

When A Pursuit Is Not A Pursuit ... Court Of Appeal Rules That Statutory Immunity  
Based On A Police Vehicular Pursuit Policy Does Not Apply When No Actual Pursuit  
Was Initiated By A Peace Officer

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As many are aware, public entities in California, such as cities, enjoy immunity under *Vehicle Code* § 17004.7 - which immunizes a public entity from liability for collisions caused by fleeing criminal suspects so long as the entity has implemented a written policy and has adhered to that policy.<sup>1</sup>

The statute was tested in the case of Melanie Gilliland v. City of Pleasanton (2025) Lexis 748 (“Gilliland case”). In the Gilliland case, Plaintiff Melanie Gilliland was severely injured after a car driven by 18-year-old Elijah Henry ran a red light and collided with her vehicle. At the time of the accident, Henry was being followed by Officer Matthew Harvey, a police officer employed by Defendant City of Pleasanton. Gilliland sued Henry and the City for negligence. After a bench trial on the City's liability only, the Court concluded the City was not liable under *Vehicle Code* § 17004.7.

Gilliland appealed. Gilliland claimed that the Trial Court applied an incorrect standard in finding that the collision occurred during a qualifying vehicular pursuit, under § 17004.7. The Court of Appeal agreed and reversed. The Court of Appeal noted the City was seeking statutory immunity based on its vehicular pursuit policy - even though it admitted that no active pursuit had been initiated at the time of the collision. In that regard, Henry testified that he saw a police car (driven by Officer Harvey) entering a parking lot where he and his friends had congregated. Henry testified that he decided to leave the parking lot in which he was parked because he thought Officer Harvey might be trying to talk to him, and he, “Just [did not] like being around police officers.” Henry specifically

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<sup>1</sup> The statute provides in part:

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

(b)(1) A public agency employing peace officers that adopts and promulgates a written policy on, and provides regular and periodic training on an annual basis for, vehicular pursuits complying with subdivisions (c) and (d) is immune from liability for civil damages for personal injury to or 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 being or has been, pursued in a motor vehicle by a peace officer employed by the public entity.

denied that he thought the officer was going to try to pull him over or arrest him. Based upon that, the Court of Appeal ruled that the Trial Court erred in disregarding evidence that Henry did not believe he was being pursued within the meaning of the City's pursuit policy, which required that the suspect be, "attempting to avoid arrest."

The Gilliland case is somewhat troubling in that it appears, based upon the Court of Appeal opinion, that the Court of Appeal took into account whether the driver, Henry, subjectively perceived he was being pursued. This is a concern in that, in many cases, an individual that is being pursued by a police officer may subjectively express that they did not perceive the police officer would actually be attempting to pursue them in order to shift liability for an accident to a public entity.

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