

Text of Kristie's Bill (SB 1866)

BILL NUMBER: SB 1866 INTRODUCED
BILL TEXT

INTRODUCED BY Senator Aanestad

FEBRUARY 20, 2004

An act to amend Sections 17004 and 17004.7 of, to add Section 1666.1 to, and to add Article 2 (commencing with Section 2830) to Chapter 4 of Division 2 of, the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 1866, as introduced, Aanestad. Peace officer motor vehicle pursuit.

(1) Under existing law, a public agency employing peace officers that adopts a written policy on vehicular pursuits that complies with specific standards is immune from liability for civil damages for personal injury to, or the death of, any person or damage to property resulting from the collision of a vehicle being operated by an actual or suspected violator of the law who is being, has been, or believes he or she is, or has been, pursued by a peace officer employed by the public entity in a motor vehicle. Existing law makes it a crime for a person while operating a motor vehicle to intentionally evade, willfully flee, or otherwise attempt to evade a pursuing peace officer's motor vehicle under certain conditions.

This bill would continue the described civil immunity if a law enforcement agency, rather than a public agency, adopts and implements a written policy on motor vehicle pursuits that complies with a comprehensive peace officer pursuit guidelines and practices act established by this bill and the peace officer is immune from civil liability as described under (2). The bill, under that proposed comprehensive act, would, among other things, prohibit a peace officer from pursuing a vehicle under specified circumstances, require a peace officer to engage in certain conduct and procedures involving a motor vehicle pursuit, as defined, and a motor vehicle incident, require a peace officer to discontinue a motor vehicle pursuit under specified circumstances, and establish related procedures governing law enforcement dispatchers and supervisors.

This bill would require all traffic safety programs that are funded by state funds to include a section examining the public safety risks of peace officer motor vehicle pursuits. The bill would also require at least one question on an applicant's driving test to include a question regarding these matters.

This bill would require a law enforcement agency to adopt guidelines and procedures regarding a motor vehicle pursuit by a peace officer that, at a minimum, comply with the requirements of

this bill, and, when necessary to achieve public safety, would allow an agency to enhance its guidelines and procedures with respect to a pursuit of a vehicle by a peace officer beyond the requirements of this bill.

(2) Existing law affords civil immunity to a public employee on account of personal injury to or death of any person or damage to property resulting from the operation, in the line of duty, of an authorized emergency vehicle, for among other things, when in the immediate pursuit of an actual or suspected violator of the law.

This bill, instead, would afford that civil immunity on account of personal injury to, or death of a person, or damage to property caused by a collision that occurs as a result of a motor vehicle pursuit, as defined, if that peace officer was acting within the scope of his or her employment and the action taken was not performed in bad faith or in a grossly negligent manner.

(3) Because this bill would increase the level of services required of local law enforcement agencies, this bill would impose a state-mandated local program.

(4) Because existing law makes it a crime to violate and fail to comply with the Vehicle Code, this bill would impose a state-mandated local program by creating new crimes.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1666.1 is added to the Vehicle Code, to read:

1666.1. The department shall include at least one question in each test, as administered under Section 12804.9, of an applicant's knowledge and understanding of this code to verify that the applicant has an understanding of the risks and punishments associated with eluding a pursuing peace officer's motor vehicle.

SEC. 2. Article 2 (commencing with Section 2830) is added to Chapter 4 of Division 2 of the Vehicle Code, to read:

Article 2. Peace Officer Motor Vehicle Pursuit Guidelines and Practices

2830. This article shall be known, and may be cited as, Kristie's Law.

2831. The Legislature finds and declares all of the following:

(a) Motor vehicle pursuits of fleeing suspects present a danger to the lives of the public and the peace officers and suspects involved in the pursuits.

(b) According to statistics from the National Highway Traffic Safety Administration, California has consistently higher numbers for fatalities in crashes involving peace officer pursuits.

(c) In 2001, the National Highway Traffic Safety Administration reported 365 fatalities nationwide as a result of peace officer pursuits. California had the highest number of fatalities with 51 deaths, accounting for nearly 15 percent of the nation's crashes. Of those 51 fatalities, 24 were innocent bystanders. On average, that is one death a week due to peace officer pursuits, and one innocent death every two weeks.

