

# Daily Journal

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## GUEST COLUMN

# Will California's pursuit immunity protect public safety or set dangerous precedents?

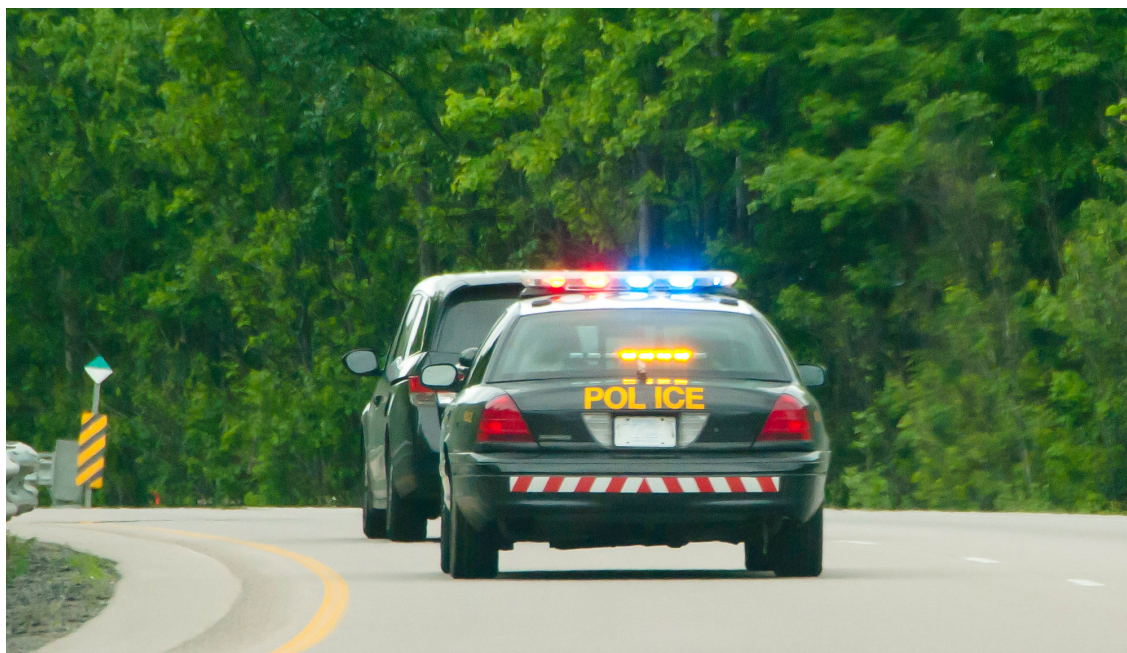
**California's Vehicle Code section 17004.7 provides public entities with immunity from liability in pursuit-related crashes if they adopt and regularly train officers on pursuit policies, but ongoing litigation, including the case *Gilliland v. City of Pleasanton*, could significantly impact the scope of that immunity.**

By Tyler Sherman

Tens of thousands of police pursuits occur every year in California according to data from the California Highway Patrol. Hundreds can result in serious crashes causing death or injury to officers, civilians or suspects. Seeing a need to stem the number of pursuit-related crashes, the Legislature adopted Vehicle Code section 17004.7 in 1987. (*Alcala v. City of Corcoran*, 147 Cal.App.4th 666, 672 (2007).)

Vehicle Code section 17001 makes public entities liable for employees' negligent driving: "A public entity is liable for death or injury to person or property proximately caused by a negligent or wrongful act or omission in the operation of any motor vehicle by an employee of the public entity acting within the scope of his employment."

In turn, though, section 17004.7 limits that liability by rewarding public entities that adopt and implement training and policies for the safe conduct of vehicle pursuits. A public entity that employs peace officers and which "promulgates a written policy on, and provides regular and periodic training on an annual basis for, vehicular pursuits" is immunized from liability for injury, death, or damage resulting from "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 in a motor vehicle by a peace officer employed by the public entity." (Veh. Code § 17004.7(b)(1).)



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Both the statute's legislative history and language reflect the Legislature's significant safety concerns. (*E.g.*, *Alcala*, 147 Cal.App.4th at 672-73.) Agencies' pursuit policies must define "pursuit" and encompass things like the circumstances warranting high-speed chases, traffic safety, driving tactics, and balancing the need to apprehend suspects against risks to the public. (Veh. Code § 17004.7(c).) Peace officers must certify in writing that they have read, received, and understood the pursuit policies. (Veh. Code § 17004.7(b)(2).)

