

Approved: February 17, 2000
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on February 2, 2000 in Room 313-S of the Capitol.

All members were present except:

Representative Tony Powell - Excused

Committee staff present:

Jerry Ann Donaldson, Legislative Research Department

Jill Wolters, Office of Revisor of Statutes

Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:

Derek Schmidt, Office of The Governor

Paul Davis, Kansas Bar Association

Representative Doug Johnston

Captain Mark Goodloe, Kansas Highway Patrol

Representative Carlos Mayans

Don Burger, National Association of Human Rights Workers

Representative David Haley

Sandy Jacquot, League of Kansas Municipalities

Derek Schmidt, Office of the Governor, requested a bill introduction revising Kansas' Anti-trust law. (Attachment 1)

Representative Carmody made the motion to have the request introduced as a committee bill. Representative Lloyd seconded the motion. The motion carried.

Paul Davis, Kansas Bar Association, requested a bill modifying the service of process provisions. (Attachment 2)

Representative Carmody made the motion to have the request introduced as a committee bill. Representative Gregory seconded the motion. The motion carried.

Hearing on **HB 2683 – Collection of information on traffic stops**, was opened.

Representative Doug Johnston appeared in support of the bill. He commented that the purpose of the bill was to collect data, which would determine whether Kansas's law enforcement officers are stopping people based on race. It is expected that law enforcement officers are honest and fair when they stop someone, but Kansas has a responsibility to make sure that citizens are not stopped because of their race. (Attachment 3)

Captain Mark Goodloe, Kansas Highway Patrol, informed the committee that all Highway Patrol Officers go through a Criminal Interdiction Program which instructs officers on the latest trends of contraband smuggling and techniques available to stop the business. The course also provides material that promotes the use of racial profiling to supplant probable cause. The Kansas Highway Patrol does not believe that the department has a problem with racial profiling but would welcome the opportunity to do the study, if the program was adequately funded. (Attachment 4)

Representative Carlos Mayans told a story of how he felt when he was on the receiving end of an officer harassing him after a traffic accident because of his race.

Don Burger, National Association of Human Rights Workers, believes that all adult African-Americans have encountered a racial act at one time in their lives. In minority communities throughout the country, it is believed that traffic stops are made based on the race of the drivers, not that an infraction has been made. An officer can always observe a driver long enough to identify some minor infractions as a reason to stop him, but far too many of these stops occur to minorities. (Attachment 5)

Sandy Jacquot, League of Kansas Municipalities, opposes the mandatory racial profiling due to the cost it would impose on cities. Many cities would have to hire patrol officers, staff and buy modern computers. She

CONTINUATION SHEET

suggested that the committee look at making the program a voluntary one. (Attachment 6)

Representative David Haley provided the committee with a copy of an article from the Kansas City Star (Attachment 7) which reported the pro's & con's of enacting a racial profiling law. Rep. Haley suggested that if it happens in Kansas then the Legislature has the responsibility to find out to what degree. If the report shows that it's a problem then the next step would be to introduce a bill to stop it.

The hearing on **HB 2683** remained opened to receive further information from Don Burger.

The committee adjourned at 5:30 p.m. The next meeting was scheduled for February 3, 2000.

COMPONENTS OF ANTITRUST PROPOSAL

February 2, 2000

- Give attorney general modern investigative powers, including administrative subpoena power, replacing current-law inquisition authorities, which are of limited utility.
- Give attorney general range of remedies so Court can tailor a remedy after liability is found. This contrasts with current-law requirements that certain remedies, such as forfeiture of corporate charter, are mandatory. Include explicit authority for attorney general to recover investigation costs in successful litigation.
- Allow courts to impose a civil penalty up to \$5,000 for each day a violation of this statute occurs, which mirrors penalty provisions of Kansas Consumer Protection Act.
- Permit Kansas courts to exercise jurisdiction over nonresident entities that violate this statute to the maximum extent allowed by the United States Constitution.
- Concentrate all enforcement power in attorney general rather than county and district attorneys.
- Consolidate the several separate provisions of current law, as set forth in Article 1 of Chapter 50, into a single statute called the Kansas Restraint of Trade Act.
- Make entire statute civil and repeal the criminal remedies in current law.
- Put all enforcement litigation under the Code of Civil Procedure rather than under existing, *ad hoc* procedures established by current law.
- Permit enforcement actions to be filed in Shawnee County District Court.
- Repeal 32 outdated and unused sections in current law, including various oddities such as mandatory forfeiture of office for public officials who fail to report violations of this act and for prosecutors who fail to prosecute violations of this act.
- Require the attorney general to report annually on her antitrust investigation and enforcement activities as part of her required annual report on consumer protection activities.



**KANSAS BAR
ASSOCIATION**

1200 SW Harrison St.
P.O. Box 1037
Topeka, Kansas 66601-1037
Telephone (785) 234-5696
FAX (785) 234-3813
Email: ksbar@ink.org

BILL INTRODUCTION

February 2, 2000

TO: Chairman Mike O'Neal and Members of the House
Judiciary Committee

FROM: Paul T. Davis, Legislative Counsel

RE: Changes to K.S.A. 60-303, 60-308 and 61-1803 regarding
service of process

Chairman O'Neal and Members of the Committee:

I am appearing on behalf of the Kansas Bar Association to request introduction of the attached bill which makes several modifications to K.S.A. 60-303, 60-308 and 61-1803. The bill accomplishes several things. First, it expands the allowable means of service of process to priority mail, commercial courier service, overnight delivery service or other reliable personal delivery service. Secondly, the bill cleans up language in the "service by certified mail" sections of all three statutes to provide greater clarity.

