

Approved: 3-29-06

Date

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 February 9, 2006 in Room 231-N of the Capitol.

All members were present except:

Senator Anthony Hensley- excused
Senator John Vratil- excused
Senator Kay O'Connor - excused

Committee staff present:

Athena Andaya, Kansas Legislative Research Department
Dennis Hodgins, Kansas Legislative Research Department
Connie Burns, Committee Secretary

Conferees appearing before the committee:

Secretary Roger Werholtz, Kansas Department of Corrections

Others attending:

See attached list.

Secretary Roger Werholtz, Kansas Department of Corrections, provided an overview and update on the Department of Corrections. (Attachments 1) Secretary Werholtz introduced his staff:

Chuck Simmons, Facilities Supervisor
Tim Madden, Legal Counsel
Dennis Williams, Chief Fiscal Officer
Jeremy Barclay, Special Assistant to the Secretary

The Secretary went over the projections for FY05, FY06, and three different scenarios that will decrease prison population which were based on several different assumptions. The Sentencing Commission provided current information this fall and the budget projections were revised for FY07.

The two policy initiatives that account for the slope of the projections are:

- SB 123 – the drug treatment bill that provides significant substance abuse treatment as an alternative to incarceration, and is for possession only drug offenders (18 month history for bill.)
- Extensive training and emphasis the department has placed on reentry initiatives. This program has been operational in the Topeka community and is now on line in Wichita, and the program is being finalized in Wyandotte County, and it is anticipated further improvement in the slope of the line as the programs are brought on line. The extensive retraining of staff in the facilities and in parole, providing them with different and additional skill set in working with offenders with the goal of cutting recidivism and given the fact that these offenders are going to be getting out of prison and return to the community, the department wants to be sure that this is done in the safest possible way. The reduction in recidivism is reflective of reduced levels of inappropriate behavior in re-offending in the community.

The Reentry Initiative Conference sponsored by Council of State Government (CSG) and held in Wichita last spring, one of the initiatives was a neighborhood proposal that could further reduce parole revocation. What was proposed was targeting two or three neighborhoods within a specific city council district that has significant numbers of offenders returning to that location from prison and through those neighborhood targeted initiatives try and lower parole revocations by 300 per year. CSG predicted that by lowering parole revocations by 300 per year that would lower the population projections by 100 beds. Senator Sam Brownback spoke at the conference and explained the Federal Second Chance Act and that he wanted to see parole revocations cut in half in five years and that he wanted to see it start in Kansas.

Secretary Werholtz explained that the projections did not reflect the two bills in the legislature on sex offenders and that bed space would increase. Housing expansions options were discussed and expansion can be added on to existing correctional facilities. It is always less expensive to add beds to existing facilities, simply because the need to repeat info structure, build brand new medical facilities, brand new food services, and power plants, but there is a point at which it is not cost effective and new expansion construction and operational costs were provided.

In closing the Secretary addressed the rising cost of the medical contract as the population of the prisons is aging.

The secretary will provide the committee with additional information on cost of additional 1000 beds and the reentry initiative added back in.

Staff provided the information requested by Chairman Brungardt on **SB 486** and past legislation on **Sub for SB 77**, The Governor's Task Force on Racial Profiling report and recommendations. (Attachment 2)

The meeting was adjourned at 11:30 am. The next scheduled meeting is February 14, 2006.

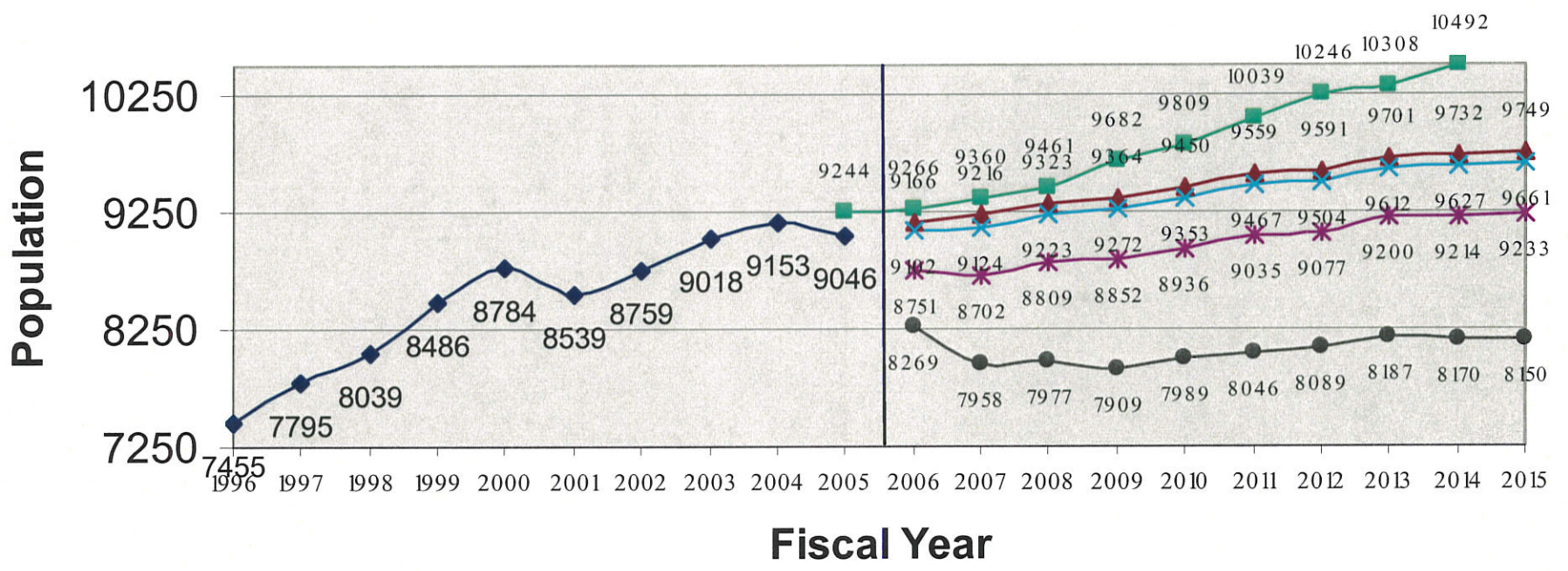
SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

