

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 March 6, 2008 in Room 526-S of the Capitol.

All members were present.

Committee staff present:

Kathie Sparks, Kansas Legislative Research Department  
Dennis Hodgins, Kansas Legislative Research Department  
Melissa Doeblin, Revisor of Statutes Office  
Theresa Kiernan, Revisor of Statutes Office  
Connie Burns, Committee Assistant

Conferees appearing before the committee:

Senator Betts  
Senator Haley  
Representative Faust-Goudeau  
Allen Smith, Governor's Task Force on Racial Profiling  
Mike Watson, Governor's Task Force on Racial Profiling  
Danielle Dempsey-Swopes, Kansas African American Affairs Commission  
Steve Cisneros, Kansas Hispanic & Latino American Affairs Commission  
Jared Maag, Attorney General's Office  
Sean McCauley, Fraternal Order of Police  
Ed Klumpp, Kansas Peace Officers' Association  
Chief Robert Sage, Kansas Association of Chief's of Police  
Frank Denning, Kansas Sheriff's Association  
Shiela Officer

Others attending:

See attached list.

The Committee Minutes for January 29, 30 and February 5, 6, 7, 12, and 13, distributed on February 28, 2008, with no changes stand approved.

Staff provided the history on the bill. **SB 77** which was enacted in 2005 made racial profiling unlawful and created a 15 member task force on Racial Profiling. In 2006 **Sub for SB 486** was passed to extend the task force to 2009.

Staff provided an overview of the bill. (Attachment 1)

The committee was provided with a report from the Attorney General's web site with the data from 2007 and a summary page; the information reflects the agency, the complaints filed, the date filed, action taken and the date closed. There were two incidents where action was taken, and the rest were adjudicated without any particular cause for action. (Attachment 2)

**SB 610 - Racial profiling; requiring racial profiling abatement training and establishing duties for the attorney general**

Chairman Brungardt opened the hearing on **SB 610**.

Senator Betts spoke in favor of the bill. (Attachment 3) Because of the length of time it has taken the task force to provide a final report to the governor and the Legislature, an independent citizen advisory board for cities of the first class (created by the legislature) also provided some recommendations that would make the law more enforceable to the legislature.

Representative Faust-Goudeau spoke in favor of the bill. (Attachment 4) The bill would help provide a resource to address the concerns of Kansans who feel they are unfairly racially profiled against.

## CONTINUATION SHEET

MINUTES OF THE Senate Federal and State Affairs Committee at 10:30 a.m. on March 6, 2008 in Room 526-S of the Capitol.

Senator Haley spoke on the bill. ([Attachment 5](#)) The bill strives to create another level of bureaucracy between an alleged victim of profiling and justice.

Pastor Allen Smith, Co-Chair, Governor's Task Force on Racial Profiling, spoke on the bill with the Task Force recommendations. ([Attachment 6](#)) The Task Force as a result of input from citizens, and discussion with law enforcement leaders find that some revision to the statutes is necessary. The continuation of the Task Force work and implementation of its recommendations will address the concerns of Kansas communities regarding racial profiling, without creating a significant burden on law enforcement agencies. The Task Force amendment to SB 610:

- Maintains the current definition of profiling and adds clarification regarding profiling on the basis of ethnicity
- Requires the Task force to implement a method for the collection and analysis of traffic stop data within a reasonable time
- Mandates that the Kansas commission on Peace Officers Standards and Training (KSCPOST) reviews complaints and initiate discipline against officers engaged in profiling
- Mandates the use of a uniform traffic citation for the collection of data statewide

The Chairman requested copies of the reports and if they were available on line.

