

City Hall
8500 Santa Fe Drive
Overland Park, Kansas 66212
www.opkansas.org

Date: January 29, 2019
To: Chairman Patton and the House Committee on Judiciary
From: City of Overland Park
Re: Written Testimony of Michael Koss in Support of HB 2065

Thank you for accepting this testimony on behalf of the City of Overland Park. The City supports HB 2065 because it will allow police officers to pursue fleeing criminals without fear that they or their employers will be responsible for the consequences of a criminal's decision to flee arrest.

The discretionary function exception in the Kansas Tort Claims Act ("KTCA") is intended to protect government entities and their employees from judicial "second-guessing" of reasonable policy decisions. A police officer's decision to pursue and their manner of apprehending fleeing criminals are exactly the kind of actions this exception was intended to protect. For example, if a murder suspect is escaping arrest by car, a police officer should be able to do what's necessary to pursue and apprehend that individual as quickly as possible. The ruling in *Montgomery v. Saleh*, which says the duty created by K.S.A. 8-1506(d) precludes immunity under the Kansas Tort Claims Act's ("KTCA") discretionary function exception, could prevent efforts to apprehend dangerous criminals because of fear that the police officer or their department will be liable for damages resulting from the pursuit.

Thank you for allowing the City to submit testimony on this important issue. HB 2065 will restore the application of the discretionary function exception to police pursuits; remove police officers' fear of judicial second-guessing when they decide whether and how to pursue a fleeing criminal; and encourage officers to act as needed to protect the public. For these reasons, the City respectfully requests that the Committee advance HB 2065 to the full House for approval.