GUEST LIST

DATE 2-9-06

NAME	REPRESENTING
Philip A. Hoveley	PHIL HOVELEY & CO.
JEREMY BARCLAY	KDOC
Charles Simmons	KDOC
Tim Maddin	KDOC
Roger Werholtz	KDOC
Dennis Williams	KDOC
Estelle Montgomery	Hein Law Firm
Kimberly Kuyser	Nursing Student MNU

FY 2005 & 2006 Actual and Projected Total Prison Population



- ◆ Actuals
- FY05 proj
- ▲ FY06 proj
- ✕ Scen1
- ✱ Scen2
- Scen3

Housing Expansions Options

	Estimated Construction Cost	Estimated Const. Cost Per Bed	Estimated Operating Cost	Estimated Cost Per Inmate/Yr	Estimated Cost Per Inmate/Day	Estimated One Time Start up Co
<u>General Population – Maximum Security</u>						
EDCF – 2 Housing Units 256 Max Beds	\$19,708,900 ¹	\$76,988	\$6,683,000	\$26,105	\$71.52	\$850,000
<u>General Population – Medium Security</u>						
EDCF -2 Housing Units 512 Med. Beds	19,708,900 ¹	38,494	8,476,000	16,555	45.36	933,000
EDCF-1 Housing Unit 256 Med Beds	11,640,000 ¹	45,469	4,537,000	17,723	48.56	520,000
EDCF-Yates Center Unit 500 Med Beds	50,944,700	101,889 ²	10,419,000	20,838	57.09	2,560,000
NCF-Stockton Unit 500 Med Beds	52,838,900	105,678 ²	10,543,000	21,086	57.77	2,560,000
<u>General Population – Minimum Security</u>						
EDCF- Housing Unit 100 Bed	3,313,600	33,136	1,449,000	14,490	39.70	327,000
ECF- Housing Unit 100 Bed	3,657,400	36,574	1,592,000	15,920	43.62	319,000
NCF-Stockton Expansion 72 Beds	3,968,000	55,111	819,000	11,375	31.16	338,000
EDCF-Toronto Expansion 75 Beds	2,770,000	36,933	1,003,000	13,373	36.64	333,000
<u>Special Needs – Mental Health</u>						
LCMHF-Housing Unit 256 Med Beds	15,288,000	59,719	3,661,000 ³	14,301	39.18	513,000
<u>Special Needs – Medical</u>						
HCF-East Unit 258 Med Beds	6,204,600	24,049	3,166,000	12,271	33.62	410,000
ECF-Century Building 178 Med & 112 Min Beds	6,217,300	21,439	4,092,000	14,110	38.66	719,000
TCF-Housing Unit 200 Med and 40 Work Release Beds	13,660,800	56,920	4,962,000	20,675	56.64	564,000
<u>Central Training Academy</u>						
Osawatomie State Hospital-Rush Building	2,183,000	N/A	\$1,034,000	N/A	N/A	\$405,000

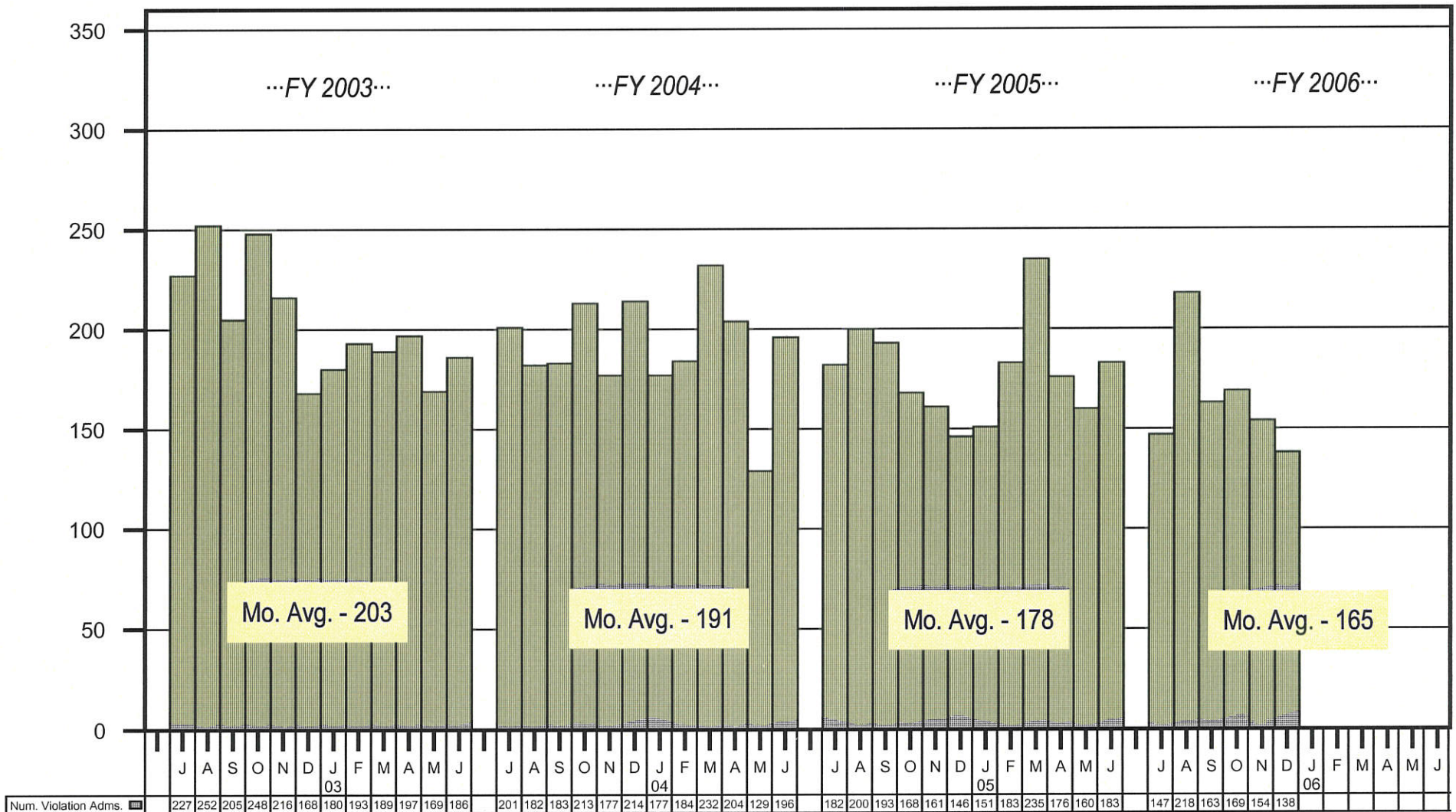
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¹ This cost also includes a 23 bed Infirmary expansion at the facility.

