeing suspect, if the officer’s decision was unreasonable.”

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In *Haynes*, the Supreme Court of Tennessee discussed the factors an officer should consider in deciding to start and stop a pursuit. These factors include:

1. speed
2. area of the pursuit
3. weather and road conditions
4. vehicular and pedestrian traffic
5. alternative methods of apprehension
6. danger posed to the public by the suspect being pursued
7. applicable police regulations

A decision to continue a high-speed pursuit can be negligence like a failure to brake or careless steering. A decision to continue a pursuit is negligent if a reasonably careful officer would not do so under like circumstances. Unusual circumstances may justify a high-speed pursuit at great risk to the public but, as the courts in *Day* and *Haynes* and other similar cases recognize, the need to arrest that violator must be sufficient to justify the danger to the public.

With *Day* and *Haynes*, Utah and Tennessee join the growing ranks of states that recognize a claim against a police officer for the injuries sustained by innocent bystanders in collisions with pursued vehicles. Courts in the following jurisdictions have recognized a cause of action for negligent conduct of a high-speed chase where the pursued vehicle strikes and injures an innocent third party: Alabama, Arizona, Arkansas, Connecticut, District of Columbia, Florida, Michigan, Mississippi, Nebraska, Oregon, Pennsylvania, Tennessee, Texas, Utah, and Washington. A number of other jurisdictions also recognize such a claim but allow recovery only if the officer is grossly negligent or reckless: Colorado, Georgia (by statute), Illinois, Iowa, Maryland, New York, North Carolina, and West Virginia. Several states that have addressed the issue but have yet to recognize liability for such a claim include: Kansas, Kentucky, Minnesota, Missouri, New Jersey, Ohio, Oklahoma, Wisconsin, and Wyoming. For a listing of jurisdictions along with citations to cases or statutes, see **Appendix B**.

In those states which require a showing of gross negligence, a high-speed pursuit ending in a fatal crash may not create liability.

Case Twenty-Seven: No Reckless Disregard In Pursuit Fatal To Bystanders

BULLINS v. SCHMIDT, 322 N.C. 580, 369 S.E.2d 601 (1988).

A pursuit started in Greensboro, NC, early in the morning when a car weaving in the travel lane refused to stop for blue lights and siren. The fleeing suspect continued on for eighteen miles at

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speeds up to 100 mph, forcing several cars off the two lane rural road north of the city. Traffic was light and the road surface dry.

Two officers continued the pursuit at a distance of about 100 yards behind the suspect's car. By radio, a supervisor authorized continuing the chase.

The suspect pulled into the opposing travel lane to pass a car and collided with an oncoming vehicle, killing its driver. At the time, the suspect was driving with headlights off.

The Supreme Court of North Carolina reversed a jury verdict for the driver of the oncoming car and ruled that the pursuing officers were not negligent.

First, the court concluded the appropriate standard for liability if a suspect collides with an innocent bystander is gross negligence or reckless disregard of the safety of others, not simply negligence, the failure to use due care. The emergency exemption statute expresses a policy of permitting pursuits except those that show a reckless disregard of the safety of others. A collision between a suspect and an innocent bystander is not a failure by the officer to control the officer's vehicle.

Second, the officers did not violate any of the rules of the road in this pursuit. The suspect was unknown to the officers and acting in a manner consistent with drunk driving, a serious threat to public safety requiring an immediate arrest. Although the pursuit was conducted at high speeds over a long distance, traffic was light over the rural road early in the morning. The officers continually operated their emergency equipment and kept their vehicles under control at all times. The court held that there was no evidence of negligence, let alone gross negligence.

Central to the decision to terminate a pursuit is a balancing process: *Given all the prevailing conditions - speed, traffic density, weather, intersections, etc. - how likely is it that an innocent third person will be injured?* That likelihood must be weighed against the need to protect the public by making an immediate arrest of the violator. As speed, traffic density, and intersections increase, the danger to innocent bystanders increases. As the seriousness of the crimes committed by the violator increases, the need to protect the public by making an immediate arrest also increases. That decision may be difficult for any officer.

Significantly, even where an officer terminates a pursuit, the officer may still be liable for injuries to third parties in collisions with the fleeing suspect that occur shortly after termination of the pursuit. See *Creamer v. Sampson*, 700 So.2d 711 (Fla. Ct. App. 1997) (holding that fatal collision between fleeing suspect and innocent motorist that occurred 45 seconds after pursuing officer

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terminated pursuit of car displaying improper tag have been proximately caused by officer's negligence conducting pursuit for minor infraction at high speed over crowded city streets).

