



Risk Management Solutions

A QUARTERLY NEWSLETTER OF THE ALABAMA MUNICIPAL INSURANCE CORPORATION
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Firearms Training System

In early September 2001, the League of Municipalities purchased a Firearms Training System (FATS) for use by its loss control department. The system began its journey across the state in late February 2002 and has since visited over 14 departments and trained more than 300 law enforcement officials. It continues to be one of the most sought after training tools offered by the loss control department. Used primarily as a loss prevention measure, the training benefits through FATS are practically immeasurable.

FATS is one in a long list of resources that the League offers to municipalities across the state. It is designed to assist cities and towns in their efforts to provide municipal employees with a safer work environment and better equip them to handle diverse situations. FATS is an excellent training tool that is designed to develop and sharpen a police officer's discretionary skills as well as re-enforce conflict resolution abilities.

Over the course of law enforcement, continued training is a must! FATS is designed to do just that. However, while the League's Loss Control Department is prepared to assist municipalities with their training, the Loss Control staff *does not*

consist of law enforcement officials or Certified Firearms Instructors (CFI). Therefore, the services of the Loss Control Department are limited to: 1) delivery of the system and 2) instruction of how to use the equipment. The Loss Control staff will *not* – in any manner whatsoever – attempt to teach the force continuum. That is the responsibility of a CFI. Furthermore, it is *highly* recommended that this type of training originate in a classroom and progress towards the use of the system. In so doing, an excellent opportunity is provided for each department to review its use-of-force policy.

Many municipalities throughout Alabama have inquired about hosting FATS in their perspective areas. Obviously, with such a high demand for the system the Loss Control staff cannot possibly accommodate each department that would like to be a host. Therefore, the Loss Control Department is in the process of identifying multiple locations centrally located throughout the state that have adequate room and resources to fulfill the Department's training objectives for the system. Once these locations are identified and chosen, map coordinates

listed in a database will be used to alert surrounding departments as to the system's location; duration of its stay at the location; and the name of the police chief at the location. Each police chief who hosts the system will have agreed in advance to allow outside departments to utilize their firearms instructor(s) and the equipment while it is in their possession. In so doing, the Loss Control Department believes everyone will have a better opportunity to train on the equipment.

As you may know, FATS uses state-of-the-art technology to replicate everyday situations encountered by the men and women of law enforcement. It uses actual weapons that have been electronically

modified to interact with the system. These weapons are connected to a CO2 tank and also to a computer. This provides a semblance of actual recoil, sound, shot registration and reaction by the subjects on the screen. It is truly an interactive system that provides the trainee with role playing familiarity under controlled settings. The trainee interacts with images projected onto a life-sized screen while the instructor controls the actions of the subjects displayed on the screen, thus allowing the instructor to escalate a situation if the trainee does



not respond to the given scenario appropriately or vice-a-versa.

The scenarios offered are as diverse as the applications of the system. They range from simple domestic disputes to the all-too-common domestic attacks; routine traffic stops that carry the hidden potential to change dramatically in the blink of an eye; building entries; and hostage and tactical situations. The weapons used are Glock, Smith and Wesson handguns, as well as Beretta models. The system is also equipped with O.C. (a form of pepper spray) and an infra red flashlight for the night mode setting.

The price for use of the system stands at \$20 per trainee for departments that are members of at least one of the League's insurance pools. Purchase of the system by the League was not profit oriented as is reflected by the nominal fee charged for its use. By providing this service to multiple municipal police departments, the League conceptually achieves its greatest goal: safety in the workplace! The Loss Control staff strongly urges each municipality to sign up for FATS when it is in their area and to conduct routine training. ■

Reducing Liability from Pursuit-Related Collisions

By David N. Lesh

Unless a law enforcement agency has imposed a total ban on vehicle pursuits, sooner or later one of its pursuits will end with the fleeing suspect crashing into an uninvolved motorist or pedestrian. Since the fleeing suspect usually has little money, these tragedies often result in the victims or their families seeking compensation from the officer's employer through a lawsuit.

A few states have statutes that make it very difficult for plaintiffs to successfully sue officers and their employers under these circumstances. In many other states, however, plaintiffs may prevail in a lawsuit simply by demonstrating that their injuries were caused, at least in part, by the officers negligently failing to terminate the pursuit of the fleeing vehicle. As tragic as some of these outcomes can be, law enforcement is often reluctant to accept civil liability for these collisions when, in their mind, the injuries were caused by the fleeing suspect's reckless driving and unlawful flight from the police.