Since the Kansas Sheriffs' Association has asked for a modification of the service of process provisions in K.S.A. 60-303 and 61-1803, we have incorporated their suggested changes into our bill. The Judicial Council also has a bill which affects K.S.A. 61-1803, we will try to work with them to present the Committee with agreed upon language.

The KBA respectfully requests introduction of this bill. Thank you for your time and I would be happy to stand for questions.

AN ACT concerning methods of service of process within this state; amending K.S.A. 60-303, K.S.A. 60-308 and K.S.A. 61-1803 and repealing the existing sections.

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

Section 1. K.S.A. 60-303 is hereby amended to read as follows: (a) Methods of service of process within this state, except service by publication as provided in K.S.A. 60-307, and amendments thereto, are described in this section. Methods of out-of-state service of process are described in K.S.A. 60-308, and amendments thereto.

(b) Who serves process. The sheriff of the county in which the action is filed shall serve any process by any method authorized by this section, by K.S.A. 60-903, 60-2401 or 60-3104, or as otherwise provided by law, unless a party, either personally or through an attorney, elects to undertake responsibility for service and so notifies the clerk.

~~(b) (c) Service by certified mail return receipt delivery. Except if the attorney for the party or the party, if the party is not represented by an attorney, requests personal or residence service pursuant to subsection (c); if the attorney or the party requesting service elects to serve process by certified mail pursuant to this subsection; as provided in K.S.A. 60-903, 60-2401 or 60-3104, and amendments thereto; or as otherwise provided by law, the sheriff of the county wherein the action is filed shall serve any process by certified mail evidenced by return receipt signed by any person or by restricted delivery, unless otherwise permitted by this article. (1) Service of process by return receipt delivery shall include service effected by certified mail, priority mail, commercial courier service, overnight delivery service, or other reliable personal delivery service to the party addressed, in each instance evidenced by a written or electronic receipt showing to whom delivered, date of delivery, address where delivered, and person or entity effecting delivery. (2) The sheriff, attorney for the party seeking service or the party, if the party is not represented by an attorney party or party's attorney shall cause a copy of the process and petition or other document to be placed in an a sealed envelope addressed to the person to be served in accordance with K.S.A. 60-304, and amendments thereto, adequate postage to be affixed and the sealed envelope to be placed in the United States mail as certified mail return receipt requested with instructions to the delivering postal employee to show to whom delivered, date of~~

~~delivery, and address where delivered with postage or other delivery fees prepaid, and the sealed envelope placed in the custody of the person or entity effecting delivery. (3) Service of process shall be considered obtained under K.S.A. 60-203, and amendments thereto, upon the delivery of the sealed envelope. (4) After service and return of the return receipt, the sheriff, party or party's attorney or the party, if the party is not represented by an attorney, shall execute a return on service stating the nature of the process, to whom delivered, the date on which the process was mailed of delivery, and the name and address on the envelope containing the process mailed as certified mail return receipt requested the address where delivered and the person or entity effecting delivery. The sheriff, party or the party's attorney shall file the return on service and the return receipt or return envelope in the records of the action.. The original return of service shall be filed with the clerk, along with a copy of the return receipt evidencing such delivery. Service of process shall be considered obtained under K.S.A. 60-203, and amendments thereto, upon the delivery of the certified mail envelope. (5) If the certified mail sealed envelope is returned with an endorsement showing refusal of to accept delivery, the sheriff, serving party or the party's attorney shall may send a copy of the process and petition or other document to be served to the defendant by ordinary, first-class mail by first-class mail addressed to the party to be served, or may elect other methods of service. The mailing shall be evidenced by a certificate of mailing which shall be filed with the clerk. If mailed, service shall be considered obtained upon three days after the mailing by ordinary, first-class mail, postage prepaid, which shall be evidenced by a certificate of service filed with the clerk. If the unopened envelope sent first-class mail is returned as undelivered for any reason, the sheriff, party or party's attorney shall file an amended certificate of service with the clerk indicating non-delivery, and service by such mailing shall not be considered obtained. Mere failure to claim certified mail service return receipt delivery is not refusal of service within the meaning of this subsection.~~

(e) (d) Personal and residence service. (1) ~~When~~ The plaintiff may files a written request with the clerk for service other than by certified mail, service of process shall be made by personal or residence service. Personal service shall be made by delivering or offering to deliver a copy of the process and accompanying documents to the person to be served. Residence service shall be made by leaving a copy of the process and petition, or other document to be served, at the dwelling house or usual place of abode of

the person to be served with some person of suitable age and discretion residing therein. If service cannot be made upon an individual, other than a minor or a disabled person, by personal or residence service, service may be made by leaving a copy of the process and petition, or other document to be served, at the defendant's dwelling house or usual place of abode and mailing a notice that such copy has been left at such house or place of abode to the individual by first-class mail.

(2) When process is to be served under this subsection, the clerk of the court shall deliver the process and sufficient copies of the process and petition, or other document to be served, to the sheriff of the county where the process is to be served or, if requested, to a person appointed to serve process or to the plaintiff's attorney.

(3) Service, levy and execution of all process under this subsection, including, but not limited to, writs of execution, orders of attachment, replevin orders, orders for delivery, writs of restitution and writs of assistance, shall be made by a sheriff within the sheriff's county, by the sheriff's deputy, by an attorney admitted to the practice of law before the supreme court of Kansas or by some person appointed as a process server by a judge or clerk of the district court, except that a subpoena may also be served by any other person who is not a party and is not less than 18 years of age. Process servers shall be appointed freely and may be authorized either to serve process in a single case or in cases generally during a fixed period of time. A process server or an authorized attorney may make the service anywhere in or out of the state and shall be allowed the fees prescribed in K.S.A. 28-110, and amendments thereto, for the sheriff and such other fees and costs as the court shall allow. All persons authorized under this subsection to serve, levy and execute process shall be considered an 'officer' as used in K.S.A. 60-706 and 60-2401 and amendments thereto.