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In addition to filing claims under state law, third parties injured in collisions with fleeing vehicles sometimes bring suit against the pursuing officers and their agencies under federal law as well. A very different and much higher standard applies in these federal cases. For discussion of negligent pursuit cases under federal law, see Objective 1.3.

DUTY TO OCCUPANTS OF FLEEING CAR

Although courts increasingly are finding pursuing officers civilly liable for injuries suffered by an innocent third party who is struck by the fleeing suspect, courts remain less willing to find pursuing officers liable for injuries sustained by the *fleeing suspect* where there is no contact between the police car and the fleeing vehicle. See *Tyree v. City of Pittsburgh*, 669 A.2d 487 (Pa. Commw. Ct. 1995) (holding that pursuing officer owed no duty to fleeing suspect who ran red light and drove at excessive speed before fatally crashing into utility pole); *Estate of Day by Strosin v. Willis*, 897 P.2d 78 (Ala. 1995) (holding that pursuing officer owed no duty to fleeing suspect wanted for assault and battery and stop sign violation where suspect ran off road and fatally crashed after officer terminated pursuit). See also *Vince v. City of Canton*, 1998 Ohio App. LEXIS 1989 (Ohio Ct. App. 1998) (holding that, while duty to refrain from operating police car in willful and wanton manner extends to persons being pursued, pursuit of motorcycle which ended with motorcyclist fatally crashing was not willful or wanton). For discussion of cases involving collisions between police cars and fleeing vehicles, see Objective 1.4 which addresses roadblocks and ramming.

However, courts are less united on the issue of whether officers owe a duty to *passengers* in fleeing vehicles injured in collisions with structures or other vehicles during high-speed pursuits and, if so, what standard applies. Some courts hold a pursuing officer liable for death or injury to passengers of fleeing cars only where gross negligence or wanton and willful misconduct is shown. See *Parish v. Hill*, 350 N.C. 231, 513 S.E.2d 547 (N.C. 1999); *Jackson v. Poland Township*, 1999 Ohio App. LEXIS 4703 (Ohio Ct. App. 1999); *Urban v. Village of Lincolnshire*, 272 Ill.App.3d 1087, 651 N.E.2d 683 (Ill. App. Ct 1995), *appeal denied*, 163 Ill.2d 591, 657 N.E.2d 641 (Ill. 1995); *Jones v. Ahlberg*, 489 N.W.2d 576 (N.D. 1992).

Other courts hold that the duty of pursuing officers to drive with due regard to “all persons” is owed to passengers of fleeing vehicles as well. See *City of Lancaster v. Chambers*, 883 S.W.2d 650 (Tex. 1994). And other courts hold that police owe no duty to a voluntary passenger in a fleeing car. See *In Re Estate of Henderson v. City of Detroit*, 225 Mich. App. 14, 571 N.W.2d 34 (Mich. Ct. App. 1997), *application granted*, 458 Mich. 861, 587 N.W.2d 637 (Mich. 1998).

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AGENCY PURSUIT POLICIES

Many police agencies have recognized the high risk of harm to the public posed by high-speed chases and consequently have adopted specific policies regarding police pursuits. As the next case demonstrates, violation of an agency pursuit policy may provide evidence of a negligent pursuit.

Case Twenty-Eight: Violation of Hot Pursuit Policy Evidence Of Negligence

ESTATE OF ATEN v. CITY OF TUCSON, 169 Ariz. 147, 817 P.2d 951 (Ariz. Ct. App. 1991).

For several miles and on several streets, two police cars engaged in a high-speed chase of a reckless driver suspected in a hit-and-run collision earlier. At some point during the chase, a police helicopter arrived at the scene. After running a red light, the pursued vehicle collided with another vehicle and killed the driver.

The estate of the decedent filed a wrongful death action against the city, alleging that the police failed to comply with department procedures regarding hot pursuits. The trial court granted summary judgment to the city, but the Arizona Court of Appeals reversed.

The Arizona Court of Appeals held that there was a question of material fact on the issue of whether the police pursuit of the fleeing vehicle was conducted in a negligent manner. Among the items of evidence offered by decedent's estate that precluded summary judgment was evidence that the officers' violated specific departmental policy in continuing pursuit after the arrival of the helicopter.

