

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Pete Brungardt at 10:30 a.m. on Wednesday, February 9, 2005, in Room 231-N of the Capitol.

All members were present.

Committee staff present:

Athena Andaya, Kansas Legislative Research Department
Dennis Hodgins, Kansas Legislative Research Department
Mary Ann Torrence, Revisor of Statutes Office
Dee Woodson, Committee Secretary

Conferees appearing before the committee:

Senator Greta Goodwin
Jack Walker, Vice Chairman, Kansas Commission on Veterans Affairs

Others attending:

See attached list.

Chairman Brungardt asked the Committee to consider the approval of the minutes, which had been distributed last week, covering the meetings of January 25, 26 and 27.

Senator Reitz made a motion to approve the minutes as written, seconded by Senator Ostmeier, and the motion carried.

Chairman Brungardt called the Committee's attention to distributed copies of Kyle Smith's written testimony, on behalf of the Kansas Peace Officers Association, covering his oral testimony for **SB 77** on February 3. (Attachment 1)

Chairman Brungardt asked for bill introductions. Kyle Kessler, Director, Governmental and Media Affairs, Department of Social and Rehabilitation Services (SRS), requested the introduction of an SRS legislative proposal. The proposal authorizes SRS Child Support Enforcement to establish new orders of support and register non-Kansas orders for enforcement and modification using administrative procedures only. The proposed legislation also expands the existing administrative remedies to require financial institution data matches and levies, to intercept insurance proceeds otherwise payable to support debtors, to restrict driving privileges of debtors, and to require a payment against arrearages from any debtor applying for hunting or fishing licenses. He said it further amends exiting laws to streamline support enforcement procedures, eliminate ambiguities, and assure access to needed information about debtors.

Senator Barnett made a motion to introduce the proposed bill, seconded by Senator Brownlee, and the motion to introduce carried.

SB 110 - Kansas commission on veterans affairs, veterans memorials, donations, capital improvement projects, procedures, guidelines, fund

Chairman Brungardt opened the hearing on **SB 110**, and asked the Revisor to give a brief overview of the proposed legislation. The Revisor explained that the bill provided a mechanism for the Kansas Commission on Veterans Affairs to provide the memorials for veterans of the U.S. Military, prescribes certain guidelines, limitations and procedures; establishing the Kansas Veterans Memorials Fund.

Senator O'Connor inquired if the money in the established fund would be income from private money. The Revisor responded affirmatively, and it does not authorize any kind of appropriations. Senator O'Connor asked who got the interest off the fund, and the Revisor said it goes back into the fund.

Chairman Brungardt asked Senator Goodwin, who sponsored the bill, if she would like to make any comments on **SB 110**. Senator Goodwin expressed her appreciation for the Committee having a hearing on the proposed bill. She said there had been a lot of inquiries from people wanting to know how to give memorials, what the guidelines were on memorials, who gets the money, does one cemetery get all the

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memorials, and the other get none. She stated that she had worked with the Commissioners this past summer, and they had come up with a very good plan to cover all veterans in the State of Kansas.

Jack Walker, Vice Chairman of the Kansas Commission on Veterans Affairs (KCVA), testified in support of **SB 110**. He introduced the Commission's Chairman, Colonel (Ret.) Jack Fowler and their Executive Director, Colonel (Ret.) George Webb, who were in attendance. He stated that the KCVA represents nearly a quarter million veterans in the State of Kansas. Mr. Walker said that the proposed bill provides a means to honor those veterans with memorials that would be placed at the homes and cemeteries overseen by the Kansas Commission of Veterans Affairs.

Mr. Walker explained that **SB 110** provides a mechanism by which privately donated funds can be accepted and safeguarded until sufficient funds can be raised to build any large memorial. The bill contains the requisite controls for the management of funds, as they would be accumulated on deposit with the state. The bill requires that all projects be fiscally responsible and able to be sustained by the KCVA Memorial Fund, without resorting to requests for assistance from the state, and that memorials constructed would be maintained from the same funds. He stated that the bill specifically prohibits the use of these memorial funds to cover operational requirements, and also takes care to keep separate, the KCVA memorial funds and the Benefit funds now authorized by law, which generally are designed to provide a more personal benefit to our veterans.

Mr. Walker talked about the bill's proposal to establish an advisory committee, which would ensure equity among the facilities, that would include not only the KCVA commissioners, Executive Director, superintendent of the Homes and Cemetery director, but a member of the state legislature from the district in which each of our facilities are located. The advisory committee would have the charge to consider ideas and concepts presented along with ensuring that the funds were adequate to support the project under consideration. (Attachment 2)

Chairman Brungardt opened the floor to questions and comments from Committee members. Senator Brownlee asked if it was possible for individuals to contribute as a 501-C-3 donation. Mr. Walker replied that they had looked at that concept, but found that it would take it out of the state control. A 501-C-3 would be outside the management of the state, and if the Commission was going to do this as a representative of a state agency that the funds should go into that pool. He said that as they have it proposed, donations could possibly be a tax credit to the memorial fund. He added that it would also act as an incentive for memorial donations by being tax deductible.