Mike Watson, Member Governor's Task Force on Racial Profiling, spoke in support of the bill with the Task Force recommendations. ([Attachment 7](#)) The Task Force has acquired two National Highway Traffic Administration grants in excess of one million dollars to support the administration of the Task Force, assist in the training of law enforcement officers, and continue implementation of the racial profiling statutes, including the collecting, analyzing and utilizing of law enforcement traffic stop data to assist in preemption of racial profiling. Mr. Watson asked for the support of:

- retaining current working "sole factor" in the definition of racial profiling rather than 'a factor'
- deleting "pedestrian stops" as added in the bill
- retaining current language holding officer and agency or both civilly liable rather than adding "any person with supervisory authority over such officer"

Danielle Dempsey-Swopes, Administrator, Governor's Task Force on Racial Profiling, spoke on the bill and respectfully asked the bill to be amended as recommended by the Governor's Task Force on Racial Profiling. A balloon and statutes were provided. ([Attachment 8](#))

Steve A. Cisneros, Administrator Governor's Task Force on Racial Profiling, spoke in support of the Task Force's amendment to the bill. ([Attachment 9](#))

Jared S. Maag, Deputy Solicitor General, spoke on the bill and requested that New Section 5 (d) be stripped from **SB 610**. ([Attachment 10](#)) The issue with this language is the Office of the AG has never historically acted as an administrative agency reviewing complaints and making final determinations. KSCPOST was created solely to perform this administrative function and the process should begin and end there. The Office of the Attorney General regularly has Assistant Attorneys General sit as legal advisors during hearings before KSCPOST; to that end, New section 5(d) poses a potential conflict with that process.

Walt Chappell, Citizens Advisory Board, provided written testimony in support of the bill. ([Attachment 11](#))

Sean McCauley, Attorney for Fraternal Order of Police, (FOP) spoke in opposition to the bill ([Attachment 12](#)) The FOP and its members are adamantly opposed to any form of racial profiling and have a number of concerns with regard to the changes being considered in the bill and the possible effects on FOP members and on law enforcement in general.

- Changes to the definition of racial profiling
- References to disciplining of officers
- Complaint Review Process

The FOP encourages the committee to take no action on the bill and not to adopt any of the proposed suggested changes.

## CONTINUATION SHEET

MINUTES OF THE Senate Federal and State Affairs Committee at 10:30 a.m. on March 6, 2008 in Room 526-S of the Capitol.

Ed Klumpp, Kansas Peace Officers' Association, (KPOA) appeared in opposition to the bill with amendments. (Attachment 13) The KPOA wants to be clear that racial profiling is not an acceptable police practice, and recognize that the response to racial profiling concerns must be balanced in a manner to allow law enforcement to take appropriate actions to prevent, detect, and investigate criminal activity. Law enforcement must also be able to resolve the multitude of non-criminal complaints called upon to be resolved in the communities. There are provisions in the bill that will be detrimental to the ability of law enforcement and to public safety. Items recommended for amendments:

- Page 2, lines 13 - 20, setting a deadline for actual implementation
- Page 3, lines 27 - 29, remove the two hours training mandate
- Page 3, lines 35 - 37, delete the expansion of mandated advisory boards

Chief Robert S. Sage, President, Kansas Association of Chief's of Police, (KACP) spoke in opposition to the bill. (Attachment 14) The KACP does support different provisions of the bill, but cannot support:

- the definition change
- the change in data collection
- two hour mandatory training for law enforcement officers
- citizen advisory boards as a requirement for agencies with 10 or more certified officers
- the review process for complaints

Frank Denning, Legislative Chair, Kansas Sheriff's Association, spoke in opposition to the bill. (Attachment 15) The bill is an attempt to recreate all of the work that has already been accomplished in SB 77. The bill would mandate that every law enforcement agency with 10 or more officers establish a citizen advisory board; every community is unique and a one-size fits all solution is a recipe for poor public policy.

Sheila Officer, Wichita, appeared in opposition to the bill. (Attachment 16)

Chief Norman Williams, City of Wichita, provided written testimony in opposition to the bill. (Attachment 17)

Kevin Myles, President, Wichita Branch NAACP, provided written testimony in opposition to the bill. (Attachment 18)

Written testimony as neutral information on the bill was provided by The Kansas Human Rights Commission (Attachment 19) Colonel Terry Maple, Kansas Highway Patrol, provided written concerns on the bill. (Attachment 20)

Chairman Brungardt closed the hearing on **SB 610**.

Reports were provided and are available in the Kansas Legislative Research Department.

The Governor's Task Force on Racial Profiling Report and Recommendation - Oct. 31, 2005  
The Governor's Task Force on Racial Profiling Report - Yearly Report Aug 31, 2007

The meeting was adjourned at noon. The next scheduled meeting is March 11, 2008.

