



WARNER  
LAW OFFICES

phone (316) 269-2500  
toll free (800) 815-5297  
fax (316) 269-1430

310 W. Central Ave. Suite 110  
Wichita, KS 67202

[warnerlawoffices.com](http://warnerlawoffices.com)

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ATTORNEYS

Thomas M. Warner Jr.

Anne H. Pankratz

To: Rep. Richard Proehl, Chairman  
Rep. Jack Thimesch, Vice Chairman  
Rep. Henry Helgerson, Ranking Minority Member  
Members of the House Transportation Committee

From: Tom Warner, Warner Law Offices, Wichita

Date: March 12, 2018

RE: Hearing on S Sub. For SB 62 An act regulating traffic; exempting police vehicle drivers from audible or visual requirements; OPPOSED

Thank you for the opportunity to testify on S Sub for SB 62. I am an attorney in private practice in Wichita where I focus on personal injury litigation. I am here to testify on the unintended consequences of S Sub for SB 62. I respectfully urge the committee not to pass S Sub for SB 62.

S Sub for SB 62 gives police officers discretion to determine if a "law enforcement action" will be impeded by operating using lights and sirens. The bill permits officers to operate without lights and sirens if they decide they can do so with a reasonable degree of safety. The bill contains a list of circumstances in which a law enforcement action may be impeded by using lights and sirens. The bill also provides immunity from certain traffic laws while operating without lights and sirens.

S Sub for SB 62 may have been drafted with the intent of increasing the effectiveness of law enforcement; I support that intent, and I support the law enforcement officers in this state and in our communities that have devoted their careers to criminal justice. But the bill is overbroad. It unjustifiably cuts corners on safety. And it potentially leaves innocent bystanders without a legal remedy.

I believe S Sub for SB 62 is not in the interests of the public or the law enforcement community because it compromises safety. It should not be passed.

1. Lights and sirens are necessary safety equipment intended to protect pedestrians and motorists; their use should not be discretionary.

Under current law, sirens must be sounded when reasonably necessary to warn pedestrians and other drivers of the approach of the police vehicle, KSA 8-1738. Lights and sirens warn those in the path of the police vehicle to get out of the way. Failing to use the audible and visual signals while driving over the speed limit, driving against traffic, and driving inconsistently with "the rules of the road" is dangerous.

Collisions occur during police operations. Nationally, on average, 336 people are killed each year in police pursuits and that number has increased since 2013. The most tragic are innocent bystanders including pedestrians and people in vehicles who were simply in the wrong place at the wrong time.

In Wichita, a twelve-year-old girl was killed by a police officer traveling to a burglary at an automotive business without displaying lights and sirens. And a man suffered a traumatic brain injury and broken bones when his vehicle was struck by an officer on his way to a burglary. The officer's vehicle proceeded through an intersection without displaying lights and sirens, striking the other vehicle.

2. The immediate danger to pedestrians and motorists of law enforcement officers operating without lights and sirens outweighs any possible benefit of S Sub for SB 62.

Under S Sub for SB 62, the circumstances forming the basis of an officer's decision not to use lights and sirens during a "law enforcement action" include the possibility of destruction of evidence, monitoring for indications of a crime or a need of law enforcement services, surveillance, and obtaining evidence of speeding violations. In addition to being vague the situations can't be characterized as emergencies or serious crimes that justify risking lives of officers or members of the public.

S Sub for SB 62 is not consistent with police policies. A 2015 model policy written by the International Association of Chiefs of Police regarding police pursuits sets specific standards for when initiation of a pursuit is appropriate. It states that "in general, pursuits for minor violations are discouraged." The policy further requires the use of sirens, lights, and cameras at all times during a pursuit.

3. The authority granted officers is broad and the circumstances in which they may exercise it are vague.

Under S Sub for SB 62, during a "law enforcement action," officers determine (1) whether the action is impeded by use of lights and sirens; (2) whether operation without lights and sirens can be done with a reasonable degree of safety. "Law enforcement action" is broad and undefined; it could include anything from policing traffic infractions to violent felonies, and there is no minimum threshold to limit the bill's scope.

4. Kansas already has laws to address use of lights and sirens; S Sub for SB 62 is confusing.

KSA 8-1506 has been the law since the mid-70s and it is like laws in many other states. Under KSA 8-1506, officers must comply with traffic laws except when going to an emergency call or pursuing an actual or suspected violator of the law. Then they must display their lights and sirens, and they are exempt from certain traffic laws such as proceeding through stop signs and lights, exceeding the speed limit, and driving against traffic.

Two statutes with separate requirements will result in confusion both for the public and for law enforcement. The greatest concern is that S Sub for SB 62 contains confusing language regarding an officer's legal duty.

Under KSA 8-1506(d), police officers have a duty to drive with due regard for the safety of all persons, and officers are not protected from the consequences of reckless disregard for the safety of others. S Sub for SB 62 does not contain a similar duty; at Section 1(d), "The provisions of this section shall not relieve the driver of an authorized emergency vehicle from the consequences of reckless disregard for the safety of others."



The Kansas Supreme Court has ruled that police officers have a duty in KSA 8-1506(d) for purposes of the Kansas Tort Claims Act. Since KSA 8-1506(d) and Section 1(d) of S Sub for SB 62 are not consistent, it is uncertain that the Court would find that both statutes contain the same duty.

If there is not a clear legal duty in S Sub for SB 62, innocent bystanders that are injured or killed during a law enforcement action may have no ability to recover for their losses. No remedy for truly innocent citizens who were at the wrong place at the wrong time—like those in Wichita—is completely unfair.

5. A case dealing with KSA 8-1506 is pending before the Supreme Court and the Legislature should not act until after the Supreme Court has ruled.

The Kansas Court of Appeals decided *Montgomery v Saleh* in 2018 and the decision has been appealed to the Supreme Court. The Court of Appeals held that a law enforcement officer's decision to pursue a fleeing suspect does not fall within the exceptions to liability contained in the Kansas Tort Claims Act.

The Legislature should wait until the Supreme Court has reviewed and decided the appeal in *Montgomery* before enacting new law dealing with police discretion.

Thank you for the opportunity to present you with my testimony. I respectfully request that the Committee take no action on S Sub for SB 62.