Questions and discussion were raised in regard to the establishment of the advisory committee. The Revisor asked for clarification purposes and possible revised language to the bill whether there would be only one advisory committee or one for each facility. Mr. Walker stated that the intent was to have only one committee with a legislator from the area of each facility in order to make sure there was equity among the four facilities presently in existence, i.e. Ft. Dodge, Winfield, cemetery at Wakeeney, and the proposed cemetery at Ft. Riley. The Chairman stated that there was a need to clean up the language relating to the committee membership before the Federal and State Affairs Committee worked the bill for final action next week.

There being no other conferees to appear to testify on **SB 110**, Chairman Brungardt closed the hearing.

SB 77 - Racial profiling; creating a misdemeanor violation, civil cause of action, requirements of law enforcement agencies

Chairman Brungardt called for discussion on **SB 77**, and called upon the Revisor to go over the balloon amendment that Senator Betts brought to the Committee during the hearing on February 3. The Revisor stated that in hind sight it probably would have been better to do a substitute bill instead of a balloon amendment since so much of the language had been changed, deleted, and language added. She explained all the requested changes contained in the distributed balloon. (Attachment 3)

Discussion and questions followed regarding concerns that the penalty for the criminal activity of racial profiling had been deleted; authorization to file a civil action in Section 6, lines 25-31, relating to the

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prevailing plaintiff can recover reasonable attorney fees, expert witness costs and other litigation costs reasonably incurred, but a prevailing defendant cannot recover such fees; annual training issues; and clarification of the definition of racial profiling under Section 1, lines 24-28.

Question was asked regarding whether there was an updated Fiscal Note covering **SB 77**. (Attachment 4) Chairman Brungardt related that Senator Betts was told by the Budget Division that there wouldn't be an update until the final form of the bill is presented by the Committee. He said that most of what was detailed in the original Fiscal Note had been deleted out of the bill and does not apply.

Senator Barnett stated that he had visited with staff and would like to offer new language to be included as a new subsection under Section 6, to read as follows: "A law enforcement agency shall not be eligible to receive grants or other moneys from the state for the fiscal year following a finding by the Attorney General or the attorney General's designee that a law enforcement agency has engaged in racial profiling or has failed to discipline a law enforcement officer in accordance with the recommendations of the Attorney General or the Attorney General's designee pursuant to this section. The provisions of this subsection shall not apply if the complainant files a civil cause of action pursuant to this section and the district court finds that racial profiling did not occur." (Attachment 5)

Senator Barnett said he wanted to add some "teeth" back into the bill to make it clear Kansans would not tolerate racial profiling, and that state moneys and grants will be withheld if racial profiling occurs and policy is not followed. Chairman Brungardt asked if he had any feel for what potential that holds, and Senator Barnett responded that he did not have an idea of how many grants that would involve. The Revisor stated that she did not know either.

Senator Brownlee questioned if the definition on racial profiling was one typically used by other states or agencies. The Revisor said she did not know as she was not involved in the original drafting of **SB 77**. The Chairman asked Senator Betts where the definition of racial profiling came from. Senator Betts replied that it came from a variety of sources with a similar definition, i.e. Missouri, Oklahoma, Texas, California, Nebraska and Colorado. He said it was also in federal policy.

Senator Brownlee inquired about the terminology used relating to "written policy and regulations" which is rather "atypical" with state law. She said that when dealing with local government, it would be more appropriate to say "policies" and when dealing with a state agency then it should be a regulation. Senator Brownlee expressed that the Committee needed to distinguish between those two units of law. The Revisor said she would check into it for clarification. Chairman Brungardt asked Sandy Jacquot, League of Kansas Municipalities (LKM), if she had any comments on the subject. Ms. Jacquot said in order to help the smaller cities in Kansas, LKM would probably assist in writing a plan and have an adopting ordinance incorporate the plan. She stated LKM does not do regulations, they do ordinances. She added that some of the larger departments do standard operating procedures.

Senator Brownlee reiterated that it probably should be policy rather than regulations. She referenced page 4, lines 28-31, of the revised bill regarding the court being allowed to award to the prevailing plaintiff attorney fees, expert witness costs and other litigation costs reasonably incurred. She asked if there was any place in state laws where that was done as it could become very costly, and could almost create a reverse discrimination situation. Senator Brownlee said she thought the goal of this proposed law was to be fair.

