

Approved: 5/02/06

Date

MINUTES OF THE HOUSE CORRECTIONS & JUVENILE JUSTICE COMMITTEE

The meeting was called to order by Chairman Ward Lloyd at 3:00 P.M. on March 21, 2005 in Room 241-N of the Capitol.

All members were present except:

Kathe Decker- excused  
Mike Peterson- absent  
Stephanie Sharp- excused

Committee staff present:

Jill Wolters, Revisor of Statutes Office  
Diana Lee, Revisor of Statutes Office  
Jerry Ann Donaldson, Kansas Legislative Research  
Connie Burns, Committee Secretary

Conferees appearing before the committee:

Senator Journey  
Kevin Graham, Attorneys General Office  
Senator Betts  
Danielle Dempsey-Swopes, KS African American Affairs Commission  
Col. William Seck, KS Highway Patrol  
Kyle Smith, KBI  
Sheriff Randy Rogers, KS Sheriffs Association  
Mike Watson, KS Association of Chief's of Police

Others attending:

See attached list.

**SB 71- Creating the crime of automated teller machine robbery and aggravated automated teller machine robbery**

Chairman Loyd opened the hearing on **SB 71**.

Senator Journey, appeared before the committee in support of the bill. (Attachment 1) This bill would facilitate the documentation of this violent crime trend, the bill supplements KSA 21-3426 and 21-3427 with two new classes of robbery. The bill increases the criminal penalties imposed for the crimes of robbery and aggravated robbery at an automatic teller machine, from a Level 5 Person Felony (PF) to a Level 4 PF and from a Level 3 PF to a Level 2 PF, respectively.

Kevin Graham, Attorney Generals Office, appeared in support of the bill and offered a balloon. (Attachment 2) This bill would create two new felony offenses under Kansas law that would apply only in situations where an offender (i.e. "robber") makes the use of an automated teller machine an essential component of the robbery crime. The proposed balloon amendment would insert the language of SB 179 into SB 71. The language of SB 179 has been designed to help protect children from sexual predators. The bill language would enhance penalties for sex offenders who actively prey on children and allows for charges to be filed against sex offenders for every image of child pornography they possess.

Chairman Loyd closed the hearing on **SB 71**.

**SB 72- Worthless checks, more than once in a seven-day period, increased penalty.**

Chairman Loyd opened the hearing on **SB 72**.

Senator Journey, appeared before the committee in support of the bill. (Attachment 3) This bill mirrors the increase of the threshold for felony giving a worthless check from \$500 to \$1,000 as was done with felony theft in 2004. This level of felony is a presumptive probation disposition in the sentencing

guidelines, will reduce the number of potential defendants to be incarcerated due to probation violations. This should largely offset any potential KDOC beds needed for the new cases charged as felonies due to aggregation.

Chairman Loyd closed the hearing on SB 72.

**Sub for SB 77- Racial profiling; requirements of law enforcement agencies; civil cause of action**

Chairman Loyd opened the hearing on Sub for SB 77.

Senator Betts, appeared in support of the bill. (Attachment 4) Included in the attachment were letters of support from Jihad Muqtasid, Rev. Andrew McHenry, Kevin Myles, and Ralondo Henry Carr. An amendment is being drafted that was a cooperative effort with law enforcement agencies across the state.

Colonel William Seck, Kansas Highway Patrol, (Attachment 5) stated the Patrol fully supports the concept of eliminating bias-based policing but has concerns with the language found in the bill and working with representatives of the Kansas Hispanic/Latino American Affairs Commission, the Kansas African American Affairs commission, the Kansas Attorney General's Office, the KBI, the Kansas Law Enforcement Training Center, the Kansas Sheriff's Association, the Kansas Peace Officers' Association, the Kansas Association of Chief's of Police, the Kansas Trooper's Association and many other law enforcement officials and Senator Betts, have fashioned substitute language for sub SB 77. The substitute language for the bill (drafted by the working group and amended by Senate Committees) addressed the need for no tolerance policies. To require all law enforcement agencies in the state to adopt a detailed, written policy to preempt racial profiling, on going training for officers, and a 15-members Governor's Task Force would be put into motion to look at practices that would hold officers accountable and conscientious of their actions. The patrol does oppose the language found in Section 6 and urged the committee to work with stakeholders to ensure language previously agreed to is passed out of committee.

Kyle Smith, spoke in favor of the bill as agreed and amended. (Attachment 6) Section 6 creates a couple of redundancies in the law, the bill inserts responsibility of the attorney general's offices as the state agency that reviews and imposes punishment for officers who break the law. The Kansas Commission on Peace Officers standards and Training (KSCPOST) is the board set up by statute to handle the discipline and certification of law enforcement officers, and on page 2 line 20 officers should be changed to *agencies*.

Mike Watson, Director Legislative Committee, Kansas Association of Chief's of Police, provided testimony in support of a compromise that support certain provision. (Attachment 7) The committee was provided with substitute language and the provisions that the Association is opposed to.

Danielle Dempsey-Swopes, Kansas African American Affairs Commission, spoke in favor of the bill. (Attachment 8) The bill will mandate annual training for law enforcement officers and allow for the creation of a task force to determine a state process for collection of data on routine investigatory activities.

Written testimony in support of the bill was provided by: Senator Haley, (Attachment 9) Kevin Graham, Attorney General's Office, (Attachment 10) Shirley Wishom and Mona Brown, Women in Action, (Attachment 11) Sandy Jacquot, General Counsel League of Kansas Municipalities, (Attachment 12) William Richards, Topeka NAACP Lobbyist, (Attachment 13) Dick Kurtenbach, Executive Director of the American Civil Liberties Union of Kansas and Western Missouri, (Attachment 14) Elias Garcia, Executive Director of the Kansas Hispanic & Latino American Affairs Commission, (Attachment 15) Walt Chappell, Citizens for Equal Law Enforcement, (Attachment 16) in opposition or wanting the amended form written testimony was received from Randy Rogers, President Kansas Sheriff's Association, (Attachment 17) and Michael Heffron, Emporia Chief of Police. (Attachment 18)

Chairman Loyd closed the hearing on Sub for SB 77.

The meeting was adjourned at 3:30 pm. The next committee meeting is March 22, 2005.

HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

GUEST LIST

DATE 3/21/05

NAME	REPRESENTING
Richard Samaligo	Kennedy & Assoc.
Karen Beckerman	JJA
Prock Landwehr	JJA
Anthony Fanson	Kappa League
Kyuna Khepra	Kappa League
Jeremy Foye	<del>MM</del>
Janet's Foye	Kappa League
Jake's Watie	Kappa League
Quincy Watie	Kappa League
Timothy Williams	Kappa League
Donald Jackson	Kappa League
Thomas (T.H.) Turner	Kappa League
Sarah Beylon	Washburn University
Khiny Woods	Kappa League
Andrea Malone	Kansas State University
Angela Waters	Women In Action
Walt Chappell	Citizens for Equal Law Enforcement
LTC Larry Burks	NAACP - Wichita, KS
Troy Scroggins	NAACP - Topeka, KS
KEVIN GRAMM	AG
Amber Shiverdi	PMCA
Matthew Goddard	Heartland Community Bankers Assoc.
Randy Rogers	Kansas Sheriff's Assoc.
William R Leck	Kansas Highway Patrol





SENATOR PHILLIP B. JOURNEY

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SENATE CHAMBER

COMMITTEE ASSIGNMENTS

MEMBER: SPECIAL CLAIMS AGAINST THE STATE  
 (JOINT), CHAIR  
 HEALTH CARE STRATEGIES  
 JUDICIARY  
 PUBLIC HEALTH AND WELFARE  
 TRANSPORTATION

CORRECTIONS AND JUVENILE JUSTICE  
 OVERSIGHT (JOINT)

**Testimony in Support of Senate Bill 71**  
**Presented by State Senator Phillip B. Journey, 26<sup>th</sup> District**

On March 17th, 2005, before the House Corrections and Juvenile Justice Committee, the Honorable Representative Ward Loyd, Chair.

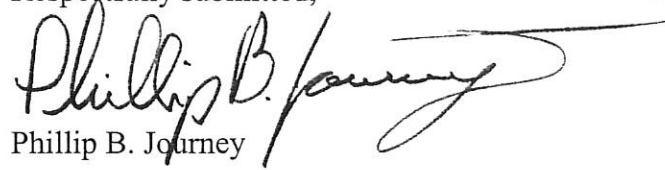
Mr. Chairman, ladies and gentleman of the committee, it is a pleasure to be before you today as a proponent of this bill. Senate Bill 71 is a piece of legislation that is very important to the residents of Sedgwick County and the State of Kansas. It is a simple piece of legislation with two sections. It is important to the residents of Sedgwick County and the State of Kansas due to the extraordinary nature of crimes perpetrated involving automatic teller machines and their customers. Last session I introduced SB333 to require banks to implement free software that when a customer entered a reverse Personal Identification Number or PIN number, law enforcement would automatically be informed that the distress PIN had been entered, the location of the ATM, the account holder's name, and if integrated with the Division of Motor Vehicle records, the likely car's description. Opponents said ATM crime was not significant enough to warrant the cost. This bill would facilitate the documentation of this violent crime trend. This bill supplements K.S.A. 21-3426 and 21-3427 with two new classes of robbery. Senate Bill 71 which increases the criminal penalties imposed for the crimes of robbery and aggravated robbery at an automatic teller machine, from a Level 5 Person Felony (PF) to a Level 4 PF and from a Level 3 PF to a Level 2 PF, respectively.

While many of us are aware of the violent and sadistic nature of the Carr murders in Wichita, other ATM crimes in Wichita have been similarly brutal. ATM crimes are not your normal everyday robbery where the criminal approaches the victim, demands money or property and then leaves upon receipt. These crimes tend to go on for hours, or even days, as the criminal must repeatedly approach the ATM machines to remove more and more money each time. In many cases, the victim is terrorized for an extended period of time, far greater than a normal robbery.

My experience in the criminal justice system consists of working on over 60,000 criminal and traffic cases with over 21 years of experience in Kansas Courts. I practice mainly in the Sedgwick County area and have reviewed thousands of police reports. I have spoken with hundreds of victims of violent crime and understand in many respects the pain they are forced to endure. I recognize that the fiscal note of potential cost may put some off of this proposal; however, other bills I have filed if passed would offset these costs and when weighed against the human cost of the violent crimes and when factored in is an economic positive.

I want to thank the committee for it's time and attention in this matter and urge the committee to pass this bill out with a favorable recommendation, and I will stand for questions.

Respectfully submitted,

A handwritten signature in cursive script that reads "Phillip B. Journey". The signature is written in black ink and is positioned above the printed name.

Phillip B. Journey



STATE OF KANSAS  
OFFICE OF THE ATTORNEY GENERAL

**PHILL KLINE**  
ATTORNEY GENERAL

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March 17, 2005

HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE  
Testimony in Support of  
Senate Bill No. 71

By  
Kevin A. Graham  
Office of the Attorney General

Dear Chairman Loyd and Members of the Committee:

Thank you for allowing me to appear and offer testimony in support of SB 71. This bill would create two new felony offenses under Kansas law that would apply only in situations where an offender (i.e. "robber") makes the use of an automated teller machine an essential component of the robbery crime. For example, an offender approaches a victim outside of a bank and forces the victim to go to the nearby ATM and withdraw money from the victim's account under threat of bodily harm. Under SB 71, the offender's actions in this example would constitute the crime of Automated Teller Machine Robbery, a proposed Severity Level 4, person felony. If the offender in this example were armed with a dangerous weapon at the time of the offense, or if the offender did inflict bodily harm on the victim during the course of the offense, this scenario would rise to the level of Aggravated Automated Teller Machine Robbery, a proposed Severity Level 2, person felony.