(4) In all cases when the person to be served, or an agent authorized by the person to accept service of process, refuses to receive copies thereof, the offer of the duly authorized process server to deliver copies thereof, and the refusal, shall be a sufficient service of the process.

~~(d)~~ (e) Acknowledgment or appearance. An acknowledgment of service on the summons is equivalent to service. The voluntary appearance by a defendant is equivalent to service as of the date of appearance.

place of business within this state or acting as executor or administrator of any estate within this state;

- (7) Causing to persons or property within this state any injury arising out of an act or omission outside of this state by the defendant if, at the time of the injury either (A) the defendant was engaged in solicitation or service activities within this state; or (B) products, materials or things processed, serviced or manufactured by the defendant anywhere were used or consumed within this state in the ordinary course of trade or use;
- (8) Living in the marital relationship within the state notwithstanding subsequent departure from the state, as to all obligations arising for maintenance, child support or property settlement under article 16 of this chapter, if the other party to the marital relationship continues to reside in the state;
- (9) Serving as the insurer of any person at the time of any act by the person which is the subject of an action in a court of competent jurisdiction within the state of Kansas which results in judgment being taken against the person;
- (10) Performing an act of sexual intercourse within the state, as to an action against a person seeking to adjudge the person to be a parent of a child and as to an action to require the person to provide support for a child as provided by law, if (A) the conception of the child results from the act and (B) the other party to the act or the child continues to reside in the state; or
- (11) Entering into an express or implied arrangement, whether by contract, tariff or otherwise, with a corporation or partnership, either general or limited, residing or doing business in this state under which such corporation or partnership has supplied transportation services, or communication services or equipment, including, without limitation, telephonic communication services, for a business or commercial user where the services supplied to such user are managed, operated or monitored within the state of Kansas, provided that such person is put on reasonable notice that

arranging or continuing such transportation services or telecommunications services may result in the extension of jurisdiction pursuant to this section.

(c) Service of process upon any person who is subject to the jurisdiction of the courts of this state, as provided in subsection (b), may be made by serving the process upon the defendant outside this state, as provided in subsection (a)(2), with the same force and effect as though process had been served within this state, but only causes of action arising from acts enumerated in subsection (b) may be asserted against a defendant in an action in which jurisdiction over the defendant is based upon this subsection.

(d) Nothing contained in this section limits or affects the right to serve any process in any other manner provided by law.

(e) Service by ~~certified mail~~ *return receipt delivery*. Service of any out-of-state process may be by certified mail, ~~evidenced by return receipt signed by any person or by restricted delivery~~ *priority mail, commercial courier service, overnight delivery service, or other reliable personal delivery service to the party addressed, in each instance evidenced by a written or electronic receipt showing to whom delivered, date of delivery, address where delivered, and person or entity effecting delivery.* The ~~attorney for the party seeking service or the party, if the party is not represented by an attorney~~ *party or party's attorney* shall cause a copy of the process and petition or other document to be placed in ~~an~~ *a sealed* envelope addressed to the person to be served in accordance with K.S.A. 60-304, and amendments thereto, ~~adequate postage to be affixed and the sealed envelope to be placed in the United States mail as certified mail return receipt requested with instructions to the delivering postal employee to show to whom delivered, date of delivery, and address where delivered~~ *with postage or other delivery fees prepaid, and the sealed envelope placed in the custody of the person or entity effecting delivery.* Service of process shall be considered obtained under K.S.A. 60-203, and amendments thereto, upon the delivery of the sealed envelope. After service and return of the return receipt, the ~~party or party's attorney or the party, if the party is not represented by an attorney, shall execute a return on service stating the nature of the process, to whom delivered, the date on which the process was mailed, and the name and address on the envelope containing the process mailed as certified mail return receipt requested~~ *the address where delivered and the person or entity effecting delivery.* The ~~party or the party's attorney shall file the return on service and the return receipt or~~

~~return envelope in the records of the action.. The original return of service shall be filed with the clerk, along with a copy of the return receipt evidencing such delivery. Service of process shall be considered obtained under K.S.A. 60-203, and amendments thereto, upon the delivery of the certified mail envelope. If the certified mail sealed envelope is returned with an endorsement showing refusal of to accept delivery, the serving party or the party's attorney may send a copy of the process and petition or other document to be served to the defendant by ordinary, first class mail by first-class mail addressed to the party to be served, or may elect other methods of service. The mailing shall be evidenced by a certificate of mailing which shall be filed with the clerk. If mailed, service shall be considered obtained upon three days after the mailing by ordinary, first-class mail, postage prepaid, which shall be evidenced by a certificate of service filed with the clerk. If the unopened envelope sent first-class mail is returned as undelivered for any reason, the sheriff, party or party's attorney shall file an amended certificate of service with the clerk indicating non-delivery, and service by such mailing shall not be considered obtained. Mere failure to claim certified mail service return receipt delivery is not refusal of service within the meaning of this subsection.~~

Section 3. K.S.A. 61-1803 is hereby amended to read as follows: (a) Methods of service of process within this state, except service by publication, are described in this section. Service of process outside the state shall be made in substantial compliance with the applicable provisions of K.S.A. 60-308, and amendments thereto.

(b) Who serves process. The sheriff of the county in which the action is filed shall serve any process by any method authorized by this section, by K.S.A. 60-903, 60-2401 or 60-3104, or as otherwise provided by law, unless a party, either personally or through an attorney, elects to undertake responsibility for service and so notifies the clerk.

