

KANSAS TRIAL LAWYERS ASSOCIATION



To: Representative Richard Proehl, Chairman
Members of the House Transportation Committee

From: Callie Jill Denton, Executive Director

Date: March 12, 2019

Re: Senate Substitute for SB 62 An act regulating traffic; exempting police vehicle drivers from lights and sirens (OPPOSED)

Thank you for the opportunity to testify in opposition to S Sub for SB 62. KTLA is a professional organization of Kansas attorneys that represent clients injured or killed due to the dangerous conduct and decisions of others.

Law enforcement officers play a vital role in the justice system. Following the Senate hearing, KTLA met with the proponents to discuss S Sub for SB 62 as introduced and to seek common ground. We had a productive and informative discussion; however, we did not reach agreement on language that met the proponents' objectives and addressed KTLA's concerns. KTLA remains willing to work toward a resolution that doesn't compromise safety or obligations to innocent bystanders.

We further believe that legislative action is premature until the Kansas Supreme Court rules in *Montgomery v Saleh*, a case that deals with law enforcement officer discretion.

S Sub for SB 62 does not address the concerns KTLA raised in the Senate. It is much broader than the proponents' stated objectives, which are to update current law to allow officers to park and stand to monitor traffic without displaying lights and sirens and to go through toll roads without picking up and returning toll cards. It has many unintended consequences. It is not ready to advance.

S. Sub for SB 62 grants greater authority to officers than under current law. Under the bill, officers may decide whether to display lights and sirens when enforcing traffic laws and performing other "law enforcement actions."

Under S Sub for SB 62, when an officer has "...a reason to believe operation under KSA 8-1506 may impede a law enforcement action...", the officer is not required to use lights or sirens, as long as the operation can be done "...with a reasonable degree of safety."

First, the language of the bill is unclear. Section 1(a) of S Sub for SB 62 refers to the entirety of KSA 8-1506: officers are not required to use lights and sirens when he or she "...has reason to

believe operation under KSA 8-1506 may impede a law enforcement action....” KSA 8-1506 contains subsection (c) relating to mandatory display of lights and sirens during emergency calls and pursuits. But KSA 8-1506 also includes subsection (d), the duty and negligence standard, which means S Sub for SB 62 can be interpreted to mean that when an officer has reason to believe that *driving with due regard for the safety of all persons* may impede a law enforcement action, use of lights and sirens is not required.

The term “a reason to believe” in Section 1(a) is ambiguous, and Sections 1(a) (1-5) do not contain objective standards or criteria for determining when use of lights and sirens may impede a law enforcement action. Additionally, Section (1)(a) requires only that the use of lights and sirens *may impede* a law enforcement action, not that it *is or will be* impeded.

S. Sub for SB 62 is not consistent with the International Association of Chiefs of Police Model Policy, which specifies that pursuits for minor violations are discouraged and should be reserved for situations in which there is a danger to human life or the potential to cause serious injury. The policy requires that if a suspect can be identified and apprehended at another time, a pursuit should not be undertaken unless a greater hazard would result. And always during a pursuit, lights, sirens and cameras must be activated.

Kansas has clear laws that strike a balance between effective law enforcement actions and safety. Current laws appropriately grant exemptions from traffic laws for the purpose of conducting emergency calls and police pursuits. However, lights and sirens are required to be displayed, and drivers of authorized emergency vehicles have a specific duty to drive with due regard for the safety of all persons. S Sub for SB 62 does not contain a similar duty of care.

Current law serves law enforcement and the public well. S Sub for SB 62 is a step in the wrong direction because it grants officers the authority to operate outside the normal traffic laws without using lights and sirens. Serious injuries and deaths occur when officers have failed to use lights and sirens and exceed the speed limit or proceed against a light.

KTLA members have represented Kansans that have been injured or killed as innocent bystanders. When police pursue offenders at high rates of speed, bystanders unrelated to the chase are often the victims. S Sub for SB 62 limits the maximum speed limits of law enforcement vehicles in some (but not all) enforcement actions. But it eliminates the requirements to use the safety equipment that *warns* bystanders to watch out and get out of the way—lights and sirens. Lights and sirens are important to keeping bystanders safe.

