

HOUSE BILL No. 2876

By Committee on Federal and State Affairs

2-13

9 AN ACT concerning racial profiling.

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11 *Be it enacted by the Legislature of the State of Kansas:*

12 Section 1. As used in sections 1 through 6, and amendments thereto:

13 (a) "Governmental unit" means the state, or any county, municipality
14 or other political subdivision thereof, or any department, division, board
15 or other agency of any of the foregoing.

16 (b) "Law enforcement agency" means the governmental unit em-
17 ploying the law enforcement officer.

18 (c) "Law enforcement officer" has the meaning ascribed thereto in
19 K.S.A. 74-5602, and amendments thereto.

20 (d) "Racial profiling" means the practice of a law enforcement officer
21 or agency relying, to any degree, on race, ethnicity or national origin in
22 selecting which individuals to subject to routine investigatory activities,
23 or in deciding upon the scope and substance of law enforcement activity
24 following the initial routine investigatory activity. Racial profiling does not
25 include reliance on such criteria in combination with other identifying
26 factors when the law enforcement officer or agency is seeking to appre-
27 hend a specific suspect whose race, ethnicity or national origin is part of
28 the description of the suspect.

29 (e) "Routine investigatory activities" includes, but are not limited to,
30 the following activities by law enforcement officers and agencies: Traffic
31 stops; pedestrian stops; frisks and other types of body searches; consen-
32 sual or nonconsensual searches of the persons or possessions, including
33 vehicles, dormitory rooms, school lockers, homes, apartments of any res-
34 idents, motorists or pedestrians.

35 (f) "Collection of data" means that information collected pursuant to
36 K.S.A. 22-4604, and amendments thereto.

37 Sec. 2. (a) It shall be unlawful for any law enforcement officer or any
38 law enforcement agency to engage in racial profiling.

39 (b) A violation of this section is a class A misdemeanor.

40 (c) This section shall be a part of and supplemental to the Kansas
41 criminal code.

42 Sec. 3. (a) The race or ethnicity of an individual or neighborhood
43 shall not be the sole factor in determining the existence of probable cause

1 to take into custody or to arrest an individual or in constituting a reason-
2 able and articulable suspicion that an offense has been or is being com-
3 mitted so as to justify the detention of an individual or the investigatory
4 stop of a pedestrian or vehicle.

5 (b) This section shall be a part of and supplemental to the Kansas
6 criminal code.

7 Sec. 4. (a) All law enforcement agencies in this state shall adopt de-
8 tailed, written policies, strategies and procedures to end racial profiling.
9 These policies, strategies and procedures shall be made available to all
10 officers of such agency. The policies, strategies and procedures shall be
11 available for public inspection during normal business hours.

12 (b) The policies, strategies and procedures shall include, but not be
13 limited to, the following:

14 (1) A prohibition on racial profiling.

15 (2) Basic and continuing educational training which shall include, but
16 not be limited to, an understanding of the historical and cultural systems
17 that perpetuate racial profiling, assistance in identifying racial profiling
18 practices, and providing officers with self-evaluation strategies to end ra-
19 cial profiling.

20 (3) The collection of data on routine investigatory activities sufficient
21 to determine if law enforcement officers and law enforcement agencies
22 are engaged in racial profiling. Such data shall be submitted to the attor-
23 ney general for public annual updates on or before January 31.

24 (4) Establishing and appointing independent citizen review boards,
25 including private employees which reflect the racial and ethnic commu-
26 nity, to receive, investigate and respond meaningfully within six weeks to
27 complaints alleging racial profiling by law enforcement officers and
28 agencies.

29 (5) Procedures to discipline law enforcement officers and agencies
30 who engage in racial profiling.

31 (6) Any such other policies or procedures that the attorney general
32 deems necessary to eliminate racial profiling.

33 (c) The attorney general shall annually compile data received from
34 law enforcement agencies and make such data available to the public.

35 (d) If the investigation of a complaint of racial profiling reveals the
36 officer was in direct violation of the law enforcement agency's written
37 policies and procedures regarding racial profiling, the employing law en-
38 forcement agency shall take appropriate action consistent with applicable
39 laws, rules and regulations, resolutions, ordinances or policies including
40 demerits, suspension or removal of the officer from the agency.

41 Sec. 5. Any person who is subjected to racial profiling shall have a
42 civil cause of action against any law enforcement officer or agency, or
43 both, and shall be entitled to recover damages from any such officer, any

1 person with supervisory authority over such officer and agency if it is
2 determined by the court that such person's or agency engaged in racial
3 profiling. The court may allow the prevailing plaintiff reasonable attorney
4 fees, expert witness costs and other litigation costs reasonably incurred.
5 Statistical or other documented proof that the routine investigatory activ-
6 ities of law enforcement officers or agencies have had a disparate impact
7 on racial or ethnic minorities shall constitute prima facie evidence of a
8 violation of this section.

9 Sec. 6. (a) Whenever a person who is stopped or arrested believes
10 the stop or arrest was in violation of section 2, and amendments thereto,
11 such person may file a complaint with the Kansas human rights commis-
12 sion. A copy of the complaint shall be forwarded to the arresting officer's
13 employer by the commission. The employer shall investigate the com-
14 plaint for purposes of disciplinary action or a criminal violation of section
15 2, and amendments thereto, or both.

16 (b) The Kansas human rights commission shall promulgate rules and
17 regulations establishing procedures for filing a racial profiling complaint
18 with the commission and the process for delivering a copy of the com-
19 plaint by the commission to the employing agency. The commission shall
20 adopt forms for complaints of racial profiling.

21 (c) The commission shall compile an annual report of all complaints
22 received for racial profiling and submit the report on or before January
23 31 to the governor, the president of the senate and the speaker of the
24 house of representatives. The annual report shall be an open record.

25 Sec. 7. This act shall take effect and be in force from and after its
26 publication in the statute book.