² Land survey not completed, estimated cost may vary once land survey and subsoil investigation is completed. Project estimated with no work being performed by inmate crews.

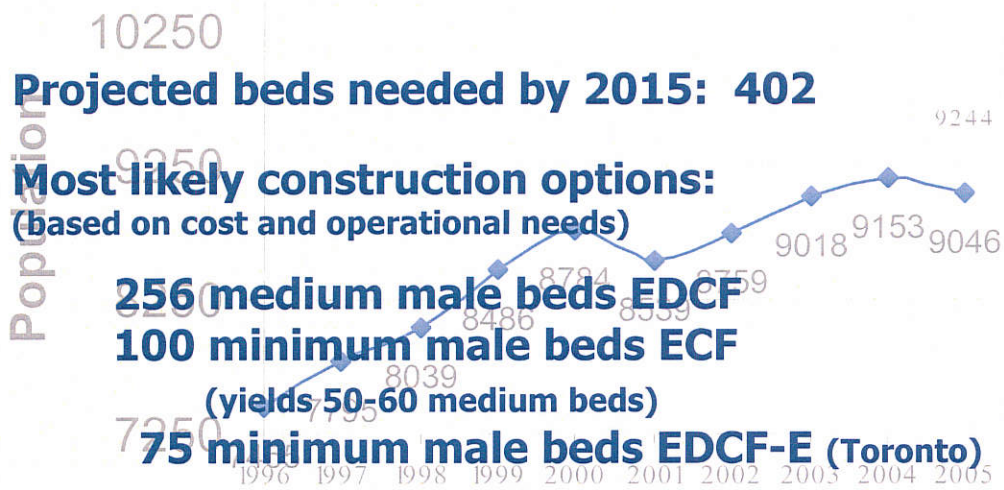
³ These figures do not include any costs for Larned State Hospital to provide food service, laundry and some utility services.

Number of Return Admissions for Condition Violations by Month: FY 2003 - FY 2006 to Date*



*Total number of admissions for violation of the conditions of release (no new sentence).

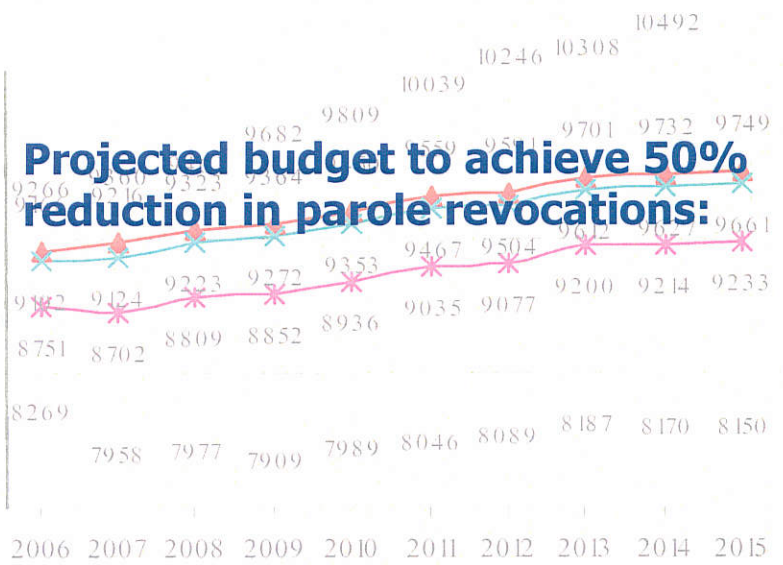
FY 2005 & 2006 Actual and Projected Total Prison Population



Projected beds needed by 2015: 402

Most likely construction options:
(based on cost and operational needs)

- 256 medium male beds EDCF**
- 100 minimum male beds ECF**
(yields 50-60 medium beds)
- 75 minimum male beds EDCF-E (Toronto)**