~~(b) (c) Service by certified mail return receipt delivery. Except if the attorney for the party or the party, if the party is not represented by an attorney, requests personal or residence service pursuant to subsection (c); if the attorney or the party requesting service elects to serve process by certified mail pursuant to this subsection; or as otherwise provided by law, the sheriff of the county wherein the action is filed shall serve any process by certified mail evidenced by return receipt signed by any person or by restricted delivery, unless otherwise permitted by this article. (1) Service of process by return receipt delivery shall include service effected by certified mail, priority mail, commercial courier service, overnight delivery service, or other reliable personal~~

delivery service to the party addressed, in each instance evidenced by a written or electronic receipt showing to whom delivered, date of delivery, address where delivered, and person or entity effecting delivery. (2) The sheriff, ~~attorney for the party seeking service or the party, if the party is not represented by an attorney party or party's attorney~~ shall cause a copy of the process and petition or other document to be placed in ~~an~~ a sealed envelope addressed to the person to be served in accordance with K.S.A. 61-1805, and amendments thereto, ~~adequate postage to be affixed and the sealed envelope to be placed in the United States mail as certified mail return receipt requested with instructions to the delivering postal employee to show to whom delivered, date of delivery, and address where delivered with postage or other delivery fees prepaid, and the sealed envelope placed in the custody of the person or entity effecting delivery.~~ (3) Service of process shall be considered obtained under K.S.A. 61-1703, and amendments thereto, upon the delivery of the sealed envelope. (4) After service and return of the receipt, the sheriff, party's attorney or the party, if the party is not represented by an attorney, shall execute a return on service stating the nature of the process, to whom delivered, the date ~~on which the process was mailed~~ of delivery, ~~and the name and address on the envelope containing the process mailed as certified mail return receipt requested~~ the address where delivered and the person or entity effecting delivery. ~~The sheriff, party or the party's attorney shall file the return on service and the return receipt or return envelope in the records of the action..~~ The original return of service shall be filed with the clerk, along with a copy of the return receipt evidencing such delivery. ~~Service of process shall be considered obtained under K.S.A. 61-1703, and amendments thereto, upon the delivery of the certified mail envelope.~~ (5) If the certified mail sealed envelope is returned with an endorsement showing refusal ~~of~~ to accept delivery, the sheriff, ~~serving~~ party or the party's attorney shall ~~may~~ send a copy of the process and petition or other document to be served to the defendant by ordinary, first class mail by first-class mail addressed to the party to be served, or may elect other methods of service. ~~The mailing shall be evidenced by a certificate of mailing which shall be filed with the clerk.~~ If mailed, service shall be considered obtained upon three days after the mailing by ordinary, first-class mail, postage prepaid, which shall be evidenced by a certificate of service filed with the clerk. If the unopened envelope sent first-class mail is returned as undelivered for any reason, the sheriff, party or party's attorney shall file an amended certificate of service with the clerk indicating non-delivery, and service by

such mailing shall not be considered obtained. Mere failure to claim ~~certified mail service~~ return receipt delivery is not refusal of service within the meaning of this subsection.

~~(e)~~ (d) Personal and residence service. (1) ~~When~~ The plaintiff *may* files a written request with the clerk for ~~service other than by certified mail, service of process shall be made by~~ personal or residence service. Personal service shall be made by delivering or offering to deliver a copy of the process and accompanying documents to the person to be served. Residence service shall be made by leaving a copy of the process and petition, or other document to be served, at the dwelling house or usual place of abode of the person to be served with some person of suitable age and discretion residing therein. If service cannot be made upon an individual, other than a minor or a disabled person, by personal or residence service, service may be made by leaving a copy of the process and petition, or other document to be served, at the defendant's dwelling house or usual place of abode and mailing a notice that such copy has been left at such house or place of abode to the individual by first-class mail.

(2) When process is to be served under this subsection, the clerk of the court shall deliver the process and sufficient copies of the process and petition, or other document to be served, to the sheriff of the county where the process is to be served or, if requested, to a person appointed to serve process or to the plaintiff's attorney.

(3) Service, levy and execution of all process under this subsection, including, but not limited to, writs of execution, orders of attachment, replevin orders, orders for delivery, writs of restitution and writs of assistance, shall be made by a sheriff within the sheriff's county, by the sheriff's deputy, by an attorney admitted to the practice of law before the supreme court of Kansas or by some person appointed as a process server by a judge or clerk of the district court, except that a subpoena may also be served by any other person who is not a party and is not less than 18 years of age. Process servers shall be appointed freely and may be authorized either to serve process in a single case or in cases generally during a fixed period of time. A process server or an authorized attorney may make the service anywhere in or out of the state and shall be allowed the fees prescribed in K.S.A. 28-110, and amendments thereto, for the sheriff and such other fees and costs as the court shall allow. All persons authorized under this subsection to serve, levy and execute process shall be considered an 'officer' as used in K.S.A. 60-706 and 60-2401 and amendments thereto.

(4) In all cases when the person to be served, or an agent authorized by the person to accept service of process, refuses to receive copies thereof, the offer of the duly authorized process server to deliver copies thereof, and the refusal, shall be a sufficient service of the process.

~~(d)~~ (e) Acknowledgment or appearance. An acknowledgment of service on the summons is equivalent to service. The voluntary appearance by a defendant is equivalent to service as of the date of appearance.

Section 4. K.S.A. 60-303, K.S.A. 60-308 and K.S.A. 61-1803 are hereby repealed.

Section 5. This act shall take effect and be in force from and after its publication in the statute book.