SB 71 is intended to impose strict punishments on individuals who would risk the lives of others solely for financial gain. SB 71 is also intended to serve a deterrent purpose – by imposing higher sentencing severity levels for ATM Robbery and Aggravated ATM Robbery than currently exist for the crimes of Robbery and Aggravated Robbery, the bill seeks to convince offenders not to attempt to commit robbery crimes in this fashion. There are a huge number of ATM's in our state. Many times individuals utilize ATM's at night or on weekends when the regular bank is not open. Very often the person using the ATM is alone and is unable to keep watch for criminals who may approach undetected. SB 71 seeks to help protect Kansas citizens and prevent ATM robberies by sending a message to criminals that if they do rob a victim by forcing the victim to withdraw money from an ATM, they will be punished severely.

**Please note:** Attorney General Kline is requesting that the committee consider adopting the balloon amendment attached to this testimony. The proposed balloon amendment would insert the language of SB 179 into SB 71.

The language of SB 179 has been designed to help protect Kansas children from sexual predators. This bill language would enhance penalties for sex offenders who actively prey on Kansas children and allows for charges to be filed against sex offenders for every image of child pornography they possess.

- Section 3 of the balloon amends the crime of Indecent Solicitation of a Child, KSA 21-3510, to raise the severity level of the crime from the current level 7 to a severity level 6. While the amended severity level would still result in a presumptive sentence of probation for a first time offender – as is currently the case – elevating this severity level would impose presumptive prison sentences for criminals who commit a second or subsequent offense.
- Section 4 of the balloon amends the crime of Aggravated Indecent Solicitation of a Child, KSA 21-3511, to raise the severity level of that crime from the current level 6 to a severity level 5. This enhanced severity level would place first time offenders of this aggravated crime in a presumptive prison box on the Sentencing Guidelines grid. [Note: A first offender at level 5 – if the offender has no prior record – would fall in a “border box” on the sentencing grid, thus a judge could sentence the offender to probation if the judge determined that a lesser sentence was appropriate in an individual case.]
- Section 5 of the balloon amends the crime of Sexual Exploitation of a Child, KSA 2004 Supp. 21-3516, to bring Kansas law into agreement with federal law on the same subject and corrects a defect in how the current statute allows crimes of possessing child pornography to be charged in our State.
  - This balloon section amends the wording of KSA 2004 Supp. 21-3516 to remedy a potential problem with the current wording of the Sexual Exploitation statute that came to light in the US Supreme Court case of **Ashcroft, Attorney General, et al. vs. Free Speech Coalition, et al.**, 122 S.Ct. 1389 (2002), a case that dealt with a federal law that was determined to be overly broad. The federal law was subsequently changed, and we are recommending amending the language of the Kansas statute to mimic the revised federal law.
  - The language of the statute is also amended to allow one count of Sexual Exploitation of a Child to be filed for each individual image of child pornography that an offender possesses. Under current law if an offender has ten hard-copy photographs of child pornography, we can file 10 separate criminal counts against the offender. However, under current law, if an offender has 10,000 pictures of child pornography on his/her computer hard-drive, we can only file one count, because there is only one



hard-drive. [See State v. Donham, 29 Kan. App. 2d 78, 24 P. 3d 750 (2001).]

The proposed changes from SB 179 (now the proposed balloon amendment) strengthen the ability of the Kansas law enforcement community to prosecute sex offenders who would prey on our children. The increased penalties would not only appropriately punish offenders who commit the crimes, but would also serve to deter individuals from other states from coming to Kansas to take advantage of our children. If you have any doubt that these offenders do examine the laws of various states to see what states have the weakest laws and punishments, one has only to visit the website [www.ageofconsent.com](http://www.ageofconsent.com) which has links specifically for that purpose. [Note the link which connects pedophiles to the official Kansas website so that they can pull up copies of our statutes and check them for themselves.]

The Senate Judiciary Committee recommended SB 179 favorably for passage, and the committee amended the language of SB 179 into Sub. HB 2016, which was heard on the floor of the Senate yesterday, March 16, 2005. The Senate is scheduled to take final action on Sub. HB 2016 today, March 17, 2005.

On behalf of Attorney General Phill Kline, I encourage the Committee to support SB 71, with the requested amendment, and to recommend the bill favorably for passage.

Respectfully,

OFFICE OF THE ATTORNEY GENERAL  
PHILL KLINE



Kevin A. Graham  
Assistant Attorney General  
Director of Governmental Affairs

# PROPOSED BALLOON AMENDMENT

2-4

*As Amended by Senate Committee*

*Session of 2005*

## SENATE BILL No. 71

By Senator Journey

1-20

10 AN ACT concerning crimes and punishment; creating the crime of au-  
11 tomated teller machine robbery; aggravated automated teller machine  
12 robbery.

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

14 Section 1. (a) Automated teller machine robbery is the taking of  
15 property from the person or presence of another by force or threat of  
16 bodily harm to any person ~~to effect~~ **through the use of** an automated  
17 teller machine transaction.

18 (b) Automated teller machine robbery is a severity level 4, person  
19 felony.

20 (c) For the purpose of this section, "automated teller machine"  
21 means any electronic information processing device located in this state  
22 which accepts or dispenses cash in connection with a depositor's account  
23 or accounts.

24 (d) This section shall be part of and supplemental to the Kansas crim-  
25 inal code.

26 Sec. 2. (a) Aggravated automated teller machine robbery is an au-  
27 tomated teller machine robbery, as defined by section 1, and amendments  
28 thereto, committed by a person who is armed with a dangerous weapon  
29 or who inflicts bodily harm upon any person in the course of such robbery.

30 (b) Aggravated automated teller machine robbery is a severity level  
31 2, person felony.

32 (c) This section shall be part of and supplemental to the Kansas crim-  
33 inal code.

34 Sec. ~~3~~ 7 This act shall take effect and be in force from and after its  
35 publication in the statute book.

INSERT

SECTION 3.

K.S.A. 21-3510 is hereby amended to read as follows: 21-3510. (a) Indecent solicitation of a child is:

(1) Enticing or soliciting a child 14 or more years of age but less than 16 years of age to commit or to submit to an unlawful sexual act; or

(2) inviting, persuading or attempting to persuade a child 14 or more years of age but less than 16 years of age to enter any vehicle, building, room or secluded place with intent to commit an unlawful sexual act upon or with the child.

(b) Indecent solicitation of a child is a severity level ~~7~~ 6, person felony.

Sec. ~~4~~ 4. K.S.A. 21-3511 is hereby amended to read as follows: 21-3511. Aggravated indecent solicitation of a child is:

(a) Enticing or soliciting a child under the age of 14 years to commit or to submit to an unlawful sexual act; or

(b) inviting, persuading or attempting to persuade a child under the age of 14 years to enter any vehicle, building, room or secluded place with intent to commit an unlawful sexual act upon or with the child.

Aggravated indecent solicitation of a child is a severity level ~~6~~ 5, person felony.

Sec. ~~5~~ 5. K.S.A. 2004 Supp. 21-3516 is hereby amended to read as follows: 21-3516. (a) Sexual exploitation of a child is:

(1) Employing, using, persuading, inducing, enticing or coercing a child under 18 years of age to engage in sexually explicit conduct for the purpose of promoting any performance;

(2) possessing any ~~film, photograph, negative, slide, book, magazine or other printed or visual medium or any audio tape recording or any photocopy, video tape, video laser disk, computer hardware, software, floppy disk or any other computer related equipment or computer generated image that contains or incorporates in any manner any film, photograph, negative, photocopy, video tape or video laser disk in which a~~

CONTINUED ON NEXT PAGE

CONTINUED. INSERT:

2-5

~~visual depiction~~ visual depiction, including any photograph, film, video picture, digital or computer generated image or picture, whether made or produced by electronic, mechanical or other means, where such visual depiction is, ~~or appears to be~~, of a child under 18 years of age is shown or heard engaging in sexually explicit conduct with intent to arouse or satisfy the sexual desires or appeal to the prurient interest of the offender, the child or another;

(3) being a parent, guardian or other person having custody or control of a child under 18 years of age and knowingly permitting such child to engage in, or assist another to engage in, sexually explicit conduct for any purpose described in subsection (a)(1) or (2); or

(4) promoting any performance that includes sexually explicit conduct by a child under 18 years of age, knowing the character and content of the performance.

(b) As used in this section:

(1) "Sexually explicit conduct" means actual or simulated: Exhibition in the nude; sexual intercourse or sodomy, including genital-genital, oral-genital, anal-genital or oral-anal contact, whether between persons of the same or opposite sex; masturbation; sado-masochistic abuse for the purpose of sexual stimulation; or lewd exhibition of the genitals, female breasts or pubic area of any person.

(2) "Promoting" means procuring, selling, providing, lending, mailing, delivering, transferring, transmitting, distributing, circulating, disseminating, presenting, producing, directing, manufacturing, issuing, publishing, displaying, exhibiting or advertising:

(A) For pecuniary profit; or

(B) with intent to arouse or gratify the sexual desire or appeal to the prurient interest of the offender, the child or another.

(3) "Performance" means any film, photograph, negative, slide, book, magazine or other printed or visual medium, any audio tape recording or any photocopy, video tape, video laser disk, computer hardware, software, floppy disk or any other computer related equipment or computer generated image that contains or incorporates in any manner any film, photograph, negative, photocopy, video tape or video laser disk or any play or other live presentation.

(4) "Nude" means any state of undress in which the human genitals, pubic region, buttock or female breast, at a point below the top of the areola, is less than completely and opaquely covered.

(c) Sexual exploitation of a child is a severity level 5, person felony.

(d) This section shall be part of and supplemental to the Kansas criminal code.

Sec. 6 K.S.A. 21-3510 and 21-3511 and K.S.A. 2004 Supp. 21-3516 are hereby repealed.

SENATOR PHILLIP B. JOURNEY

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TOPEKA

SENATE CHAMBER

## COMMITTEE ASSIGNMENTS

MEMBER: SPECIAL CLAIMS AGAINST THE STATE  
(JOINT); CHAIR  
HEALTH CARE STRATEGIES  
JUDICIARY  
PUBLIC HEALTH AND WELFARE  
TRANSPORTATIONCORRECTIONS AND JUVENILE JUSTICE  
OVERSIGHT (JOINT)

**Testimony in Support of Senate Bill 72**  
**Presented by State Senator Phillip B. Journey, 26<sup>th</sup> District**

On March 17th, 2005, before the House Corrections and Juvenile Justice Committee, the Honorable Representative Ward Loyd, Chair.

First I'd like to thank the committee for allowing me to testify in support of Senate Bill 72. Senate Bill 72 mirrors the increase of the threshold for felony giving a worthless check as we did with felony theft last year. It increases the threshold from \$500 to \$1000. While this level of felony is a presumptive probation disposition in the sentencing guidelines it will reduce the number of potential defendants to be incarcerated due to probation violations. This should largely offset any potential DOC beds needed for the new cases charged as felonies due to aggregation. Senate Bill 72 mirrors modifications made two years ago to K.S.A. 21-3729. That statute deals with the criminal use of a financial card. That statute was modified by the Kansas Legislature and signed by the Governor to allow the aggregate of financial transactions within a seven-day period to be a made a felony. For example, if someone made six \$100 fraudulent credit card transactions in a seven-day period, it could be charged as a felony as opposed to six separate counts of misdemeanor counts. Senate Bill 72 accomplishes the same thing in dealing with worthless checks.