In defending itself against a pursuit-related civil claim, the government nearly always faces a substantial hurdle at trial-sympathetic plaintiffs. When a fleeing suspect crashes his vehicle into an innocent third party who dies leaving a spouse and children, the jury will necessarily be sensitive to the loss of the surviving family members. Jurors are smart enough to know that the fleeing suspect probably lacks insurance or other resources to compensate the family, especially if he is serving a lengthy prison sentence. While not always this extreme, the "sympathy factor" is strong in nearly every case in which a fleeing suspect crashes into an innocent third party.

Given the enormous sympathies favoring plaintiffs, it is critical for the government to begin its defense of these cases well before an action is ever filed. This can be accomplished, in part, by implementing five straightforward steps toward reducing liability from pursuit-related collisions.

Step One: Adopt a Sound Pursuit Policy

No matter the size, every police agency needs to have a written policy governing pursuits. Most law enforcement organizations do have pursuit policies in place. Unfortunately, there are still a number of small agencies that lack any written policy. Given how common and dangerous pursuits are, however, there is no excuse for any agency not to have a written policy in place.

Officers need not sit down and draft a pursuit policy from scratch. Many agencies have excellent policies which smaller organizations can adopt in whole or in part. Agencies can also find model pursuit policies through organizations such as the International Association of Chiefs of Police. By obtaining a sample policy and tweaking it to fit their needs, an organization of any size can have a



sound policy in place with little effort.

Having a written pursuit policy is of great importance in litigation. An agency's policies will be among the first items demanded by plaintiff's counsel in the discovery process. An agency without a pursuit policy leaves itself open to attack on a variety of issues by the plaintiff's experts. First and foremost, the agency will be criticized for failing to give officers guidance on what factors to consider when making the critical decisions to begin, continue and break off a pursuit. Additionally, courts have come to expect that law enforcement agencies will have written policies in a number of areas, including vehicle pursuits. An agency without a sound written pursuit policy will simply have a more difficult time defending itself against a claim of pursuit-related negligence.

Step Two: Conduct Periodic Reviews of Your Pursuit and Other Policies

No police policy should be adopted and then left to collect dust. A pursuit policy that does not evolve with changes in the law; with changes in technology; and with changes in law enforcement practices quickly becomes dated. Every agency should have a plan to periodically review its policies to ensure that they remain accurate and up to date. Organizations should also encourage officers to bring errors or other problems with policies to the attention of supervisors. In this way, problems can be spotted and corrected early. No agency wants policy errors to be discovered by a lawyer or expert witness representing a plaintiff during litigation.

An outdated pursuit policy can be more than just embarrassing to an organization trying to defend its actions in a civil case. Imagine the damage that a plaintiff's lawyer can inflict on organizational credibility when she demonstrates that the agency has been operating with a dated pursuit policy for years. It is a short leap for a juror who sees that an agency was negligent in keeping its policies up to date to also believe that an agency was negligent in conducting a pursuit.

Step Three: Implement On Going Pursuit-Related Training

Officers should receive some type of pursuit-related instruction every year. This can be accomplished through something as simple as a single 10-minute roll call training session that reviews the agency's pursuit policy including the factors that officer should consider when deciding to initiate, continue and terminate a pursuit.

Even this small amount of annual training offers law enforcement organizations a number of benefits. First, since officers receive a yearly review of their agency's pursuit policy, they are less likely to unintentionally violate agency guidelines during a pursuit. Second, when sued, officers can testify that they receive pursuit-related training on an annual basis. Third, a short pursuit training session of this type does not take officers off the street for any significant time and costs virtually nothing to provide. Finally, with this instruction, officers

receive annual reminders that pursuits are an inherently dangerous activity and that no matter how careful officers are, pursuit can end tragically.

Obviously, vehicle operation training is valuable as well. However, given the time and cost involved with this type of instruction, it is not practical for most agencies to provide this type of training on an annual basis. Still, agencies should offer emergency vehicle operation training when practical because of the obvious benefits.

The value of providing officers with annual pursuit-related training in defending lawsuits cannot be overstated. Veteran officers who have to concede on cross-examination that they haven't had any pursuit-related training since the academy are subject to strong attacks by the plaintiff's expert witnesses and counsel.