Chairman Brungardt asked the Chairman of the Senate Judiciary Committee, Senator Vratil, to help clarify this question. Senator Vratil explained that over the years the State Legislature has amended more and more statutes authorizing either the plaintiff to recover attorney's fees, or the defendant, or both of the parties. He said there wasn't anything consistent about the Legislature's actions in this regard. Chairman Brungardt inquired if attorney's fees included expert witness costs and other litigation costs. Senator Vratil responded that court costs included: the initial filing fee, any subpoena fees to bring a witness into the court, and cost of depositions if they are used to try the case. Court costs do not include expert witness fees, and have to specifically be requested. Both Senator Brownlee and Senator Vratil said they would offer amendments to clarify the language in the revised bill.

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Chairman Brungardt referred to page 4 and the League of Kansas Municipalities' testimony during the hearing regarding the citizen's advisory board, and that the smaller cities cannot get people to serve on such boards. He said that consideration should be given to amending that language to possibly cities of first class or some modification that would acknowledge that very small communities cannot make such an advisory board workable.

Senator Reitz suggested that the Committee should consider making this a substitute bill because of the extensive revisions. Chairman Brungardt agreed that after all the changes are made that the Committee could request it be redrafted as a substitute bill.

Senator Vratil stated that he was disappointed with the language in Section 6 and the provision for the court to allow the prevailing plaintiff reasonable attorney fees, etc., lines 30-31, which is unfair, unequal, and not justice. He said this bill should be consistently a reflection of fairness, equality, and justice. He proposed that the Committee either strike the language in the sentence that begins in line 30 and continues through line 31, or strike the word plaintiff and insert the word "party" so that either a prevailing plaintiff or a prevailing defendant could recover reasonable attorney fees. He said his preference would be to strike the entire sentence, and explained his reasoning.

Senator Vratil made a motion to amend by striking the sentence beginning in line 30, page 4, and continuing through line 31. Senator Bartlett seconded the motion. Senator Vratil explained that the end result would be that attorney's fees would not be recoverable in a civil action, expert witness fees would not be recoverable, and criminal procedure court costs would be recoverable.

Senator Brownlee made a substitute motion that would leave that sentence in, but strike the word "plaintiff" and insert "party," so that it would read, "The court may allow the prevailing party reasonable attorney fees and court costs." Senator Vratil stated he would support that motion. Senator Reitz seconded the motion. The Revisor clarified that this motion would strike in line 31, "the expert witness cost and other litigation costs reasonably incurred," and add in "and court costs." The Chairman agreed, and called for a vote on the substitute motion. The motion carried.

Chairman Brungardt called for Senator Barnett's balloon amendment. Senator Barnett made a motion to adopt the balloon amendment which would add a new subsection to Section 6. The motion was seconded by Senator Reitz.

Discussion followed regarding whether there was a penalty in the state's criminal code for racial profiling, and whether Kansas has a crime of racial profiling. Senator Vratil commented that it was unusual, but not unprecedented, to not have a penalty for a crime. Senator Betts stated that Kansas does not have a crime of racial profiling. The Revisor explained that Kansas does have in the Statute Books the crime of denying civil rights. Discussion continued on Senator Barnett's motion to adopt the balloon amendment.

Senator Hensley pointed out that on page 3 of the revised bill, Section 3, line 17, which was lined out, that "A violation of this section is a class A misdemeanor"; and suggested that reference should be made at that point that, "A violation of this section would be subject to Section 6 of the bill," which is Senator Barnett's amendment. This would be for clarification. Chairman Brungardt said possibly it should reference the Civil Rights Statute. He asked the Revisor to look into that matter, and advise the Committee.

Chairman Brungardt called for a vote on Senator Barnett's balloon amendment. The motion carried.

Senator Brownlee made a motion regarding language on page 3, line 40, to strike the words "and regulations"; and also on page 4 where those words appear on lines 17, 29, 36, and 43, so it says just "policies." Senator Hensley seconded the motion, and the motion carried.

Senator Brownlee made a motion to include on page 3, line 15, Section 3, that there is a criminal penalty for a law enforcement officer or any law enforcement agency to engage in racial profiling, and it be tied to

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the crime of denial of civil rights. Senator Hensley seconded the motion. Discussion followed. Senator Vratil questioned whether this amendment would be counter to what the agreements were that was worked out on the revised bill between Senator Betts and the law enforcement people. Senator Betts stated that the amendment was still in the same scope of the negotiations. Law enforcement did not want to see the misdemeanor or data collection included. Jeff Bottenberg, representing the Kansas Sheriffs Association, explained that law enforcement did not want the misdemeanor in there because law enforcement officers might be hesitant to investigate any type of a crime that may have a racial component. Senator Vratil commented that he thought this amendment was contrary to the agreement between the conferring parties. Discussion followed regarding the proposed amendment's conflict with the negotiated agreement.

Chairman Brungardt called for a vote on Senator Brownlee's motion to amend with reference to the statute dealing with civil rights. The vote was uncertain, and division was called. The motion carried with six (6) affirmative votes and three (3) votes against.

