

AMENDED IN SENATE MAY 3, 2004

SENATE BILL

No. 1403

**Introduced by Senator ~~Dunn~~ Aanestad
(Coauthor: Senator Romero)**

February 18, 2004

~~An act to add Section 411.25 to the Code of Civil Procedure, relating to civil filings. 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 1403, as amended, ~~Dunn~~ Aanestad. ~~Civil actions: filings- 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 also afford civil immunity to any city, county, city and county, special district, or state agency on account of personal injury to, or death of, any suspect or accomplice, or damage to the suspect's property, resulting from the operation in the line of duty of an authorized emergency vehicle, as defined, by the public entity's peace officer in the immediate pursuit of an actual or suspected violator of the law.

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.

This bill would also afford civil immunity to a public employee on account of personal injury to, or death of, a suspect or accomplice or damage to the suspect's property, resulting from the operation in the line



of duty of an authorized emergency vehicle, as defined, when in the immediate pursuit of an actual or suspected violator of the law.

(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.

~~Existing law sets forth the procedures for filing complaints and other pleadings in civil actions, as specified.~~

~~This bill would provide that if the clerk of the court fails to accept for filing a complaint, other first paper, or any subsequent filing, the court may order the complaint, other first paper, or subsequent filing deemed to have been filed on the date on which it was first presented to the clerk's office, if the court determines that the clerk's failure to file the paper was based upon any minimal, technical, or, insubstantial defect.~~

~~This relief would be limited to documents submitted to the clerk for filing no more than 3 years previously. Under the bill, relief would include setting aside an order of dismissal, if the dismissal arose from a clerk's failure to file a complaint other first paper, or subsequent filing and the court determines that the clerk's failure to file the papers was based upon any minimal, technical, or insubstantial defect.~~

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



The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 411.25 is added to the Code of Civil~~
2 SECTION 1. Section 1666.1 is added to the Vehicle Code, to
3 read:

4 1666.1. The department shall include at least one question in
5 each test, as administered under Section 12804.9, of an applicant's
6 knowledge and understanding of this code to verify that the
7 applicant has an understanding of the risks and punishments
8 associated with eluding a pursuing peace officer's motor vehicle.

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

11
12 Article 2. Peace Officer Motor Vehicle Pursuit Guidelines and
13 Practices

14
15 2830. This article shall be known, and may be cited as,
16 Kristie's Law.

17 2831. The Legislature finds and declares all of the following:

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

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

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

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

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



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

4 2832. *For the purposes of this article and Section 17004.7, the*
5 *following terms are defined, as follows:*

6 (a) *“Boxing in” is a deliberate offensive tactic by two or more*
7 *pursuing motor vehicles to force a pursued vehicle in a specific*
8 *direction, or to force the pursued vehicle to stop or reduce speed*
9 *accomplished by the pursuing motor vehicles, while moving, the*
10 *maneuvering into a place in front of, behind, or beside the pursued*
11 *vehicle.*

12 (b) *“Collateral pursuit” is a deliberate offensive tactic by one*
13 *or more patrol motor vehicles driving on roads or streets that*
14 *parallel the road or street on which the pursued vehicle is*
15 *traveling.*

16 (c) *“Imminent peril” means ____.*

17 (d) *“Intercepting” is the activation of emergency lights or*
18 *siren, or both, at the discretion of the peace officer to notify a*
19 *violinator of a peace officer’s motor vehicle presence and to cause*
20 *the violinator to stop as quickly and safely as possible.*

21 (e) *“Overtaking” is the active attempt by a peace officer to*
22 *catch up to and stop a traffic violinator before there is recognition*
23 *by the violinator that the peace officer is attempting to stop the*
24 *violinator.*

25 (f) *“Paralleling” is a deliberative offensive tactic by one or*
26 *more patrol motor vehicles to drive alongside the pursued vehicle*
27 *that is in motion.*

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

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

38 (i) *“Ramming” is a deliberate act by the driver of a vehicle to*
39 *forcibly strike another vehicle in an attempt to stop or disable the*
40 *other vehicle.*