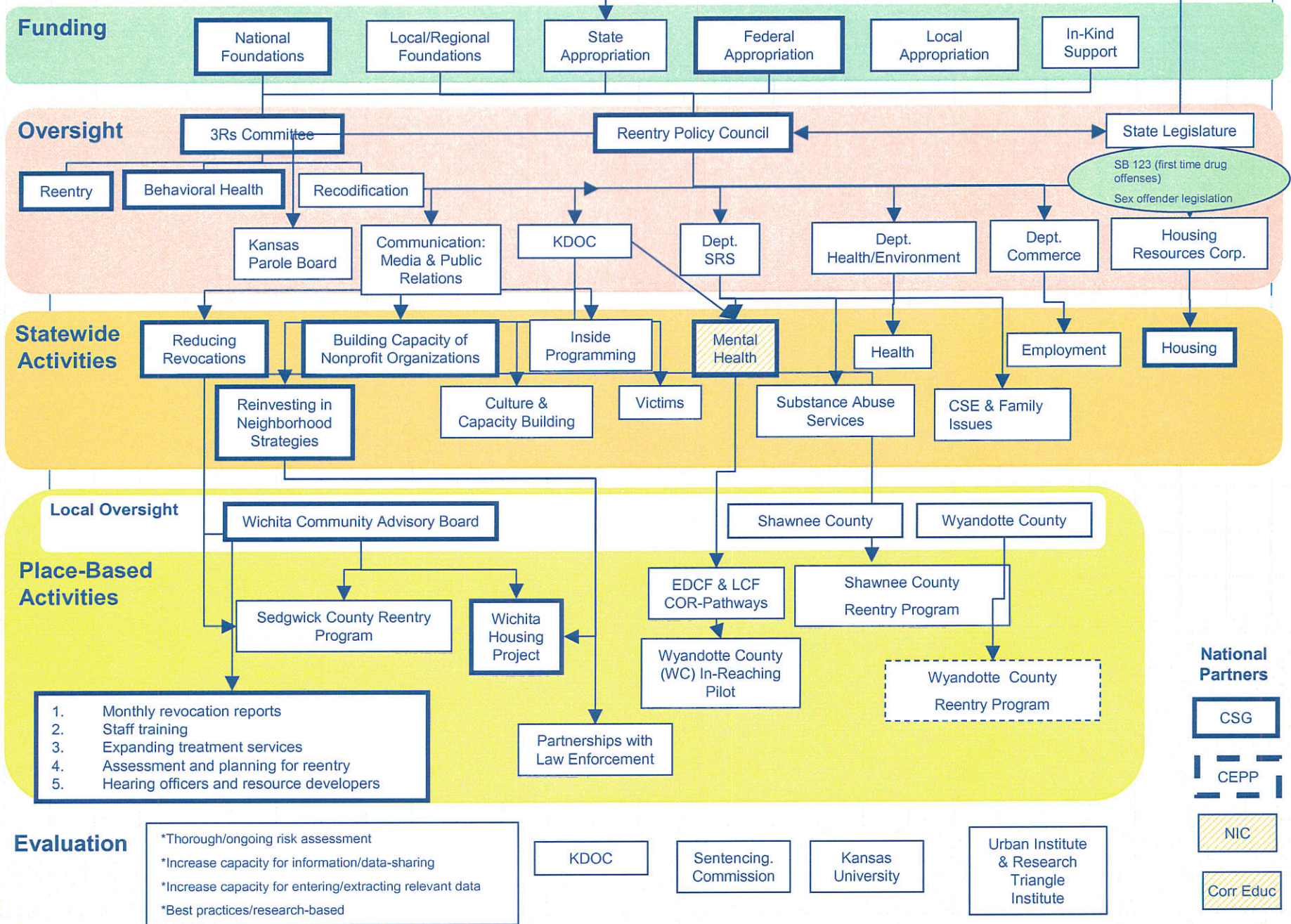
Projected budget to achieve 50% reduction in parole revocations:

\$19,239,400 – construction and start up costs
\$ 7,132,000 – annual operating costs

\$9,864,000

◆ Actuals FY05 proj ▲ FY06 proj ✕ Scen1 ✕ Scen2 Scen3

Kansas Reentry and Justice Reinvestment



October 31, 2005

The Honorable Kathleen Sebelius
Governor of the State of Kansas

The Honorable Stephen Morris
President of the Senate, State of Kansas

The Honorable Douglas Mays
Speaker of the House of Representatives,
State of Kansas

Dear Governor Sebelius and Honorable Members of the Kansas Legislature,

In accordance with the requirements of Substitute for Senate Bill 77, The Governor's Task Force on Racial Profiling is pleased to submit this report and recommendations. This report outlines our recommendations for the full implementation of Substitute Senate Bill 77 throughout the State of Kansas.

Law enforcement agencies in the state may face many challenges as they move to implement this bill. However, the Task Force believes that with adequate resources and visionary leadership, none of the challenges are insurmountable. Please find our attached report and recommendations.

Respectfully,

Rev. Allen Smith
Co-Chair
Governors Task Force on Racial Profiling

Mr. Jackie Williams
Co-Chair
Governors Task Force on Racial Profiling

Governor's Task Force on Racial Profiling Report and Recommendations October 31, 2005

Introduction

Substitute for Senate Bill 77 prohibits law enforcement officers or agencies from relying, "as a sole factor, on race, ethnicity, national origin, gender or religious dress 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."

Substitute for SB77 also:

- Requires law enforcement agencies to adopt written policies to preempt racial profiling and to collect data on all traffic stops;
- Requires law enforcement agencies to provide annual education and training on racial profiling;
- Requires cities of the first class to establish or use current independent citizen advisory boards that include participants who reflect the racial and ethnic community;
- Requires law enforcement agencies to have a complaint procedure and to investigate racial profiling complaints;
- Authorizes the Kansas Human Rights Commission to investigate racial profiling complaints;

With the passage of Substitute for Senate Bill 77, the Kansas Legislature authorized Governor Sebelius to appoint a 15-member Task Force to design a method for the uniform collection of traffic stop data by Kansas law enforcement officers and to report its recommendations to the Governor and legislature by November 1, 2005.

Summary

The task force met weekly between September 1 and October 31, 2005. In completing its work, the Task force reviewed studies on racial profiling and examined data collection methodologies used by several states and cities. The Task Force consulted several experts who provided insight on data collection and data comparison. Finally, the Task Force identified several recommendations for the full implementation of SB 77 in the State of Kansas. Specifically, these recommendations include:

- The identification of core data elements to be collected by each law enforcement agency for appropriate analysis.
- A recommendation for further research and consultation with an expert(s) to identify the appropriate benchmark(s) and appropriate data analysis methodology.
- The creation of a standard data collection form and initiation of an appropriate data collection process and method to ensure agency reporting.
- A recommendation for the appropriate repository, management and sharing of data and reports.
- A recommendation to reinstate the practice of indicating the race/ethnicity of Kansas drivers' on a Kansas driver's license.
- A recommendation to consider the use of a statewide, uniform traffic citation for future use.
- A recommendation for a permanent allocation of funding for the full implementation of SB77
- A recommendation to retain the current Task Force for an extended period.

Report and Recommendations

The Task Force members endorse the final recommendations to the Governor and to the Kansas State Legislature as set forth below. In order to accomplish the objectives of SB77 three elements are necessary:

A.) Data Collection, B.) Analysis through the use of benchmarks, and C.) Funding.