Senator Vratil made a motion to amend Section 5 to refer to cities of the first class, regarding the establishment or use of current independent citizen advisory boards. The motion was seconded by Senator Hensley, and the motion carried.

Chairman Brungardt called for a motion to adopt the revised bill. Senator Hensley moved to adopt the revised bill as amended, seconded by Senator Barnett, and the motion carried.

Senator Reitz made a motion to draft the revised and amended SB 77 into a substitute bill form. Senator Reitz moved to have the bill redrafted into a substitute bill, seconded by Senator Brownlee, and the motion carried.

Chairman Brungardt announced that copies of the redrafted substitute bill for **SB 77** would be sent out as soon as it was available so all interested parties will have a chance to study it and make comment. He said after an appropriate time frame for everyone to digest the new version, it would be rescheduled for final action.

The meeting was adjourned at 11:44 a.m. The next meeting is scheduled for February 10, 2005.

SENATE FEDERAL & STATE AFFAIRS COMMITTEE GUEST LIST

DATE Weds, Feb. 9, 2005

Jim Chadd	KANSAS GAS SERVICE
John Teeley	KANSAS GAS SERVICE
Nyle Klesher	STCS
Edna Glaser	AARP
Laurita Lyon	AARP - Emporia
Georgia Taylor	AARP - Emporia
Les Pugh	Kansas Gas Service
Bliah Harrison	KARP
HERMAN T JONES	KHP
John Eichkoen	KHP
Paula Kafka	Intern (Wysong)
Ruth Devri	Ks Human Rights Commission
William Vimmer	Ks. Human Rights Commission
Richard Smalley	Monetary Assoc.
Stasha August	CKM
Norma J. Guckenson	KC KS
Mary Sheppard	AARP KS
Edwin Hammer	
Sen. Donald Bittig	SB77
Jeff Bortner	Kansas Sheriff's Ass'n
Carolyn A Taylor	AARP-Kansas



Kansas Bureau of Investigation

Larry Welch
Director

Testimony in Support of SB 77
Before the Senate Federal and State Affairs Committee
Kyle G. Smith
Kansas Peace Officers Association
February 9, 2005

Phill Kline
Attorney General

Chairman Brungardt 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.

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.

Senate Federal & State Affairs
Committee
2-09-05
Attachment 1

**TESTIMONY ON BEHALF OF
KANSAS SENATE BILL 110
A BILL TO ESTABLISH A MEMORIAL FUND WITHIN THE
KANSAS COMMISSION ON VETERANS AFFAIRS**

9 FEBRUARY 2005

Mr. Chairman, Senators of the Federal and State Affairs Committee, I am Jack Walker, Vice Chairman of the Kansas Commission on Veterans Affairs. It is my distinct honor and pleasure to appear before you today on behalf of Senate Bill 110 representing the Kansas Commission on Veterans Affairs. With me today are our Chairman Colonel (Ret.) Jack Fowler and our Executive Director, Colonel (Ret.) George Webb. We are grateful for the efforts of Senator Greta Goodwin for her support with this bill and her continuing efforts in support of the veterans of our state. As you know, the KCVA represents the nearly quarter million veterans in our State of Kansas. The bill before you today provides a means to honor those veterans with memorials that would be placed at the homes and cemeteries overseen by the Kansas Commission on Veterans Affairs.

Our commission has recognized that there are veterans, service organizations and individuals who would like to donate funds that would allow for memorials to be built honoring the veterans of our state. There is currently no mechanism by which such donated funds can be accepted and safeguarded until sufficient funds can be raised to build any large memorial. This bill is designed to facilitate such fund raising, security of the funds, management of the design effort and approval from other affected state agencies that would allow for large memorials, that are considered in the capital project range, to become reality, without resorting to a request for state funding. Things that come to mind would be flag malls, replacement of flags, gateways, outdoor picnic groves, carillons and statuary to name but a few ideas. These enhancements would not only beautify our facilities, but also provide comfort to the resident veterans and those who come to visit the facilities. All of this without funds from the state treasury.

The bill contains the requisite controls for the management of funds, as they would be accumulated on deposit with the state. All funds are raised from private sources and not requested from the state. The bill requires that all projects be fiscally responsible and able to be sustained by the KCVA Memorial Fund, without resorting to requests for assistance from the state. Further, that the memorials constructed would be maintained from the same funds. The bill specifically prohibits the use of these Memorial Funds to cover operational requirements. The bill also takes care to keep separate, the KCVA Memorial Funds and the Benefit Funds now authorized by law, which generally are designed to provide a more personal benefit to our veterans.

To ensure equity among our facilities, the bill proposes that an advisory committee be established that would include not only the KCVA commissioners, Executive Director, Superintendent of the Homes and Cemetery Director, but a member of the state legislature from the district in which each of our facilities are located. That advisory committee would have the charge to consider ideas and concepts presented along with ensuring that the funds were adequate to support the project under consideration.

