

SENATE JUDICIARY COMMITTEE
 Martha M. Escutia, Chair
 2003-2004 Regular Session

SB 1866	S
Senator Aanestad	B
As Amended April 22, 2004	
Hearing Date: April 27, 2004	1
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SUBJECT

Kristie's Law: Establishing Standards for Public Entity and Employee Immunity from Liability for Third Party Injuries and Deaths Arising from Police Pursuits

DESCRIPTION

This bill would repeal the current broad immunity from liability for public agencies and their law enforcement officers when a suspect fleeing a police vehicle pursuit causes injury or death to an innocent third party, and would instead provide that:

- a) The public agency must adopt and implement, and its law enforcement officers must adhere to, a police vehicle pursuit policy that meets specified guidelines, to obtain an immunity from liability for injury or death caused to innocent third parties by a suspect fleeing a police vehicle pursuit; and
- b) A peace officer would not be liable for the personal injury or death of a third party caused by a collision resulting from a police vehicle pursuit if the peace officer was acting within the scope of his or her employment, and the action was not performed in bad faith or in a grossly negligent manner.

The bill would establish minimum guidelines and procedures

(more)

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for police vehicle pursuits, as specified, that a public agency must adopt and implement, and its peace officers must adhere to, as a condition of obtaining the liability immunity.

The bill would also make legislative findings regarding police vehicle pursuits, their costs, risks, and purpose.

(This analysis reflects author's amendments to be offered in Committee.)

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BACKGROUND

SB 1866 was heard and approved last week by the Senate Committee on Public Safety on a 4 - 1 vote. The bill is double-referred to this Committee for consideration of the proposed liability changes.

SB 1866 arises from the tragedy that struck the Priano family when their 15-year old daughter Kristie was killed in a collision caused by a suspect fleeing a police vehicle pursuit. The loss was particularly senseless because the suspect's identity was already known to the pursuing officers. Moreover, she had posed no danger to others until the pursuit was initiated and could have been arrested later for stealing her mother's car.

This and other examples are offered by Senator Aanestad, author of SB 1866, as compelling evidence for the need to change the law so that public safety and innocent lives are not put at dangerous risk by police pursuits that do not justify their risks to the public's safety. (See Comment

SB 1866 also responds to a plea from the Fourth District Court of Appeal which urged the Legislature "to revisit this statute and seriously reconsider the balance between public entity immunity and public safety. The balance appears to have shifted too far toward immunity and left public safety, as well as compensation for innocent victims, twisting in the wind." (Hoa Nguyen v. City of Westminster (2002) 103 Cal.App.4th 1161.)

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The 3 - 0 decision upheld a summary judgment motion in favor of the City of Westminster based on prior cases interpreting Vehicle Code Section 17004.7 to not require implementation or compliance with any adopted policy for police vehicle pursuits for the immunity to apply. (In Nguyen, a suspect in a stolen van was pursued by the police into a high school parking lot just as classes had ended. During the course of the parking lot pursuit, the suspect's van was rammed twice by the pursuing police vehicle and struck a trash dumpster, propelling the dumpster into Nguyen causing his eventual death.)

CHANGES TO EXISTING LAW

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1. Existing law , Vehicle Code Section 17004.7, provides that if a public agency adopts a written policy for police vehicle pursuits that meets specified standards, the public agency is immune from liability for death, injury or damage caused to third parties when a suspect fleeing a police pursuit causes an accident which results in that third-party injury or damage. Case law has interpreted Section 17004.7 to apply the immunity even when the public agency has not implemented the adopted policy or when the public entity's peace officer was not complying with the adopted policy in conducting the vehicular pursuit that led to the third-party injury or death. Existing law , Vehicle Code Section 17004, immunizes a peace officer from civil liability for any injury or death to any person resulting from the operation of a police vehicle in the line of duty "when in the immediate pursuit of an actual or suspected violator of the law."