There are two operative sections of the bill amending K.S.A. 21-3707. Adding Section (e) (1) (B), which makes a level 7 nonperson felony out of giving multiple worthless checks, drafts, or orders in a seven-day period in an aggregate amount of \$25,000 or more; and, an amendment adding to K.S.A. 21-3707 Section (e) (2) a new Section (B) which makes it a level 9 nonperson felony to give multiple worthless checks in a seven-day period if the combined total of those checks, drafts, or orders is at least \$1000 but less than \$25,000. It is important to remember that the basic structure of the statute is not changed. An individual who mistakenly writes a number of checks in excess of the balance in their account, would still have an opportunity to cure that problem as state law requires that a certified letter be sent to the drawer of the checks or the maker of the checks giving them up to 21 days to make good on the worthless checks. The statute simply imposes a presumption of criminal intent, but that is still a rebuttable presumption in criminal court.

I have now practiced law in excess of 21 years in Sedgwick County, Kansas, working on over 60,000 criminal and traffic cases. For eight years I served my penance for being a lawyer, working under contract for one or two days a week in Wichita Municipal Court on misdemeanor cases. I can recall on many instances where the defendant had multiple checks in excess of \$2500 in the aggregate, but was simply charged with 50 misdemeanor counts as opposed to one




felony count. Municipal Courts do not have the probation resources necessary to monitor restitution to the victims in these financial crimes. Municipal Courts do not have the probation resources necessary to monitor defendants to insure their compliance with court orders for drug or alcohol treatment which in many cases is the trigger for this criminal behavior.

In these times when the state legislature is contemplating tax increases on many individuals and businesses in the State, we should with the other hand help these businesses maintain their financial solvency and send a message to people who would abuse the privilege of having a checking account in this State. District Court Probation Services and Community Corrections Probation Services in the State of Kansas are generally not available in Municipal Court cases. In many cases Community Corrections is not available for misdemeanor charges in District Court placing these defendants, upon conviction, with Court Services or Community Corrections as the Court may desire increases the likelihood that these persons while being granted probation would be monitored closely enough to hopefully motivate them to correct the behavior that precipitated these issues.

I sincerely appreciate the committee's time and attention in these matters and would urge the committee to pass this legislation out of committee with a favorable recommendation.

Respectfully submitted,



Phillip B. Journey

STATE OF KANSAS

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SENATOR, 29TH DISTRICT  
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COMMITTEE ASSIGNMENTS  
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MEMBER: • WAYS & MEANS  
• JOINT COMMITTEE ON ADMINISTRATIVE RULES & REGULATIONS  
• JUDICIARY

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March 21, 2005

Rep. Ward Loyd  
Capitol, 427-S  
Topeka, Kansas 66612

Re: SB 77, an Act Concerning Racial Profiling

Representative Loyd, Committee Members,

Racial profiling may be a relatively new term, but it is not a new practice. Indeed, you might say it is as old as the dawn of man. As all of you are aware, the version of the racial profiling bill in front of you is not the first one to be brought before the Senate. We haven't been working on it since the dawn of man – it only seems that way.

As you hear from the other speakers today, you will see that a remarkable coalition of people and groups came together to work on a bill that sets the policy for the State of Kansas. When it comes to racial profiling, with the passage of SB 77, we will have a statute that sets the tone for every law enforcement agency in the state.

One step at a time, we will strengthen the underlying statutes with the efforts of the Task Force which brings together representatives of all the important areas – individuals, law enforcement, community groups like the NAACP and Citizens for Equal Law Enforcement, and government agencies like the Kansas African American Affairs Commission and the Kansas Hispanic/Latino American Affairs Commission. One year from this week, that Task Force is mandated to come back to this body with practical recommendations for collecting data and making it available for analysis.

I applaud the efforts of the citizens from all over the state of Kansas who felt it necessary to show their support for SB 77. I also appreciate the efforts of the community, law enforcement, KAAAC, KHLAC, and all who collaborated to begin the first stages of a policy that will eventually bridge the gap between law enforcement and the public. As we all know, change is difficult, but this first step is both crucial and necessary.

House C & JJ  
3-21-05  
Attachment 4

# Testimony

before the

## House Corrections and Juvenile Justice Committee

March 21, 2005

Jihad Muqtasid  
Wichita, Kansas  
316/684-7126

Chairman Loyd, Members of the Committee,

I come today to tell you of two incidents of racial profiling. One happened to me when I was just a boy and another recently as an old man of 75.

Sixty-four years ago, my family and I lived in Memphis, Tennessee. We were not wealthy, and I worked in a funeral home to make some extra cash. One day, as I was walking home from my part-time job, I was accosted by two police officers in a patrol car. One of them spoke to me through the passenger side window.

“Where you goin’, little nigger,” he asked. I responded that I was on my way home. He then motioned for me to come closer and continued to motion until I was standing right by the window. “Put your head in the window,” he ordered. I responded that I was unwilling. His voice become harsher. “I told you to put your head in the window, boy!” Finally, I leaned into the patrol car.

Quickly, my tormentor rolled up the window so that my head was inside the car, my body outside, and my neck so tightly held that I could not get away. I was only eleven and not very tall. I was standing on my tip-toes to take some of the pressure off my neck.

Now both police officers were laughing and taunting me. They thought they had done something very funny. But their loudest laughter came as the patrol car pulled away from the curb. I did my best to run alongside the car, but I lost and regained my foothold several times, each time nearly choked to death before I could get my feet under me. Finally, they rolled down the window and increased speed so that I fell out of the car and onto the street.

I have been afraid of the police ever since.

So, one evening some months ago, as I drove away from a religious gathering, I noticed the patrol car that was sitting opposite the mosque at 17<sup>th</sup> and Lorraine, watching my friends as we all left. But it was me that it followed.

When I stopped to speak to an elderly neighbor in her driveway, I thought the patrol car had passed me by. But as I drove away from my neighbor's home, I saw the patrol car behind me again.

The officer flashed his lights, and I pulled over to the side of the road. I was terrified. The officer came up to my window, and I asked why he had stopped me. He told me I had failed to signal when I changed lanes. I said that I remembered signaling, but that the van I was driving did not belong to me but to a family member. Instead of asking me to put on my signal to see if the light was working, he then asked me to get out of the van.

He directed me to stand in front of the van and to link my hands behind my head. When I had done so, he pushed me down onto the hood of the van. He searched me, not gently. In the process of the search, he discovered the small pocket knife that I carry with me everywhere. Many men my age carry pocket knives, and they come in handy in many ways, but mine is not large enough to be a threat to anyone, especially not in the hands of a 75-year-old man with emphysema.

He asked for my permission to search the van. I refused. He asked again, and I refused again.

He then walked back to his squad car and sat in it for some minutes, leaving me in that very uncomfortable position. When he again approached me, he handed me a ticket for failure to signal, involving a fine of \$110. He got back in his patrol car and drove away.

I have taken my story to the head of the local precinct and even to the Chief of Police in Wichita. But no one has taken action, at least not that I could see. I have not paid the ticket, and I have made sure that everyone knows why.

I do not believe that I failed to signal for a lane change, and I do not believe that such a failure was why I was pulled over. When he looked at me, this white officer saw me as just an old black man, and he pulled me over to torment me. Just like those police in Memphis all those years ago, he wanted to have a little "fun" at my expense.

Please make it clear to all police officers in this state that racial profiling is wrong, that it will not be tolerated, and that it will be punished. Senate Bill 77 is the first step in that process. I ask that you vote for it.



# Testimony

before the

## House Committee on Corrections and Juvenile Justice

March 21<sup>st</sup>, 2005

Rev. Andrew McHenry  
406 Prairie  
P.O. Box 26  
Maple Hill, KS 66507  
(785/256-4277 Office  
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pastorandrew70@yahoo.com  
(former Chaplain at Topeka Correctional Facility & Topeka Juvenile Correctional Facility)

I have worked in prison and jail ministries for several years – in both professional and volunteer capacities – and on both state and county levels. Something that has always troubled me has been the disproportionate rates of incarceration. In Kansas, blacks make up roughly 6 percent of the general population, but comprise around 35 percent of the prison population. There are also disproportionate rates of incarceration for Hispanics and Native Americans.

Racists have declared that this happens because minority groups are more criminally-minded. I think we should all agree that this is not an acceptable answer.

I remember one corrections officer saying to me, "These aren't all the people who committed the crimes; these are just the ones who got caught." Ever since Dr. Karl Menninger wrote his classic *The Crime of Punishment*, it has been agreed that the majority of criminal activity goes undetected. Therefore, the ones who get punished are the ones the police focus on, and the fact that Kansas police engage in racial profiling undoubtedly plays a role in who gets caught.

In 2003, the *Topeka Capital-Journal* reported Police Foundation findings that black and Hispanic motorists are three times more likely than whites to be pulled over by authorities on Kansas' interstate highways. This has several detrimental impacts:

- 1) It drives away potential visitors and as such hurts the economy. Racial minorities are less likely to visit Kansas if they fear being needlessly harassed by law enforcement.
- 2) It fuels existing racial tensions, particularly those between minorities and law enforcement agencies. The law enforcement community needs to foster good relations with Kansas' communities of all races. Racial minorities (as with caucasians) should be able to trust the police, not fear them.

- 3) It is blatantly unfair. A crime is a crime whether you are white, black, Hispanic, etc. A white criminal should not have any loopholes to evade law enforcement more easily than criminals of other races.

I therefore support SB 77 and hope the legislature passes it. Thank you for your consideration.

# Testimony

before the

## House Corrections and Juvenile Justice Committee

March 21<sup>st</sup>, 2005

Kevin Myles  
NAACP of Wichita  
Wichita, Kansas

Chairman Loyd, Committee Members

In my capacity as NAACP President, I have personally heard over 20 complaints which I feel should be considered Racial Profiling. Each of these cases began with the complainant being followed, then later pulled over for one of 3 reasons:

1. Failure to Signal 100 feet from a turn
2. Wide Turn
3. Wheels touched the center line

After the stop was initiated, the officers requested to search the vehicles. In most cases, the individuals are not aware of their right to refuse, so they consent. If anything is found, then a ticket or citation is written for the item or issue then determined. If nothing is found, then the complainant is released and no ticket is issued, no record kept. The fact that these "random" stops often take as long as an hour and a half, and the vehicles that are followed and subsequently stopped are selected on the basis of the drivers' appearance, amounts to harassment.

In my capacity as State Vice President, and in my discussions with Civil Attorneys and the Branch Presidents of the NAACP from around the State of Kansas, I have noted that the same pattern of pretextual stops has been occurring statewide. Furthermore, I have noted that the same three items seem to present a consistent pattern.

# Testimony

before the

## House Federal and State Affairs Committee

March 30, 2005

Ralondo Henry Carr  
Wichita  
316/687-3736

Representative Loyd, Members of the Committee:

My name is Ralondo Henry Carr. I am a student at Wichita State University. I recently received my bachelor of arts degree in Criminal Justice, Ethnic Studies.

I am a returning adult student working on my master's of arts degree. I am a former Shocker basketball player and played professionally as well.

As a result of my family and I traveling all over the world, I have had many experiences with racial profiling. I will be speaking today on what we have endured, both in the state of Kansas and other places, regarding racial profiling.





