

KANSAS TRIAL LAWYERS ASSOCIATION



To: Senator Mike Petersen, Chairman
Members of the Senate Transportation Committee

From: Callie Jill Denton, Executive Director

Date: February 7, 2019

Re: SB 62 An act regulating traffic; exempting police vehicle drivers from lights and sirens --
OPPOSE

The Kansas Trial Lawyers Association is a non-profit, professional organization of trial lawyers with members across the state. I am here to testify on behalf of KTLA in opposition to SB 62.

SB 62 grants exceptions to traffic laws for law enforcement officers. Under SB 62 officers are permitted to park or stand, exceed the maximum speed limit, proceed past stop lights or red lights, disregard movement of traffic, and proceed through toll booths when actively engaged in a law enforcement action. Under SB 62, lights or sirens would no longer be required to be displayed if the officer determines the law enforcement action would be “reasonably enhanced” by refraining from their use.

Law enforcement officers play a vital and irreplaceable role in the justice system. Law enforcement officers assure that “no one is above the law.” Yet SB 62 creates new, overly broad privileges that conflict with this principle. The exceptions and permissive rules in SB 62 are not safe and go beyond the necessities of enforcing the law.

Kansas has clear laws that strike a good balance between effective law enforcement actions and safety. Current laws appropriately grant exemptions from traffic laws so for the purpose of conducting emergency calls and police pursuits. KSA 8-1506 grants officers the same privileges and exemptions from traffic laws provided in SB 62. However, lights and sirens are required to be displayed, and drivers of authorized emergency vehicles have a special duty to drive with due regard for the safety of all persons.

In addition, KSA 8-1738(d) requires that authorized emergency vehicles be equipped with sirens. Drivers of authorized emergency vehicles are required to sound the siren in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law when reasonably necessary to warn pedestrians and other drivers.

The current “rules of the road” serve law enforcement and the public, well. But the permissive nature of SB 62 is a step in the wrong direction.

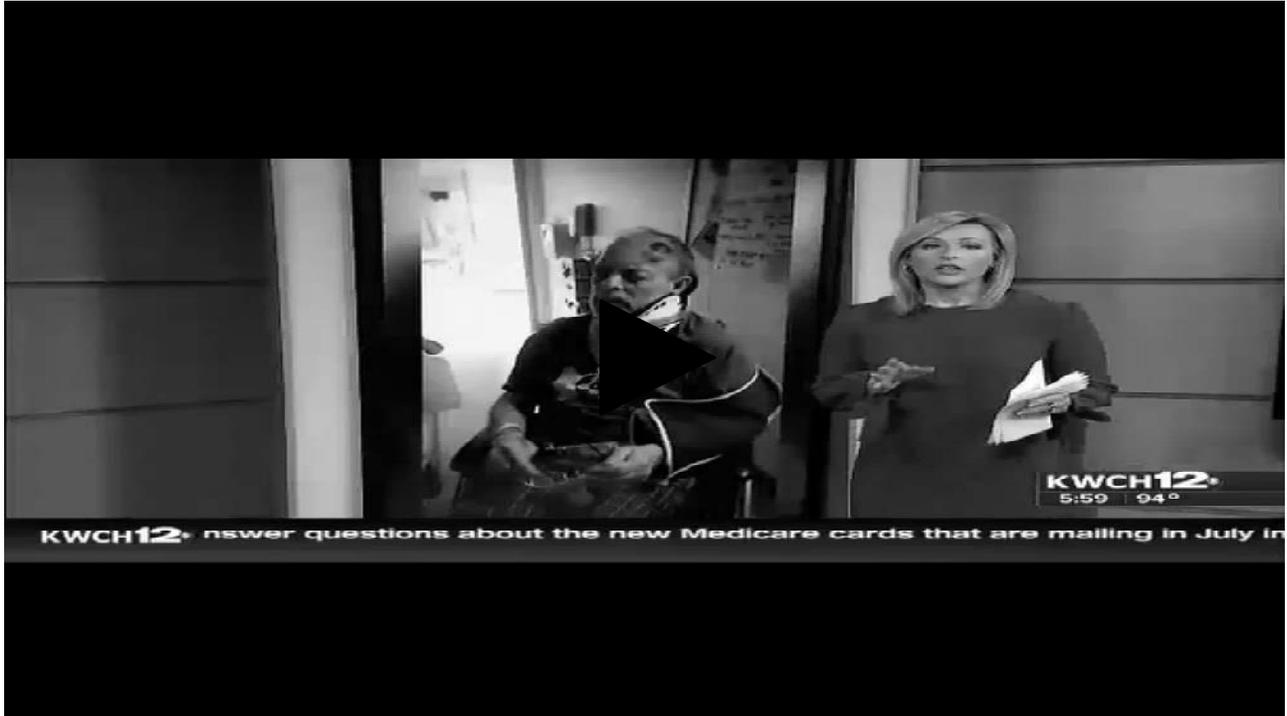
Serious injuries and deaths occur when officers have failed to use lights and sirens and exceed the speed limit or proceed against a light, which is exactly what SB 62 would legalize. KTLA members have represented Kansans that have been injured or killed in these tragic situations (see attachments).

