

California Pedestrian Deaths: Why “Jaywalking” Does Not End the Family’s Wrongful Death Case



Provided by:
Rich Harris, Attorney at Law
CalWrongfulDeathLawyer.com

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Richard C. Harris

California Wrongful Death Lawyer

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When someone is killed while crossing a California roadway, the family may hear a judgment almost immediately: “They were jaywalking.”

The word is often used as though it settles everything: as though the pedestrian caused the collision, the driver could do nothing, and the family has no right to ask further questions.

That is not California law.

The person who died cannot explain what happened. The surviving driver usually can. A police report may therefore begin with the driver’s version of events, while the pedestrian’s conduct is reconstructed from incomplete physical evidence. An insurance company may then use the crossing location to blame the one person who is no longer able to respond.

California law requires more. It recognizes unmarked crosswalks, preserves a driver’s duty of care even when a pedestrian is outside a crosswalk, and uses comparative fault rather than an all-or-nothing rule. California also changed enforcement of its so-called jaywalking laws in 2023.

The family deserves an investigation, not a label.

No Painted Lines Does Not Mean There Was No Crosswalk

One of the most persistent misconceptions in pedestrian death cases is that a crosswalk exists only when lines are painted on the pavement.

Under [Vehicle Code section 275](#), California recognizes an **unmarked crosswalk** where the boundary lines of sidewalks extend or connect across an intersection at which the roadways meet at approximately right angles. Unless local authorities have posted signs indicating no crossing, the absence of paint does not necessarily eliminate the crosswalk.

This matters because [Vehicle Code section 21950](#) requires a driver to yield to a pedestrian crossing within either a marked crosswalk or an unmarked crosswalk at an intersection. A driver approaching a pedestrian in either type of crosswalk must exercise all due care and must reduce speed or take any other action necessary to safeguard the pedestrian. (Veh. Code, § 21950, subds. (a), (c); CACI No. 710.)

When an insurer says, “There were no crosswalk lines,” that should begin the legal analysis, not end it. The actual intersection geometry, sidewalk boundaries, signs, curb ramps, and precise path of the pedestrian must be examined.

California Changed Its Jaywalking Enforcement Laws in 2023

Assembly Bill 2147, sometimes called the “Freedom to Walk Act,” became effective on January 1, 2023. It limits when police may stop a pedestrian for specified crossing violations. An officer generally may not make the stop unless a reasonably careful person would recognize an immediate danger of collision with a moving vehicle or human-powered device. ([Assem. Bill No. 2147 \(2021–2022 Reg. Sess.\)](#), Stats. 2022, ch. 957.)

The change did not erase every pedestrian traffic rule. A pedestrian outside a crosswalk must still yield to a vehicle that is so near as to constitute an immediate hazard. ([Veh. Code, § 21954, subd. \(a\)](#).)

Between adjacent intersections controlled by traffic signals or police officers, pedestrians must cross in a crosswalk ([Veh. Code, § 21955, subd. \(a\)](#)), and cities may adopt ordinances prohibiting crossing outside crosswalks ([Veh. Code, § 21961](#)). Both provisions now carry AB 2147’s immediate-danger limit on police stops, and both state that the limit does not relieve a driver of the duty of due care. (Veh. Code, §§ 21955, subd. (b), 21961.)

But the change is important. California law no longer treats every technical crossing violation as sufficient reason for a police stop. The Legislature now requires an immediate danger of a collision that a reasonably careful person would realize before such a stop may be made.

That enforcement standard does not itself determine civil liability after a death. It does, however, expose the weakness in treating the word “jaywalking” as a substitute for analyzing danger, visibility, timing, and avoidability.

The Driver’s Duty Does Not Disappear Outside a Crosswalk

Even when a pedestrian crosses outside a marked or unmarked crosswalk, California law expressly states that the driver is **not relieved of the duty to exercise due care for the pedestrian’s safety**. (Veh. Code, § 21954, subd. (b).)