# KANSAS

WILLIAM R. SECK, SUPERINTENDENT

KANSAS HIGHWAY PATROL

KATHLEEN SEBELIUS, GOVERNOR

## **Testimony on Substitute for SB 77 House Corrections and Juvenile Justice Committee**

**Presented by  
Colonel William Seck  
Kansas Highway Patrol**

**March 21, 2005**

Good afternoon, Mr. Chairman and members of the committee. My name is Colonel William Seck, and I respectfully submit the following written testimony on behalf of the Kansas Highway Patrol on Substitute for SB 77.

The Kansas Highway Patrol takes bias-based policing or "racial profiling" very seriously and does not tolerate this unethical practice. The Patrol has taken and continues to take active steps to eliminate biased-based policing:

- In June of 2004, the Kansas Highway Patrol implemented a biased-based policing policy to reaffirm the Patrol's commitment to unbiased policing.
- In an ongoing effort to strengthen relationships with Kansas' minority community, the Patrol held meetings in Salina and Garden City to discuss racial profiling in an attempt to discuss all concerns on this matter. Because these meetings were well received and proved to be successful, it is our intention to continue this initiative in other areas of the state. By working together, it is our goal that we address concerns and work to eliminate bias-based policing.
- To educate our personnel on this issue, the Patrol provides training for its law enforcement officers, which includes hands-on or scenario-based learning. We continue to provide the latest curriculum addressing "professional traffic stops," which include classes on "cultural awareness" and "cultural diversity".
- The Patrol works hard to recruit and hire individuals for law enforcement positions within the agency that reflect the diverse population we serve.

- Complaints alleging bias-based policing against an agency officer is handled and investigated by the Patrol's Professional Standards Unit. The Kansas Highway Patrol is continuously looking for ways to improve the services we provide.

The Patrol fully supports the concept of eliminating bias-based policing but has had concerns with language found in SB 77. After initial discussion with some of our law enforcement partners across Kansas, it seemed that many of the same concerns were commonly shared. In an effort to address these concerns and to support the primary concept, the Patrol joined a group of stakeholders soon after the bill's introduction.

By working together with representatives of the Kansas Hispanic/Latino American Affairs Commission, the Kansas African American Affairs Commission, the Kansas Attorney General's Office, the KBI, the Kansas Law Enforcement Training Center, the Kansas Sheriff's Association, the Kansas Peace Officer's Association, the Kansas Association of Chiefs of Police, the Kansas Trooper's Association and many other law enforcement officials and Senator Donald Betts, we fashioned substitute language for SB 77. We felt these revisions demonstrated the law enforcement community's commitment to unbiased policing but also addressed concerns with the initial version of the bill.

Substitute language for SB 77 (drafted by the working group and amended by Senate Committees) addressed the need for no tolerance policies. In doing so, it would require all law enforcement agencies in this state to adopt a detailed, written policy to preempt racial profiling. It also addressed the need for ongoing training for officers in an effort to ensure a better understanding of the issues. And finally, a 15-member Governor's Task Force would be put into motion to look at practices that would hold officers accountable and conscientious of their actions. But as changes have been made to SB 77, portions of the original compromise have been altered to reflect language that concerns the Patrol.

Originally, the compromise would have allowed a period no longer than one year for the 15-member task force to develop recommendations for uniform data collection. Current language in Substitute for SB 77 sets the deadline for the group at November 1, 2005. The Patrol continues to support the original timeline in an effort to ensure a quality final product.

We also oppose the language found in Section 6 of the bill. Originally, the compromise would have allowed a law enforcement agency to have the first opportunity to investigate a complaint against one of its officers. Thereafter, the complainant would have had an opportunity to file a complaint with the Kansas Attorney General. The intent was to give individuals another avenue to express concerns after they felt the original agency hadn't followed through. The existing language in Section 6 could potentially create confusion among the various groups and could place a huge burden on the Attorney General's Office, who would become a part of the disciplinary process.

The Kansas Highway Patrol supports substitute language for SB 77, drafted by the working group including Senator Betts, for the benefits it provides to the citizens of Kansas. The Patrol appreciates the opportunity to address you today and urges this committee to work with stakeholders to ensure language previously agreed to is passed out of committee.

###

# Kansas Peace Officers Association

**Testimony in Support of SB 77**  
Before the Senate Federal and State Affairs Committee  
Kyle G. Smith, Legislative Chair  
Kansas Peace Officers Association  
March 21, 2005

Chairman Loyd and Members of the Committee,

On behalf of the Kansas Peace Officers Association I appear today in support of the agreed amended version of SB 77. While I wish it were otherwise, we all know that racial profiling, as defined in the bill, happens. As does racism. The question is what effective steps can be taken to address the problem in a meaningful way without unfairly tarnishing all law enforcement officers or creating unnecessary bureaucracy and problems for the criminal justice system. Law enforcement must have the trust and assistance of the public to be effective. Abusive racial profiling destroys that trust and respect.

I've been very pleased to watch the cooperation between SB 27's proponents and the law enforcement community work out this compromise. By requiring every agency to develop a policy against racial profiling and mandating training, we can work together to minimize this problem that all should find abhorrent.

However, there are a couple of concerns I wish to bring up to the committee. First I have spoken with Senator Betts regarding section 6 of the bill, which creates a couple of redundancies in the law. In addition to the obvious first responsibility of the agency, Section 6 now inserts the attorney general's office as the state agency that reviews and imposes punishment for officers who break the law. As most of you are aware, the Kansas Commission on Peace Officers Standards and Training (KSCPOST) is the board set up by statute to handle the discipline and certification of law enforcement officers. Attorney General Phill Kline's office agrees that this section is unnecessary. Aggrieved citizens can always contact the attorney general's office and request a criminal investigation so while the first two sentences of section 6 are unnecessary; they are not really a problem.

And while I was not a main player in the negotiations that led to this version of the bill, I have heard concerns from several officers who did participate that while they agreed to a task force to study data collection, the language in the amended bill states the task force is only to look at how data is collected, not if it is necessary or advisable, narrower than the officers understood to be the charge to the task force.

Finally, I believe there is a typo in the bill when it requires law enforcement *officers* to adopt a policy against racial profiling – it should be law enforcement *agencies*”.

The Kansas Peace Officers Association is proud to stand in support of this legislation that will help insure that all Kansans are treated alike and also enhances the professionalism of Kansas law enforcement.

I'd be happy to respond to questions.

**Substitute for SENATE BILL No. 77**

By Committee on Federal and State Affairs

2-22

10 AN ACT concerning racial profiling; prohibiting certain actions and pro-  
11 viding remedies for violations.

12

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

14 Section 1. As used in this act:

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

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

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

22 (d) "Racial profiling" means the practice of a law enforcement officer  
23 or agency relying, as the sole factor, on race, ethnicity, national origin,  
24 gender or religious dress in selecting which individuals to subject to rou-  
25 tine investigatory activities, or in deciding upon the scope and substance  
26 of law enforcement activity following the initial routine investigatory ac-  
27 tivity. Racial profiling does not include reliance on such criteria in com-  
28 bination with other identifying factors when the law enforcement officer  
29 or agency is seeking to apprehend a specific suspect whose race, ethnicity,  
30 national origin, gender or religious dress is part of the description of the  
31 suspect.

32 (e) "Routine investigatory activities" includes, but is not limited to,  
33 the following activities conducted by law enforcement officers and agen-  
34 cies in conjunction with traffic stops: (1) Frisks and other types of body  
35 searches, and (2) consensual or nonconsensual searches of persons or  
36 possessions, including vehicles, dormitory rooms, school lockers, homes  
37 and apartments.

38 (f) "Collection of data" means that information collected by Kansas  
39 law enforcement officers after each traffic or pedestrian stop.

40 Sec. 2. A 15-member task force shall be appointed by the governor  
41 to design a method for the uniform collection of data. The task force shall  
42 include representatives of the Kansas attorney general's office, the Kansas  
43 highway patrol, city and county law enforcement agencies, the Hispanic



1 and Latino American affairs commission, the advisory commission on Af-  
2 rican-American affairs, the department of revenue, Kansas district courts,  
3 Kansas civil rights advocates and others who can assist in the uniform  
4 collection of data. The task force shall make a final report and recom-  
5 mendations to the governor and the legislature not later than November  
6 1, 2005.

7 Sec. 3. It shall be unlawful for any law enforcement officer or any  
8 law enforcement agency to engage in racial profiling.

9 Sec. 4. The race, ethnicity, national origin, gender or religious dress  
10 of an individual or group shall not be the sole factor in determining the  
11 existence of probable cause to take into custody or to arrest an individual  
12 or in constituting a reasonable and articulable suspicion that an offense  
13 has been or is being committed so as to justify the detention of an indi-  
14 vidual or the investigatory stop of a vehicle.

15 Sec. 5. (a) All law enforcement agencies in this state shall adopt a  
16 detailed, written policy to preempt racial profiling. Each agency's policy  
17 shall include the definition of racial profiling found in section 1, and  
18 amendments thereto.

19 (b) Policies adopted pursuant to this section shall be implemented by  
20 all Kansas law enforcement ~~officers~~ within one year after the effective  
21 date of this act. The policies and data collection procedures shall be avail-  
22 able for public inspection during normal business hours.

Agencies

23 (c) The policies adopted pursuant to this section shall include, but  
24 not be limited to, the following:

25 (1) A prohibition of racial profiling.

26 (2) Annual educational training which shall include, but not be lim-  
27 ited to, an understanding of the historical and cultural systems that per-  
28 petuate racial profiling, assistance in identifying racial profiling practices,  
29 and providing officers with self-evaluation strategies to preempt racial  
30 profiling prior to stopping a citizen.

31 (3) For law enforcement agencies of cities of the first class, establish-  
32 ment or use of current independent citizen advisory boards which include  
33 participants who reflect the racial and ethnic community, to advise and  
34 assist in policy development, education and community outreach and  
35 communications related to racial profiling by law enforcement officers  
36 and agencies.

37 (4) Policies for discipline of law enforcement officers and agencies  
38 who engage in racial profiling.

39 (5) A provision that, if the investigation of a complaint of racial pro-  
40 filing reveals the officer was in direct violation of the law enforcement  
41 agency's written policies regarding racial profiling, the employing law en-  
42 forcement agency shall take appropriate action consistent with applicable  
43 laws, rules and regulations, resolutions, ordinances or policies, including

1 demerits, suspension or removal of the officer from the agency.

2 (6) Provisions for community outreach and communications efforts  
3 to inform the public of the individual's right to file with the law enforce-  
4 ment agency or the attorney general's office complaints regarding racial  
5 profiling, which outreach and communications to the community shall  
6 include ongoing efforts to notify the public of the law enforcement  
7 agency's complaint process.

8 (7) Procedures for individuals to file complaints of racial profiling  
9 with the agency, which, if appropriate, may provide for use of current  
10 procedures for addressing such complaints.

11 (d) Each law enforcement agency shall compile an annual report of  
12 all complaints of racial profiling received and shall submit the report on  
13 or before January 31 to the office of the attorney general for review. The  
14 annual report shall include: (1) The date the complaint is filed; (2) ac-  
15 tion taken in response to the complaint; (3) the decision upon disposition  
16 of the complaint; and (4) the date the complaint is closed. Annual reports  
17 filed pursuant to this subsection shall be open public records and shall  
18 be posted on the official website of the attorney general.