(d) A primary function of all law enforcement agencies is to protect the public against personal injury, death, or property damage.

(e) Peace officer pursuits involving motor vehicles inherently present a risk to the public. A responsibility of law enforcement is to ensure that innocent third parties are reasonably shielded from any risk emanating from these pursuits. It is also necessary to assist peace officers in the safe performance of their duties.

(f) It is the intention of this article to strictly regulate the manner in which a peace officer motor vehicle pursuit is initiated, undertaken, and performed.

2832. For the purposes of this article and Section 17004.7, the following terms are defined, as follows:

(a) "Boxing in" is a deliberate offensive tactic by two or more pursuing motor vehicles to force a pursued vehicle in a specific direction, or to force the pursued vehicle to stop or reduce speed accomplished by the pursuing motor vehicles while moving, the maneuvering into a place in front of, behind, or beside the pursued vehicle.

(b) "Collateral pursuit" is a deliberate offensive tactic by one or more patrol motor vehicles driving on roads or streets that parallel the road or street on which the pursued vehicle is traveling.

(c) "Imminent peril" means that an immediate injury or loss of life is about to occur, or is near-at-hand. The peril is certain, immediate, and impending. The peril is not remote, uncertain, or contingent. A likelihood of mere possibility of injury or loss of life is not sufficient to create an imminent peril.

(d) "Intercepting" is the activation of emergency lights or siren, or both, at the discretion of the peace officer to make notification of a peace officer's motor vehicle presence and to cause the violator to stop as quickly and safely as possible.

(e) "Overtaking" is the active attempt by a peace officer to catch up to and stop a traffic violator before there is recognition by the violator that the peace officer is attempting to stop the violator.

(f) "Paralleling" is a deliberative offensive tactic by one or

more patrol motor vehicles to drive alongside the pursued vehicle that is in motion.

(g) "Peace officer" has the same meaning as that term is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code.

(h) "Pursuit" or "motor vehicle pursuit" is an active attempt by a peace officer while operating a motor vehicle, to apprehend a suspect who is also operating a motor vehicle, while the suspect is trying to avoid capture by using high speed driving or other evasive tactics, including, but not limited to, driving off a highway, making a sudden or unexpected movement, or driving on the wrong side of the roadway.

(i) "Ramming" is a deliberate act by the driver of a vehicle to forcibly strike another vehicle in an attempt to stop or disable the other vehicle.

2833. Initiation of a motor vehicle pursuit does not include intercepting or overtaking. It begins when the violator recognizes a peace officer is attempting to stop him or her.

(a) A peace officer may pursue a vehicle if there is reason to believe, or if there is a determination that, imminent peril exists.

(b) The commission of a traffic infraction alone does not qualify as imminent peril under subdivision (a).

(c) A pursuit that does not qualify under subdivision (a) is prohibited.

2833.1. A peace officer shall not pursue a motor vehicle under any of the following circumstances:

(a) The peace officer is carrying a prisoner or any other person who is not an authorized ride-along.

(b) The peace officer is on a call that should take precedence.

(c) A supervisor advises the peace officer not to pursue.

(d) The peace officer initiates or participates in the pursuit without having on an approved forward-facing red light or siren.

(e) The pursued vehicle does not represent an imminent peril from other than the traffic condition being created by the pursued vehicle as it flees.

2833.2. All of the following guidelines apply to a pursuit of a vehicle by a peace officer:

(a) The danger created by the flight of the suspect does not constitute justification for the pursuit.

(b) A peace officer shall continually question whether the seriousness of the offense committed or being committed justifies continuation of the pursuit.

(c) A peace officer shall consider the need for enhanced safety in residential or school areas.

(d) When approaching an intersection where signal lights or stop signs control the flow of traffic, a peace officer shall obey the signal light or stop sign at the intersection until the officer is certain that all traffic has yielded the right-of-way.

2833.3. All of the following apply to a motor vehicle pursuit incident:

(a) A pursuit is limited to no more than two pursuit motor vehicles, excluding aircraft.