The bill ensures that the requisite approvals by other state agencies are obtained as prescribed by state law. Since whatever construction may result becomes the property of the State of Kansas, the agencies charged with construction approval are included as a part of the memorial authorization process.

The bill is also significant in that it provides for the honoring of all veterans in a non-discriminatory and non-partisan manner. It provides a mechanism to do things properly with legislative and state oversight, at no cost to the state. Your support for this enabling legislation would be the next step in allowing the State to continue its efforts in caring for and honoring its veteran population.

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Attachment 2

We of the KCVA invite you to see the facilities you have already provided your veterans as you have done well in your efforts. We appreciate your past support and look forward to working with you now and in the future in support of the ever growing number of veterans from our state. I thank you for your courtesy and the opportunity to have been allowed to speak in behalf of Senate Bill 110. Subject to your questions, this concludes my presentation.

Jack E. Walker (LTC, USA, Ret)
Vice Chairman
Kansas Commission on Veterans Affairs
913-684-3732

SENATE BILL No. 77

By Senators Betts and Haley

1-21

9 AN ACT concerning racial profiling.

10

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

12 Section 1. As used in sections 1 through 8, and amendments thereto:

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

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

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

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

29 ~~(e) "Routine investigatory activities" includes, but are not limited to,~~
30 ~~the following activities by law enforcement officers and agencies: Traffic~~ (e) "Routine investigatory activities" includes, but is not limited to,
31 ~~stops; pedestrian stops; frisks and other types of body searches; Consen-~~ the following activities conducted by law enforcement officers and
32 ~~sual or nonconsensual searches of persons or possessions, including ve-~~ agencies in conjunction with traffic stops: (1) Frisks and other types of
33 ~~hicles, dormitory rooms, school lockers, homes, apartments of any res-~~ body searches, and (2) consensual or nonconsensual searches of persons or
34 ~~idents, motorists or pedestrians.~~ possessions, including vehicles, dormitory rooms, school lockers, homes
35 and apartments.

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

37 ~~Sec. 2. (a) An optically scannable "uniform racial profiling data col-~~
38 ~~lection form" shall be designed by the Kansas attorney general in con-~~
39 ~~sultation with representatives from the police officers, sheriffs, Kansas~~
40 ~~highway patrol, National association for the advancement of colored per-~~
41 ~~sons, American civil liberties union, Kansas human rights commission and~~
42 ~~Kansas civil rights advocates.~~

43 (b) ~~The data collected at each stop shall include:~~

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Attachment 3

3-2

- 1 (1) Officer identification number;
- 2 (2) law enforcement agency code;
- 3 (3) month, day, and year of stop;
- 4 (4) hour and minute of stop;
- 5 (5) who was stopped, a motorist or pedestrian;
- 6 (6) gender of person stopped, male or female;
- 7 (7) specific age of person stopped;
- 8 (8) race of person stopped, African American, Hispanic, Native
- 9 American, Caucasian, Asian, Arabic or other as stated by person stopped
- 10 or by officer observation;
- 11 (9) reason for stop: Violation of the criminal code; violation of a
- 12 county resolution or city ordinance; calls for service, suspect or vehicle
- 13 description or pre-existing knowledge or information, such as a warrant;
- 14 citizens assist or welfare; or traffic violation such as a moving violation,
- 15 equipment failure or license plate violation. If a moving violation, the
- 16 officer shall indicate the specific violation;
- 17 (10) result of stop: Citation, warning or arrest;
- 18 (11) if person was arrested, what crime or violation was alleged;
- 19 (12) number of passengers;
- 20 (13) what was the nature of the search done on the pedestrian, driver
- 21 or passenger, or of the vehicle or property or no search was conducted;
- 22 (14) search authority: By consent; tow inventory; odor of drugs/al-
- 23 colol; plain view contraband; incidental to arrest; dog alert; search war-
- 24 rant; or other;
- 25 (15) was contraband discovered? If yes, was it illegal drugs; drug par-
- 26 aphermlia; weapons; alcohol; currency or stolen property; or other;
- 27 (16) stop location in agency boundaries, using the specific address of
- 28 each stop including street address or highway mile marker, city and
- 29 county;
- 30 (17) duration of stop listing the number of minutes;
- 31 (18) vehicle license plate number; and
- 32 (19) signature of law enforcement officer making the stop.
- 33 (c) Such form shall be used by all law enforcement agencies. The
- 34 form shall be completed by each law enforcement officer who stops a
- 35 motorist or pedestrian in Kansas.
- 36 (d) A copy of this completed form shall be given by the law enforce-
- 37 ment officer to the motorist or pedestrian who has been stopped.
- 38 (e) On a weekly basis, such forms will be mailed to the office of the
- 39 attorney general where they will be compiled into a statewide discrimi-
- 40 natory policing database.
- 41 (f) The attorney general shall monthly compile data received from
- 42 law enforcement agencies and make such data available to the public and
- 43 all law enforcement agencies.