As a matter of policy, KTLA requests that the committee reject any proposal that undermines the remedies of innocent bystanders. Innocent bystanders are the most deserving of justice and the protection of the law; they are simply in the wrong place at the wrong time. S Sub for SB 62 may make it even more difficult for them to recover by eliminating the officer’s duty of care, and their remedies under the Kansas Tort Claims Act are already extremely limited.

In addition, KTLA respectfully requests the committee to reject any proposal that erodes or eliminates the duties of safety that are contained in the current law. S Sub for SB 62 does not contain the same requirement to drive with due regard for the safety of all persons found in KSA

8-1506. There is simply no sound public policy justification for law enforcement or any driver to be granted permission to operate a vehicle without considering the safety of others, or to be exempted from a duty to drive safely while on Kansas roads.

Proponents testified in the Senate Transportation Committee that current law does not allow officers to park and stand to monitor traffic without displaying lights and sirens, and the current law requires them to collect and return tickets when passing through toll roads. We believe it is possible to update current law with an essentially technical amendment to address their concerns. KTLA does not object to a narrow, technical update of the statute.

On behalf of the members of the Kansas Trial Lawyers Association, thank you for the opportunity to testify on S Sub for SB 62. I respectfully request your opposition to S Sub for SB 62.



A high-speed police chase near the Plaza and Brookside? KCK police need to rethink policy

BY THE KANSAS CITY STAR EDITORIAL BOARD

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Here are two phrases that too often go together: “police chase” ending in a “violent crash.”

That’s exactly what occurred recently in Kansas City, though the chase apparently didn’t involve the Kansas City Police Department. What it did involve was a wildly dangerous high-speed chase through Country Club Plaza and Brookside neighborhoods instigated by Kansas City, Kansas, police that left an innocent bystander in critical condition.

The late-afternoon chase lasted 13 minutes and reached nearly 90 mph along Interstate 670 and 80 mph south of the Plaza.

As the caravan passed the east side of the Plaza, speeds were reported at 45 mph. Heading south on Main Street, speedometers hit 60. At one point, the driver of the station wagon being chased drove over a sidewalk where Main Street feeds into southbound Brookside Boulevard.

Things picked up again from there.

“Passing 61st Street,” a pursuing officer advised, according to a Broadcastify.com recording. “Traffic is light. Speeds are 80.”

The victims, an elderly couple sitting inside their SUV at 63rd Street and Brookside Boulevard, were in the wrong place at the wrong time. The driver of the station ran a red light and smashed into them. You can’t help but wonder if the couple even saw it coming.

Both were hospitalized, with one in critical condition.

No question that serious crimes potentially sparked this incident. Someone notified officers of a rolling gun battle near 24th Street and Parallel Parkway in Kansas City, Kan. When officers tried to stop the station wagon, the driver fled. A short time later, the station wagon sped toward an officer standing outside his patrol car.

The driver also intentionally struck a police car, police said.

Kansas City, Kan., department policy permits chases for a felony, misdemeanor or traffic violation, and they’re allowed to spill over into neighboring cities. Asked why the chase continued through heavily populated neighborhoods, police spokesman Thomas Tomasic said, “Because it involved a violent felony.”

He said the chase was under review.

Still, this strikes us as overkill, the equivalent of taking out a bee with a bazooka. How many people must suffer to end the threat? Continuing a high-speed chase that places so many innocent lives in peril is simply unacceptable.

Departments in these parts — and across the country — have wrestled with chase policies for decades for precisely the reason that innocent life so often is jeopardized. Over the years, the trend has been, rightly and logically, to restrict chases.

“Police pursuits are always a dangerous situation, no matter where you are,” Liberty Police Lt. Mark Misenhelter told The Star in 1999 when the newspaper reviewed area policies.

The number of deaths from chases averages 355 a year, according to recent Bureau of Justice Statistics figures. Support groups have popped up to aid families who have lost loved ones to chases.

Chuck Wexler, executive director of the Police Executive Research Forum, says the number of chases is dropping as chiefs weigh acceptable risk.

“What departments have learned is that this is about the sanctity of human life,” he said. “You can’t get a life back.”

Kansas City, Kan., police should once again review the department’s policies with an eye toward ensuring that chases occur only in the most dire of circumstances. And chases on busy city streets during daytime hours should be rare to non-existent.