A. DATA COLLECTION

1. Following research and discussion, this Task Force recommends that the following data items be collected by every Kansas law enforcement agency following each traffic stop. (For further information regarding the rationale for each data source, see Appendix A.)

1. Officer Identification Number	Each jurisdiction will need the ability to analyze the enforcement actions of individual officers.
2. Demographic data	Age and Gender should be included in the demographic data for a complete analysis of enforcement actions.
3. Race	The categories for race should be, White, Black, Native American, Asian, other and more than one race.
4. Ethnicity	The categories for ethnicity shall be Hispanic/Latino and Non-Hispanic.
5. Agency/ORI	Data must be sorted by agency for a complete analysis of the enforcement activity in each jurisdiction.
6. County Code	Data will also be sorted by county for analysis. The Kansas Highway Patrol and County Sheriffs will need to make data analysis by county.
7. Location of the stop	The most useful analysis will also require sorting data by location. Traffic enforcement patterns differ greatly in many areas.
8. Time and Date of Stop	Traffic enforcement patterns also differ depending on the time of day and day of the week.
9. Primary reason for investigation	Analysis should include a review and comparison of the stops initiated by the officer and stops made because the officer was so directed. Officer initiated stops allow for greater discretion on the part of the officer while call related stops do not.
10. Means of gathering information	An analysis of whether the officer was aware of the demographic information before or after the stop is needed.
11. Observation of Religious dress or religious symbols	A data analysis should be made of stops where an officer observes the religious dress or religious symbols associated with the driver.
12. Primary Reason for the stop	Officers should indicate all that apply including: to render service, moving violation, equip/reg. violation, criminal offense/ probable cause, special detail, suspicious circumstances, pre-existing knowledge, call related, other. This data is needed to understand why the stop was made. The most common reasons for stops are identified. The absence of a primary reason for the stop can be an indicator of profiling.
13. Action Taken	Including: to render assistance, warrant arrest, search, citation, warning, arrest, no action. An analysis of the enforcement actions that take place following the stop is also critical to understanding officer perceptions and behavior. Profiling or other disparate treatment of citizens could occur following a reasonable stop.
14. Search Rationale	Including: search, vehicle indicators, verbal indicators, physical/visual indicators, incident to arrest, other, no search. A request to search may be made at the officer's discretion. A reasonable analysis will include the rationale for any search.
15. Type of Search	Including: consent search, inventory, stop and frisk, search warrant, consent denied, search incident to arrest, plain view, probable cause, no search conducted. An analysis of the type of search conducted should also be made.
16. Contraband seized	Including, currency, firearms, other weapons, drugs/paraphernalia, alcohol/tobacco, stolen property, other. The analysis should include whether searches generally result in finding contraband or some other result.

A. DATA COLLECTION, CONTINUED

2. The Task Force recommends that the legislature amend SB 77 to make data collection mandatory for all law enforcement agencies and officers. The formal adoption of these recommendations to occur when the infrastructure and equipment is available for data collection and compilation, or within one year of the formal adoption of these recommendations, whichever occurs first.
3. The Task Force recommends that the state develop a standard form for data collection. It is recommended that the data collected by each law enforcement agency be documented on a state developed and supplied standard form. Individual law enforcement agencies should be given the option to collect and submit their data electronically. The use of the mobile data terminals and/or handheld personal computers are suggested as the most appropriate and cost-effective method of collecting data. (See Appendix B.)
4. The Task Force recommends that the State of Kansas reinstate the practice of indicating the race/ethnicity on the Kansas driver's license. It is recommended that the race/ethnicity of all motorists appear in a code format to assist officers in easily identifying the race/ethnicity of every Kansas driver. While this measure would take time to be fully implemented, due to the six year license renewal cycle, the Task Force found that the cost would be minimal.
5. The Task Force recommends that the data collected be confined to the information regarding the driver of the vehicle stopped and not the passengers in the vehicle.
6. The Task Force recommends that the data collected by individual law enforcement agencies be transmitted to the state on a quarterly basis.
7. The Task Force recommends the Attorney General/Kansas Bureau of Investigation serve as the repository for the traffic stop data as they are the repository for criminal data and already have the computer facilities and expertise to process and store law enforcement data. The Task Force understands that this will not be possible without the appropriate funding of personnel, equipment, and administration of the data collection for the Attorney General/KBI.
8. The Task Force recommends that all traffic enforcement data collected as a result of this program be considered public record except for the employee or officer identification information that would identify the individual officers. Pursuant to state statute and personnel regulations, the officer identification information is considered an employment record and thus only available to the officer's agency for an analysis of individual officer actions. This information is a useful management tool in resolving issues and/or the administration of personnel matters raised by the analysis.
9. The Task Force recommends the immediate implementation of the standard form for data collection. The Task Force further recommends that the state consider the use of a uniform traffic citation for future use as the means of collecting and storing all law enforcement/criminal justice traffic stop data. A uniform traffic ticket, utilized by all jurisdictions, would allow for the collection, storage and sharing of all law enforcement traffic data including racial profiling data.

B. BENCHMARKING AND ANALYSIS

A benchmark is a standard (baseline) for comparison of all collected data. The research of the Task Force shows that the establishment of benchmarks (comparison data) is vital to the validity of the final data analysis. The collection of data without analysis by a competent expert will invalidate the entire process.

1. The Task Force recommends further research into the methods to be used to benchmark traffic stop data. The Task Force research regarding benchmarks indicates that significant expertise will be needed to determine a method of benchmarking of the data collected. There is no consensus about the best benchmark against which to compare traffic stop data and thus determine whether substantial disparities in the number of investigatory activities members of one group experiences constitute racial profiling. The literature on racial profiling describe several commonly used benchmarking methods. (See Appendix C.)
2. The Task Force recommends hiring an expert to determine an appropriate benchmarking method and analysis for interpretation of data in our state. Appropriate benchmarks are critical for a meaningful analysis.
3. The Task Force recommends the publication of an annual report summarizing the data on a statewide basis and that data be made available for public review. It is recommended that each law enforcement agency internally review and analyze the data to determine whether officers are inappropriately using race, gender, national origin, ethnicity, or religious dress as the sole reason for traffic stops or follow-up investigations.