~~1 (g) The data will be analyzed by statistical experts for patterns of racial
2 profiling at least once every three months. The results of each three-
3 month analysis shall be posted on the official website of the attorney
4 general.~~

~~5 (h) Law enforcement agencies or individual officers who need to cor-
6 rect their racially biased behavior will be contacted by the attorney gen-
7 eral's office within two weeks after a pattern of discrimination is identified
8 as one standard deviation above the mean for all races of motorists and
9 pedestrians stopped in a five block radius in a town or city or a 10 mile
10 section of road or highway.~~

~~11 (i) Annual reports shall be submitted by the attorney general to the
12 legislature, governor and Kansas law enforcement agencies on or before
13 January 31 of each year. Each annual report shall be posted on the official
14 website of the attorney general.~~

~~15 Sec. 3. (a) It shall be unlawful for any law enforcement officer or any
16 law enforcement agency to engage in racial profiling.~~

~~17 (b) A violation of this section is a class A misdemeanor.~~

~~18 (c) This section shall be a part of and supplemental to the Kansas
19 criminal code.~~

~~20 Sec. 4. (a) The race or ethnicity of an individual or neighborhood
21 shall not be the sole factor in determining the existence of probable cause
22 to take into custody or to arrest an individual or in constituting a reason-
23 able and articulable suspicion that an offense has been or is being com-
24 mitted so as to justify the detention of an individual or the investigatory
25 stop of a pedestrian or vehicle.~~

~~26 (b) This section shall be a part of and supplemental to the Kansas
27 criminal code.~~

~~28 Sec. 5. (a) All law enforcement agencies in this state shall adopt un-
29 iform detailed, written policy to preempt racial profiling. This statewide
30 policy shall be developed with input from the Kansas highway patrol, the
31 attorney general's office, the Kansas human rights commission, the Na-
32 tional association for the advancement of colored people, the Kansas Af-
33 rican American affairs commission, the Kansas advisory committee on
34 Hispanic affairs, the Kansas sheriff's association, the Kansas chiefs of
35 police association and the Kansas peace officers association.~~

~~36 (b) These uniform policies and data collection procedures shall be
37 implemented by all Kansas law enforcement officers within one year after
38 the effective date of this act. The policies and data collection procedures
39 shall be available for public inspection during normal business hours.~~

~~40 (c) The uniform policies shall include, but not be limited to, the
41 following:~~

- ~~42 (1) A prohibition of racial profiling.~~
- ~~43 (2) Basic and continuing educational training which shall include, but~~

Sec. 2. A 15-member task force shall be appointed by the governor to design a method for the uniform collection of data. The task force shall include representatives of the Kansas attorney general's office, the Kansas highway patrol, city and county law enforcement agencies, the Hispanic and Latino American affairs commission, the advisory commission on African-American affairs, the department of revenue, Kansas district courts, Kansas civil rights advocates and others who can assist in the uniform collection of data. The task force shall make a final report and recommendations to the governor and the legislature not later than February 1, 2006.

, ethnicity, national origin, gender or religious dress of an individual or group

a and regulation

Each agency's policy shall include the definition of racial profiling found in section 1, and amendments thereto.

policies and regulations

and regulations

Annual

1 not be limited to, an understanding of the historical and cultural systems
2 that perpetuate racial profiling, assistance in identifying racial profiling
3 practices, and providing officers with self-evaluation strategies to preempt
4 racial profiling prior to stopping a citizen.

5 ~~(5) The collection of uniform data on routine investigatory activities
6 sufficient to determine if law enforcement officers and law enforcement
7 agencies are engaged in racial profiling.~~

8 ~~(4) Establishing and appointing independent citizen review boards,
9 including private participants which reflect the racial and ethnic com-
10 munity, to receive, investigate and respond meaningfully within 60 days
11 to complaints alleging racial profiling by law enforcement officers and
12 agencies. In counties with a population of 10,000 or less, there shall be
13 one citizen review board for all law enforcement agencies within the
14 county. Counties with a population of 10,000 or less outside of the city
15 limits shall have one citizen review board for the county law enforcement
16 agencies.~~

17 ~~(5) Policies to discipline law enforcement officers and agencies who
18 engage in racial profiling.~~

19 ~~(6) If the investigation of a complaint of racial profiling reveals the
20 officer was in direct violation of the law enforcement agency's written
21 policies regarding racial profiling, the employing law enforcement agency
22 shall take appropriate action consistent with applicable laws, rules and
23 regulations, resolutions, ordinances or policies including demerits, sus-
24 pension or removal of the officer from the agency.~~