19 Sec. 6. (a) Any person who believes such person has been subjected  
20 to racial profiling by a law enforcement officer or agency may file a com-  
21 plaint with the law enforcement agency. The complainant may also file a  
22 complaint with the attorney general's office. ~~If a complaint is filed with~~  
23 ~~the attorney general's office, the attorney general or the attorney general's~~  
24 ~~designee shall review and, if necessary, investigate the complaint. The~~  
25 ~~attorney general or attorney general's designee shall consult with the head~~  
26 ~~of the law enforcement agency before making final recommendations~~  
27 ~~regarding discipline of any law enforcement officer or other disposition~~  
28 ~~of the complaint.~~

→ The Kansas  
Commission on  
PEACE Officer  
Standards And  
training.

29 (b) Upon disposition of a complaint by <sup>Administrative means</sup> ~~the attorney general's office,~~  
30 the complainant shall have a civil cause of action in the district court  
31 against the law enforcement officer or law enforcement agency, or both,  
32 and shall be entitled to recover damages if it is determined by the court  
33 that such persons or agency engaged in racial profiling. The court may  
34 allow the prevailing party reasonable attorney fees and court costs.

~~35 (c) A law enforcement agency shall not be eligible to receive grants  
36 or other moneys from the state for the fiscal year following a finding by  
37 the attorney general or the attorney general's designee that a law enforce-  
38 ment agency has engaged in racial profiling or has failed to discipline a  
39 law enforcement officer in accordance with the recommendations of the  
40 attorney general or the attorney general's designee pursuant to this sec-  
41 tion. The provisions of this subsection shall not apply if the complainant  
42 files a civil cause of action pursuant to this section and the district court  
43 finds that racial profiling did not occur.~~

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



March 21, 2005

**OFFICERS**

SAM BUDREAU  
President  
Chanute Police Dept.

KELLY PARKS  
Vice President  
Valley Center Police Dept.

ED KLUMPP  
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Immediate Past President  
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GUS RAMIREZ  
Region I  
Johnson Co. Comm. College

JAY REYES  
Region II  
Fort Scott Police Dept.

RONNIE GRICE  
Region III  
KSU Police Dept.

JIM DAILY  
Region IV  
Newton Police Dept.

LYNN MENAGH  
Region V  
Norton Police Dept.

VERNON RALSTON  
Region VI  
St. John Police Dept.

Kansas House of Representatives  
Committee on Corrections and Juvenile Justice

Dear Chairman Loyd and Committee Members,

I am the Legislative Committee Chairman of the Kansas Association of Chiefs of Police (KACP). I wish to share information with you in regard to Senate Bill 77 that is being heard by your Committee. I want to make it clear that all members of the KACP are opposed to racial profiling and all forms of illegal discrimination.

Although not unanimous, the KACP as an organization is supportive of reasonable legislation that would assist in the prevention of racial profiling in Kansas. The KACP was adamantly opposed to the original Senate Bill 77 but after compromise with Senator Betts and others the association agreed to support a racial profiling bill that contains certain provisions. Unfortunately the substitute Senate Bill 77 that eventually passed the full Senate 39-0 had been further amended and was not a bill the KACP would support and therefore the information disseminated that the KACP supported the substitute bill was inaccurate. The KACP will support a substitute racial profiling bill with the following provisions:

1. A statewide definition of racial profiling as conducting routine investigatory activities solely on the basis of a persons race, gender, ethnicity, or national origin.
2. A mandate for all Kansas law enforcement agencies to have a written policy prohibiting racial profiling.
3. A mandate for all Kansas law enforcement agencies to provide annual training explaining and prohibiting racial profiling.
4. A mandate for all Kansas law enforcement agencies to have a written policy for investigating complaints of racial profiling.
5. A mandate for all Kansas law enforcement agencies to have a written policy delineating the discipline for any officers found to be conducting racial profiling.

6. A mandate for all Kansas law enforcement agencies to annually report the number of complaints of racial profiling and the disposition of the internal investigation to the Kansas Attorney General.

The association is opposed to the following provisions of various forms of the bill:

1. Collecting in-depth data on all vehicle and pedestrian stops. The collecting of this data would be extremely time-consuming, expensive, and would not be conducive to effective law enforcement through de-policing or encouraging officers to take enforcement action against Caucasians to offset statistics indicating action taken against minority offenders.
2. Use of statistical data on an officer's stops that were disproportionate to the racial makeup of the community as prima face evidence of guilt is totally unacceptable. Statistical data cannot prove the guilt or innocence of racial profiling and the statistics are frequently inaccurate. There are many other factors that might explain statistical data in law enforcement activities.
3. Classifying racial profiling as a misdemeanor crime. This is unnecessary. Violating someone's civil rights is already illegal.
4. The Attorney General would consult with the officer's agency head prior to recommendation of discipline. There are current city and county disciplinary policies and agreements with bargaining groups that need to be respected. There is also a concern with the separation between the law enforcement agency and the Attorney General's Office.
5. Complainants do not need a civil cause of action in the district court. They already have the ability to bring a civil action in federal court.
6. A law enforcement agency shall not be eligible to receive grants from the state for the fiscal year following a finding by the attorney general that racial profiling has occurred or the officer was not disciplined in accordance with the Attorney General's recommendations. This could result in some cities and counties losing large sums in grant revenue and seriously effect the ability to provide law enforcement that is routinely used in minority communities.
7. Including "religious dress" as criteria for racial profiling. We do not want to have to train the officers in the religious dress of all the many religious groups that the officers may come in contact with. Officers need training on overwhelming topics currently and the inclusion of religious dress is unreasonable.
8. Mandating the use of independent citizen advisory boards to review disciplinary actions, policy development and education, and community outreach and communications. Many Kansas jurisdictions do not have significant minority populations and other jurisdictions already have citizen advisory boards. This decision should be left to the governing bodies and their respective law enforcement agencies.



9. The report to the Attorney General in reference to racial profiling is due by January 31. Many agencies will need longer to compile these statistics. We would suggest February 15.

I would like to point out that the members of our association who are not supportive of the racial profiling legislation do so because they believe the legislation is unnecessary. Nearly all of the provisions of the substitute SB 77 except those supported by the KACP are currently available to citizens who believe they are victims of racial profiling.

The KACP desires to work with the Committee and all interested parties to prohibit racial profiling and provide responsive, effective law enforcement to all citizens of the state of Kansas. If you have questions or the KACP can be of assistance in working this legislation, please feel free to contact Director Mike Watson (785-537-2112 ext. 2280) or contact your local chief of police. Thank you.



Director Mike Watson  
Legislative Committee Chairman  
Kansas Association of Chief's of Police



**State of Kansas**  
**House Committee on Corrections and Juvenile Justice**  
**Testimony in support of Substitute SB77**  
**Danielle Dempsey-Swopes, Executive Director**  
**Kansas African American Affairs Commission**  
**March 21, 2005**

Chairman Loyd, members of the committee,

Members of the African American Affairs Commission represent African American communities from all corners of the state. We have the responsibility for addressing many issues in the African American community. One of the most pressing concerns of our community is the practice of racial profiling and the lack of trust in law enforcement officials. The Kansas African American Affairs Commission has been pleased to partner with the Kansas Highway Patrol and other state law enforcement agencies to address these issues and together we urge you to support Substitute SB 77, as it will provide the legal foundation for preempting the practice of racial profiling by law enforcement agencies in Kansas.

Our community members understand that we must work in partnership with law enforcement officials to engage in effective community policing. Effective community policing requires that all of the members of our diverse Kansas communities have significant trust in its law enforcement officials.

Racial profiling (or bias based policing,) generally, is the invidious use of race or ethnicity as the sole criteria for engaging in investigative procedures. When law enforcement officials engage in racial profiling, or bias based policing, they erroneously assume that individuals of one race, ethnicity, religious group or gender, are more likely than others to engage in crime. When law enforcement officers make erroneous assumptions, they become ineffective. Racial profiling causes significant damage, including, stigma, humiliation and a basic erosion of the trust that should exist between the community and those who protect and serve the community. No law enforcement agency can be successful without the trust of its community.

The Northeastern University Center for Race and Justice reports that more than 20 states now have legislation to ban racial profiling and bias based policing and to collect data to study the issues. Substitute SB77 is an important first step for our state to address this widespread community concern.

In 2002 the State of Kansas contracted with a Washington D.C. organization called the Police Foundation Institute, a private, independent, nonprofit organization, to conduct a study on racial profiling in Kansas. This study gave significant insight

to the reality of the problem of racial profiling in Kansas communities. The Executive Summary of the researcher's findings confirmed, ". . . that the State of Kansas is experiencing profiling of Hispanic and Black motorists. While evidence of this was not apparent in all jurisdictions, seven assessed agencies had evidence of at least one of these two groups being targeted by police in traffic stops . . . All ten agencies assessed in this report were asked for alternative explanations that were considered in interpreting findings of profiling. Researchers are aware of no existing evidence that supports the assertion that the members of minority groups are more likely to violate traffic laws."

**John C. Lamberth, PhD**

**Chief Executive Officer, Project Director**

**Police Foundation Institute, A Multi Jurisdictional Assessment of Traffic Enforcement and Data Collection in Kansas, Executive Summary, February 2003.**

Given what the research confirms, the implementation of Substitute SB77 is desperately needed. This bill will:

- 1.) Define racial profiling and specify that engaging in the practice is a violation of Kansas statute. This will allow alleged victims to bring a cause of action for damages in civil court.
- 2.) Require that all law enforcement agencies adopt policies against racial profiling.
- 3.) Mandate annual training for law enforcement officers and the adoption of strategies to end such profiling.
- 4.) Mandate outreach and communication with local communities on the issue.
- 5.) Allow for the creation of a task force that will determine a state process for collection of data on routine investigatory activities.

And finally, Substitute SB77 will give the Attorney General authority to review complaints and to assist law enforcement agencies with activities to stop and prevent racial profiling and bias based policing.

I am pleased to note that law enforcement officials that we have met with during the previous two months also believe that the implementation of Substitute SB77 will allow law enforcement agencies to develop effective partnerships as well as increase cooperation and trust between law enforcement personnel and Kansas minority communities. The implementation of this bill, combined with effective community policing, will help to keep all Kansans safe.

# STATE OF KANSAS

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SENATE CHAMBER

**DAVID B. HALEY**

SENATOR  
DISTRICT 4  
WYANDOTTE COUNTY

Chairman and Honorable members of the House Corrections and Juvenile Justice Committee: Good Morning.

I join the long list of proponents before your Committee today who support swift and affirmative final action on Senate Bill 77, sponsored by Senator Betts and myself. My statement this morning is brief primarily in deference to other proponents here whose statements the Committee might consider.

SB 77 addresses a pervasive and vexing occurrence which occurs, most unfortunately, between members of law enforcement and citizens of color. We call it "Racial Profiling". (We have even nicknamed this deplorable practice as 'Driving While Black' or as 'Driving While Brown'). SB 77 defines "Racial Profiling" on page 1 lines twenty (20) through twenty - eight (28) of the bill as:

*"..the practice of a law enforcement officer or agency relying, as the sole factor, on race, ethnicity or national origin in selecting which individuals to subject to routine investigatory activities, or in deciding upon the scope and substance of law enforcement activity following the initial routine investigatory activity. Racial profiling does not include reliance on such criteria in combination with other identifying factors when the law enforcement officer or agency is seeking to apprehend a specific suspect whose race, ethnicity or national origin is part of the description of the suspect."*

Racial profiling is a classic example of depriving a person of his/her civil rights under the color, or pre-text, of enforcing the law.

Frankly Mr. Chairman, this bill ,in my opinion, is but another baby step instead of the giant stride that this Legislature should be taking towards abolishing this antiquated and discriminatory practice.