The section on air support unit assistance in the city department procedures manual section on hot pursuits provided that, once ground units are advised that the air support unit has visual contact with the suspect vehicle, then the air support unit will coordinate the remainder of the pursuit and pursuing ground units are to immediately slow down and respond to the directions of the air support unit.

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See also *D'Alessandro v. Westhall*, 972 F.Supp. 965 (W.D. N.C. 1997) (holding that pursuing officers' admitted violation of departmental rules regarding pursuits may be evidence of negligence or even gross negligence). However, other courts are more reluctant to consider an officer's violation of agency pursuit policy as evidence of negligence. See *Morton v. City of Chicago*, 286 Ill. App.3d 444, 676 N.E.2d 985 (Ill. App. Ct. 1997), *appeal denied*, 173 Ill.2d 527, 684 N.E.2d 1336 (Ill. 1997) (holding that violation of internal guidelines does not impose a legal duty, let alone constitute evidence of negligence).

Several states, including California, Utah, and Wisconsin, have a statutorily imposed requirement that agencies adopt pursuit policies. California Vehicle Code §17004.7, for example, conditions governmental immunity on an agency's adoption of a written pursuit policy and provides minimum standards for such pursuit policies.

In cases involving police pursuits, California courts closely examine agency pursuit policies to determine whether they adhere to the statutory requirements of California Vehicle Code §17004.7(c). See *McGee v. City of Laguna Beach*, 56 Cal. App. 4th 537, 65 Cal. Rptr. 2d 506 (Cal. Ct. App. 1997), *review denied by* 1997 Cal. LEXIS 7612 (Cal. 1997) (holding that pursuit policy complied with minimum standards of statute so officer was immunized from liability for striking motorist and leaving young boy a quadriplegic); *Payne v. City of Perris*, 12 Cal. App. 4th 1738, 16 Cal. Rptr. 2d 143 (Cal. Ct. App. 1993), *review denied by*, (Apr. 29, 1993) (holding that pursuit policy failed to provide detailed objective guidelines so officer was not immunized from liability for death of third party killed by fleeing suspect); *Berman v. City of Daly City*, 21 Cal. App. 4th 276, 26 Cal. Rptr. 2d 493 (Cal. Ct. App. 1993) (holding that pursuit policy was deficient in giving nearly complete discretion to officers to initiate and terminate high-speed pursuit and therefore could not invoke governmental immunity).

SUMMARY

State emergency exemption provisions offer authorized emergency vehicles limited exemptions from ordinary traffic laws. To enjoy these exemptions, law enforcement officers engaged in emergency driving must comply with the warning device requirements of these provisions. Moreover, even when complying with the warning device requirements, law enforcement officers engaged in emergency driving must still exercise due regard for the safety of others or risk liability. Under the law of many states, law enforcement officers engaged in emergency driving are not only potentially liable to a third party injured or killed in collisions with police cruisers but also to third parties injured or killed in collisions with fleeing suspects. Consequently, law enforcement officers engaged in emergency driving *must* become familiar with the requirements of their state emergency exemption provisions. In addition, law enforcement officers engaged in emergency driving should know and understand their agency's policies regarding emergency calls and pursuits. Significantly, violation of agency policy may be considered evidence of negligence.

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SUGGESTED INSTRUCTIONAL METHODOLOGY

LECTURE WITH SLIDES

With slides of various environmental factors, have students identify how the factors create a situation which is more demanding of the driver's skills and attention.

LECTURE AND CLASS DISCUSSION

Utilize case summaries to present legal principles and involve students in discussion of relevant issues.

SMALL GROUPS WITH CASE STUDIES

In groups of 3-6, present each group with the cases provided above and additional factual situations. Involve small groups in discussion of cases and develop group questions for the instructor to address in subsequent lectures.

RESOURCES AND AIDS

1. Relevant state statutes
2. Agency policies

SUGGESTED EVALUATION METHODOLOGY

STUDENTS

1. Written or verbal response to questions regarding legal principles
2. Observation of strategies, decisions, or methods used by a driver when exposed to various driving scenarios

COURSE

1. Observe the driving of officers during the simulations of emergency vehicle operations
2. Review agency collision reports for failure to heed legal considerations

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