California courts have rejected the idea that vehicles own the roadway whenever a pedestrian is outside a crosswalk. In *Servito v. Lynch & Sons Van & Storage Co.* (1961) 191 Cal.App.2d 799, 805–806, the Court of Appeal explained that section 21954 does not prohibit crossing outside a crosswalk and does not give vehicles a “monopoly” over streets and highways. The real issue is whether due care was used.

That means the investigation must focus on the driver as well as the pedestrian:

- Was the driver watching the road?
- Was the driver speeding for the conditions?
- Was the driver using a phone or in-vehicle screen?
- Was the driver impaired, fatigued, or distracted?
- Were the headlights on and functioning properly?
- How long was the pedestrian visible before impact?
- Did other drivers see and avoid the pedestrian?
- Did the driver brake, steer, sound the horn, or take any evasive action?
- Would an attentive driver have had enough time and distance to avoid the collision?

A driver’s right-of-way is not permission to strike a person who could have been seen and avoided through reasonable care.

The Family Does Not Have to Prove Their Loved One Was Perfect

Insurance companies often frame pedestrian cases as a false choice: either the pedestrian did everything perfectly, or the driver owes nothing.

California rejected that all-or-nothing approach decades ago.

Under California’s system of pure comparative fault, responsibility is allocated according to each person’s contribution to the collision. A pedestrian’s share of fault may reduce a recovery, but it does not automatically eliminate the family’s wrongful death claim. (*Li v. Yellow Cab Co.* (1975) 13 Cal.3d 804, 828–829.)

The practical point for heirs is simple: **Your loved one did not have to be faultless for someone else to be held responsible.**

If a pedestrian made an unsafe decision but a distracted or speeding driver still had a reasonable opportunity to avoid the death, both facts matter. The insurer cannot fairly investigate only the pedestrian’s mistake while ignoring the driver’s conduct.

A Freeway Case Is Difficult, but “They Were on the Freeway” Is Still Not a Complete Defense

Freeways require a separate analysis. Under [Vehicle Code section 21960](#), Caltrans or a local authority may prohibit or restrict pedestrian use of a freeway, expressway, or designated portion. The restriction becomes effective when appropriate notice signs are posted. A limited exception permits occupants of a disabled vehicle to walk to the nearest exit for assistance.

AB 2147 did not repeal those freeway rules. A person who intentionally enters posted freeway traffic lanes will face a substantial comparative-fault argument.

But that does not excuse a driver from every act of negligence. It does not excuse intoxication, excessive speed, texting, poor lookout, defective headlights, or a failure to react to a pedestrian who was visible long enough to be avoided. Nor does it answer how the person came to be in the lane. The pedestrian may have exited a disabled vehicle, been struck by another vehicle first, been thrown into the roadway, become disoriented, or been attempting to reach safety.

In a freeway death, investigators should determine:

- Where and why the pedestrian entered the freeway.
- Whether pedestrian-prohibition signs were posted at the relevant access point.
- Whether the pedestrian was moving, standing, or already down before impact.
- How far away the pedestrian was when the driver could first have seen them.
- Whether surrounding drivers reacted sooner than the striking driver.
- Whether the driver’s electronic data, speed, braking, or steering contradicts the driver’s account.
- Whether an earlier collision or dangerous roadway condition created the emergency.

Freeway cases are factually challenging. They are not resolved responsibly by one sentence in a collision report.

The Evidence Must Be Preserved Before It Disappears

In a fatal collision, objective evidence becomes the decedent’s voice. Much of that evidence can disappear within days or weeks.

A prompt investigation may need to preserve:

- Traffic-camera, business, residential, dashcam, and doorbell video.
- Vehicle event-data-recorder information.
- Cellphone and in-vehicle infotainment records.
- Photographs and measurements of lighting, sight distance, curves, grades, and obstructions.
- Headlight, brake, tire, and vehicle-condition evidence.

- Witness statements before memories change.
- Data showing the driver’s speed, braking, steering, and perception-response time.
- Prior collision records and complaints concerning the location.
- Roadway plans, crosswalk records, signal timing, and maintenance history.

Families should be cautious about accepting an insurer’s early conclusion before this evidence is obtained. They should also consider obtaining legal advice before giving a recorded statement or signing broad authorizations.