This bill would revise those provisions and instead provide the following narrower immunity for third-party injuries or deaths resulting from a police vehicle pursuit:

- a) The public agency would be immune if it adopted and implemented, and its officers adhered to, a written policy on police vehicle pursuits that complies with specified guidelines and procedures; and
- b) The peace officer employee would be immune if the officer was acting within the scope of his or her employment, and the action taken was not performed in

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bad faith or in a grossly negligent manner. (The April 22nd amendments and proposed author's amendment state that "the failure to strictly adhere to all provisions of a written policy . . . is not, in and of itself, evidence of bad faith or gross negligence."

2. This bill would make specified legislative finding and declarations (see Comment 6) and make its provisions as known as "Kristie's Law."
3. This bill would establish minimum guidelines and procedures for vehicle pursuits by peace officers (see Comments 4a, 4b, and 4c), and would set forth numerous definitions (see Comment 4e).
4. This bill would require the Department of Motor Vehicles to include at least one question in each license test regarding the risks and punishments associated with eluding a pursuing peace officer's motor vehicle.

5. This bill would also enact changes relating to the reporting of police vehicle pursuits. (See Comment 5.)

COMMENT

1. Stated need for bill: To rebalance the police pursuit law towards public safety

The author asserts that adoption of a statewide police vehicle pursuit policy is necessary to prevent the many unnecessary injuries or fatalities to innocent bystanders that have arisen all too frequently in police vehicle pursuits under current law. He also asserts that a statewide policy would be in accordance with an officer's duty to protect the public from harm, and would protect peace officers themselves in the execution of their duties. He writes:

A peace officer has a duty to protect the public and maintain the peace and safety of society. The factors that a peace officer must assess in deciding whether or not to engage in a pursuit can change at any moment, resulting in serious injury or death. The speed of the pursuit, the road conditions,

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pedestrian or vehicular traffic do not remain constant throughout a peace officer in pursuit. While law enforcement provides a great safety service to the community, its highest responsibility is the prevention of injury or death to that same public. Law enforcement should not be exempted from conducting its activities in the most cautious and efficient manner to ensure the safety of the public during its apprehension of fleeing suspects.

According to the author's background information, California leads the nation in the number of innocent victims killed in pursuits. A study by the NHTSA (National Highway Traffic Safety Administration) shows that in 2001 there were 51 deaths in California that resulted from police pursuits. Twenty-two of the 51 deaths were innocent bystanders/drivers of other vehicles not involved as a suspect. The total number of deaths reported throughout the nation was 365 in 2001. Florida, another state with a large population, had only 15 fatalities in 2001. According to federal statistics, 181 innocent bystanders died in traffic collisions arising from police vehicle pursuits in a ten-year period between 1992 and 2001. Overall, there were 541 pursuit-related deaths.

According to the California Highway Patrol, of the 5,334 police pursuits in the year 2000, 21 percent of those pursuits resulted in collisions.

Until its recent change in policy, the Los Angeles Police Department (LAPD) led the nation in dangerous police pursuits, and their number increased by more than 30 percent between the years 2000 and 2001. In 2001, there were 781 police pursuits, the equivalent of more than two per day. Sixty percent of the police pursuits initiated by LAPD involved minor traffic violations, including missing license plates or broken taillights. (In response to the number of horrific accidents arising from police pursuits, the LA Police Commission approved an interim ban on police chases for minor traffic infractions, such as missing license plates and broken taillights. Officers are still allowed to chase persons suspected of committing misdemeanors or felonies and persons who fail to stop for offenses such as reckless

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driving.)

According to the author:

The LAPD study also showed that in 2001 there were 154 crashes resulting from pursuits based on infractions: 116 crashes resulted from pursuits based on felonies and 13 crashes from pursuits

based on misdemeanor offenses. However, after several changes to the LAPD pursuit policy last year, there has been a reduction in injury or death resulting from those pursuits.<1>

In Florida, there has been a significant decrease in injury and death involving police pursuits, largely due to the implementation of a new policy similar to this bill by the Florida Highway Patrol.