Step Four: Periodically Review New Products, Techniques and Technologies

Law Enforcement agencies should conduct periodic reviews of available devices and techniques used to prevent and end pursuits. Obviously an agency cannot adopt every new product and method to come along. Supervisors should, however, make an effort to familiarize themselves with what pursuit prevention and termination techniques are available so that they can make an informed decision about whether or not to employ the new ideas or technology. While no rational juror would expect a law enforcement agency to use every cutting edge technique, an organization is best served when supervisors can testify that they review new products and ideas as they become available and that the agency utilizes those procedures that are effective, affordable and practical.

By way of example, many agencies use box-in and pursuit intervention techniques either for prevention purposes or to terminate low speed pursuits. As a result, many police pursuit experts would strongly criticize law enforcement organizations that do not employ these procedures. To undercut criticism of this type, it is important for an agency to have at least considered these and similar techniques and then made a rational decision whether or not to implement them.

Agencies should give similar consideration to products and devices designed to stop pursued vehicles. Obviously, most law enforcement agencies lack the resources to employ a helicopter to monitor fleeing vehicles. However, other devices, such as the deflation strips, are practical for many agencies to use. From television, many judges and jurors are familiar with pursuit termination products such as these strips. If an agency is not using these products and a plaintiff's expert testifies that one of these devices might have safely ended the pursuit, it is important for a supervisor to be able to tell jurors that the agency is familiar with the technology and that the agency does not employ the product for a rational and defensible reason.

Step Five: Properly Address Pursuit-Related Collisions Immediately After They Occur

How a law enforcement agency responds when a fleeing vehicle collides with a pedestrian or another motorist during a police pursuit is of vital importance. Aside from the obvious concern for the victim and his or her family, officers properly treat these collisions as serious criminal investigations. Few organizations, however, appear to immediately consider the agency civil liability when these incidents occur. That's unfortunate, because by taking a few additional on-scene steps, the agency will put itself in a much stronger position to assess agency civil liability and to defend itself in a civil lawsuit down the road.



What might an agency do in addition to conducting the criminal investigation? There are several things to consider. First, officers should estimate how far from the fleeing vehicle the closest police car was during the pursuit when the collision occurred. Officers should also find out what independent witnesses say about this distance. Often, this is important to counteract later suggestions by the plaintiff's counsel or experts that the officers "pushed" the fleeing driver into the collision by pursuing "too aggressively" or too close of a distance.

Other questions that officers might seek to answer include:

- Did the officer know the true identity of the fleeing driver (or passengers) before the pursuit ended?
- How many police vehicles were involved in the pursuit? Does agency policy limit this number? If agency policy was exceeded, why?
- Were other provisions of the agency's pursuit policy violated? If so, why?
- Was a supervisor monitoring the pursuit? Was a supervisor notified of the pursuit? If not, why not?
- Did officers take steps to prevent the pursuit or to safely end the pursuit? If not, why not?
- Did officers take steps to block traffic and warn drivers ahead? If not, why not?
- How fast did the pursuit travel? What were the speeds of the patrol cars involved?
- How were the conditions throughout the entire pursuit?
 - How was the weather?
 - What were the pavement conditions?
 - How many pedestrians were around?
 - How many vehicles were on the road?
- Did officers evaluate these conditions when deciding to begin the pursuit? Did officers continue to evaluate these conditions throughout the pursuit?
- Did any officer consider terminating the pursuit? If not, why not?
- How well did lead the officer know the streets?

Many of these questions would have little, if any, bearing on a criminal prosecution of the fleeing suspect. However, any of these factors could have a significant impact on a civil case alleging police negligence for failing to terminate a pursuit. Therefore, it is critical for an agency to determine answers to these questions immediately when information is fresh in the minds of officers and witnesses.

With a minimum amount of time and resources, any law enforcement organization can improve its chances of prevailing in pursuit-related civil cases. The key to success is preparation. Since no one can predict when a pursuit will end in tragedy, it is imperative for an agency to implement these steps as soon as possible. ■

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Space Heater Safety

While space heaters are an excellent way to provide quick, convenient heat during the cold winter months, installing and using them improperly can have *serious* – often deadly – consequences.