C. FUNDING

1. The Task Force recommends that the state provide sufficient and permanent funds for the implementation of a process to include, but not limited to: collecting, storing, transmitting, and analyzing data on a statewide basis. The objectives of SB 77 will not be met without adequate funding to meet the desired goals.
2. The Task Force recommends a modest increase in the Kansas driver's license fees as a potential funding source.
3. The Task Force recommends that permanent and sufficient funds be allocated for the statewide analysis of the data on an annual basis. The Task Force recommends that the state retain the services of an expert to assist in determining how the data should be analyzed and how to respond to problems that the data might indicate.

OTHER RECOMMENDATION

The Task Force further recommends that the Governor and the legislature retain the current Task Force to address the recommendations above and other issues related to the full implementation of all sections of SB77 in the state of Kansas. The Task Force recommends that the body meet monthly for the next two calendar years following the November 1, 2005 deadline. Funding for administrative costs and the cost of travel to meetings is also recommended.

Respectfully submitted, October 31, 2005

Acknowledgements

Terri Moses , Wichita Police Department, Wichita, Kansas participated n the deliberations and research and offered insightful comments and advice that helped to guide the research, achieve consensus during the task force's deliberations and to shape the broad outlines of the final report and recommendations.

Gordon Lansford, Director, Kansas Criminal Justice Information System, provided invaluable information about current criminal justice databases and the collection and distribution of criminal justice data.

Danielle Dempsey-Swopes, Executive Director, Kansas African American Affairs Advisory Commission and Elias Garcia, Executive Director, Kansas Hispanic and Latino American Affairs Commission, ably obtained reference materials, data collection tools used by law enforcement agencies.

APPENDIX A

DESIGN FOR UNIFORM COLLECTION OF TRAFFIC STOP DATA

The task force recommends that should the legislature approve the uniform collection of data by all law enforcement officers in the state of Kansas that the following data be collected:

1. **Officer Identification Number**
Each jurisdiction will need the ability to analyze the enforcement actions of individual officers. The officer identification number should be assigned by each law enforcement agency and only be available to that law enforcement agency for analysis of individual officers. The information revealing the identity of the individual officer should not be public record. The bubble form should make four character spaces available for officer identification number.
2. **Age**
Age should be included in the demographic data for a complete analysis of enforcement actions. Age is a common data element in traffic stop studies and is relevant in the analysis of traffic stop data. Age should be determined through the officer's examination of the driver's date of birth on the driver's license. Should the driver not have a driver's license the officer should ask the driver for his/her age. The bubble form should make two characters spaces available for age.
3. **Gender**
Gender is a data element required by the statute and should be included in the demographic data for a complete analysis of enforcement actions. Gender should be determined by the officer's observation and through examination of the individual's driver's license. The bubble form should include the following three data choices for gender: Male, Female, Unknown
4. **Race**
Race is a data element required by the statute and should be included in the demographic data for a complete analysis of enforcement actions. Race should be determined by the officer's observation. The task force believes that in the future race should be indicated on all drivers' licenses. The bubble form should include the following six data choices for race: White, Black, Native American, Asian, Other, More than one race
5. **Ethnicity**
Ethnicity is a data element required by the statute and should be included in the demographic data for a complete analysis of enforcement actions. Ethnicity should be determined by the officer's observation. The task force believes that in the future ethnicity should be indicated on all drivers' licenses. The bubble form should include the following two data choices for ethnicity: Hispanic/Latino, Non-Hispanic
6. **Agency ORI**
Data must be sorted by agency for a complete analysis of the traffic stop enforcement activity in each jurisdiction. Each law enforcement agency in Kansas has an ORI that

distinguishes it from all others. The bubble form should make seven character spaces available for Agency ORI.

7. **County Code**
Traffic stop data should also be sorted by county for analysis. The Kansas Highway Patrol and county sheriffs often do not break down their jurisdictions with beats or reporting areas and the county as a whole will constitute the geographic area where the stop was conducted. This is necessary for establishing benchmarking and the proper analysis of the traffic stop data. The bubble form should make two character spaces available for County code.
8. **Location of the stop**
The most useful analysis of traffic stop data will also require sorting data by more specific locations than simply county. The demographics of areas where traffic enforcement occurs and traffic enforcement patterns differ greatly in many areas and the more specific the location the more relevant and accurate the benchmarking can be. These locations will be determined by each individual law enforcement agency and will probably correspond to their current beat structure or reporting areas. The bubble form should make four character spaces available for location of stop.
9. **Date of Stop**
Traffic demographics and enforcement patterns sometimes differ significantly depending on the day of the week or special events that occur on a particular day of the week or singular day. The date is a relevant data element and will be useful in the analysis of the traffic stop data. The bubble form should make six character spaces available for the date of stop. Two spaces should be available for month, two for day and two for year.
10. **Time of Stop**
Traffic demographics and enforcement patterns sometimes differ significantly depending on the time of day. The date is a relevant data element and will be useful in the analysis of the traffic stop data. The bubble form should make four character spaces available for the time of stop.
11. **Primary reason for investigation**
Analysis should include a review and comparison of the stops initiated by the officer and stops made because the officer was directed to do so. Officer initiated stops allow for greater discretion on the part of the officer while call related stops do not. The bubble form should include the following two data choices for primary reason for investigation: Call related, Officer initiated
12. **Means of gathering information**
Demographic information obtained through the officer's perception may be different from the actual demographic information. An analysis of whether the officer was aware of the demographic information before or after the stop is also important. The bubble form should include the following two data choices for information obtained by: Officer's perception, Investigation