In the 2000 Session, I and former Wichita State Representative Douglas Johnston, sponsored and introduced House Bill 2683 to the House Judiciary Committee which began as a measure to ban racial profiling by law enforcement. To make a long legislative story short, the powers that be insisted that the original bill would not pass as written in part due to the general public unawareness of this then "alleged" practice ...

The Substitute for HB 2683, was a drastic "watering-down" of the original bill, provided instead for the collection and reporting of statistics relating to race, ethnicity and gender by law enforcement. Although it passed in the House 115-9 and the Senate 40-0 (Journals available) and the resulting \$350,000 study (KSA 22-4604) substantiated the allegations ripe in several areas of our Great State, that bill did nothing to define in statute what "racial profiling" is and to provide specific remedies for those in law enforcement who abuse the standards of probable cause with their own misguided bigotry.

SB 77 does both. And though this bill does not ban racial profiling, it does define racial profiling and provide a mechanism for administrative remedy. This, again, is a small step towards justice for all people.

Finally, opposition in 2000 griped about alleged costs to the Senate and whined about extra paperwork. The fiscal note presented in 2000 was erroneous citing expenses that never materialized. And Mr. Chairman, as you and I grapple towards reaching a truly color-blind society, the cost we bear as tax payers in Kansas to now support law-enforcement that erode our Constitutional rights on pure bias is for far greater.

Thank you Mr. Chairman. Questions?



STATE OF KANSAS  
OFFICE OF THE ATTORNEY GENERAL

PHILL KLINE  
ATTORNEY GENERAL

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March 21, 2005

HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

Testimony in Support of

Senate Bill No. 77

By

Kevin A. Graham

Office of the Attorney General

Dear Chairman Loyd and Members of Committee:

Thank you for allowing me to appear today on SB 77, which is intended to address concerns about "racial profiling" and proposes a variety of requirements and additions to Kansas law regarding contacts between Kansas law enforcement officers and members of the public. Attorney General Phill Kline stands ardently opposed to the practice of racial profiling, and supports efforts to curtail and eliminate this clearly improper and counter-productive type of activity. Attorney General Kline was not able to support the original language of SB 77 as the original bill had the potential to negatively impact the ability of Kansas law enforcement officer and agencies to detect and prevent crime as well imposing a sizeable fiscal impact on the State and local law enforcement agencies. Attorney General Kline supports the intent of SB 77, and with the adoption of amendments to Section 6 of the bill that have been proposed by the KBI, Attorney General Kline will support the enactment of SB 77.

Thanks to the hard work of a number of individuals from local and State law enforcement agencies, the Office of the Governor and Senator Betts and his staff, compromise language was developed that amended the original bill in a number of ways. Those amendments to the original bill addressed many of the major concerns of the law enforcement community. However, certain legitimate concerns about the wording of Section 6 of the bill still exist. These concerns are related to the role that the Attorney General and his staff would play in the investigation of allegations of racial profiling and specifically in regards to the recommendations for disciplinary actions that the Attorney General would be required to make under the current bill language.

Under the current wording of the bill, the Attorney General would be required to devote significant staff resources to conduct investigations of allegations of racial profiling. The bill would require the Attorney General to make three distinct legal determinations concerning allegations of racial profiling: (1) Whether an incident of racial profiling actually occurred; (2) if an incident of racial profiling is determined to have occurred, what the appropriate level of disciplinary action should be for the officer(s) involved; and (3) if disciplinary action has been recommended by the Attorney General, if that action appropriately carried out by the law enforcement agency in accordance with the Attorney General's recommendations.



Under Section 6, subsection (c ) of the bill [page 3, starting at line 35] if the Attorney General were to determine that a law enforcement agency had engaged in racial profiling, or that a law enforcement agency had not disciplined an officer found to have engaged in racial profiling in compliance with the recommendations of the Attorney General, that law enforcement agency would not be eligible to receive grant funds from the State for that fiscal year. In essence this provision would place the Attorney General in the position of being the sole arbiter deciding whether a law enforcement agency would be eligible to receive grant funds in cases where an allegation of racial profiling had been made. While Attorney General Kline certainly does not shy away from his duties as the attorney general for the State of Kansas, Attorney General Kline does not seek the authority to be "judge, jury and executioner" in such cases and it does not appear to be appropriate for that level of authority to be vested wholly in any one elected official. Such being the case, the Attorney General supports the proposed amendment language that would remove all but the first sentences of subsection (a) of Section 6 from the bill.

Please note that as the bill is currently worded (with Section 6 left intact) the bill would require a substantial level of commitment of staff time and resources for the Office of the Attorney General. This commitment of staff and resources would involve a fiscal impact on the Office of the Attorney General. While the fiscal impact on the office would be lower than was projected under the original bill, the fiscal impact would remain in excess of \$150,000 annually (including costs of an attorney to oversee the investigations/make required legal determinations, two special agents to conduct the investigations and the related investigatory expenses.) This projected fiscal impact would be greatly reduced should the language of Section 6 be removed as has been proposed.

One further issue that should be noted by the committee is that Sub. SB 77 does provide for the creation of a new civil cause of action allowing individuals to file civil law suits in Kansas courts seeking damages for alleged acts of racial profiling. If this provision is passed into law the potential would be created for future fiscal impacts on the State of Kansas and local entities (both from the costs of defending the cases in court and the possibility of civil judgments being awarded.) The Attorney General recommends the committee investigate the necessity of the creation of this new civil cause of action in light of federal law provisions that would appear to already address these types of cases.

Attorney General Kline applauds the legislature's efforts on this legislation and encourages the committee to carefully review Sub. SB 77 (with the proposed amendments) with the goal of crafting the best possible legislation to address the issue of racial profiling and promoting the fair and unbiased enforcement of the laws of the State of Kansas.

Respectfully,

OFFICE OF THE ATTORNEY GENERAL  
PHILL KLINE



Kevin A. Graham  
Assistant Attorney General  
Director of Governmental Affairs





## **WOMEN IN ACTION**

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svoice247@yahoo.com

Kansas House of Representatives  
Corrections & Juvenile Justice Committee  
Capital Building, Room 241 N  
Topeka, Ks 66603

### **TESTIMONY IN SUPPORT OF SBILL 77**

**Kansas Representatives**, Women In Action, is a non-profit Community organization taking actions to improve the quality of life and ensure equal protection of the law for all citizens. We want to eliminate or at least minimize racial discrimination and injustice. We have branch offices across the State and in Florida.

WIA holds weekly meetings and time is allowed to receive and address Community complaints of racial discrimination and differential treatment by Law Enforcement officers in Topeka Kansas and across the state. (Including Hiawatha, Lawrence, Wichita, Leavenworth and Kansas City). We have learned that Racial Profiling is a serious escalating problem for people of color. Senate Bill 77 is necessary to stop Racial Profiling in Kansas.

**Racial Profiling is not only humiliating and demeaning but also affects the quality of life and the safety of all citizens** and should be nothing less than criminal. The following are some excerpts of Racial Profiling that WIA have documented from victims in Topeka, Kansas:

Victim #1: A young black man whom is know throughout the Topeka community, as he is mildly disabled, and travels the streets on buses to and from his volunteer jobs, he wears headphones most of the time and is extremely nice, speaking to everyone. He was leaving his job and crossed the street to catch the bus, when police officers rushed up on him and said they were going to take him to the police station, claiming a black person was seen with a gun. He tells the police he did nothing and does not want to go, the officers pepper spray him in the face, he falls down and is roughly handcuffed. Meanwhile his employer comes out and states he just left work and could not have been doing anything, (The young mans employer was threatened to be charged with interfering with an arrest.) The young black man was taken to jail anyway and left, no charges were filed but an excessive bond was placed on him and his relatives were unable to get him out. He was forced to stay overnight with violent and non-violent offenders, terrified

until the next day when the Police department realizes who he is and releases him. The torment of his stay in jail without cause is unspeakable.

Victim # 2: A young black man whom regularly jogs around Washburn University, was stopped while jogging, the officer pointed a gun against his head and said tell me where your brother is, he threatened the young man and said he could blow his brains out and no one would even know it. The officer gives him a speeding ticket and says have a nice day. This black man works at a reputable Job in Topeka and has no involvement in illegal activity.

Victim # 3: A young black man was sitting outside his house in his car parked in his driveway with his white girlfriend. (The white girl did have warrants). The police officers approach the vehicle and said that the car was stolen and asked for his ID. Even though he was not driving, his license was suspended and the officers said he was under arrest. They told his girlfriend to leave and then pointed a red laser to his head, which is illegal. The victim was told to empty his pockets, the police took his money, then proceeded to his house, kicked the door in saying it was open and searched his house. He was thrown in jail given 20,000 bond for a suspended license and placed in a cell where his family members were unable to locate him. He was held over 48 hours before his family was able to get an attorney to have him released on a habitués corpus.

Victim# 4: A black women, whom has a good paying job and drives a Cadillac Alexis. Reported she has been pulled over consistently at least 8 times. Officers asking her "where are the drugs?" This woman became so distraught that she has stopped driving her Cadillac, as her only recourse to avoiding the persistent harassment by police officers.

Victim# 5: A black man whom worked at a Car dealership, had problems with the clerk at a convenience store, the clerk was rude and did not provide the correct change. The two argued and she called the victim "the N word" The clerk calls the police and the victim waits for them to arrive. The police officer advised each to just go their separate ways no harm done. After the Black man leaves to return to his job, when he arrives he is told the Police officer called his job and said he was causing problems at the store and his employer fired him. The officer didn't take the victims name, and only knew that he worked for the dealership by reading the name on his uniform.

Victim# 6: A young black man is consistently pulled over by police officers and asked to empty his pockets, the officers took all of his money and said they were keeping it. This young man to avoid racial profiling stops, has moved out of Topeka and is afraid to visit his mother for fear she will continue to be harassed. On one Police stop the officer asked did he have any drugs, told him to drop his pants and the officer proceeded to put his hand up his rectum. The young man screamed and said he is violating his rights, the officer remarked this is where ya'll hide it at sometimes.

Victim#7: A 56-year-old black man receives a call from a young black man outside his house for help. The 56-Year-old man opens his door to see the Police slamming the young man up against the car brutally handcuffing him. The young man is saying why are you doing this to me? the police tell him to shut up or they will let the dog on him.

The 56-year-old black man standing on his porch tells the young man to not resist that they will get to the bottom of this later. The police tell the 56 year old to go back in his house and shut the door. The older black man says he will stay on his porch; the police then take the older man to jail and charge him with interfering. The young man that was being detained was never charged with any crime and was released.

The above incidents were received by WIA, within just a two-month period in Topeka Kansas and presented at the Senate Hearings on SB77.

**The following are a few of the reports received by WIA since the Senate Hearings on SB77:**

Report #1: A law enforcement Security Officer, singled out, detained and searched 3 Black under age youth. The youth were taken in a room alone, searched, taken to jail and not allowed to contact their parents.

Report # 2: A black female is walking down the road and is stopped, taken to jail, held 2 hours, then told your not who we thought you was, you may leave. The police refuse to give the woman a ride back, leaving her to walk from the police station.

Report #3: A black man was almost beaten to death by Law enforcement officers, while patronizing a predominately white club with a white female. The victim was charged with assault and prosecutors failed to win their case in court and all charges were dismissed with prejudice in favor of the defendant.

The above cases are some of the complaints that WIA has received in the Law Enforcement area. However, People are coming in multiple numbers weekly and sharing their stories of racial profiling and police harassment.