1 2833. *Initiation of a motor vehicle pursuit does not include*
2 *intercepting or overtaking. It begins when the violator recognizes*
3 *a peace officer is attempting to stop him or her.*

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

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

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

10 2833.1. *A peace officer shall not pursue a motor vehicle under*
11 *any of the following circumstances:*

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

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

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

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

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

21 2833.2. *All of the following guidelines apply to a pursuit of a*
22 *vehicle by a peace officer:*

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

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

28 (e) *A peace officer shall consider the need for enhanced safety*
29 *in residential or school areas.*

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

34 2833.3. *All of the following apply to a motor vehicle pursuit*
35 *incident:*

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

38 (b) *A peace officer operating a motorcycle who initiates a*
39 *pursuit shall withdraw when a peace officer's motor vehicle*
40 *described in subdivision (a) of Section 2800.1 has joined the*



1 *pursuit. A peace officer operating a motorcycle who is relieved*
2 *from the pursuit shall not proceed to the termination point of the*
3 *pursuit, unless directed to do so by a supervisor.*

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

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

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

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

17 *2833.4. During a motor vehicle pursuit, a peace officer shall*
18 *comply with all of the following procedures:*

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

22 *(1) Known violation or reason for the pursuit.*

23 *(2) Description of the pursued vehicle.*

24 *(3) Location and direction of travel of the pursued vehicle.*

25 *(4) Speed of the pursued vehicle.*

26 *(5) Number of known occupants in the pursued vehicle.*

27 *(6) Type of weapons in the pursued vehicle, if known.*

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

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

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

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



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

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

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

12 2834. A peace officer shall discontinue a motor vehicle
13 pursued under the following circumstances:

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

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

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

21 (3) The volume of vehicle and pedestrian traffic.

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

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

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

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

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

35 2835. (a) A law enforcement dispatcher shall immediately
36 notify a supervisor of a peace officer's motor vehicle pursuit. The
37 supervisor shall assume command of the pursuit, including, if
38 applicable, the termination of a pursuit.

39 (b) In allowing a pursuit to continue, a supervisor shall
40 carefully consider the seriousness of the offense committed or



1 *being committed, the danger presented to a peace officer and the*
2 *public, prevailing traffic conditions, pedestrian traffic, speed of*
3 *the vehicles involved, and other relevant factors.*

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

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

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

13 *(f) All reviews and analyses of pursuits shall be examined for*
14 *subject matter of benefit in training personnel for future*
15 *operations. A supervisor's review shall, at a minimum, answer the*
16 *following questions in narrative form:*

17 *(1) What was the reason for the pursuit?*

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

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

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

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

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

33 *(7) Were there any violations of the law?*

34 *(8) The identity of a third party injury or death in the motor*
35 *vehicle pursuit.*

36 *2836. All traffic safety programs that use state funds shall*
37 *include a section that examines the public safety risks of peace*
38 *officer motor vehicle pursuits, and the punishment that results from*
39 *evading a peace officer.*



1 2837. (a) A law enforcement agency shall adopt guidelines
2 and procedures regarding a motor vehicle pursuit by a peace
3 officer that, at a minimum, comply with this article.

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

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

9 17004. (a) A public employee is not liable for civil damages
10 on account of personal injury to or death of any person or damage
11 to property resulting from the operation, in the line of duty, of an
12 authorized emergency vehicle while responding to an emergency
13 call ~~or when in the immediate pursuit of an actual or suspected~~
14 ~~violation of the law~~, or when responding to, but not upon returning
15 from, a fire alarm or other emergency call.

16 (b) A public employee is not liable for civil damages on account
17 of personal injury to, or death of, a suspect or accomplice, or
18 damage to the suspect's property, resulting from the operation in
19 the line of duty of an authorized emergency vehicle when in the
20 immediate pursuit of an actual or suspected violator of the law.