(b) A peace officer operating a motorcycle who initiates a pursuit shall withdraw when a peace officer's motor vehicle described in subdivision (a) of Section 2800.1 has joined the pursuit. A peace officer operating a motorcycle who is relieved from the pursuit shall not proceed to the termination point of the pursuit, unless directed to do so by a supervisor.

(c) A peace officer in another motor vehicle that is not one of the two immediate pursuit motor vehicles shall stay clear of the pursuit. If authorized by a supervisor, a peace officer in another motor vehicle may trail at the posted speed limits while observing all traffic laws.

(d) Collateral pursuits are permitted only under the authorization of a supervisor and the peace officer shall obey all traffic laws.

(e) A peace officer in support of a pursuit shall obey all traffic laws while proceeding to strategic positions.

(f) If a person is injured or injuries are suspected or likely as a result of a collision, the primary pursuit peace officer or supervisor shall identify all officers present and document their involvement.

2833.4. During a motor vehicle pursuit, a peace officer shall comply with all of the following procedures:

(a) The peace officer initiating the pursuit shall immediately notify the dispatcher that the officer is in a motor vehicle pursuit, and report the following information:

- (1) Known violation or reason for the pursuit.
- (2) Description of the pursued vehicle.
- (3) Location and direction of travel of the pursued vehicle.
- (4) Speed of the pursued vehicle.
- (5) Number of known occupants in the pursued vehicle.
- (6) Type of weapons in the pursued vehicle, if known.

(b) Each peace officer in a pursuit is accountable for the operation of his or her motor vehicle.

(c) A peace officer joining an ongoing pursuit shall immediately notify the dispatcher that there are two peace officer motor vehicles involved in the pursuit.

(d) A peace officer shall receive authorization for participation in an ongoing pursuit. Authorization is never to be presumed. Authorization to join a pursuit requires an explicit verbal authorization by the supervisor via the motor vehicle radio.

(e) Maximum use of any law enforcement aircraft shall be made as quickly as possible.

(f) A peace officer involved in a pursuit shall not discharge his or her firearm while either the pursued vehicle or pursuit motor vehicle is in motion.

(g) A peace officer shall not attempt to stop a pursued vehicle by boxing in, ramming, or heading off, nor driving parallel to the pursued vehicle. A supervisor may authorize these actions, if, in his or her opinion, the action would bring about the successful termination of the pursuit and lessen the peace officer's, suspect's, or public's exposure to imminent peril.

(h) A peace officer shall not attempt to form a road block by slowing traffic in front of the pursued vehicle.

2834. A peace officer shall discontinue a motor vehicle pursuit

under the following circumstances:

(a) There is a clear danger to the public or to the pursuing peace officer when taking into consideration all of the following factors:

(1) The seriousness of the original offense and its relationship to the continued risk to the public, peace officer, or the fleeing person.

(2) The safety of the public in the area of the pursuit.

(3) The volume of vehicle and pedestrian traffic.

(4) The quality of road and weather conditions, speed of other vehicles, time of day, and location.

(5) The quality of radio communications and capabilities of the law enforcement motor vehicles involved.

(b) The peace officer is unable to see the pursued vehicle or the distance between the pursued vehicle and the pursuing motor vehicle is so great that further pursuit is futile.

(c) The suspect is identified and may be apprehended at a later time.

(d) The supervisor directs the peace officer to terminate the pursuit. The termination of the pursuit does not prohibit the peace officer from continuing to follow the pursued vehicle while observing all traffic laws.

2835. (a) A law enforcement dispatcher shall immediately notify a supervisor of a peace officer's motor vehicle pursuit. The supervisor shall assume command of the pursuit, including, if applicable, the termination of a pursuit.

(b) In allowing a pursuit to continue, a supervisor shall carefully consider the seriousness of the offense committed or being committed, the danger presented to a peace officer and the public, prevailing traffic conditions, pedestrian traffic, speed of the vehicles involved, and other relevant factors.

(c) A supervisor may allow a pursuit to continue only after the risks created by the pursuit have been carefully weighed against the need to continue the pursuit.

(d) A supervisor shall complete a pursuit critique and a pursuit report form (California Highway Patrol Form No. 187), as required by Section 14602.1.