DOUGLAS JOHNSTON

REPRESENTATIVE NINETY-SECOND DISTRICT

1450 LIEUNETT
WICHITA, KANSAS 67203
(316) 263-1582

STATE CAPITOL
ROOM 284-W
TOPEKA, KS 66612-1504
(785) 296-7665

LEGISLATIVE HOTLINE 1-800-432-3924

Email: rep_douglas_johnston@mail.ksleg.state.ks.us

State of Kansas



TOPEKA

COMMITTEE ASSIGNMENTS

MEMBER: TAXATION
TRANSPORTATION
ENVIRONMENT
GOVERNMENTAL ORGANIZATIONS
AND ELECTIONS
ADMINISTRATIVE RULES AND
REGULATIONS

House of Representatives

February 2, 2000

HEARING: HOUSE COMMITTEE ON JUDICIARY

TESTIMONY FROM: STATE REPRESENTATIVE DOUGLAS JOHNSTON

SUBJECT: HEARING ON HB 2683; CONCERNING CRIMINAL PROCEDURE; RELATING TO THE COLLECTING OF INFORMATION ON TRAFFIC STOPS

The Kansas Legislature should seriously consider the adoption of legislation that would require law enforcement officers to keep a record of the race, gender and approximate age of individuals who they stop for traffic infractions. The purpose of this bill is simply to determine whether or not racial profiling is being used by law enforcement agencies or officers.

Racial profiling is a terrible problem that I will never have to worry about, but the problem of racial profiling is really a problem of selective enforcement of the law. The selective enforcement of the law when the selection is based on race, gender or age, is unjust, discriminatory and unconstitutional. That should be reason enough.

We all commit traffic infractions. My guess is every person in this room has forgotten to use his or her blinkers once in a while. We maybe don't come to a complete stop at a stop sign. Maybe we even speed through a yellow light or drive 75 on the turnpike. What this means is that law enforcement officers have the ability—the necessity, really—to decide who they are going to pull over to enforce the law. This critical choice is the subject of our discussion today. We must make sure that the race of a driver has absolutely nothing to do with the decision by a law officer to pull someone over.

All the bill does is require law enforcement officials to record and tabulate the information so we can see if racial profiling is a major problem in Kansas. I am convinced that racial profiling is utilized by some law enforcement officers, but that the majority of law enforcement officers are good people doing very difficult work. Our job as elected representatives is to ensure that even good people don't treat racial minorities unfairly. I hope you share this view.

Studies around the nation have shown that racial profiling is happening. African-Americans are more likely to be subject to the selective enforcement of the law than white drivers. They are more likely to be stopped, ticketed and even searched. For example, in New Jersey, a scientific study of highway

House Judiciary
2-2-2000
Attachment 3

TESTIMONY BY REP. JOHNSTON (CONT.)
PAGE 2

patrol stops found that 4 in 10 stops were of black motorists. This despite the fact that less than 4 in 10 drivers were African-American. The same study also clearly showed that African-Americans don't drive any worse, or better than the rest of us. The *Wichita Eagle* noted in their December 20, 1999 editorial "Profiling" that their review of Wichita crime statistics "found that 17.8 percent of motorists ticketed citywide in 1997 and 1998 were black, even though African-Americans make up only 12 percent of the city's population. The percentage was even higher on area interstates, where 19.5 percent of ticketed motorists were black."

Clearly there is a problem, but it is also just as clear that the first step toward a solution is the accumulation of better information about this problem. Hence the need for the bill before you today.

Please support passage of HB 2683. It is the right thing to do.

Again, thank you for your time and attention to this matter. It is well worth your effort.

Representative Douglas Johnston, District 92
1450 Lieunett, Wichita, KS 67203

REFERENCES:

David A. Harris, Professor of Law, University of Toledo College of Law; The Stories, the Statistics, and the Law: Measuring "Driving While Black", copyright 1999 (Tables 1-4)

Additional news articles attached.

TABLE 1

**TICKETING OF AFRICAN AMERICANS
FOR 1996, 1997, AND 1998***

CITY	PERCENTAGE OF ALL TICKETS IN CITY ISSUED TO AFRICAN AMERICANS
Akron	37.6%
Toledo	31%
Dayton	50%
Columbus/ Franklin County** (Columbus)	25.20%

* Through April 30, 1998.

** Data for Franklin County include 1996 and 1997, but not 1998, and include tickets issued by all law enforcement units in the county, not just the city of Columbus.

TABLE 2

POPULATION BASELINES

CITY	BLACK DRIVING AGE POPULATION* (PERCENTAGE OF CITY TOTAL)	BLACK DRIVING AGE POPULATION, LESS 21% OF BLACK HOUSEHOLDS WITHOUT VEHICLES**
Akron	22.7%	18 %
Toledo	18%	14%
Dayton	38%	30%
Columbus/Franklin County***	16.0%	12.6%

* Source: U.S. Census Bureau

** Source: National Personal Transportation Survey, Federal Highway Administration, U.S. Department of Transportation (1995); Eric Hill, Research Associate, Center for Urban Transportation Research.

***Data are for all of Franklin County, not just Columbus.

TABLE 3

LIKELIHOOD RATIO

**“IF YOU’RE BLACK, YOU’RE ___ TIMES AS LIKELY
TO GET A TICKET IN THIS CITY THAN IF YOU
ARE NOT BLACK”**

CITY	BLACK DRIVING AGE POPULATION*	BLACK DRIVING AGE POPULATION, LESS 21% OF BLACK HOUSEHOLDS WITHOUT VEHICLES**
Columbus/Franklin County***	1.8	2.4
Akron P.D.	2.04	2.73
Toledo P.D.	2.02	2.7
Dayton P.D. (Dayton)	1.8	2.5

* Source: U.S. Census Bureau

** Source: National Personal Transportation Survey, Federal Highway Administration, U.S. Department of Transportation (1995); Eric Hill, Research Associate, Center for Urban Transportation Research.