25 Sec. 6. Any person who ~~is subjected to racial profiling shall have a
26 civil cause of action against any law enforcement officer or agency, or
27 both, and shall be entitled to recover damages from any such officer, any
28 person with supervisory authority over such officer and agency. If it is
29 determined by the court that such persons or agency engaged in racial
30 profiling. The court may allow the prevailing plaintiff reasonable attorney
31 fees, expert witness costs and other litigation costs reasonably incurred.~~

32 ~~Statistical or other documented proof that the routine investigatory activi-
33 ties of law enforcement officers or agencies have had a disparate impact
34 on racial or ethnic minorities shall constitute prima facie evidence of a
35 violation of this section.~~

36 Sec. 7. (a) Whenever a person who is stopped or arrested believes
37 the stop or arrest was in violation of section 3, and amendments thereto,
38 such person may file a complaint with the Kansas human rights commis-
39 sion. A copy of the complaint shall be forwarded to the arresting officer's
40 employer by the commission and the citizen's review board overseeing
41 the jurisdiction of the accused law enforcement agency.

42 ~~(b) The Kansas human rights commission shall promulgate rules and
43 regulations establishing procedures for filing a racial profiling complaint~~

(3) Establishing or utilizing current independent citizen advisory boards which include participants who

advise and assist in policy development, education and community outreach and communications related to

(4) Policies and regulations for discipline of

(5)

(6) Each law enforcement agency shall include in its policy provisions for community outreach and communications efforts to inform the public of the individual's right to file with the law enforcement agency or the attorney general's office complaints regarding racial profiling. Outreach and communications to the community shall include ongoing efforts to notify the public of the law enforcement agency's complaint process.

(7) Each law enforcement agency shall promulgate regulations establishing procedures for individuals to file complaints of racial profiling with the agency. If appropriate, a law enforcement agency may utilize current procedures for addressing such complaints.

(8) Each law enforcement agency shall compile an annual report of all complaints of racial profiling received and shall submit the report on or before January 31 to the office of the attorney general for review. The annual report shall include: (A) The date the complaint is filed; (B) action taken in response to the complaint; (C) the decision upon disposition of the complaint; and (D) the date the complaint is closed. Annual reports filed pursuant to this subsection shall be open public records and shall be posted on the official website of the attorney general.

believes such person has been subjected to racial profiling by a law enforcement officer or agency may file a complaint with the law enforcement agency. The complainant may also file a complaint with the attorney general's office. If a complaint is filed with the attorney general's office, the attorney general or the attorney general's designee shall review and, if necessary, investigate the complaint. The attorney general or attorney general's designee, shall consult with the head of the law enforcement agency before making final recommendations regarding discipline of any law enforcement officer or other disposition of the complaint. Upon disposition of a complaint by the attorney general's office, the complainant shall have a civil cause of action in the district court against the law enforcement officer or law enforcement agency, or both, and shall be entitled to recover damages

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1 ~~with the commission and the process for delivering a copy of the com-~~
2 ~~plaint by the commission to the employing agency and the responsible~~
3 ~~citizen's review board. The commission shall adopt forms for complaints~~
4 ~~of racial profiling.~~

5 (c) ~~The commission shall compile an annual report of all complaints~~
6 ~~received for racial profiling and submit the report on or before January~~
7 ~~31 to the governor, the president of the senate and the speaker of the~~
8 ~~house of representatives. The annual report shall be an open record and~~
9 ~~shall be posted on the official website of the attorney general.~~

10 Sec. 8. (a) ~~The law enforcement agency shall investigate the com-~~
11 ~~plaint for purposes of disciplinary action or a criminal violation of section~~
12 ~~3, and amendments thereto.~~

13 (b) ~~If the complaint is not resolved by the law enforcement agency~~
14 ~~within 90 days from the date the complaint was filed, the citizen's review~~
15 ~~board overseeing complaints against such law enforcement agency shall~~
16 ~~independently investigate the facts alleged and submit a written finding~~
17 ~~of fact within 60 days after receiving the case to the citizen who filed the~~
18 ~~complaint, the Kansas human rights commission and the law enforcement~~
19 ~~agency against whom the complaint was alleged.~~

20 ~~Sec. 9. This act shall take effect and be in force from and after its~~ 7.
21 ~~publication in the statute book.~~

February 3, 2005

The Honorable Pete Brungardt, Chairperson
Senate Committee on Federal and State Affairs
Statehouse, Room 143-N
Topeka, Kansas 66612

Dear Senator Brungardt:

SUBJECT: Fiscal Note for SB 77 by Senators Betts and Haley

In accordance with KSA 75-3715a, the following fiscal note concerning SB 77 is respectfully submitted to your committee.

SB 77 would create racial profiling policies and procedures. This bill would make it unlawful for any law enforcement officer or agency to engage in racial profiling and would consider the violation to be a class A misdemeanor. The Kansas Attorney General, along with input from other representatives listed in the bill, would design an optically scannable uniform racial data collection form. The form would be used by all law enforcement agencies and would be completed at each traffic or pedestrian stop. The bill outlines the data to be collected at each "stop." A copy of the completed form would be given to the motorist or pedestrian.