In 1995, prior to the implementation of their policy change, they experienced 23 deaths related to peace officer pursuits. In 1999 and 2000 they had 11 deaths.<2> A spokesman at the Florida Highway Patrol said its officers were reluctant to make changes, especially changes that appeared too restrictive. As the new policy was implemented, the patrol officers realized its benefits and now believe it was the right direction to take in order to protect the community.

2. Revised immunity would be conditioned upon adoption of and adherence to policy meeting specified minimum guidelines and procedures

Under existing law, in order for an agency to have immunity from civil liability arising from third-party injury, death or property damage occurring as a result of a police pursuit, the agency must adopt a policy on peace

<1> Los Angeles Times, June 5, 2002, Section: California Metro; Part 2; Page 3 "Los Angeles; Explanation for Fatal Chase Offered; LAPD: Officers were warning pedestrians of danger, officials said of the pursuit in which a girl died. Police panel meets to review policies."

<2> United States Department of Transportation, National Highway Traffic Safety Administration, 2001 Fatality Analysis Reporting System at <http://www.pursuitwatch.org/stats/NHTSA.html> .

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vehicle pursuits. However, case law (Kishida v. State of California (1991) 229 Cal.App.3d 329) does not require implementation of the policy or adherence to it as a condition of applying the immunity. Nor does existing law set any minimum standards for the policy.

This bill would establish minimum guidelines and procedures for peace officer pursuits. (See Comment 4.) Further, SB 1866 would provide that a public agency (or special district) must adopt and implement, and its law enforcement officers must adhere to, a police vehicle pursuit policy that meets the specified guidelines as a condition of obtaining an immunity from liability for injury or death caused to innocent third parties by a suspect fleeing a police vehicle pursuit.

In addition, the bill would narrow a peace officer's current broad immunity from any liability arising from the operation of a police vehicle during a police pursuit and would instead provide an immunity for police pursuit operations if the peace officer was acting within the scope of his or her employment, and the action was not performed in bad faith or in a grossly negligent manner.

a. Arguments in support: measure is needed to save lives

The author asserts that the Priano tragedy is, sadly, a too-often repeated story. He notes that many similar tragedies have been reported regularly in the news headlines, such as:

the four innocent deaths in Stockton in 2001 when a fleeing stolen car suspect ran them down in a school zone;

the death of a 17-year old and her loss of her unborn baby when the car she was riding in was hit by a stolen car suspect fleeing a police car;

the crippling of Henry and Anna Polivada, who survived the Holocaust only to be severely injured by a motorist fleeing after being stopped for a registration infraction;

the killing of Charlotte Lenga, another

Holocaust survivor, who could not survive the collision caused by a fleeing suspect; and Hoa Nguyen who was killed on the grounds of his high school parking lot by a suspect in a stolen van fleeing the police.

The author asserts that current law has resulted in numerous innocent lives being lost or destroyed unnecessarily. Noting that the most common offense triggering pursuits statewide from 1995 to 2000 was speeding, linked to 15% of all chases, followed by car theft (11%), reckless driving (4%), drunk driving (4%), and failing to stop at a stop sign (3%), he asserts that the current broad discretion giving to public agencies and their employees have failed to strike an appropriate balance between the need to apprehend law violators and the need to recognize and protect the safety of the public during a police vehicle pursuit. He writes:

In the tragedies identified above, current law does not define clear safety standards for police pursuits. ? The flexibility that enforcement agencies currently experience in creating their own guidelines often results in inconsistent pursuit standards which do little to insure public safety, and must be balanced with the need to protect the public. It is generally understood and recognized that the unintentional consequences that do result in injury or death is not what law enforcement seeks to have as a result of their pursuits. But because these incidences inevitability occur, it is for the public's safety that minimum recognizable standards be put in place.