*** Includes all police agencies in Franklin County, not just Columbus.

Table 4 combines population baselines from Table 2 and likelihood ratios from table 3.

TABLE 4

**COMBINED POPULATION BASELINES
AND LIKELIHOOD RATIOS**

CITY	BLACK DRIVING AGE POPULATION*	BLACK DRIVING AGE POPULATION, LESS 21% OF BLACK HOUSEHOLDS WITHOUT VEHICLES**
Columbus/Franklin County***	16.0%	12.6%
LIKELIHOOD RATIO	1.8	2.4
Akron	22.7%	18 %
LIKELIHOOD RATIO	2.04	2.73
Toledo	18%	14%
LIKELIHOOD RATIO	2.02	2.7
Dayton	38%	30 %
LIKELIHOOD RATIO	1.76	2.5

* Source: U.S. Census Bureau

** Source: National Personal Transportation Survey, Federal Highway Administration, U.S. Department of Transportation (1995); Eric Hill, Research Associate, Center for Urban Transportation Research.

Subj: **DWB Bill Plan**
Date: Tuesday, August 24, 1999 12:11:44 PM
From: EKeyman
To: Kansasrep

Dear Rep. Johnson:

It was indeed a happy sight to read the article concerning your bill in the Community Voice newspaper. As I have been stopped, I certainly know what it feels like.

As a new resident of Wichita, I was stopped earlier this year for changing lanes without using a signal light "illegal lane change". As a new resident, I had out of state tags. This particular evening I was hosting some pastors who were here for an United Methodist Conference. We were on our way to Old Town for a late dinner. As we were dressed casually in black, there were three black men traveling on the interstate. We were stopped because I did an illegal lane change.

Personally, we pay our officers to protect us not to harrass us. An illegal lane change is not substantial enough to warrant a stop by police officers. I was not speeding. I was not driving reckless. I did not endanger anybody. We pay too much in taxes and expect more for the people who serve us. Racial profiling seems to be a standard in Wichita. I have told my story to others who began to share their story with me. I hope that they read your article and respond.

As a respected citizen, I hope that you can get a bill passed to stopped this unfair treatment of non-Whites.

Sincerely,

Eric Key

**Kansas Highway Patrol
Summary of Testimony
2000 House Bill 2683
Before the
House Judiciary Committee
Presented by
Captain Mark A. Goodloe
February 2, 2000**

Good Morning Mr. Chairman and members of the committee. My name is Captain Mark Goodloe, representing Colonel Don Brownlee, Superintendent of the Kansas Highway Patrol, and I appear before you to comment on House Bill 2683.

HB 2683 requires law enforcement agencies to maintain records and report to the Attorney General's Office, race, color, ethnicity, gender, and age documentation of all traffic stops throughout the State of Kansas.

Further, the bill requires the following documentation:

- the location of the stop;
- the nature of the alleged traffic violation that resulted in the stop;
- whether a warning or citation was issued, an arrest made or a search conducted as a result of the stop; and
- any additional information that such agency deems appropriate.

This bill attempts to address a growing perception across the country that suggests law enforcement officers use racial profiling as a pretext to make traffic stops. I firmly believe that racial profiling, as a means to affect a traffic stop, does not occur within the agency. As superintendent, Colonel Brownlee insists that it is his obligation to ensure that this agency continues to maintain the highest level of professionalism and fairness. It is imperative that Kansas's citizens or visitors to our great state feel comfortable in traveling our highways without fear of being stopped merely because of the color of their skin or gender.

The bill is somewhat unclear as to whether it is the driver only to be documented or all "persons stopped" (line 16 of bill). With the added need for data processing personnel, office space and associated equipment, if it were necessary to document all persons in the vehicle at the time of stop, the estimated fiscal impact to the agency could be nearly one million dollars. Cost estimation for documentation of the driver only is approximately \$436,000. This impact would effect other law enforcement agencies as well.

The bill also requires the individual officer to determine the characteristics of race, color, ethnicity, gender and age based upon observation and perception. This process makes the outcome very subjective with a probable error factor. It certainly places the officer in a difficult situation if the characteristics are misinterpreted. The bill does not provide protection if the officer makes an error while attempting to determine the required data. If nationally, driver's licenses were coded with the needed information, officers would have the required information at their fingertips and reporting would be much more objective. We have suggested this addition to the American Motor Vehicle Administrator's Association and requested that this be a nation-wide consideration.

Members of the Kansas Highway Patrol undergo training in cultural sensitivity and interpersonal skills. The superintendent, along with his staff has met with the minority members of the Highway Patrol to address concerns and share thoughts and ideas.

Our Criminal Interdiction Program has been recognized as one of the best in the United States. 2Lt Kirk Simone, KHP Criminal Interdiction Coordinator, is a nationally recognized speaker and instructor, providing many hours of training for Kansas law enforcement agencies as well as many out of state and federal law enforcement agencies. He instructs on the latest trends of contraband smuggling and techniques available to thwart what has become a multi-billion dollar criminal enterprise. I assure you, no part of 2nd Lieutenant Simone's course material promotes the use of racial profiling to supplant probable cause. On behalf of Colonel Brownlee, I would like to extend an invitation to each of you to attend all or any portion of our interdiction training.

When looking at the Patrol's most recent interdiction efforts, nothing out of the ordinary is found. Of the 116 significant seizure arrests in 1999, 46% were White, 30% were Latino, 23% were African-American and 1% represented all others. This trend has remained steady over the last three years. With 390 significant seizures since January 1, 1997, 49% were White, 33% were Latino, 17% were African-American and 1% represented all others. The data for Criminal Interdiction arrests is collected and maintained manually at this time.