- 13. Religious dress**
Religious dress is a data element required by the statute and should be included in the demographic data for a complete analysis of enforcement actions. The officer will document whether in his opinion the driver stopped was wearing religious dress. The task force believed that religious dress possibly should be expanded to religious dress or symbols. The bubble form should include the following data choices for Religious dress: Yes, No
- 14. Primary Reason for the stop**
In order to determine the motivation for stopping the vehicle officers should be asked to document the primary reason for stopping the vehicle. The most common reasons for traffic stops have been identified. The absence of an appropriate reason for the stop could be an indicator of profiling. The bubble form should include the following eight data choices for the primary reason for the stop: Moving violation, Equipment violation, Criminal Offense/Probable Cause, Other violation, To render service, Suspicious circumstances, Pre-existing knowledge, Special detail
- 15. Action Taken**
In order to determine what investigative or follow-up action was taken by the officer the enforcement action the officer conducts should be documented. An analysis of the enforcement actions that take place following the stop is also critical to understanding possible discrimination on the part of an officer. Profiling or other disparate treatment of citizens could occur following a reasonable stop. The bubble form should include the following seven data choices for Action taken (The officer should document all of the data choices that apply): Citation, Search, Warning, Arrest, Warrant arrest, Assistance provided, No action taken
- 16. Search Rationale**
The officer's rationale for the subsequent investigatory action in the form of a search is necessary for a proper analysis. A request to search may be made at the officer's discretion. A reasonable analysis will include the rationale for any search. The bubble form should include the following seven data choices for Search rationale (The officer should document all of the data choices that apply): No search conducted, Vehicle indicators, Verbal indicators, Physical/visual indicators, Document indicators, Incident to arrest, Other
- 17. Type of Search**
The type of search may provide significant information relevant to the analysis of whether an officer conducts appropriate searches following a traffic stop. The bubble form should include the following nine data choices for type of search (The officer should document all of the data choices that apply): No search requested, Consent search conducted, Inventory, Stop and frisk, Search warrant, No search/consent denied, Search incident to arrest, Plain view, Probable cause
- 18. Contraband seized**
The existence of contraband or the type of contraband that is eventually found during a search following a traffic stop may reveal information significant in the analysis of the overall data collection for a particular officer or particular location.

The bubble form should include the following eight data choices for contraband seized
(The officer should document all of the data choices that apply):

- None
- Currency
- Firearms
- Other weapons
- Drugs/paraphernalia
- Alcohol/Tobacco products
- Stolen property
- Other

Appendix C

Noted authorities on racial profiling have offered analysis of several methods for establishing benchmarking data including the following:

Census population of ethnicities. The ethnicities of drivers from traffic stops are compared to the census ethnicities of the population in a particular jurisdiction. A potential problem with this type of analysis is the ethnic breakdown in the census may not be representative of the population likely to be involved in a traffic stop. Drivers may be commuting into the area and may not be the same people who live in the neighborhood where the traffic stop occurred.

Observational data. This method entails observing the drivers in a jurisdiction in order to create a comparison group who represent "people who could potentially be stopped by a police officer during a traffic stop." The observational analysis is conducted by noticing the demographic profile of drivers at a particular intersection or drivers involved in traffic violations. As with the census population method, drivers may be commuting into the area and may not be representative of the area.

Substitute for SENATE BILL No. 77

AN ACT concerning racial and other profiling; prohibiting certain actions and providing remedies for violations.

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

Section 1. As used in this act:

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

(b) "Law enforcement agency" means the governmental unit employing the law enforcement officer.

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

(d) "Racial profiling" means the practice of a law enforcement officer or agency relying, as the sole factor, on race, ethnicity, national origin, gender or religious dress 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, national origin, gender or religious dress is part of the description of the suspect.

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

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

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 human rights commission, 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 November 1, 2005.

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

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

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

(b) Policies adopted pursuant to this section shall be implemented by all Kansas law enforcement agencies within one year after the effective date of this act. The policies and data collection procedures shall be available for public inspection during normal business hours.

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

(1) A prohibition of racial profiling.

(2) Annual educational training which shall include, but not be limited to, an understanding of the historical and cultural systems that perpetuate racial profiling, assistance in identifying racial profiling practices, and providing officers with self-evaluation strategies to preempt racial profiling prior to stopping a citizen.

(3) For law enforcement agencies of cities of the first class, establishment or use of current independent citizen advisory boards which include participants who reflect the racial and ethnic community, to advise and assist in policy development, education and community outreach and

communications related to racial profiling by law enforcement officers and agencies.

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

(5) A provision that, if the investigation of a complaint of racial profiling reveals the officer was in direct violation of the law enforcement agency's written policies regarding racial profiling, the employing law enforcement agency shall take appropriate action consistent with applicable laws, rules and regulations, resolutions, ordinances or policies, including demerits, suspension or removal of the officer from the agency.

(6) 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 Kansas human rights commission complaints regarding racial profiling, which outreach and communications to the community shall include ongoing efforts to notify the public of the law enforcement agency's complaint process.

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

(d) 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: (1) The date the complaint is filed; (2) action taken in response to the complaint; (3) the decision upon disposition of the complaint; and (4) 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.

Sec. 6. (a) Any person who 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 Kansas human rights commission. The commission shall review and, if necessary, investigate the complaint. The commission'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.

(b) Upon disposition of a complaint as provided for in subsection (a) 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 if it is determined by the court that such persons or agency engaged in racial profiling. The court may allow the prevailing party reasonable attorney fees and court costs.

Substitute for SENATE BILL No. 77—page 3

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

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.

SESSION OF 2005

**CONFERENCE COMMITTEE REPORT BRIEF
SENATE BILL NO. 77**

As Agreed to March 31, 2005

Brief *

Substitute for SB 77 would make racial and other profiling unlawful. Racial profiling would be defined as the practice of a law enforcement officer or agency relying, as the sole factor, on race, ethnicity, national origin, gender, or religious dress 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.

Included among the bill's major provisions are the following:

- The bill would require all law enforcement agencies to create and adopt a detailed, written policy preempting and prohibiting racial profiling by any law enforcement officer. The written policy would include annual educational training, discipline for a violation of the law enforcement agency's policy, and a provision to inform the public of the right to file a complaint with a law enforcement agency or the Kansas Human Rights Commission;
- The bill would not create a misdemeanor crime; and
- The bill would create a civil cause of action in the district court upon the disposition of a complaint by the Kansas Human Rights Commission.