Published News Report: Former Officer booked into jail. Theft, forgery, perjury part of **100 counts**, Topeka Capital Journal, March 1, 2005. The former officer was a veteran of 14 years. The Police Chief said the 22 cases in question span from December 2002 to April 2003 . . . . Yet In 2000 the officer received a letter of commendation for a narcotics investigation and received a Distinguished Service Bar in 2002.

Published News Report: Kansas City police officer arrested in sting for stealing. The officer was a 7-year veteran and was charged with misconduct in administration of justice and stealing. It wasn't the first time the officer had been in trouble in July 2004 her was suspended after a driver accused him of taking \$950 form his front pocket in a traffic stop. Kansas.Com/Kansas City Star.

Unless Racial profiling is monitored to identify the Racial Profiling patterns of the officers, the police that are guilty of targeting people of color will never be held accountable. Citizens need public access to the information that this bill will provide.

**The Outcomes effected by Racial Profiling include but are not limited to:**

Disproportionate Minority Concentration, DMC of Black and mixed race youth in Kansas Jails. In Topeka: 1) The Disproportionate Minority Concentration, DMC of youth incarcerated/jailed in Topeka (62% are minorities), (38% black, 21% mixed race, 3% Hispanic, Asian and Native American) blacks are only 9% of the population, while whites are 82% of the population and only 38% of the youth locked up.

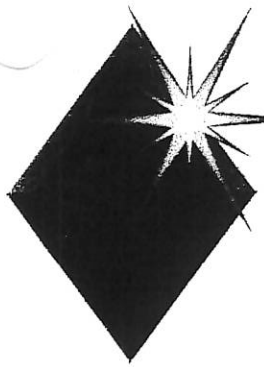
**We especially need this Racial Profiling bill in Topeka:**

Although Topeka is the Capital of Kansas, several reports and studies involving Law Enforcement, Topeka is not a participant. Including: The FBI's annual hate crime report, the Racial Profiling study commissioned by the State of Kansas, the Juvenile Justice Authorities study of the Disproportionate Minority Concentration of Youth in Kansas Jails, etc. Disclosure of information is essential in identify and solving problems and injustices.

The Law Enforcement delegation was successful in removing the Criminal application in SB77 before it was presented to the Senate Committee. Compromise has been made; this Bill should pass Unanimously by the House, as it did in the Senate Chambers.

It is the right thing to do to protect the rights of all Kansans.

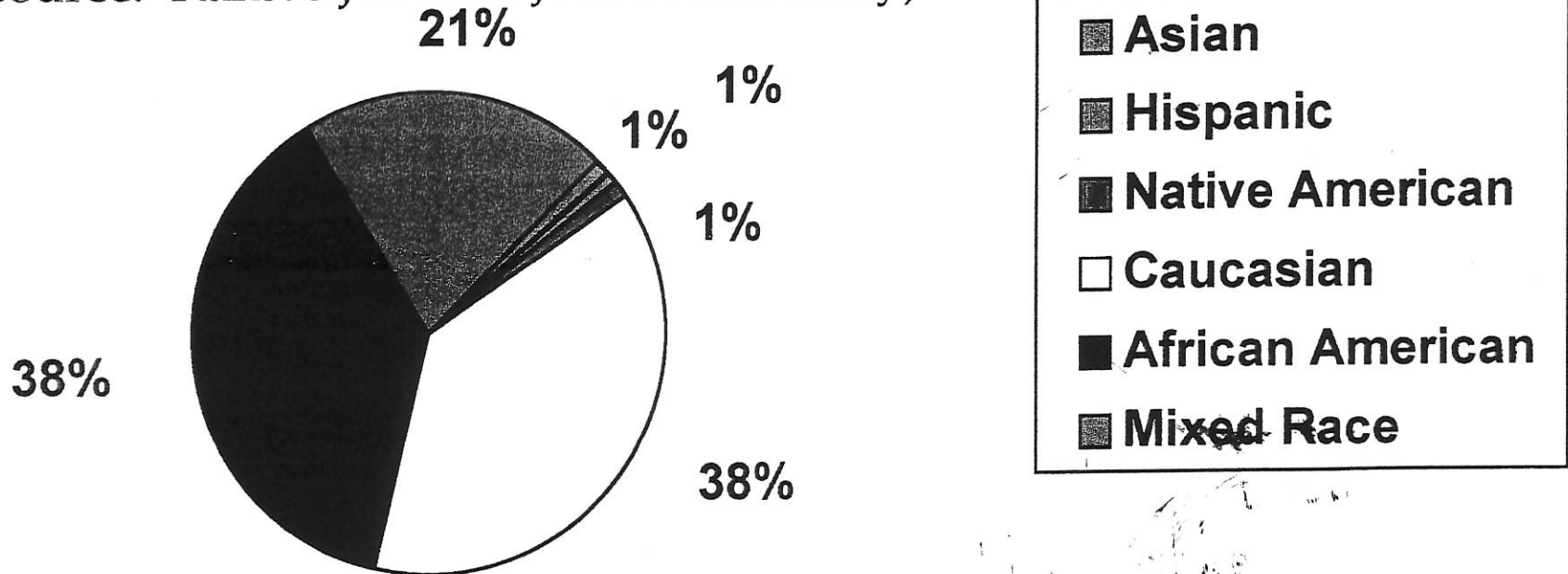
Shirley Wishom and Mona Brown,  
Women In Action  
Topeka, KS



# *Ethnicity of youth locked in Topeka*

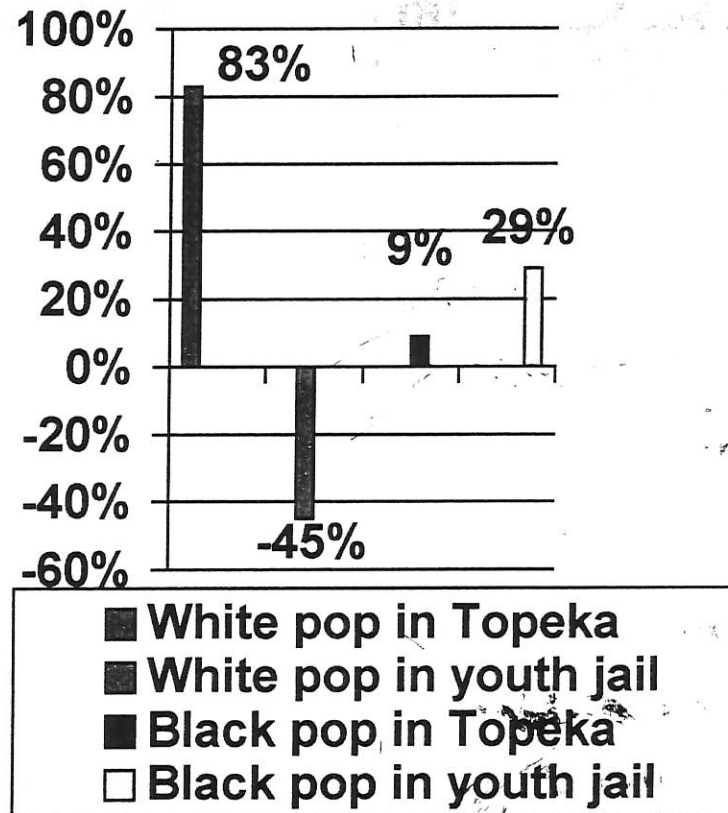
## ◆ Ethnic Profile of Youth Admitted to Topeka Juvenile Correctional Facility.

(source: Kansas Juvenile Justice Authority)



# Black American Youth Over Represented in Youth Jails

- Whites represent 83% of Shawnee County Pop.
- White youth are under represented in Topeka youth jail pop, by 45%.
- Blacks represent 9% of Shawnee County Population.
- Black youth are over represented in Topeka youth jail pop, by 29%.







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League of Kansas Municipalities

**To:** House Corrections and Juvenile Justice Committee

**From:** Sandy Jacquot, General Counsel

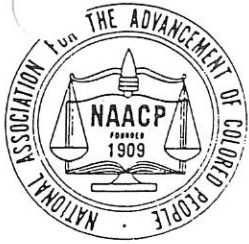
**Date:** March 21, 2005

**Re:** S. Sub. SB 77

Thank you for allowing the League of Kansas Municipalities to testify in favor of S. Sub. SB 77. The League testified originally in opposition to the base bill due to the very onerous and costly data collection provisions, in addition to other unfunded mandate provisions. A group of interested parties worked to together on a bill to incorporate some compromise language that would allow the bill to move forward without some of the objections that groups had to the original bill. In the spirit of compromise, the League is pleased to come forward now as a proponent of the substitute bill.

The only objection that the League had after the compromise was Subsection (c)(3), which would have required law enforcement agencies to establish or utilize existing independent citizen advisory boards. Because of the number of cities that are too small to have such advisory boards, the League opposed this requirement. The Senate Federal and State Affairs committee did amend that provision to only apply in cities of the first class. In addition, LKM is willing to assist cities in putting together a plan to address and eliminate racial profiling and is willing to provide training for all law enforcement officers, as required by this bill to help eliminate biased based policing. This should help some of the smaller cities that have few police officers or perhaps a part time city marshal to be able to comply with this bill if it ultimately becomes law. In addition, we are supportive of a local complaint procedure as contained within the bill. Finally, LKM is supportive of the creation of a governor's task force to discuss the issue of data collection.

Thank you again for allowing the League to appear before you in support of S. Sub. SB 77. I will be present to answer any questions the committee may have.



**NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE**  
**NAACP, TOPEKA BRANCH**  
P.O. BOX 1451  
TOPEKA, KANSAS 66601

**BRANCH SLOGAN: "Come Together As One and Get The Job Done"**

March 21, 2005

Dear State Legislators:

The Topeka Branch of the National Association for the Advancement of Colored People (NAACP) supports Substitute for Senate Bill No. 77, as amended, and urges your affirmative support and vote for passage of this Bill, which is concerned with racial profiling, prohibits certain actions and provides remedies for violations.

Substitute for Senate Bill No. 77 prescribes concrete steps toward insuring that any pattern or practice of Racial Profiling without valid probable cause, will be deemed unlawful throughout the State of Kansas!

The enactment into Law of the remedies outlined in Substitute for Senate Bill No. 77 would reassure Kansas Citizens that Legislative Intent is to mandate that Kansas Laws be enforced in a Colorblind and unbiased manner!

Thanking you in advance for your support of Substitute for Senate Bill No. 77.

Sincerely,

William E. Richards, Sr.  
Topeka NAACP Lobbyist

**American Civil Liberties Union of  
Kansas and Western Missouri**  
3601 Main Street, Kansas City, Missouri 64111

*Executive Director*  
*Dick Kurtenbach*  
*816/756-0136*

**Testimony in Support of SB 77**  
**Before the House Committee on Corrections and Juvenile Justice**  
**Monday, March 21, 2005**

My name is Dick Kurtenbach. I am the Executive Director of the American Civil Liberties Union of Kansas and Western Missouri. The ACLU is a non-profit, non-partisan, advocacy organization devoted to the defense and promotion of the Bill of Rights. I appear today on behalf of the organization and its over 2,500 members who reside in Kansas and in support of SB 77.

As you consider the important decision each of you must make on whether or not this committee will support the bill, I hope you have gotten beyond the question of whether or not racial profiling by law enforcement is a reality. It is. Studies sponsored by this legislature confirm it. The ACLU has done studies in Mission Hills, Leawood, and Prairie Village that confirm it. Legislation similar to SB 77 that has been in place in Missouri for several years confirms it in that state. Anecdotal evidence about the practice abounds.