SENATE FEDERAL AND STATE AFFAIRS COMMITTEE  
GUEST LIST

DATE 3-06-08

NAME	REPRESENTING
Captain Dan Barci	JUNCTION CITY POLICE
SHERIFF FRANK DENNING	JOHNSON COUNTY SHERIFFS
Amir Janati	KHP
Wacile Williams	Gov. Bureau Profiling Task Force
TROY BETTIG	LEAWOOD KS. P.D.
TIM SCHWARTZKOPF	PRAIRIE VILLAGE KS PD
Wes Lovett	Prairie Village PD
Wes Jordan	Prairie Village KS PD
Charles Leithoff	Junction City Ks. P.D.
John Simmons	Fairway PD
Jack Mackley	TOPKA POLICE
Darren McLaughlin	Merriman PD
Bill Litzke	Merriman PD
David Brown	Lenexa P.D.
MARK W HEIN	SHAWNEE PD
Rob Moser	Shawnee PD
DAWN LAYMAN	LENEXA PD
Clay Janson	Lenexa PD
Rich Kott	Lenexa PD
Mike Lopez	Emporia PD
BRYAN DUNLAP	ABILENE P.D.
J.P. Thurlo	FAIRWAY P.D.
Jahari Wamble	Kansas AG's Office
Tom Keone	LENEXA P.D.
JARED MAAG	KS AG

SENATE FEDERAL AND STATE AFFAIRS COMMITTEE  
GUEST LIST

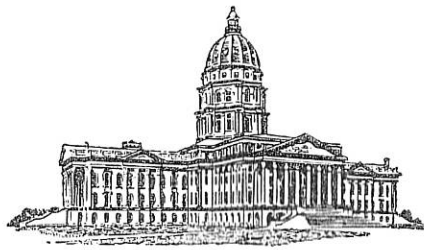
DATE 03-06-08

NAME	REPRESENTING
Richard W. Barta	SNAYLSEE County SHERIFF'S OFFICE
Veronica R. Padilla	YWCA, R.A.C.E. Committee
Linda L. Kinney	YWCA, R.A.C.E. Committee
Rick <del>Jed</del>	Wichita Kan <sup>NAA CP</sup> Police advisory
Myrtle Pearson	Topeka Kansas KAB
John Carmichael	KHRC
Bennie T. Davis	Topeka Assoc. of Neighborhoods
Christine Mathews	Olathe, KS - visitor to Sen. Brownlee

MARY ANN TORRENCE, ATTORNEY  
REVISOR OF STATUTES

JAMES A. WILSON III, ATTORNEY  
FIRST ASSISTANT REVISOR

GORDON L. SELF, ATTORNEY  
FIRST ASSISTANT REVISOR



OFFICE OF REVISOR OF STATUTES  
KANSAS LEGISLATURE

Legal Consultation—  
Legislative Committees and Legislators  
Legislative Bill Drafting  
Legislative Committee Staff  
Secretary—  
Legislative Coordinating Council  
Kansas Commission on  
Interstate Cooperation  
Kansas Statutes Annotated  
Editing and Publication  
Legislative Information System

TO: Senate Committee on Federal and State Affairs  
FROM: Melissa Doeblin, Assistant Revisor of Statutes  
DATE: Thursday, March 6, 2008  
SUBJECT: Staff Overview of Senate Bill 610

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Senate Bill 610 concerns racial profiling, and amends several sections in Article 46, general provisions in the Kansas Code of Criminal Procedure, and K.S.A. 2007 Supp. 74-9501, a section in the Kansas Criminal Justice Coordinating Council article.

K.S.A. 22-4606 Racial and other profiling definitions

The amendments in this section are to several definitions. First, amendments are made to “racial profiling” in subsection (d). The amendments eliminate national origin as a factor that law enforcement officers or an agency rely on to select which individuals to subject to investigation. Additionally, the words “the sole” in line 25 are eliminated and replaced with “a,” which means that if officers use race, ethnicity, gender or religious dress to select individuals, it does not have to be the only factor they are targeting, just one of the factors.

Second, amendments are made to “routine investigatory practices” in subsection (e). The first amendment eliminates the association of these activities with traffic stops. Also, the words “dormitory rooms, school lockers, homes and apartments” are stricken and replaced with “and domiciles.”