In 1999 the patrol issued 191,436 traffic tickets and 145,986 warnings. At this time, the Patrol does not enter data from these two documents making it impossible to capture information regarding many of the required elements set forth in HB 2683. Implementation of House Bill 2683 would create a significant fiscal impact on the Kansas Highway Patrol. It would be necessary to hire and train several data processing personnel and develop a

data base compatible with the form developed by the Attorney General's Office.

In conclusion, the Patrol welcomes the opportunity to provide the information required in HB 2683. I believe that the statistics would indicate that a racial profiling atmosphere does not exist within our agency. However, the necessary funding to cover the associated costs to record, collect and transmit the data must be provided.

#####

FEBRUARY 2, 2000

KANSAS HOUSE OF REPRESENTATIVES
313 S. CAPITOL BUILDING, OLD SUPREME COURT CHAMBERS

TESTIMONY OF RACIAL PROFILING

Presented By

*Donald W. Burger, CEO of Conflict Resolution Services and
National Secretary, National Association of Human Rights Workers*

I appreciate the opportunity to testify before the Kansas House of Representatives considering legislation on racial profiling. I offer my views on the issue from the prospective of thirty-five years employment as a human and Civil Rights professional addressing law enforcement practices associates with due process and racial profiling. Over twenty-five years were devoted to duties in state and federal positions. I currently serve a National Secretary for the Association of Human Rights Workers.

The membership of the National Association of Human Rights Workers (NAHRW) includes the directors and staff members from local and community relations offices from across the nation (public and private). Among our members from Kansas are the administrators of state and local FEP agencies, along with the field of representatives, investigators, conciliation officers, and attorneys that comprise such agencies. Other members include affirmative action officers for state, county, and local government, equal opportunity officers for the public and private institutions. Civil rights official for labor unions, police/community relations officers, education association representatives/staff of human and civil rights responsibilities, and board members, commissioners, and directors of public and private agencies with civil rights missions comprise the balance of NAHRW.

Ruth Schecter from Shawnee Mission, KS is former National president. Kansas Human Rights Commission Executive Director Bill Minner was President with NAHRW's highest honor, The Overall Human Rights Award, at the organizations 50th Annual National training conference last year in Denver. Will Burnett from Topeka, 785-233-3331, and Paul Winn from Lawrence are officers of the Kansas Human Relations Association.

Attention to police community relations and racial profiling by NAHRW dates back to the mid 1950s. The Kansas Human Relations Association in Topeka, and the United States Department of Justice Community Relations Service Regional Office in Kansas City are recommended as resources to the committee.

WITNESS RESUME

Donald W. Burger
Chief Executive Officer, Conflict Resolution Services
National Secretary, National Association of Human Rights Workers (NAHRW)
5216 NW 82nd Terrace
Kansas City, MO 6415

Donald W. Burger is Chief Executive Officer and Mediator for conflict Resolution Services with offices in Kansas City and Des Moines. Mr. Burger and his associates provide investigation, fact finding, facilitation, mediation, victim advocacy, and EEO/AAP Technical Assistance services for a professional fee. He currently serves as National Secretary for NAHRW. He served in 1965-66 as the first Director of Iowa's Civil Rights Commission, was in 1967 Assistant Director of Kentucky's Human Rights Commission, and in 1968 was appointed by Roger Wilkins to the U.S. Department of Justice - Community Relations Service (CRS). He served in a series of Senior Level Career Civil Service and political appointee positions with CRS until his retirement on 1990.

Among his duties were research and program development, Community Relations specialist, program administration, Evaluation and Staff Development Officer, and Conciliation Specialist/Mediator. Mr. Burger is past President of the American Federation of government Employees Union for Community relations Service, U.S. department of Justice, nationwide. He retired from CRS in 1990 and established the Conflict Resolution Services consulting firm in 1991.

Donald W. Burger assisted regional, state, and local government and business officials in revising rules and regulations and in training or education programs where conflicts attributes to discriminatory practices were impacting productivity of private and public sector employers.

Mr. Burger has trained civil rights case investigators and mediators in the use of emerging technologies and remedial measures in the following program areas: employment, contract compliance, housing, credit insurance, public accommodations, education, environmental health and welfare services, sexual harassment, hate crime, police use of excessive force, and other administrations of justice problems. He is a member of the Society of Professionals in Dispute Resolution (SPIDR), National Education Association (NEA), National Association of Human Rights Workers (NAHRW), and various local, state, and regional human rights, civil rights, and dispute resolution/mediator organizations. He currently serves as National Secretary of NAHRW. He is a consultant to the Iowa Mediation Service, U.S. Department of Agriculture certified program.



League of Kansas Municipalities

300 SW 8th Avenue
Topeka, Kansas 66603-3912
Phone: (785) 354-9565
Fax: (785) 354-4186

TO: House Judiciary Committee
FROM: Sandy Jacquot
DATE: February 2, 2000
RE: **HB 2683**

Thank you for allowing me to address this committee on behalf of the League of Kansas Municipalities in opposition to **HB 2683**. The League is not opposing this bill on the basis that there may not be a valid need to assess data regarding traffic stops. Rather, our position is that this imposes a costly mandate on local governments. As I am sure you are aware, there are 628 cities of varying sizes in Kansas. Of those 628 cities, most have law enforcement agencies to enforce local and state laws in the corporate limits of each city. The data collection required by HB 2683 will impose an additional mandated burden on large and small cities alike. Not only will the law enforcement officer have to gather the data at the time of the traffic stop, another employee or multiple employees will have to compile the information in a report to the Attorney General. In large cities the impact is huge because of the vast number of traffic stops. In smaller cities, any additional burden can have a great impact on the functioning of the city. For example, many cities in Kansas have a state highway running through town. It is vital to the public safety that these cities control the speed of traffic passing through the city limits. That city may have only one other part time employee, a city clerk. Adding a mandated data collection and reporting requirement would be onerous for most cities in Kansas.