I want to share just one anecdotal example that I think is particularly compelling. Several years ago I was approached by the manager of a private country club on the Kansas side of the state line in Kansas City who explained that racial profiling of her black employees was so rampant that many of her black employees were quitting because they couldn't get to and from work without getting hassled by the police. The board of directors of the club wanted stickers printed that the black employees could place on their windshields – I guess to convey the message to the police that these black folks belonged in the suburb.

Think about that -- a problem so pervasive that people could not get to and from work without constant harassment by the police. And a problem confirmed by the manager of a country club and its board of directors.

The problem is real and SB 77 is the start toward a meaningful response to do something about it. The passage of the bill is important because it is the first step toward holding those law enforcement officers who engage in this obnoxious and illegal activity accountable. And it is important because it will shed further light on the problem.

I urge you to support the legislation. Thank you.

**Senate Federal & State Affairs Committee**  
Elias L. Garcia, Executive Director  
Kansas Hispanic & Latino American Affairs Commission (KHLAAC)  
**Senate Bill 77 – Racial Profiling**

Honorable Chairman and honorable members of the Corrections and Juvenile Justice Committee, my name is Elias L. Garcia, Executive Director of the Kansas Hispanic & Latino American Affairs Commission and I appreciate the opportunity to speak today in support of SB 77, a bill that enjoys a broad base of community support and one that presents a unique opportunity to address one of the most pressing civil rights issues of our time – Racial profiling.

We all know what Racial Profiling is, it is the spontaneous reliance on race, gender, national origin or religious stereotypes as determining factors in law enforcement activities. We also know that the per the Department of Justice Guidance regarding the use of Race in Federal Law Enforcement Agencies, the practice of relying upon generalized stereotypes is absolutely forbidden. By definition, Racial Profiling is a form of disparate treatment and thus racial discrimination.

Further, we can all agree that racial profiling is one of the most disturbing and controversial issues confronting our society day. It is our position that racial profiling must not be condoned or otherwise tolerated within the ranks of public service and most certainly not within the ranks of law enforcement officers who are charged with protecting and serving the public. We can also all agree, that when law enforcement officials focus on what people look like, where they come from, what religion they follow, or what they wear...it puts us all at risk. DWB has become a slogan that has special meaning to members of both the African American Community and the Hispanic and Latino community. Yet , with pending national Home Land Security legislation, DWB has taken on even more significance to our Latino community as the ramifications of these national legislative initiatives have yet to be realized.

Racial Profiling is a “flawed first impressions”, and as we all know first impressions are more often than not wrong (impressions). Let me site two examples of how flawed first impressions or rather Racial Profiling can be. I refer to the 1995 bombing of the Alfred P. Murrah Building in Oklahoma City where Timothy McVeigh was able to flee while officers operated on the initial theory that “Arab” terrorists had committed this heinous crime. Or how about 2002 , when two African American male snipers were able to evade police and continue terrorizing residents in Washington D.C. area, as law enforcement relied on racially-based profiles of serial killers and were searching for two anti-social white males. Racial Profiling based on spontaneous reliance on race and absent of trustworthy sources is wrong .

I would further suggest to you that it is virtually impossible to accurately reflect the true merit of a person simply by judging ones external appearance. Yet, that is exactly what Racial Profiling does. It reduces a living, breathing human being to that of a mere object, and by doing so, it paves the way to a mindset that portrays that individual as unworthy of basic human respect or dignity and this practice has no place in public service.

So, why is it necessary to be here today discussing racial profiling and SB 77 since we have already established that our communities are against it and it is against local, state and federal laws. Ladies and gentlemen we come here today not as Latinos, Hispanics, African Americans, members of law enforcement, victims or perpetrators of racial profiling. No, despite of , or in difference to our own personal perspectives on this subject, we come here today in unity and solidarity as Kansans to offer our collective support to an initiative that will take us one step closer to eradicating an issue that continues to this day in 2005 to haunt our “ethnic minority” communities, be it in practice or perception.

Honorable members of the committee, I say to you that the Kansas Hispanic and Latino community does not support the practice of Racial Profiling as defined in SB 77, and we are here today, along with members of the African American community law enforcement community, and others to add our voice in support of this bill and end racial profiling in the state of Kansas both in practice and perception. Thank you

3/21/05

# Citizens for Equal Law Enforcement

Box 776, Wichita, KS 67201

(316)838-7900(Phone) (316)838-7779(Fax) equalenforcement@cox.net

3/21/2005

TO: Chairman Ward Loyd, and Kansas House  
Corrections and Juvenile Justice Committee Members

## Racial Profiling Testimony on SB77

It took 3 years to get KSA 22-4604 enacted into law in 2000 as a "baby step" forward to first document that racial profiling exists in Kansas. The "study" mandated by KSA 22-4604 was not completed until 2003. It only included 9 Kansas law enforcement agencies, of which 7 actually submitted data.

Even with this limited sample, the study reported by the Police Foundation in Washington, D.C. showed that if you are Black or Hispanic, you are twice as likely to be stopped by Sheriff's deputies and police officers in those jurisdictions which participated. These same results are supported by an analysis of data from the Wichita police department of all 37,454 vehicle and pedestrian stops during the 6 months from January through June of 2001. It took another year before this "study" was published, but it found that not only are Blacks twice as likely to be stopped and given a traffic violation ticket but they are 3 x's more likely to be searched, arrested or have the police use physical force during these questionable stops.

SB77, which was introduced this Session by Senator Betts, was drafted using legislation which is already law in Oklahoma, Missouri, Nebraska, Texas and Colorado. It also included language from legislation in the US Congress.

The Racial Profiling Data Collection Resource Center at [http://www.racialprofilinganalysis.neu.edu/plan\\_jurisdictions.php](http://www.racialprofilinganalysis.neu.edu/plan_jurisdictions.php) reports that 38 States already have racial profiling legislation passed into law. (See attached.) Twenty States, including Missouri, Colorado, Texas, Iowa and Nebraska also have data collection mandated to identify where racial profiling is happening and by which officers. In addition, many major cities across America are currently collecting data to help put a stop to this egregious violation of the civil and constitutional rights of people-of-color.

SB77 was first introduced last year as HB 2876. It had strong support in the House Federal and State Affairs Committee but was not heard until late in the Session, so it had to wait until now. Between Sessions, with input from Kansas law enforcement, legislators, the Kansas Attorney General's office, the KBI, racial profiling researchers, and advice from the US Department of Justice, Civil Rights Division attorneys who reviewed the draft, it was greatly modified to be reintroduced as SB77. So, hundreds of hours have now been invested to reach compromise and make this legislation meaningful.

After the hearing which was attended by approximately 200 Kansans, the Senate Federal and State Affairs Committee added a few amendments to strengthen the bill. **SB77 then passed the Senate by a vote of 39 to 0 with strong support.**

Passing this bill now by the House will be a major blessing for thousands of Kansans each year. Racially profiled stops are not only illegal, but they also result in fines which create a major financial hardship on Black and Hispanic families. For example, in Wichita, there has been a 300% increase in revenue to the City of Wichita from Municipal Court fines. This means that Blacks are paying over \$1 million dollars per year more than their proportional share. It is estimated that the excess fines in Kansas on Blacks and Hispanics due to racial profiling exceeds \$7 million dollars per year. This is \$56 million dollars extra since 1998 when the first racial profiling bill was introduced.

House C & JJ

3-21-05

Attachment 16



**In ADDITION to these excessive fines**, vehicle insurance premiums go up for any driver who receives a traffic citation, making it harder to keep their policies paid. Without insurance, Minority citizens are left vulnerable to huge debt from accidents plus increase the likelihood that their driver's license will be suspended. If caught driving with a suspended license, their car can be impounded and the driver put in jail. The financial disaster to Black and Hispanic families who depend on that driver and car is huge. And, in most cases, it starts with a traffic stop for which White drivers would never be cited at all. Instead, the police are using phony traffic violations as "probable cause" to stop people-of-color to question or search them and/or their vehicles.

Racism and racial profiling is not only a crime but it causes great distrust and lost respect for the vast majority of good and honest law enforcement officers in our State. A few "bad apples" are spoiling what should be a well deserved reputation for our police and sheriffs.

Without accountability, the few law enforcement officers who are racially profiling will continue their criminal behavior. Thirty-eight States have already put into law that there are consequences for law enforcement officers who racially profile. Now it is time to make it clear by passing SB77 that the Kansas Legislature is serious about ending racial profiling in our State as well.

Respectfully Submitted,



*Walt Chappell, Ph.D.*

Coordinator





# Kansas Sheriffs Association

P.O. Box 1853  
Salina, Kansas 67402-1853  
785-827-2222  
Fax 785-827-5215

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**Sheriff Sandy Horton**  
Crawford County - Alternate

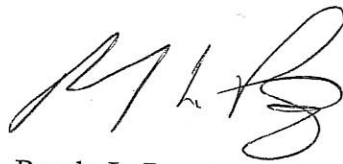
To: House Corrections and Juvenile Justice Committee  
Re: Senate Bill 77

Chairman and Committee Members,

I come before you today to address Senate Bill 77. The Kansas Sheriff's Association testified previously before the senate committee in favor of Senate Bill 77. At that time law enforcement administrators, members of the African American Affairs Commission, Hispanic-Latino American Affairs Commission and Senator Bitts worked closely together to amend SB77. The changes that were made were changes that would create accountability, responsibility and address concerns on behalf Kansans and the issue of Racial Profiling. All were pleased with the changes that were made and believed that we were making progress and would be able to move forward united in our efforts.

Unfortunately after the hearing changes were made that none involved wanted or asked for. The changes that were made may very well have a negative impact on law enforcement and would create an environment in which law enforcement would be adversely impacted.

The Kansas Sheriff's Association would ask that Senate Bill 77 be returned to the amended form as presented to the Senate Committee and eliminate those changes that were made after the committee hearing.



Randy L. Rogers  
President  
Kansas Sheriff's Association



*Michael J. Heffron, Chief of Police*

*Michael Lopez, Deputy Chief of Police*

*Michael Williams, Deputy Chief of Police*

## **Negative Impact Resulting From Passage of SB 77**

- **1 Additional Records Clerk**  
\$30,000 annually
- **Office Furniture and Computers**  
Additional forms, paper and office supplies
- **Officer Time - 5 Minutes Per Ticket Average** (based on 4960 Tickets in 2004)  
 $2480 / 60 = 413.33$  hours annually taken away from "Protect and Serve"
- **Video Tapes - 165 Tapes annually from incar cameras**  
Keeping 60 minute tapes from all stops awaiting possible litigation will require more storage
- **Redevelop Current Policy**
- **Violation of Civil Rights** - In today's society the lines of ethnic, religious and racial origins are blurred. How many complaints will be generated based on an allegation of violation of civil rights when officers are required to ask defining and intrusive questions that pertain to data collection.
- **Why should Cities of the first class be the only entities required to have a citizens advisory review board? Why not counties and other cities that are not first class?**



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*Michael J. Heffron, Chief of Police*

*Michael Lopez, Deputy Chief of Police*

*Michael Williams, Deputy Chief of Police*

**Currently:**

**Racial Profiling is already unlawful.**

**We already have training in racial profiling.**

**Policy is already in place and complaints are already investigated.**

Section 5: 4,5,6,7

**Census is inaccurate.** U.S. Census Bureau reports 21.7% Hispanic population in Emporia yet school data reports 40.23% Hispanic students with a total of 50.72% non-white student population.

**Very High Population of Immigrants** - do not report to census.

**Growth of Hispanic Population** - Since 1990, Hispanic population has risen 368% but census does not reflect that.