SB 77 would require all completed forms to be mailed to the Office of the Attorney General on a weekly basis. The forms would be compiled into a statewide discriminatory policing database. Every month, the Attorney General would compile the data and make them available to the public and law enforcement agencies. SB 77 would require the data to be analyzed by statistical experts for patterns of racial profiling at least once every three months. These results would be posted on the Attorney General's website. The bill also requires the Attorney General to submit an annual report by January 31 of each year to the Legislature, Governor, and Kansas law enforcement agencies. The annual report would also be posted on the Attorney General's website.

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The bill would require the Attorney General's Office to contact law enforcement agencies or individual officers who need to correct racially biased behavior. This contact would be made within two weeks after a pattern is identified. The bill describes how patterns are identified. This bill would require all law enforcement agencies to adopt uniform and detailed policies to preempt profiling. The bill details who would be responsible for developing the policies. The policy and data collection procedures would be available to the public during normal business hours. The policy and procedures would be implemented within one year after the effective date of this bill.

Any person who is subjected to racial profiling could bring a civil cause of action against any law enforcement officer, agency, or both and would be able to recover damages, as well as reasonable attorney fees, expert witness costs, and other reasonable litigation costs. Any person who is "stopped" or arrested and believes he or she is the subject of racial profiling could file a complaint with the Kansas Human Rights Commission. The complaint would be sent to the officer's employer and to the Citizen's Review Board in that jurisdiction. The bill would require the Commission to establish procedures for filing and distributing the complaints. SB 77 would require the Commission to compile an annual report of the complaints and submit it to the Governor, President of the Senate, and Speaker of the House of Representatives by January 31 of each year.

The law enforcement agencies would investigate the complaint from the Kansas Human Rights Commission to determine whether disciplinary action is needed or if a criminal violation occurred. If the complaint is not resolved by the law enforcement agency within 90 days, the Citizen's Review Board would investigate. The Board would submit written findings to the person who filed the complaint, the Commission, and the law enforcement agency within 60 days.

The fiscal effect of this bill is especially difficult to estimate because it creates a number of new administrative responsibilities, and the nature and scope of those processes are sizeable. The fiscal estimates provided by the primary agencies affected, the Attorney General and the Human Rights Commission, are based on the best information available and their judgment of the effect that the bill would have on their operations. At the same time, the uncertainty in the number of "stops" and the number of complaints that might be filed if this bill passed, in the absence of actual experience, suggest that the fiscal effect presented here cannot be more than a general indication of the cost based on a thoughtful consideration of the factors and assumptions involved.

The Attorney General states that implementing SB 77 would increase its State General Fund expenditures by \$854,028 in FY 2006. Included in this total is \$404,830 for 8.00 new FTE positions; \$30,000 for office equipment and furnishings; \$30,000 for travel, including litigation; and \$389,198 for database, scanning, printing, mailing, reporting, and other related computer-generated reports. The estimate is based on 2.5 million "stops" per year. The Kansas Law Enforcement Training Commission provided the estimated 2.5 million stops based on historical data.

The Honorable Pete Brungardt, Chairperson
February 3, 2005
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The Kansas Human Rights Commission estimates that SB 77 would increase its State General Fund expenditures by \$603,364 in FY 2006. The estimate includes \$421,321 for 12.00 new FTE positions; \$115,732 for printing, communication, and additional office space; \$29,591 for office supplies; and \$36,720 for office equipment and furnishings. The Commission's estimates are based on 18,960 complaints. The number of complaints was based on findings from a 2001 racial profiling study. The data for the study were provided by the Kansas Highway Patrol along with large, medium, and small law enforcement agencies.

SB 77 also would increase the Citizen's Review Board expenditures. However, no estimate is available. Furthermore, SB 77 would increase the number of court cases; however, no estimate is available. Any fiscal effect associated with SB 77 would be in addition to amounts in *The FY 2006 Governor's Budget Report*.

Sincerely,

Duane A. Goossen
Director of the Budget

cc: Ruth Glover, Human Rights
Kevin Graham, Attorney General's Office
Walt Darling, KHP
Kim Gulley, League of KS Municipalities
Judy Moler, KS Association of Counties
Brandy Wheeler, Judiciary

PROPOSED AMENDMENT TO S. B. 77

Add a new subsection to section 6, to read as follows:

A law enforcement agency shall not be eligible to receive grants or other moneys from the state for the fiscal year following a finding by the attorney general or the attorney general's designee that a law enforcement agency has engaged in racial profiling or has failed to discipline a law enforcement officer in accordance with the recommendations of the attorney general or the attorney general's designee pursuant to this section. The provisions of this subsection shall not apply if the complainant files a civil cause of action pursuant to this section and the district court finds that racial profiling did not occur.

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Attachment 5