To put this in perspective, it is important to look at the probable cost. In municipal courts alone, approximately 500,000 traffic offenses were adjudicated in the last state fiscal year. Assuming that the data collection only took a law enforcement officer 3 minutes per stop, that equates to 25,000 staff hours per year. Assume further that it took a city official the same time per stop to compile the information required for the Attorney General, which doubles the staff hours to 50,000. This totals 24 employees working 40 hour weeks for one year. Your analysis should also factor in the 105 counties, the Kansas Highway Patrol and all of the college and university law enforcement agencies this bill would affect. I will leave it to your own calculation to estimate how much time per shift a law enforcement officer could spend doing data collection, rather than law enforcement.

Rather than just tell you why the bill is bad and should not be enacted, however, I would like to propose several possible solutions. Presumably the goal of the bill is to provide a mechanism to collect data regarding traffic stops. Rather than create a mandate for every law enforcement agency in the state, the Attorney General could work cooperatively with local governments to do continuous data collection sampling across the state. For example, various law enforcement

House Judiciary
2-2-2000
Attachment 6

agencies across the state could collect the type of data set forth in the bill on a voluntary basis for one or two weeks per year. This would provide the Attorney General with statistically valid and representative data from across the state on traffic stops and would not impose the huge burden on local governments. Another solution would be for the state to fund this program, given the cost of implementation to local governments. Finally, law enforcement officers could collect the data on each stop and forward all of the forms to the Attorney General's office or another state agency for compilation.

Finally, thank you again for allowing me to testify in opposition to **HB 2683** on behalf of the League of Kansas Municipalities and its member cities. Please contact me if you have any questions regarding the League's position on this bill.

Should Kansas approve 'racial profiling' bill?

By DAVID HALEY
Special to The Star

Let's presume for the sake of discussion that innocent drivers are pulled over on the pretext of wrongdoing. But in actuality,



Haley

they were "selected" only because of the color of their skin, age or gender or even the accessories or make of their car or clothing — in other words, "racial profil-

ing." Just imagine this horrible assumption for a minute...

Whether real or imagined, a large number of people believe that law enforcement engages in driver profiling as the only basis for innumerable traffic stops. As a Kansas state representative, I must reflect the concerns of my constituency before the Legislature. Because more than policies or laws, our government runs on the public's belief that equity exists and that justice is impartial.

That is why I helped prepare House Bill 2863, regarding the compilation of data on all traffic stops.

Several states, including New Jersey, Maryland, California, Florida and Illinois, have already taken steps to address an increasing public perception that many innocent motorists are but hapless victims of stereotype.

PRO

More important, initial results of the tracing of law enforcement traffic stops in these states by government and civil rights organizations such as the American Civil Liberties Union have confirmed a higher disproportionate percentage of such stops to each state's demography, especially by race and age.

Kansas should join this list of responsive states, if for no other reasons than to reduce the prospect of successful lawsuits by unfairly targeted motorists and to enhance public confidence in our law enforcement by allaying the widespread impression that racial profiling continues unabated. Stopping, detaining, questioning and perhaps ticketing and searching of any driver based on race, gender, age or car model on a hunch is an erosion of basic constitutional guarantees of probable cause, due process and equal protection under the law and against illegal search and seizures.

The roads of our state and of our nation should not be discriminatory minefields exploited by some in uniform. This practice should be deplored by every law-abiding citizen who truly believes in "liberty and justice for all."

David Haley is a Kansas City, Kan., Democrat who represents the 34th District in the Kansas House of Representatives.

THE PROPOSAL

House Bill 2863 would require Kansas law enforcement agencies to gather and disclose information about the racial characteristics of the drivers they pull over. They also would be required to include the location of the traffic stop, the nature of the alleged violation and the disposition of the case. The bill is scheduled for a hearing before the Kansas House Judiciary Committee today.

By JOHN M. HAMMELL
Special to The Star



Hammell

The bill pending before the Kansas Legislature, to require police officers to capture racial data on drivers stopped for traffic violations, is well-intentioned but a poor piece of legislation.

I am both "white" (Caucasian) and a former police officer. As a citizen, I want law enforcement officers to focus on what they are trained and paid to do: Enforce the law; in this case, the traffic laws.

Why put this administrative burden on police officers who are already overworked, need to focus all of their energy and attention on saving lives, and should be totally above considerations of race while they are on the job?

If there are problems with racial profiling in law enforcement, let's stamp them out. But let's do it in ways that don't create more tension between citizens and police officers at the moment of "confrontation."

I am adamant that I do not want law enforcement officers to focus on race. That will set us back 100 years in this country. I remember all too well from my youth when Bull Connor and

CON

his thugs down in Birmingham, Ala., set upon blacks with fire hoses and dogs. That was one of the lowest points in this nation's history — when we should have learned from the slavery, the Civil War, Jim Crow laws, the KKK lynchings and everything else.

The state Legislature can easily capture racial data on those ticketed for traffic and other violations: Simply have clerks in state offices pull up the driver's license data on each ticketed motorist and look at the photograph! If the individual's physical characteristics are sufficiently distinct that a police officer can differentiate between races while moving down a street at 30 miles an hour or more, they ought to be distinct in the driver's license photograph as well.

And if some police officers really are practicing discrimination through racial profiling, isn't it a bit like having the wolf herd the sheep to have police officers gathering data on their own traffic stops? If these officers are so bad, let impartial third parties collect the racial data.

John M. Hammell is a senior simulation analyst at the National Simulation Center, Fort Leavenworth. He is employed by Cubic Applications Inc., a private company under contract to the U.S. government. He lives in Leavenworth.