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

23 17004.7. (a) The immunity provided by this section is in
24 addition to any other immunity provided by law. ~~The adoption of~~
25 ~~a policy by a public agency pursuant to this section is discretionary.~~

26 (b) ~~A public agency employing peace officers which adopts a~~
27 ~~written policy on vehicular pursuits complying with subdivision~~
28 ~~(e) peace officer is not liable for any personal injury to, or death~~
29 ~~of, a person, or damage to property caused by a collision that~~
30 ~~occurs as a result of a motor vehicle pursuit if that peace officer~~
31 ~~was acting within the scope of his or her employment, and the~~
32 ~~action taken was not performed in bad faith or in a grossly~~
33 ~~negligent manner. The failure to strictly adhere to all provisions of~~
34 ~~a written policy, adopted as provided in subdivision (c), is not, in~~
35 ~~and of itself, evidence of bad faith or gross negligence.~~

36 (c) A city, county, city and county, special district, or state
37 agency whose law enforcement agency adopts and implements a
38 written policy on motor vehicle pursuits in accordance with Article
39 2 (commencing with Section 2830) of Chapter 4 of Division 2 is
40 immune from liability for civil damages for personal injury, to or



1 death of ~~any~~, a person or damage to property resulting from the
2 collision of a vehicle being operated by an actual or suspected
3 violator of the law who is being, has been, or believes he or she is
4 being or has been, pursued by a peace officer employed by the
5 public entity in a motor vehicle *a collision if the pursuit was*
6 *initiated, engaged in, or terminated by a peace officer acting*
7 *within the scope of his or her employment and who adhered to the*
8 *guidelines established in Article 2 (commencing with Section*
9 *2830) of Chapter 4 of Division 2.*

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

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

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

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

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

24 (d) A determination of whether a *written policy adopted*
25 ~~pursuant to described under~~ subdivision (c) complies with ~~that~~
26 ~~subdivision is a question of law for the court~~ *the guidelines and*
27 *procedures established under Article 2 (commencing with Section*
28 *2830) of Chapter 4 of Division 2 is a question of law.*

29 (e) A city, county, city and county, special district, or state
30 agency is not liable for civil damages on account of personal injury
31 to, or death of, a suspect or accomplice or damage to the suspect's
32 property, resulting from the operation in the line of duty of an
33 authorized emergency vehicle by the public entity's peace officer
34 in the immediate pursuit of an actual or suspected violator of the
35 law.

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

38 SEC. 5. No reimbursement is required by this act pursuant to
39 Section 6 of Article XIII B of the California Constitution for
40 certain costs that may be incurred by a local agency or school



1 district because in that regard this act creates a new crime or
2 infraction, eliminates a crime or infraction, or changes the penalty
3 for a crime or infraction, within the meaning of Section 17556 of
4 the Government Code, or changes the definition of a crime within
5 the meaning of Section 6 of Article XIII B of the California
6 Constitution.

7 However, notwithstanding Section 17610 of the Government
8 Code, if the Commission on State Mandates determines that this
9 act contains other costs mandated by the state, reimbursement to
10 local agencies and school districts for those costs shall be made
11 pursuant to Part 7 (commencing with Section 17500) of Division
12 4 of Title 2 of the Government Code. If the statewide cost of the
13 claim for reimbursement does not exceed one million dollars
14 (\$1,000,000), reimbursement shall be made from the State
15 Mandates Claims Fund.

16 Procedure, to read:

17 411.25. — (a) If the clerk fails to accept for filing a complaint,
18 other first paper, or any subsequent filing in a civil action, the court
19 may order the complaint, other first paper, or subsequent filing
20 deemed to have been filed on the date on which it was first
21 presented to the clerk’s office, if the court determines that the
22 clerk’s failure to file the papers was based upon any minimal,
23 technical, or, insubstantial defect.

24 (b) Any claim for relief pursuant to this section shall be limited
25 to documents submitted to the clerk for filing no more than three
26 years previously. Relief granted pursuant to this section may
27 include, but is not limited to, setting aside an order of dismissal,
28 if the dismissal arose from a clerk’s failure to file a complaint,
29 other first paper, or subsequent filing and the court determines that
30 the clerk’s failure to file the papers was based upon any minimal,
31 technical, or insubstantial defect.

