

To: House Judiciary Committee

From: Amanda L. Stanley, General Counsel

Date: January 29, 2019

RE: Support for HB 2065

I want to thank Chairman Patton and the Committee members for allowing the League of Kansas Municipalities the opportunity to provide testimony in support of HB 2065.

The League and its members believe it is the duty of government to reduce crime and provide for the health and safety of the public. A tactic occasionally required is police pursuits.

The public duty doctrine expresses the general rule that absent a special duty, law enforcement duties are owed to the public at large and not to any specific person. Relying on Kansas Supreme Court precedent, in *Montgomery v. Saleh*, 55 Kan. App. 2d 429 (2018), the Court of Appeals found the phrase in K.S.A. 8-1506(d) "duty to drive with due regard for the safety of all persons" sets forth a specific duty owed to "all persons" and not a general duty to preserve the peace. The Court found that this plain language creates a duty under which law enforcement can be held liable under a negligence suit for police pursuits and has been construed to make the government liable even when the law enforcement officer is not involved in a collision. Furthermore, the Court found that the existence of this legal duty prevents the government from asserting sovereign immunity under the discretionary function exception of the Kansas Torts Claims Act.

The League is not appearing before the committee today because of the specific facts of *Montgomery*. Rather, *Montgomery* sparked a discussion among our members about whether they agreed with the underlying public policy that police pursuits should not be considered under the discretionary exception to the Kansas Torts Claims Act because of this additional special duty. Under the Torts Claims Act, liability is the rule unless there is a specific exception granting sovereign immunity. One of those exceptions is provided for discretionary functions of government. The consensus was, that as a matter of overarching public policy, police pursuits are a necessary function of government. A law enforcement officers' pursuit of fleeing offenders is inherent in the officers' duty to protect the public and often involves split second decisions that are easy to second guess in retrospect. Additionally, we heard from one member whose internal data showed that when its department instituted a policy to not pursue, crime went up. Our members

felt that when faced with negligence suits arising out of police pursuits, they should have the opportunity to argue why the particular pursuit should qualify for sovereign immunity under the discretionary exception. Whether an officer decides to pursue involves policy formulation on behalf of the governing body and the department and is a fact specific determination based on what is occurring in their individual communities; however, because Kansas courts have found a special duty to a specific person in K.S.A. 8-1506 precludes the assertion of immunity under the discretionary function exception, our members cannot successfully make this argument. HB 2065 asks the legislature to remove this specific duty found by the Court and leave in its place a generalized duty that officers need to avoid reckless conduct and be conscious of the safety of the public in their decisions on whether to pursue a suspect. The Supreme Court defined "reckless disregard" for purposes of K.S.A. 8-1506 as "driving a vehicle under circumstances that show a realization of the imminence of danger to another person or the property of another where there is a conscious and unjustifiable disregard of that danger." *Robbins v. City of Wichita*, 285 Kan. 455, 469 (2007). The amendment strikes a balance between fighting crime and the hazards of police pursuits. There is no guarantee a court will ultimately find police pursuits are discretionary; however, by removing the specific duty, it provides the opportunity for our members to make this argument in the future.

We respectfully ask this Committee to pass HB 2065 to the full House for consideration.