Installation Location

- Space heaters should be installed in accordance with local building codes and manufacturer's instructions and specifications. Only qualified, licensed service personnel should install and service a space heater.
- Read all manufacturer's instructions, warnings and warranties carefully.
- If your current space heater does not have oxygen depletion safety shut-off, you should replace it with a model that does contain this safety feature, if possible. This device will automatically shut off your space heater if oxygen levels become unsafe.
- Space heaters installed on carpet, linoleum or tile may require a metal plate or stoveboard to be installed underneath the unit. If required by the manufacturer, the metal plate needs to meet manufacturer's specifications for thickness and needs to extend the full width and depth of the heater.
- Space heaters must not be installed in an area where flammable liquids, gases or explosive materials are used or stored. Vapors from these materials may migrate and be ignited by the pilot or burner flame.
- Space heaters are **HOT** during operation. People, clothing, furniture and other combustible items should be kept away from space heaters and gas logs at all times.
- Any guard installed or recommended by the manufacturer should **ALWAYS** remain in place during operation.

Combustion Air Requirements

- Operating space heaters without sufficient fresh air can lead to carbon monoxide poisoning. It is *paramount* to provide fresh air to these appliances anytime they are operating.
- Always follow the manufacturer's specifications, and never cover any openings or alter the space heater's cabinet in any way. Contact a qualified heating contractor or service technician for recommendations on how to provide and maintain sufficient fresh air to your space heater.

Maintenance, Cleaning and Service

- Each year, your space heater should be inspected by a qualified service technician before being used.
- Even in the cleanest homes and buildings, the air moving through space heaters carries lint and dust. This lint and dust may clog the air intakes for the burner and pilot light if it is allowed to build up. Lint build-up at the burner intake can cause the improper combustion of natural gas and produce carbon monoxide. If you notice lint build-up, contact a qualified heating contractor or service technician and have your equipment cleaned.
- When properly adjusted, a space heater should burn with a blue flame. If the flame is orange or yellow, stop using the space heater and contact a qualified heating contractor or service technician immediately.
- Always follow the manufacturer's guidelines for the proper maintenance, cleaning and service of your space heater. ■

Become a Member of the Public Employees Safety Council of Alabama

The Public Employees Safety Council of Alabama (PESCA) was established in 1998 by a group of civic-minded Safety and Risk Managers from municipalities in various Alabama cities who recognized that there was a void in workplace safety and health for workers in Alabama's public sector. The members soon realized that they all faced many of the same issues, and that by sharing challenges and solutions they all benefited.

In 1999 the group formally established PESCA and elected the first slate of officers:

- Chairperson – John Dorsett, Jefferson County
- Vice-Chair – Mike Voss, City of Decatur
- Secretary/Treasurer – Tammy Shaw, Shelby County Highway Dept.

PESCA members routinely share solutions for challenges they face and freely ask other members for help. For the past three years, PESCA has held an annual Safety Conference focusing on safety and health issues affecting the public sector. PESCA receives generous assistance and support from Elizabeth Maples of the Deep South Center for Occupational Health and Safety, and Johnny Ward of the Alabama Chapter, National Safety Council.

Annual membership dues are \$25.00. Anyone interested in safety is strongly urged to join. PESCA has quarterly meetings and an annual convention that focus on common problems plaguing local governments. PESCA is an excellent forum to discover solutions to everyday safety concerns and establish a network of people that have a sincere desire to ensure that local governments are safety conscious employers!

For more information about the organization or how to join, contact Tammy Shaw at **205-669-3880** or tshaw@shelbycountyalabama.net. ■

For information regarding the next Proactive Driver Training workshop, contact the Loss Control Division at 334-262-2566.



Risk Management Guidelines for Skateboarding and In-Line Skating Facilities

Skateboarding and in-line skating are dynamic and fast growing sports. Citizens of many municipalities are now requesting public entities to provide public areas in which individuals can skateboard and in-line skate. The liabilities associated with allowing individuals to use public sidewalks and streets include personal bodily injury claims; improperly maintained sidewalks claims; and claims made by persons who may be injured by the skateboarders or skaters. Additionally, citizens might complain of harassment by persons participating in the skating activities which can also create a public relations problem for the municipality.