Third, a definition is added in subsection (g) for “profiling on the basis of ethnicity.” This type of profiling is unlawfully using information about members of a cultural group with a shared identity, ancestry or language characteristics that are common to that group, and may include common religious association or history.

K.S.A. 22-4607 Same; task force; review of and recommendations on policies and procedures

On page 2 of the bill, line 9 presents a purely technical change. In subsection (b), the governor’s task force is directed to work with the public in designing methods for data collecting, analysis and public dissemination regarding traffic and pedestrian stops. It gives the task force until January 1, 2009 to design these methods, with an implementation date of January 1, 2010. In subsection (c), the task force is required to review policies and make recommendations for training programs. Stricken language in subsection (d) allows members of the task force to serve indefinitely. In subsection (f), two

ex officio members are added to the task force – the executive director of the Kansas Advisory Commission on African American Affairs, and the executive director of the Hispanic/Latino American Affairs Committee. The sunset date for the task force is stricken in subsection (h).

K.S.A. 22-4609 Same; prohibited as sole basis for making stop or arrest

Parallel with the change in K.S.A. 22-4606 above, “national origin” is stricken, and pedestrian stop is also added to this statute.

K.S.A. 22-4610 Same; policies preempting profiling, requirements; annual reports of complaints

In subsection (c)(2), law enforcement agencies would now required to provide at least two hours of racial profiling training each fiscal year for law enforcement officers. In subpart (3), law enforcement agencies with 10 or more officers certified under K.S.A. 74-5602(l) are now required to use citizen advisory boards to advise and assist in policy development related to racial profiling. In subpart (5), agencies are required to adopt policies requiring disciplinary action if officers are in violation of policies.

In subsection (d), the amendments require all agencies to file annual reports of complaints of racial profiling by August 1 of each year, including agencies who do not receive any complaints. Annual reports would now required to include the number of complaints and date complaint was filed, whether officers in the agency received the required statutory training , whether the agency has a written policy prohibiting racial profiling, whether the agency mandates discipline for profiling, whether the policy provides for discipline for officers engaging in profiling, whether the policy includes provisions outlining the individual’s right to file complaints with the agency or the attorney general, and whether the agency has a citizen advisory board.

K.S.A. 22-4611 Same; complaints, procedure; civil action

Language is stricken in subsections (a) and (b), and new subsections (b) through (f) are established. Subsection (b) requires the Kansas Human Rights Commission (KHRC) to forward findings of probable cause (that the person has been subject to racial profiling) to the Kansas Commission on Peace Officers’ Standards and Training (KSCPOST), and notify the attorney general of those findings that are forwarded to KSCPOST. The KHRC is required to notify the complainant in writing of the outcome or disposition of the complaint.

In subsection (c), the KSCPOST must review findings of the KHRC and make a determination regarding discipline of any officer engaged in unlawful profiling.

In subsection (d), where the KSCPOST’s findings are not sufficient to sustain a KHRC finding of probable cause, the KSCPOST must forward the complaint to the attorney general for a final administrative determination. The attorney general shall review the complaint or conduct an investigation to dispose of the complaint. In subsection (e), a motorist or pedestrian is allowed to go to the district attorney to bring criminal or civil action against the officer or agency. In subsection (f), any person who is subjected to racial profiling is allowed to bring a civil action and may recover damages if a

jury determines profiling occurred, and a prevailing plaintiff may recover reasonable attorney fees, expert witness costs and other reasonable litigation costs.

K.S.A. 2007 Supp. 74-9501 Kansas criminal justice coordinating council; membership; powers and duties; local government advisory group; task forces; sex offender policy board

These amendments are made to the statute concerning the Kansas Criminal Justice Coordinating Council. The amendments give the Council responsibilities for overseeing the development, implementation and management of a uniform traffic citation to collect data on traffic and pedestrian stops for all Kansas law enforcement agencies, by January 1, 2011. The data must include information necessary to conduct analysis of stops with regard to race, gender and ethnicity of drivers and pedestrians.