Kristie's Bill proactively addresses this issue while incorporating police powers to continue to overtake, intercept and apprehend law violators. The bill, modeled after the Florida Highway Patrol pursuit policy, establishes safety standards that will help minimize the public's risk relating to police officer pursuits. ? Kristie's Bill will help make roadways safer for all Californians. Kristie's Bill will save lives.

(Emphasis added.)

b. Opposition from public agencies and peace officer groups

Opponents, public agencies with police departments and numerous peace officer organizations, oppose SB 1866 on two grounds: 1) loss of the current broad immunity for peace officers and their employing agency; and 2) they believe the proposed minimum guidelines and procedures for police vehicle pursuits are overly restrictive and contrary to good police policy.

As to the first basis of opposition, opponents assert that SB 1866 will have the likely effect of precipitating litigation on virtually every pursuit resulting in injury to a third person, since the question could always be raised as to whether the officer was in total compliance with the policy. Peace officer organizations particularly object to removing the peace officer's current absolute immunity, arguing that the fear of potential personal liability could hamper an officer's use of his or her best judgment, and result in less vigorous law enforcement efforts to the detriment of public safety.

Proponents respond that SB 1866 protects a peace officer from unwarranted liability. As long as the peace officer was acting within the scope of his or her employment and the action was not grossly negligent or taken in bad faith, the officer would not be subject to liability. Further, the officer's failure to strictly adhere to all provisions of a written policy would not, in and of itself, be evidence of bad faith or gross negligence. If

necessary, the proponents indicate that they are willing to consider the idea of requiring a "special finding" before a peace officer could be held liable for bad faith or gross negligence in a vehicle pursuit that causes injury or death to an innocent third party.

Opponents also argue that SB 1866 would effectively make public agencies civilly liable for deaths or

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injuries caused by a fleeing suspect, and would effectively compromise their peace officers' ability to protect the communities they serve. While opponents express compassion for the pain of innocent victims, they believe that the better solution is to establish a statewide risk pool that would provide victims compensation to those injured by fleeing suspects.

Opponents also argue that strengthening penalties for fleeing from a peace officer will have greater impact on reducing the likelihood of suspects who flee, and would correspondingly reduce the number of police chases.

Regarding the second basis of opposition, Comment 4 details the proposed minimum guidelines and procedures, and the opponents' objections to them. In general, opponents argue that the proposed guidelines and procedures are overly restrictive and fail to allow for needed flexibility in the split second decision-making in police pursuits. In opposition, the Attorney General's office argues that "under this bill peace officers will fail to pursue criminals because of the worry of potential liability for not following the very detailed procedures [of SB 1866]. The public's safety could potentially be at risk if officers fail to conduct these pursuits."

c) Similar narrower legislation heard and approved last year

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Last year, this Committee heard and approved SB 219 (Romero) which proposed to require that an agency must implement and the officer follow a pursuit policy before immunity attaches. As in SB 219 (Romero), SB 1866 would provide that an agency only has immunity from liability if the agency adopts and implements a pursuit policy in accordance with the guidelines and the officer, acting within the scope of his or her employment, adheres to the guidelines.

However, SB 219 is narrower in several other aspects. For instance, that bill did not propose minimum statewide standards for police vehicle pursuits. Nor did it affect the immunity granted to

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peace officers. SB 219 also provided that its provisions do not apply to allow any lawsuit for civil damages brought by the driver of the vehicle pursued or his or her accomplice.

SHOULD, LIKE SB 219, THE BILL MAKE IT CLEAR THAT IMMUNITY FROM A SUIT BY THE DRIVER OF A VEHICLE

PURSUED OR HIS OR HER ACCOMPLICE IS ABSOLUTE WHETHER OR NOT A POLICY HAS BEEN IMPLEMENTED AND FOLLOWED?

SB 219 is currently on the inactive file on the Assembly Floor after failing passage and having reconsideration granted in September of 2003.

