

HUTTON & HUTTON

Law Firm L.L.C.

Mark B. Hutton †◇
Andrew W. Hutton
Anne M. Hull
J. Darin Hayes #
Blake A. Shuart ★
Daniel K. Back #
Nola Tedesco Foulston
Andrew L. Foulston

8100 E. 22nd St. N., Building 1200
Wichita, Kansas 67226-2312
Mail: P.O. Box 638, Wichita, Kansas 67201-0638
Telephone: 316.688.1166
Facsimile: 316.686.1077
E-Mail: Trial.Lawyers@huttonlaw.com
Web: www.huttonlaw.com

†Also Admitted in Oklahoma,
Missouri, Texas, New York, Illinois
Virginia and the District of Columbia
◇Certified Nat'l Bd. Trial Advocacy
★Also Admitted in Illinois,
Florida and New Jersey
#Also Admitted in Missouri
Office Tax I.D. # 48-0966751

TO: Senator Mike Petersen, Chairperson
Senator Dan Goddard, Vice-Chairperson
Senator Pat Pettey, Ranking Minority Member
Members of the Senate Transportation Committee

FROM: Blake A. Shuart, Hutton & Hutton Law Firm, L.L.C., Wichita
Individually, for the Firm & on behalf of the
Kansas Trial Lawyers Association (KTLA)

DATE: February 6, 2019

RE: SB 62: An act regulating traffic; concerning authorized emergency vehicles;
relating to police vehicles; exempting police vehicle drivers engaged in certain
actions from audible or visual signal requirements (OPPOSE)

My name is Blake Shuart, and I am an attorney at Hutton & Hutton Law Firm, L.L.C., based in Wichita. We represent Kansans and their families in claims arising out of injury or death, including cases involving motor vehicle collisions or pedestrian injuries arising from police pursuits. I have personally represented both non-involved third parties and law enforcement officers who were injured in the course of a police pursuit, and I have represented law enforcement officers and other first responders in several other types of injury claims as well. I have also litigated these cases in Kansas courts, and am familiar with both the legal issues involved and the impact of departmental policies in the Court's disposition of these issues. I strongly believe that our law enforcement officers have tremendously difficult jobs, and I support their need for discretion in making split-second decisions with life or death implications. But, for the reasons stated briefly below (to be supplemented with oral testimony), I must stand alongside my colleagues at my firm and the Kansas Trial Lawyers Association in voicing my opposition to this bill.

While I understand the basic premise behind the bill – that law enforcement officers should be exempted from having to use audible or visual signals (“lights or sirens”) when doing so would undermine important law enforcement objectives – I believe the changes proposed will cause more problems than they will fix. A few initial reasons come to mind:

1. The bill's language goes too far in the discretion it provides to officers. "Such actions include, but are not limited to," as this language appears in the bill, has the effect of allowing an officer to formulate any "law enforcement action reasonably enhanced by such vehicle's operation" he or she chooses, including the ability to do so in hindsight. Additionally, the only criterion under subsection (a)(1) is that an expedited arrival is required and the use of audible or visual signals "might" lead to one of the three unintended effects listed (which, as addressed above, are merely examples – the officer is provided to discretion to formulate his own). "Might" is a low bar for disregarding such an important requirement.

2. While subsection (a) has the intended purpose of excusing an officer from "lights and sirens" requirements in some situations, subsection (b) goes on to provide an even longer list of important traffic rules that the officer is likewise allowed to violate, including the right to proceed through red lights or stop signs, the right to speed, and the right to disregard other traffic regulations.

3. The intent behind subsection (c) is unclear, but its use of the term "consequences" reflects an intent to impact civil tort claims in some fashion. The legal standards in these cases do not need to be complicated any further by language contained in ancillary statutes.

By way of example, if this bill is passed, a law enforcement officer who believes that expedited arrival to a crime scene is required and that the use of lights and sirens *might* cause the destruction of evidence will be permitted to race to the scene at excessive speeds while running red lights without his lights or sirens on. The risk to the public in this situation would, of course, exponentially outweigh the benefit of possibly avoiding the destruction of evidence.

With the work of law enforcement officers becoming more dangerous than ever before, Kansas does not need a new law to foster unpredictability for citizens and provide outsized discretion to officers in situations that are usually the subject of carefully-crafted departmental policies. These policies are informed by our laws, and our laws must be clear and comprehensive. The proposed bill will muddy the waters in a manner that places the public at risk, and I respectfully request that this Committee not pass SB 62.