



June 20, 2019

## Pursuit Critical Case Law Overruled

The Kentucky Supreme Court overturned longstanding protection for law enforcement when it issued a decision on [Gonzalez v. Johnson \(2019\)](#) on June 13, 2019. The *Gonzalez* decision overrules *Chambers v. Ideal Pure Mike Co.* (1952) in which the court held that a police officer's actions, as a matter of law, could never be the proximate or legal cause of damages suffered by a third party struck by a fleeing suspect.

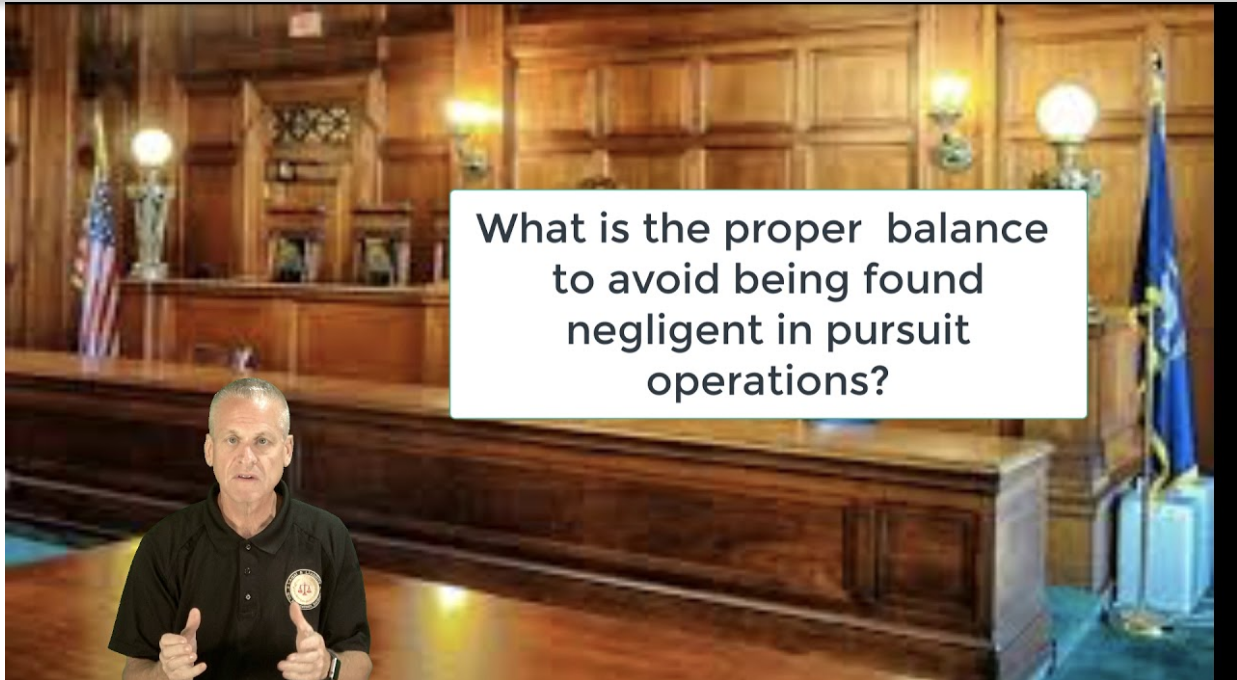
The new *Gonzalez* ruling states:

“We instead hold that an officer can be the cause-in-fact and legal cause of damages inflicted upon a third party as a result of a negligent pursuit. The duty of care owed to the public at large by pursuing officers is that of due regard in accordance with KRS 189.940.”

We have contacted our legal and liability expert Jack Ryan for his observations and recommendations on the new case law. Ryan stated the following:

“This [new case \(Gonzalez\)](#) is a dramatic change, and it will lead to more lawsuits and more findings against officers.

“Because it is a change to the legal analysis on causation, meaning that now a jury gets to decide if the officer's conduct in pursuing was a substantial factor in causing the accident, the only way to further limit liability would be to further restrict pursuits.



### 2019 Kentucky Only-Pursuits Gonzalez Case Video

“It is my opinion that the current KLC model is restrictive (violent felony). It would be difficult, if the officer were to follow it, for plaintiff to establish a negligent pursuit.

“The new rule is that officers can have liability for a negligent pursuit even if they are not the striking vehicle. It is my opinion that the current KLC model policy that limits pursuits to the most serious offenses and the dangerous driving conduct before law enforcement involvement supports nonnegligent pursuit because the pursuit is not undertaken for a minor offense.”

KLCIS recommends that all of our police departments adopt the **KLCIS model policy Vehicle Pursuit & Emergency Vehicle Operations**. The policy requires a violent felony before a pursuit is initiated or when there is evidence of outrageous, reckless driving generally or possibly in association with driving under the influence, and these observations precede the officer's intervention through any pursuit mode.

We are equally concerned on how this ruling will impact cases involving emergency responses and encourage members to also adopt the **Vehicles**

We have also adopted a new safety and liability review standard that recommends each department have a safety committee. Recent studies indicate that policy and training without accountability is less successful. One of the safety committee's responsibilities will be to review all pursuits and ensure that officers follow policy standards.

Adopting the policy without providing training, ensuring accountability and requiring officers to follow the policy is worse than not having the policy at all.

Officers that are found operating outside of departmental policy are almost always found negligent. This is why training and accountability are critical to adopting the policy.

We have attached the [new Gonzalez ruling](#) and the KLCIS model policies for your review. This case law did not change statutory law; however, it has significantly increased liability exposure to our officers and agencies.

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