As a matter of policy, the committee should reject any proposal that erodes or eliminates the duties of safety that are already contained in the current traffic laws. There is simply no 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 the requirements of safe driving while on Kansas roads.

In addition, the committee should reject any proposal that undermines the remedies of innocent bystanders. Kansans injured in crashes with authorized law enforcement vehicles are often totally innocent and completely unconnected to the law enforcement action: they are simply in the wrong place at the wrong time. Innocent bystanders are the most deserving of justice and the protection of the law. But their remedies under the Kansas Tort Claims Act are already extremely limited. SB 62 may make it even more difficult for them to recover.

On behalf of the members of the Kansas Trial Lawyers Association, I respectfully request your opposition to SB 62, and that the Committee take no action on SB 62.

Man injured in crash caused by WPD officer continues recovery



Posted: Tue 4:56 PM, Jul 24, 2018 | Updated: Tue 10:38 PM, Jul 24, 2018

WICHITA, Kan. (KWCH) We're learning more about the man whose truck was hit by a Wichita Police vehicle traveling nearly 80 mph in March.



Officer Samuel Dugo is charged with felony aggravated battery for the crash and has been on unpaid leave from the department since June. The man whose vehicle he struck, Don Clark is still recovering from serious injuries.

Clark's attorney, Dustin DeVaughn says Clark suffered a traumatic brain injury as well as broken bones. He's currently going through occupational therapy and speech therapy.

Officer Dugo was responding to a burglary in progress when investigators say he went through the intersection of Broadway and Pine and hit Clark's truck. Dugo was not using his lights and sirens which is against department policy.

"He failed to use reasonable care. He violated set police department protocol, he violated state statute and as a result somebody was very seriously injured," said DeVaughn.

DeVaughn says the crash is not a reflection on the department, but rather the mistake of one officer. Attorney Jess Hoeme is representing Officer Dugo. He sent us the following statement:

"We believe Mr. Dugo is innocent of the allegations made by the District Attorney's Office and we look forward to proving his innocence in court. Mr. Dugo, in his official capacity as a Wichita Police Officer, was responding to the scene of burglary in progress in downtown Wichita. His response was consistent with police practice. The business owners in downtown Wichita are fed up with thieves and vandals and the Wichita Police Department and Officer Dugo were attempting to catch them in the process. As Officer Dugo was responding to the scene of the burglary in progress when a motorist proceeded into the intersection and an accident happened. When responding to the scene of a crime accidents are an officer's worst fear, but unfortunately that's exactly what this was, an accident. Mr. Dugo was not acting recklessly as the District Attorney alleges, but rather, he was doing his job with the purpose and intent to protect a Wichita business from burglars. We look forward to presenting our case in court. "

Officer Dugo's preliminary hearing is scheduled for Aug. 2.