3. Measure may accurately reflect original intent of 1987 legislation that created the conditional immunity, in requiring adherence to adopted policy

Vehicle Code Section 17004.7 was added in 1987 by AB 1912 (Stirling), Chapter 1205, Statutes of 1987. It was one of nine intertwined bills, each contingent upon the passage of the other eight, that constituted the public entity tort liability reform package that was jointly

sponsored by the Attorney General, the League of California Cities, the County Supervisors Association and the California Trial Lawyers Association (now Consumer Attorneys of California).

One of the other bills in the package was SB 1598 (Presley), Ch. 1207, Statutes of 1987, which overturned two Supreme Court cases [Petersen v. City of Long Beach (1979) 24 Cal.3d. 238; Clemente v. State of California (1985) 40 Cal.3d 202)] that held that a public employee's violation of the employer's policy manual or guideline constituted evidence of negligence per se. SB 1598 provided that a rule, policy, manual, or guideline of a state or local governmental agency setting forth standards of conduct for its employees shall not be considered a statute, ordinance, or regulation within the meaning of Evidence Code Section 669 (the negligence per se law) unless the rule has been formally adopted as a statute or as an ordinance of a local governmental entity.

The League of California Cities, a co-sponsor of the

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measure, stated that the Supreme Court cases "prompted governmental entities, particularly police departments, to consider 'abolishing interdepartmental policy documents that recommend ideal standards of behavior because of the fear that the standards, when collected in a department policy manual, are considered regulations and will subject the city to increased liability exposure every time a peace officer does not follow the manual to the letter'" (Analysis of SB 1598, Senate Judiciary Committee, August 24, 1987.)

Under SB 1598, "a violation of a rule or manual regarding a public employees' conduct would remain admissible as evidence of the employee's negligence. However, it would no longer give rise to a presumption of negligence." (Ibid.)

In the context of the nine-bill intertwined package, AB 1912 sought to give public entities additional protection from liability when their peace officers engaged in vehicular pursuits so long as the public entity adopted a written policy for those pursuits. The written policy was desired by consumer advocates so that unbridled discretion could not be exercised by overly anxious peace officers resulting in needless injury to the general public. Correspondingly, SB 1598 was enacted to protect public entities from undue liability under the negligence per se rules in the event an officer failed to follow the policy. The interconnection of the two bills can be seen in a comment to the Senate Judiciary Committee's August 24, 1987 analysis on AB 1912. Comment 4 on page 3 states, after describing the required provisions for the written policy: "In any action brought against the public entity, the issue of whether the adopted written policy complied with these requirements would be a question of law for the court to decide. SB 1598, one of the public entity tort liability reform bills to be heard today would provide that violations of such policies would not be negligence per se." (Italics added.)

These past legislative materials evidence intent that any adopted policy should be followed as a condition of the immunity, but that a failure to follow the adopted policy would not constitute negligence per se.

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Another indication of this intent was legislation carried by Senator Presley (the author of SB 1598) in 1992, SB 347, to require that the public agency adopt and implement, rather than just adopt, and that its peace officers follow, that written policy in order for the immunity to apply. SB 347 was intended to correct a court of appeals decision which held that it was sufficient for the immunity if the public agency adopted a pursuit policy; the court ruled that the statute did not require implementation or adherence to the policy as

a condition of the immunity. (Kishida v. State of California (1991) 229 Cal. App.3d 329, 355. See also Comment 8.)

SB 347 passed the Assembly 70 - 0, passed the Senate 36 - 0 on a concurrence vote, but was vetoed by then Governor Wilson.

4. Proposed minimum guidelines and procedures for police vehicle pursuit

The bill would establish minimum guidelines and procedures for police vehicle pursuits, as detailed below, that a public agency must adopt and implement, and its peace officers must adhere to, as a condition of obtaining the liability immunity. The author notes that these guidelines are modeled after policies in Florida that have operated to reduce injuries and deaths to innocent third parties from police vehicle pursuits without having any known negative effects.