A controlled facility for skateboarding and in-line skating has the advantage of reducing the liability risks associated with skateboarders and in-line skaters using the public streets and sidewalks. However, there are risks associated with operating a skating facility which should be carefully considered prior to the decision to provide a controlled environment for these activities. The potential for serious injury to both participants and spectators exists if the community has not taken appropriate measures to:

- Assure the physical safety and integrity of the facility.
- Train facility personnel.
- Establish and communicate safety rules to participants and spectators.
- Provide appropriate safety and health supplies and equipment in the event of an emergency.

The Facility

The skateboarding industry is in the process of developing documented industry standards to provide consistency in the design and construction of obstacles. While these standards are under development, a community can take steps to reduce its risks if it chooses to offer a controlled facility for skateboarding and in-line skating.

The design and layout of the facility should be carefully considered during the decision process. Features that are commonly found in many of these facilities include a flat area for freestyle skating, a slalom course, a bowl, a ramp, a vertical wall, a full and half pipe and dunes and valleys. The facility might resemble an in-ground pool or be set up with obstacles. Some of the materials used in the construction of the obstacles includes concrete, plywood, molded fiberglass, Plexiglas, wood or metal. These areas may also include a pro shop, concessions areas and bleachers. The best loss control guidelines for the facility should include the following:

- The design of the park layout and obstacles should meet or exceed best practices currently in place in the industry.
- A licensed architect or engineer should approve all obstacle design plans.
- Perimeter fencing and secured access should be provided to prevent unauthorized access into the area during non-operational hours.
- A minimum distance of 20 feet should separate obstacles, runs and fences.
- Obstacles and runs should be free of sharp edges.
- Temporary obstacles should be secured to prevent movement while in use.
- Platforms used for standing and recovery by participants which are over three feet in height must have standard hand rails with midrails and stairs.
- Decks attached to obstacles intended for waiting participants should have enough depth to offer protection from flying skateboards.

Facility Supervision

Park staff should inspect the runs and obstacles on a daily basis with documentation of deficiencies and repairs. Wood structures require more frequent and thorough inspections to assure that there are no nails, screws or

splintered wood that could injure a participant. It will also be important for the staff to keep observers behind the fencing to protect them from injury by participants and potential flying skateboards. Controlled numbers of participants on each run and obstacle will help to reduce the potential of collisions between participants.

Facility management should make certain that all personnel receive adequate training and that the training is documented and maintained. Management must assure that personnel are actively supervising the facility activities during the hours of operations. Additional facility management guidelines should include the following:

- Post and communicate park rules clearly to participants.
- Post the disclaimer "Use at your own Risk" prominently with the written rules.
- Require minors to provide written approval from a parent or guardian.
- Require safety equipment such as helmets and knee pads for all participants.
- Make training and instructions available to new participants.
- Require organized groups to provide certificates of insurance which are equal to or in excess of that carried by the municipality.
- Assure that first aid supplies are present at readily available locations within the park.
- Include First Aid training for staff members.
- Assure that phones are readily available to report emergencies. ■

Municipal Workers' Compensation Fund Now Offers 24/7 Toll-Free Claim Reporting Number

1-866-840-0210

Members can now report work injury claims 24-hours-a-day, 7-days-a-week by calling the toll-free reporting line. This toll-free number should reduce paperwork, lower claims cost and improve the timeliness of benefit delivery to your injured worker. When a work injury is reported to you, simply call **1-866-840-0210** and have the following information ready:

- Injured Worker's: name, address, telephone number, social security number, date of birth
- Date of injury and description of injury
- Name and address of medical provider
- Wage information
- 10-digit Alabama Employer Code

EMPLOYMENT PRACTICES LAW HOTLINE

1-800-864-5324



Through a toll-free Employment Practices Law Hotline, members can be in direct contact with an attorney specializing in employment-related issues. When faced with a potential employment situation, the hotline provides a no-cost, 30 minute consultation.

Popular Safety Videos for the Winter Season

- Winter Driving (5.046)
- Space Heaters (7.044)
- Safety Program Management: Modules 1 & 2 (11.017)
- Safety Program Management: Modules 3,4 & 5 (11.018)
- How to Develop and Implement an Effective Safety Program (11.010)
- Custodial Staff Safety (10.002)
- Office Safety - Fire Plan (10.006)
- Drug Testing in the Workplace (11.005)

To check-out a safety video, simply call, FAX, or e-mail your request to Rachel Wagner at:

**334-262-2566; rachelw@alalm.org;
or FAX at 334-263-0200.**



*For more information, call:
334-262-2566.*



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