In addition, the bill would provide for the following:

- "Gender or religious dress" would be included in the definition of racial profiling;
- The definition of routine investigatory activity would be narrowed;

*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. The conference committee summary report may be accessed on the Internet at <http://www.kslegislature.org>

- A task force would be appointed by the Governor to study the need for, and, if necessary, design a method for uniform data collection. The Kansas Human Rights Commission would be added as members of the Task Force. The final report and recommendation of the task force to the Governor and the Legislature would be due no later than November 1, 2005;
- An independent citizen advisory board for cities of the first class would be created to advise and assist in policy development, education, and community outreach;
- Community outreach and communication would be required to inform the public of the right to file complaints regarding racial profiling with the law enforcement agency or the Kansas Human Rights Commission;
- Law enforcement agencies would be required to create a grievance process to hear the complaints regarding racial profiling with an annual report given to the Kansas Attorney General;
- A complaint filed with the Kansas Human Rights Commission may be investigated by the Commission. Furthermore, the Kansas Human Rights Commission's designee would be required to consult with the head of the law enforcement agency before recommending discipline of the law enforcement officer, if appropriate; and
- A district court would be permitted to award reasonable attorney fees and court costs to the prevailing party in a civil action filed after the disposition of a complaint by the Kansas Human Rights Commission.

Conference Committee Action

In Conference Committee, the Senate Conference Committee agreed to the House amendments to the bill.

All of the conferees agreed to make a clarifying amendment to strike the reference to the Kansas Attorney General and replace it with the Kansas Human Rights Commission regarding the provision for community outreach. However, the conferees agreed that the

Kansas Attorney General's Office would remain as the repository of the annual report compiled by law enforcement agencies.

Finally, the conferees agreed to limit data collection by Kansas law enforcement officers to traffic stops only rather than traffic or pedestrian stops.

Background

Senator Betts and Senator Haley, sponsors of the bill, appeared before the Committee in support of the bill. Additionally, representatives from the clergy, the legal profession, the Kansas African American Affairs Commission, the Kansas Hispanic-Latin American Affairs Commission, the American Civil Liberties Union of Kansas and Western Missouri, the Kansas State Conference of the National Association for the Advancement of Colored People, the Kansas Association of Chiefs of Police, the Kansas Sheriffs' Association, the Kansas Branch of the National Association for the Advancement of Colored People, Citizens for Equal Law Enforcement, Women in Action, the Kansas Human Rights Commission, Prisoner of Conscience Committee, the Kansas Peace Officers Association, the Kansas Attorney General's office and other civilians testified in support of the bill.

A representative from the League of Kansas Municipalities testified in support of the bill, with a few exceptions.

A representative from the City of Overland Park Police Department testified in opposition of the bill.

The Senate Committee on Federal and State Affairs amended the bill by adopting the following amendments:

- Added language to include "gender or religious dress" in defining racial profiling;
- Narrowed the definition of routine investigatory activity;
- Deleted the provision requiring the Kansas Attorney General, along with others, to design an optically scannable uniform racial data collection form and instead would create a 15-member task force charged with the responsibility of designing a method for uniform data collection. The final report and recommendation of

the task force to the Governor and the Legislature is due no later than November 1, 2005.

- Added language to require that all law enforcement agencies adopt a detailed, written policy preempting racial profiling which shall include the definition of racial profiling as found in the bill;
- Deleted the provision requiring initial training and continuing education and instead would require annual training only;
- Added language to create an independent citizen advisory board for cities of the first class to advise and assist in policy development, education, and community outreach;
- Added language to include community outreach and communication to inform the public of the right to file complaints regarding racial profiling with the law enforcement agency or the Kansas Attorney General;
- Added language to require law enforcement agencies to create a grievance process to hear the complaints regarding racial profiling with an annual report given to the Kansas Attorney General;
- Added language to include that a complaint filed with the Kansas Attorney General may be investigated by the Kansas Attorney General. Furthermore, the Kansas Attorney General may recommend discipline of the law enforcement officer, if appropriate;
- Added language to establish a civil cause of action in district court upon the disposition of a complaint by the Kansas Attorney General's office;
- Added language permitting the district court to award reasonable attorney fees and court costs to the prevailing party in a civil action filed after the disposition of a complaint by the Kansas Attorney General's office; and
- Added language restricting grants or other state moneys of a law enforcement agency if the Kansas Attorney General or the Kansas Attorney General's designee finds a law enforcement agency has engaged in racial profiling or has failed to discipline a law enforcement officer for engaging in racial profiling, in

accordance with the recommendations of the Kansas Attorney General or the designee.

The Senate Committee of the Whole amended the bill by deleting the restriction on a law enforcement agency's ability to receive other moneys from the State upon a finding that the law enforcement agency engaged in racial profiling or failed to discipline a law enforcement officer in accordance with the Kansas Attorney General's recommendation.

The House Committee amended the bill to do the following:

- Charged the Kansas Commission on Peace Officers' Standard and Training, rather than the Attorney General's Office, with the responsibility of accepting complaint of racial profiling.
- Added the Kansas Human Rights Commission to the membership of the Task Force created in the bill.
- Deleted the provision whereby a law enforcement agency could not receive grants upon a finding that the agency has engaged in racial profiling or failed to discipline a law enforcement officer in accordance with recommendation of the Attorney General.
- Other amendments are clarifying in nature.

The House Committee of the Whole amended the bill to clarify that it is an act concerning other unlawful profiling in addition to racial profiling. The Committee also amended the bill to require the Kansas Human Rights Commission, rather than the Commission on Peace Officers' Standards and Training to accept, review, and if necessary, investigate racial profiling complaints.

It should be noted that the Division of the Budget's fiscal note was based upon a version of the bill that was not introduced. Nonetheless, the Division of the Budget's fiscal note indicates that the fiscal impact of the bill is difficult to estimate. However, the Kansas Attorney General opines that enactment of the bill would increase its State General Fund expenditure by \$854,028 for FY 2006 based upon 2.5 million routine investigatory stops. Any fiscal effect associated with SB 77 would be in addition to amounts in the *FY 2006 Governor's Budget Report*.