Opponents, however, argue that SB 1866's measures are so prescriptive as to make it virtually impossible for law enforcement agencies to comply.

a. When a pursuit can and cannot be initiated: "imminent peril" does not include a traffic infraction violation

Proposed Section 2833(a) would provide that a peace officer may only pursue a vehicle if there is reason to believe, or if there is a determination that, imminent peril exists. "Imminent peril" would mean 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,

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uncertain or contingent. A likelihood of mere possibility of injury or loss of life is not sufficient to create an imminent peril."

Proponents assert that this provision is necessary to emphasize the importance of protecting innocent lives and public safety whenever an officer considers whether or not to undertake a police pursuit. Under current law, the experience of law enforcement's exercise of its apparent unbridled discretion to pursue fleeing suspects has left an unacceptable wake of needless deaths and devastating injuries for far too many families.

Opponent, the Los Angeles County Sheriffs Department, contends that restricting police pursuits to cases of imminent peril as narrowly defined would create such a high standard that it would be virtually impossible for an officer to articulate or justify his or her decision to pursue a serious or dangerous fleeing suspect. Since the mere possibility of injury or loss of life is not sufficient, and given the difficulty of foretelling when an immediate injury or loss of life is about to occur, opponents contend that few if any police pursuits can be initiated without exposing the public agency to potential civil liability.

COULD THE STANDARD OF "IMMINENT PERIL" BE RELAXED SOMEWHAT, WHILE STILL RESTRICTING THE OFFICER'S EXERCISE OF UNBRIDLED DISCRETION?

The bill would further provide that, the commission of a traffic infraction alone does not qualify as imminent peril. (Section 2833(b).)

Opponents contend that this provision is too restrictive and argue that many serious and violent offenders are often caught as a result of a simple traffic stop. Opponents also contend that proposed Section 2833(b) is not reflective of reality because pursuits that start with a traffic infraction often reveal that the offender is a wanted felon or is a person committing a felony unknown to the officer at the time.

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This bill would provide that a peace officer may not pursue a motor vehicle under any of the following specified circumstances: the peace officer is carrying a prisoner or any other person who is not an authorized ride-along; the peace officer is on a call that should take precedence; a supervisor advises the peace officer not to pursue; the peace officer initiates or participates in the pursuit without having on an approved forward-facing red light or siren; and the pursued vehicle does not represent an imminent peril from other than the traffic condition being created by the pursued vehicle as it flees.

Opponents contend that SB 1866 is not clear as to what would take precedence over a pursuit and that the factors going into making that determination would make a violation inevitable.

The bill would also specify that the 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.

b. Guidelines for the vehicle pursuit

Under SB 1866, an officer starting or joining a pursuit must notify their supervisor and must receive authorization from the supervisor to continue or join the pursuit. A peace officer may not discharge his or her weapon while his or her car or the vehicle being pursued is moving. Further, the officer shall not attempt to stop a pursued vehicle by boxing in, ramming or heading off, or driving parallel to the vehicle unless authorized to do so by the supervisor when the supervisor determines that action will lessen the imminent peril of others.

Also, while in pursuit the officer must continuously question whether the seriousness of the offense committed or being committed justifies continuation of the pursuit. The peace officer must also consider the need for enhanced safety in residential or school areas, and must obey traffic signals until it is clear that other vehicles have yielded the right of way.

Opponents contend that this latter provision (proposed

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Section 2833.2(d) on page 6, line 6), is particularly unworkable and would effectively give fleeing suspects a "free pass to freedom."

In addition:

A motorcycle officer who starts a pursuit shall stop it when a motor vehicle takes over.

Generally, no more than two vehicles should be involved in a pursuit and any other vehicle may, if authorized by a supervisor, trail the vehicle at posted speed limits.

This bill would also provide that immediately upon starting a pursuit the officer shall notify a supervisor who shall then take command of the pursuit.

When allowing the pursuit to continue, the supervisor shall consider the seriousness of the offense committed, the danger to the peace officer and the public, prevailing traffic conditions, pedestrian traffic, speed of the vehicles involved and other relevant factors. A supervisor may only allow a pursuit to continue after weighing the risks against the need to continue.