Law Enforcement Agency	Complaints Filed	Action
Ark City Police	4	4 investigated/unfounded
Augusta Police	1	1 investigated/unfounded
Belaire Police	2	2 investigated/unfounded
Bonner Springs Police	1	withdrawn/dropped
Coffey Co sheriff	1	closed
Coffeyville Police	1	investigated/none
El Dorado Police	1	investigated/unfounded
Emporia State University Poli	1	investigated/unfounded
Grandview Plaza Police	1	investigated/unfounded
Harvey Co Sheriff	1	determination/closed
Johnson Co	2	investigated/unfounded
Junction City Police	1	unfounded
Kansas City Police	12	
Kansas Highway Patrol	9	5 closed/unfounded
Kechi Police	2	officer termintaed
Lawrence Police	1	investigated/unfounded
Leawood Police	3	investigated/unfounded
Lenexa Police	1	investigated/exonerated
Le Roy Police	4	1 open
Lyon Co Sheriff	1	Pending
Merriam Police	1	investigated/unfounded
Mission Police	2	investigated/unfounded
Newton Police	6	investigated/unfounded
Olathe Police	5	1 pending/4 investigated/unfounded
Overland Park Police	4	investigated/unfounded
Paola Police	1	open
Prairie Village Police	6	investigated/unfounded
Riley Co Police	3	investigated/unfounded
Roeland Park Police	3	investigated/unfounded
Salina Police	1	investigated/unfounded
Sedgwick Co Sheriff	8	1 pending/ 6 investigated/unfounded
Shawnee Police	4	3 established/miscounduct not
Thomas Co Sheriff	3	
Topeka Police	1	investigated/exonerated
Wichita Police	58	58 unfounded
Wichita State University	1	1 investigated/unfounded
Wyandotte Co Sheriff	1	Interview/unfounded
<b>Total</b>	<b>158</b>	

Sen Fed & State

Attachment 2

3-06-08

	LAW ENFORCEMENT AGENCY	COMPLAINTS FILED	DATE OF COMPLAINT	ACTION TAKEN	DATE CLOSED
1	ABILENE POLICE DEPT	0			
2	ALLEN CO. LAW ENFORCEMENT CENTER	0			
3	ALMA POLICE DEPT	0			
4	ALTAMONT POLICE DEPT	0			
5	AMERICUS POLICE DEPT	0			
6	ANDALE POLICE DEPT	0			
7	ANDERSON CO SHERIFF'S OFFICE	0			
8	ANDOVER POLICE DEPT	0			
9	ANTHONY POLICE DEPT	0			
10	ARKANSAS CITY POLICE DEPT	4	5/7/07	Investigated/Unfounded	6/19/07
			9/5/07	Investigated by APD and DOJ APD/Unfounded DOJ/Unknown	9/30/07
			9/18/07	Investigated by APD and KHRC APD/Unfounded KHRC/Unkown	1/2/08
			11/13/07	Investigated/Unfounded	11/20/07
11	ARMA POLICE DEPT	0			
12	ATCHISON CO SHERIFF'S OFFICE	0			
13	ATCHISON POLICE DEPT	0			
14	ATTICA POLICE DEPT	0			
15	AUGUSTA POLICE DEPT	1	10/2/07	Investigated/Unfounded	10/9/07
16	BALDWIN CITY POLICE DEPT	0			
17	BARBER COUNTY SHERIFF'S DEPT	0			
18	BARTON COUNTY SHERIFF'S OFFICE	0			
19	BASEHOR POLICE DEPT	0			