(e) A supervisor shall complete a written review and analysis of a pursuit within 15 days of the pursuit, which shall be made public at that time.

(f) All reviews and analyses of pursuits shall be examined for subject matter of benefit in training personnel for future operations. A supervisor's review shall minimally answer the following questions in narrative form:

(1) What was the reason for the pursuit.

(2) What were the conditions of the pursuit, for example, traffic conditions, time of day, vehicle speeds, number of peace officers involved, and number of law enforcement motor vehicles involved?

(3) During the pursuit, did the action of the involved peace officer conform to established written policy as described in Section 17004.7?

(4) Were there any exceptions to the written policy? If so, what were they and why did they occur?

(5) Was any action taken against the pursued vehicle, for example, ramming or roadblock?

(6) If personnel or motor vehicles from other law enforcement agencies assisted in the pursuit, how many personnel and motor vehicles from those agencies responded? What role did the assisting agencies have in the pursuit?

(7) Were there any violations of the law?

2836. All traffic safety programs that use state funds shall include a section that examines the public safety risks of peace officer motor vehicle pursuits, and the punishment that results from evading a peace officer.

2837. (a) A law enforcement agency shall adopt guidelines and procedures regarding a motor vehicle pursuit by a peace officer that, at a minimum, comply with this article.

(b) When necessary to achieve public safety, a law enforcement agency may enhance its guidelines and procedures with respect to a pursuit of a motor vehicle by a peace officer beyond the requirements of this article.

SEC. 3. Section 17004 of the Vehicle Code is amended to read:

17004. A public employee is not liable for civil damages on account of personal injury to or death of any person or damage to property resulting from the operation, in the line of duty, of an authorized emergency vehicle while responding to an emergency call ~~or when in the immediate pursuit of an actual or suspected violator of the law~~, or when responding to , but not upon returning from , a fire alarm or other emergency call.

SEC. 4. Section 17004.7 of the Vehicle Code is amended to read:

17004.7. (a) The immunity provided by this section is in addition to any other immunity provided by law. ~~The adoption of a policy by a public agency pursuant to this section is discretionary.~~

(b) A peace officer is not liable for any personal injury to, or death of, a person, or damage to property caused by a collision that occurs as a result of a motor vehicle pursuit if that peace officer was acting within the scope of his or her employment, and the action taken was not performed in bad faith or in a grossly negligent manner.

(c) A ~~public agency employing peace officers which~~ law enforcement agency that adopts and implements a written policy on ~~vehicular~~ motor vehicle pursuits ~~complying with subdivision (e)~~ in accordance with Article 2 (commencing with Section 2830) of Chapter 4 of Division 2 is immune from liability for civil damages for personal injury to , or death of ~~any~~ , a person or damage to property resulting from ~~the~~ a collision ~~of a vehicle being operated by an actual or suspected violator of the law who is being, has been, or believes he or she is being or has been, pursued by a peace officer employed by the public entity in a motor vehicle~~ if the pursuit was initiated, engaged in, or terminated by a peace officer acting within the scope of his or her employment and who adhered to the guidelines

established in Article 2 (commencing with Section 2830) of Chapter 4 of Division 2 .

~~—(c) If the public entity has adopted a policy for the safe conduct of vehicular pursuits by peace officers, it shall meet all of the following minimum standards:~~

~~—(1) It provides that, if available, there be supervisory control of the pursuit.~~

~~—(2) It provides procedures for designating the primary pursuit vehicle and for determining the total number of vehicles to be permitted to participate at one time in the pursuit.~~

~~—(3) It provides procedures for coordinating operations with other jurisdictions.~~

~~—(4) It provides guidelines for determining when the interests of public safety and effective law enforcement justify a vehicular pursuit and when a vehicular pursuit should not be initiated or should be terminated.~~

(d) A determination of whether a *written* policy ~~adopted pursuant to~~ *described under* subdivision (c) complies with ~~that subdivision~~ *the guidelines and procedures established under Article 2 (commencing with Section 2830) of Chapter 4 of Division 2* is a question of law ~~for the court~~ .

(e) A term used in this section has the same meaning as that term is defined in Section 2832.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.