The Roadway May Have Helped Cause the Death

Sometimes a pedestrian is blamed for crossing at a place where the road itself left no reasonably safe or practical alternative.

A government entity may have placed a bus stop far from a protected crossing, allowed lighting or vegetation to conceal pedestrians, removed a crosswalk, created an unusually long distance between crossings, or failed to warn drivers and pedestrians about a dangerous configuration.

Depending on the evidence, a city, county, or the State of California may share responsibility. In *Tansavatdi v. City of Rancho Palos Verdes* (2023) 14 Cal.5th 639, 647, the California Supreme Court held that roadway design immunity does not categorically bar a claim that a public entity failed to warn of a dangerous condition resulting from an approved design, although the family must still prove the entity had notice of the danger, that the condition was a concealed trap, and that the missing warning was a substantial factor in causing the death. (*Id.* at pp. 657–661.) But where the entity’s approved design already included some warning, a later appellate decision in the same case holds that a claim that the warning was inadequate may still be barred.

The deadline for investigating government responsibility can be unforgiving. A claim relating to personal injury or death generally must be presented to the responsible public entity within six months after accrual. ([Gov. Code, § 911.2, subd. \(a\).](#)) A family that waits for the ordinary civil statute of limitations may lose the public-entity portion of the case.

A Wrongful Death Case Belongs to the Heirs

A pedestrian wrongful death case is not merely a dispute over vehicle speed and crossing lines. It is the family’s claim for the relationship that was taken from them.

[Code of Civil Procedure section 377.60](#) identifies [the people who may bring a California wrongful death action](#). Depending on the family structure, eligible claimants may include a surviving spouse or domestic partner, children, certain descendants, or persons entitled to inherit by intestate succession. Certain dependent parents, stepchildren, putative spouses, and minors may also qualify.

California wrongful death damages can include lost financial support, household services, gifts or benefits, and funeral and burial expenses. Just as importantly, the heirs may seek compensation for the loss of the decedent’s love, companionship, comfort, care, assistance, protection, affection, society, and moral support. A child may lose parental training and guidance; a spouse may lose an entire shared life. (Code Civ. Proc., § 377.61; CACI No. 3921; *Krouse v. Graham* (1977) 19 Cal.3d 59, 67–70.)

The defense may try to reduce that human loss to one accusation about where the decedent crossed. The law requires the entire story.

Do Not Let “Jaywalking” Become the Last Word About Your Loved One

Crossing location is evidence. It is not a verdict.

An unmarked crosswalk may carry the same legal protection as a painted one. A pedestrian outside a crosswalk may still be owed reasonable care. Comparative fault means a mistake by the pedestrian does not automatically erase the driver’s responsibility. Even on a freeway, the collision must be investigated to determine what the driver saw, what the driver did, and whether the death could have been prevented.

If someone you love was killed while crossing a California road, do not assume that a police report, traffic citation, or insurance adjuster has already decided the case. Preserve the evidence and have the facts independently evaluated.

Your loved one no longer has a voice in the investigation. The evidence, and the family, must speak for them.

Authorities

- Veh. Code, §§ 275, 21950, 21954, 21955, 21960, 21961.
- Gov. Code, § 911.2, subd. (a).
- Code Civ. Proc., §§ 377.60, 377.61.
- Assem. Bill No. 2147 (2021–2022 Reg. Sess.) (Stats. 2022, ch. 957).
- CACI Nos. 710, 3921.
- *Li v. Yellow Cab Co.* (1975) 13 Cal.3d 804.
- *Krouse v. Graham* (1977) 19 Cal.3d 59.
- *Tansavatdi v. City of Rancho Palos Verdes* (2023) 14 Cal.5th 639.
- *Servito v. Lynch & Sons Van & Storage Co.* (1961) 191 Cal.App.2d 799.



About the author

Richard C. Harris is the principal attorney of Rich Harris, A Law Corporation. His practice is dedicated to helping families pursue wrongful death claims against reckless drivers, careless companies and negligent government agencies in all 58 California counties.

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