Opponents contend that the guidelines mandate unrealistic and overly restrictive requirements regarding when an officer can or cannot pursue safe driving. "This will have a chilling effect on an officer's discretion, as they will now question their right to make a decision they deem necessary on a case-by-case basis. As many of these decisions are made in split seconds, such discretion is vitally important," asserts PORAC (Peace Officers Research Association of California.).

c. When a pursuit must end

The proposed guidelines would require a pursuit to be discontinued when:

There is a clear danger to the public or to the pursuing peace officer when taking into consideration all of the following factors: the seriousness of the original offense and its relationship to the continued risk to others; the

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safety of the public in the area of the pursuit; the volume of vehicle and pedestrian traffic; the quality of road and weather conditions, speed of other vehicles, time of day and location; the quality of radio communications and capabilities of the law enforcement motor vehicles involved.

The peace officer is unable to see the pursued vehicle, or the distance between the pursued vehicle and the peace officer is so great that further pursuit is futile.

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

The supervisor directs the peace officer to terminate the pursuit.

d. General opposition to rigid approach by opponents who believe current flexibility should be maintained

The Los Angeles Police Protective League writes in opposition:

We know our offices will always respond and make instantaneous decisions in varied situations. They make on the spot decisions that may later be reviewed and evaluated on a step-by-step basis. Last year . . . the LAPPL's Board of Directors expressed the view that "the difficulty, in large part, is that how and where the pursuit goes is not based on the actions of the officers, but instead on the unpredictable actions of the suspect. The decision to pursue is based on a balance of danger in which officers quickly evaluate the risk of pursuit versus letting the criminal flee." Limiting the discretion of the officers to pursue by imposing liability is a bad policy choice and one which sends the wrong message. (Emphasis added.)

Opponents contend that the proposed rigid guidelines would tie the hands of law enforcement, to the detriment of public safety.

In support of SB 1866, the author responds that experience as well as studies support his conclusion

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that enactment of pursuit guidelines will save lives. According to a 1997 study by the U.S. Department of Justice on police pursuits, pursuit-related accidents were found to occur more frequently in pursuits involving felonies than nonfelonies. Similarly, the risk of injuries increased with the number of pursuing vehicles and when the chases occurred on surface streets rather than on freeways and highways, or in urban and suburban areas as contrasted with rural areas.

e. Definitions

This bill would define the following terms for the purposes of implementing the minimum guidelines for peace officer pursuits:

"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.

"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.

"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 as possible.

"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 a peace officer is attempting to stop the violator.

"Paralleling" is a deliberative offensive tactic by one or more patrol motor vehicles to drive alongside the pursued vehicle that is in motion.

"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

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highway, making a sudden or unexpected movement, or driving on the wrong side of the roadway.

"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.

5. Proposed reporting changes

Existing law requires every state and local law enforcement agency to report to the California Highway Patrol (CHP) on a form approved by the department, all vehicle pursuit data, which shall include, but not be limited to, all of the following:

Whether any person involved in a pursuit or subsequent arrest was injured, specifying the nature of that injury.

The violations which caused the pursuit to be initiated.

The identity of the officers involved in the pursuit.

The means or methods used to stop the suspect being pursued.

The charges filed by the court with the district attorney.

This bill would also require the supervisor of the vehicle pursuit to complete a written review and analysis of the pursuit within 15 days of the pursuit, which would be made public at that time. The supervisor's review must "minimally" describe the reason for the pursuit; the conditions (traffic, speeds, number of cars and officers involved) of the pursuit; whether the officers conformed to the written policy, with any exceptions noted and the reasons for the occurrence; if any action was taken against the pursued vehicle; and if any laws were violated?

SHOULD THE REPORT ALSO LIST THE IDENTITIES OF ANY THIRD PARTY INJURED OR KILLED IN THE COLLISION?