20	BAXTER SPRINGS POLICE DEPT	0		
21	BEL AIRE POLICE DEPT	2	9/13/07 Investigated/Unfounded	10/31/07
22	BELLE PLAINE POLICE DEPT	0		
23	BELLEVILLE POLICE DEPT	0		
24	BELOIT POLICE DEPT	0		
25	BENTON POLICE DEPT	0		
26	BLUE RAPIDS POLICE DEPT.	0		
27	BLUE VALLEY CAMPUS POLICE DEPT	0	10/22/07 Investigated/Unfounded	1/04/08
28	BONNER SPRINGS POLICE DEPT.	1	6/6/07 Investigation Initiated/ Dropped/Withdrawn	6/13/07
29	BOURBON CO SHERIFF'S OFFICE	0		
30	BROWN CO SHERIFF'S OFFICE	0		
31	BUCKLIN POLICE DEPT	0		
32	BUHLER POLICE DEPT	0		
33	BURDEN POLICE DEPT	0		
34	BURLINGAME POLICE DEPT	0		
35	BURLINGTON POLICE DEPT	0		
36	BURRTON POLICE DEPT	0		
37	BUTLER CO SHERIFF'S OFFICE	0		
38	CALDWELL POLICE DEPT	0		
39	CANEY POLICE DEPT	0		
40	CANTON POLICE DEPT	0		
41	CARBONDALE POLICE DEPT	0		
42	CAWKER CITY POLICE DEPT	0		
43	CHANUTE POLICE DEPT	0		
44	CHAPMAN POLICE DEPT	0		
45	CHASE POLICE DEPT	0		
46	CHAUTAUQUA CO SHERIFF'S OFFICE	0		
47	CHENEY POLICE DEPT	0		

48	CHEROKEE CO SHERIFF'S OFFICE	0		
49	CHERRYVALE POLICE DEPT	0		
50	CHETOPA POLICE DEPT	0		
51	CHEYENNE CO SHERIFF'S DEPT.	0		
52	CLAFLIN POLICE DEPT	0		
53	CLARK CO. SHERIFF'S OFFICE	0		
54	CLAY CENTER POLICE DEPT	0		
55	CLAY CO. SHERIFF'S OFFICE	0		
56	CLEARWATER POLICE DEPT	0		
57	CLOUD CO SHERIFF'S DEPT	0		
			06/15/07 Investigated by	12/17/07
			KHRC/No P.C.	
58	COFFEY CO SHERIFF'S OFFICE	1	Determination/Closed	
59	COFFEYVILLE POLICE DEPT	1	11/27/07 Investigated/None	12/28/07
60	COLBY POLICE DEPT	0		
61	COLDWATER POLICE DEPT	0		
62	COLONY POLICE DEPT	0		
63	COLUMBUS POLICE DEPT	0		
64	COLWICH POLICE DEPT	0		
65	COMANCHE CO SHERIFF'S OFFICE	0		
66	CONCORDIA POLICE DEPT	0		
67	CONWAY SPRINGS POLICE DEPT	0		
68	COUNCIL GROVE POLICE DEPT	0		
69	COWLEY CO SHERIFF'S OFFICE	0		
70	CRAWFORD CO SHERIFF'S DEPT	0		
71	DECATUR CO SHERIFF'S OFFICE	0		
72	DERBY POLICE DEPT	0		
73	DICKINSON CO SHERIFF'S DEPT	0		
74	DODGE CITY POLICE DEPT	0		
75	DONIPHAN CO SHERIFF'S DEPT	0		
76	DOUGLAS CO SHERIFF'S DEPT	0		
77	EASTBOROUGH POLICE DEPT	0		
78	EDWARDS CO SHERIFF'S OFFICE	0		

79	EDWARDSVILLE POLICE DEPT	0		
			05/30/2007 Investigated/Unfounded	08/22/07
80	EL DORADO POLICE DEPT	1		
81	ELK CO SHERIFF'S OFFICE	0		
82	ELLINWOOD POLICE DEPT	0		
83	ELLIS CO SHERIFF'S OFFICE	0		
84	ELLIS POLICE DEPT	0		
85	ELLSWORTH CO SHERIFF'S OFFICE	0		
86	ELLSWORTH POLICE DEPT	0		
87	ELWOOD POLICE DEPT	0		
88	EMPORIA POLICE DEPT	0		
	EMPORIA STATE UNIVERSITY		04/26/2007 Investigated/Unfounded	04/26/2007
89	POLICE	1		
90	ENTERPRISE POLICE DEPT	0		
91	ERIE POLICE DEPT	0		
92	EUDORA POLICE DEPT	0		
93	FAIRWAY CITY POLICE DEPT	0		
94	FINNEY CO SHERIFF'S OFFICE	0		
95	FLORENCE POLICE DEPT	0		
			8/7/07 Complaint filed with KHRC/Pending	Pending
96	FORD CO SHERIFF'S OFFICE	0		
	FORT HAYS STATE UNIVERSITY			
97	POLICE DEPT	0		
98	FORT SCOTT POLICE DEPT	0		
99	FRANKFORT POLICE DEPT	0		
100	FRANKLIN CO SHERIFF'S OFFICE	0		
101	FREDONIA POLICE DEPT	0		
102	FRONTENAC POLICE DEPT.	0		
103	GALENA POLICE DEPT	0		
104	GALVA POLICE DEPT	0		
105	GARDEN CITY POLICE DEPT	0		
106	GARDEN PLAIN POLICE DEPT	0		