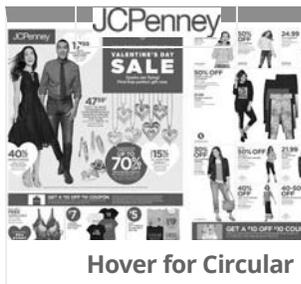
The Wichita Police Department says an officer who's been with the department since 2016 and has been on unpaid leave since June, faces a charge of felony aggravated battery in connection with a March 16 two-vehicle wreck while responding to a 911 call.

At about 10:38 p.m. March 16, Wichita police say a citizen called 911 to report a burglary in progress. Officer Samuel Dugo was among the responding officers. The WPD says as Dugo approached the intersection of Pine and Broadway in downtown Wichita, the driver of a Ford Ranger pickup pulled out from the stop sign and attempted to cross the intersection.

The WPD Chevy Tahoe driven by Dugo collided with the pickup in the intersection, police say. The pickup's driver was thrown from the truck. That man suffered severe injuries, police say.

The WPD says it requested the Kansas Highway Patrol investigate the crash. That investigation determined Dugo was driving at 79 mph and did not use his emergency lights or sirens. The posted speed limit where the crash happened was 30 mph.

The WPD says Sedgwick County District Attorney Marc Bennett received the case on June 19. Dugo was charged with one count of aggravated battery (recklessly causing great bodily harm).



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NEWS

Parents sue over Wichita police car hitting, killing girl

BY TIM POTTER

DECEMBER 27, 2012 03:00 PM, UPDATED DECEMBER 27, 2012 03:01 PM



Parents of a 12-year-old Wichita girl who died in February after a police patrol car struck her while responding to a burglary have filed a wrongful death lawsuit against the officer and the city.

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The lawsuit, filed earlier this month in Sedgwick County District Court, says Wichita police Officer Atlee Vogt was driving north in the 1600 block of South Broadway around 6:55 p.m. on Feb. 12, and that according to Kansas Highway Patrol calculations, Vogt “was negligently traveling in excess of the posted speed and was traveling between 39 and 51 miles per hour with no emergency lights or sirens activated.” The speed limit was 30 mph.

The lawsuit claims “Vogt was further negligent for ... failing to devote his full time and attention; failing to travel a speed commensurate with his visibility; failing to keep a proper look out ... and failing to adhere” to department policies on operating a vehicle.

In an e-mail Thursday, Dustin DeVaughn, the attorney representing the parents in the lawsuit, said: “Kansas law requires the police to abide by the same traffic rules and regulations as everyone else — unless the officer is responding to an emergency call with both lights and sirens activated. In this tragic situation, the police officer was traveling at a high rate of speed, at night, in a 30 mph zone without his emergency lights or sirens activated. Had the officer had his lights and sirens activated or had the officer been traveling the posted speed limit, twelve-year-old Suhani Bhakta would still be with us.”



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Shortly after the accident, Wichita police said the officer was on his way to a burglary occurring at an automotive business and that he was following policy in such situations by driving without emergency lights or sirens. Police said investigators were looking at whether an SUV traveling on Broadway obstructed the officer's view and said the officer braked hard before hitting the girl.

On Thursday, a spokesman for the Wichita Police Department, Capt. John Speer, said he couldn't comment on the lawsuit because he hadn't seen it. Sharon Dickgrafe, chief deputy city attorney, said in an e-mail that the city's legal office had yet to receive a formal summons about the lawsuit and that she couldn't comment on pending litigation.

The lawsuit, which says the city is responsible for Vogt's actions, is seeking an amount in excess of \$75,000 in addition to costs and "any further relief" deemed fair.

The accident occurred on a Sunday night. The patrol car hit the girl as she darted into Broadway, on her way to the Dillons grocery store across from the Frontier Motel, her family's business and her home. She lived with her younger sister, her parents and paternal grandparents. The motel sits in a neighborhood of Indian-owned businesses along Broadway from Kellogg to Pawnee. India is her family's native country.

Suhani was a seventh-grader at Mayberry Middle School.

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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.