Section 17004.7's scope has faced fairly substantial litigation and amendment. A previous version had no training requirement, which the 4th District Court of Appeal called

a "get out of liability free card" for agencies that merely adopted a pursuit policy. (*Nguyen v. City of Westminster*, 103 Cal.App.4th 1161, 1168 (2002).) Apparently, in reaction to that conclusion, the Legislature amended section 17004.7 to include training requirements ensuring that adoption of policies is not a perfunctory exercise. (*Ramirez v. City of Gardena*, 5 Cal.5th 995, 999-1000 (2018).)

Other litigation has focused on the scope of 17004.7's certification requirements and whether every peace officer that a public agency employs must, without fail, certify their receipt and training on pursuit policies. (*Ramirez*, 5 Cal.5th at 999-1001.) The Supreme Court of

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California, in *Ramirez v. City of Gardena*, firmly answered that question with “no.” The Court reasoned that the language of the statute says complete compliance with the certification requirement is not mandatory, and that ruling otherwise would lead to enormous administrative burdens and the “absurd circumstance” that even a single officer’s failure to complete a certification could strip immunity from agencies that employ thousands of officers. (*Id.*)

Section 17004.7 faces interpretation again in *Gilliland v. City of Pleasanton*, pending before the 1st District Court of Appeal. In very broad summary, the appellant was critically injured when another driver, whom a City of Pleasanton police officer suspected might be involved in a burglary, crashed into the appellant. That driver had sped from a parking lot and through a red light away from the officer, who followed the driver. In relevant part, appellant asserts that the City is liable for her injuries because the officer was not engaged in a policy-

defined “pursuit” with lights and sirens activated, and the driver could not have believed he was being pursued. The City asserts it is not liable even in the absence of a formal policy-defined pursuit since the driver believed he was being pursued. (*Note: Cole Huber LLP drafted an amicus brief that the League of California Cities and California State Association of Counties submitted in the case.*)

*Gilliland* could portend a significant limitation on the immunity that section 17004.7 affords. If the Court of Appeal rules that a pursuit can only occur as explicitly defined by agency policies, like one with lights and sirens activated, and that a driver cannot believe they are being followed in any other situation, the immunity under section 17004.7 will be confined to limited circumstances. That is, public agencies could be liable for pursuit-related death and injury irrespective of a fleeing suspect’s belief they are being pursued – such as when an officer follows a suspect *without* ac-

tivating lights – if the “pursuit” is anything but one defined by policy.

On the other hand, if the court holds that section 17004.7 extends to circumstances outside of narrowly defined pursuits when a suspect subjectively perceives they are being pursued, public agencies stand to enjoy broad immunity for injuries and death stemming from officers’ operation of a vehicle even when they are not involved in a quintessential hot-pursuit with lights and sirens.

Proponents of the latter interpretation say the Legislature meant to expand immunity, not contract it, in an effort to encourage public agencies to adopt and train their officers in pursuit of safety policies and minimize crashes in the first instance. Opponents say that inclusion of any “pursuit” in section 17004.7’s meaning, regardless of whether it complies with the safety considerations of a policy-limited pursuit, incentivizes unsafe, high-speed chases that section 17004.7 is meant to inhibit.

The Supreme Court expressed skepticism of a restrictive reading of section 17004.7 in *Ramirez* and criticized rendering portions of the statute superfluous. (*Ramirez*, 5 Cal. 5th at 999-1001.) It’s possible that the 1st District could take that skepticism to heart and hold that limiting section 17004.7 only to pursuits strictly complying with an agency’s policy would make the belief clause superfluous. But it’s also possible that, because section 17004.7 requires agencies to define “pursuit” and identify when a pursuit is authorized in order to receive immunity, the court will hold the Legislature meant only to expand section 17001’s immunity to chases defined by policy.

Whichever result the court reaches, it seems unlikely that the case will stop at the 1st District, and that the losing party will ask the Supreme Court to weigh in. No matter the outcome, public agencies employing peace officers who have adopted pursuit policies should be prepared to have assertions of immunity challenged.