Suggested amendment:

On page 8, line 30, strike out "minimally" and insert:
"at a minimum"

This change is necessary to ensure that the filed reports

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are not filled with minimalist answers.

6. Proposed legislative findings

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.

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

In 2001, NHTSA reported 365 fatalities nationwide

as a result of police vehicle pursuits. California had the highest number of fatalities with 51 deaths, accounting for nearly 15 percent of the nation's total. Of those 51 fatalities, 24 were innocent bystanders.

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

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.

It is the intention of the Article created by this bill to strictly regulate the manner in which a peace officer motor vehicle pursuit is initiated, undertaken and performed.

7. Case law interpreting statute hold that adoption of compliant policy is sufficient for immunity

In *Kishida v. State of California* (1991) 229 Cal.App.3d 329, the Fourth District Court of Appeal interpreted Vehicle Code Section 17004.7 and held that the statute does not require a public entity employing peace officers, in order to obtain the immunity accorded by statute, to prove that, during a particular chase, its policy on safe pursuits was actually practiced by the pursuing officer or officers. [Id., at p. 335.]

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In arriving at its position, the Kishida court sought to ascertain the legislative intent by looking at statements made by co-sponsor League of California Cities and at legislative materials prepared by the Assembly Office of Research. It also looked at the words of the statute and stated: "Nowhere does the statute require that the grant

of immunity be predicated on proof that the pursuing officer followed the standards and the guidelines, contained in the policy, during a given chase for which immunity is sought. Had the Legislature intended that the employer-entity prove in each instance that the employee-officer followed the guidelines in order to invoke the immunity, the statute would have said so." [Id., at p. 338.] (As noted above, SB 347 sought to abrogate the Kishida decision, but that measure was vetoed by then Governor Wilson. It is also not known whether the Kishida court considered the Senate Judiciary Committee legislative materials noted above.)

Subsequent decisions have followed Kishida, up to and including *Nguyen*, although not without reservation or a plea to the Legislature to reconsider the statute. As stated by the *Nguyen* court:

In so deciding this case, we wish to express our displeasure with the current version of section 17004.7. As noted, one reason for extending immunity to a public entity that adopts a written policy on vehicle pursuits is to advance a goal of public safety. But the law in its current state simply grants a 'get out of liability free card' to public entities that go through the formality of adopting such a policy.

There is no requirement that the public entity implement the policy through training or other means. (Citations omitted.) Unfortunately, the adoption of a policy which may never be implemented is cold comfort to innocent bystanders who get in the way of police pursuit . . . We urge the Legislature to revisit this statute and seriously consider the balance between public entity immunity and public safety. The balance appears to have shifted too far toward immunity and left public safety, as well as compensation for innocent victims,

SB 1866 (Aanestad)
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Support: Candi Fuller; Judith Fuller; Family of Kristie
Priano; PursuitWatch.org; Carol Burr; Arman Urun;
ACLU

Opposition: Association for Los Angeles Deputy Sheriffs;
Office of the Attorney General; Riverside
Sheriff's Association; County Sheriff's
Department of Contra Costa, Imperial, Sacramento,
Sierra, San Bernardino, and Yolo; California
Association of Joint Powers Authorities;
California State Sheriffs' Association; Los
Angeles County Sheriff's Department; Los Angeles
Police Protective League; California Peace
Officers' Association; California Police Chiefs'
Association; San Diego County Sheriff's
Department; Peace Officers Research Association
of California; Department of California Highway
Patrol; League of California Cities; County
Supervisors Association of California; Civil
Justice Association of California

HISTORY

Source: Senator Aanestad

Related Pending Legislation: SB 219 (Romero) - On Assembly
Inactive File

Prior Legislation: SB 347 (1992, Presley) - Vetoed
AB 1912 (Sterling), Chapter 1205, Stats. of
1987

Prior Vote: Senate Public Safety Committee: (Ayes 4 , Noes
1)

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