107	GARDNER PUBLIC SAFETY DEPT	0		
108	GARNETT POLICE DEPT	0		
109	GEARY CO SHERIFF'S DEPT	0		
110	GIRARD POLICE DEPT	0		
111	GODDARD POLICE DEPT	0		
112	GODDARD USD 265 POLICE DEPT	0		
113	GOODLAND POLICE DEPT	0		
114	GOVE CO SHERIFF'S OFFICE	0		
115	GRAHAM COUNTY SHERIFF'S OFFICE	0		
116	GRANDVIEW PLAZA POLICE DEPT	1	07/10/2007 Investigated/Unfounded	08/10/2007
117	GRANT CO SHERIFF'S DEPT	0		
118	GRAY CO SHERIFF'S DEPT	0		
119	GREAT BEND POLICE DEPT	0		
120	GREELEY CO SHERIFF'S OFFICE	0		
121	GREENWOOD CO SHERIFF'S OFFICE	0		
122	HALSTEAD POLICE DEPT	0		
123	HAMILTON CO SHERIFF'S OFFICE	0		
124	HARPER CO SHERIFF'S OFFICE	0		
125	HARPER POLICE DEPT	0		
126	HARVEY CO SHERIFF'S OFFICE	1	7/2/07 Investigated/No P.C. Determination/Closed	1/2/08
127	HASKELL CO SHERIFF'S OFFICE	0		
128	HAVEN POLICE DEPT	0		
129	HAVENSVILLE POLICE DEPT	0		
130	HAYS POLICE DEPT	0		
131	HAYSVILLE POLICE DEPT	0		
132	HERRINGTON POLICE DEPT	0		
133	HESSTON POLICE DEPT	0		
134	HIAWATHA POLICE DEPT	0		
135	HILL CITY POLICE DEPT	0		
136	HILLSBORO POLICE DEPT	0		

137	HODGEMAN COUNTY SHERIFF'S OFFICE	0			
138	HOISINGTON POLICE DEPT	0			
139	HOLTON POLICE DEPT	0			
140	HOLYROOD POLICE DEPT	0			
141	HORTON POLICE DEPT	0			
142	HOWARD POLICE DEPT	0			
143	HOXIE POLICE DEPT	0			
144	HUGOTON POLICE DEPT	0			
145	HUMBOLDT POLICE DEPT	0			
146	HUTCHINSON POLICE DEPT	0			
147	INDEPENDENCE POLICE DEPT	0			
148	INMAN POLICE DEPT	0			
149	IOLA POLICE DEPT	0			
150	IOWA TRIBAL POLICE DEPT	0			
151	JACKSON CO SHERIFF'S OFFICE	0			
152	JEFFERSON CO SHERIFF'S OFFICE	0			
153	JEWELL CO SHERIFF'S OFFICE	0			
154	JOHNSON CO COMMUNITY COLLEGE DEPARTMENT OF PUBLIC SAFETY	0			
155	JOHNSON CO PARK POLICE	0			
156	JOHNSON CO SHERIFF'S OFFICE	2	5/20/07 Investigated/Unfounded	6/21/07	
			7/3/07 Investigated/Unfounded	7/9/07	
		7/19/07	No Action Taken/Unfounded	8/6/07	
157	JUNCTION CITY POLICE DEPT	1			
158	KANOPOLIS POLICE DEPARTMENT	0			
159	KANSAS BUREAU OF INVESTIGATION	0			
160	KANSAS CITY KS COMMUNITY COLLEGE POLICE DEPT	0			
161	KANSAS CITY KS POLICE DEPT	12	2/21/07 Investigated/No discipline	3/4/07	
			2/23/07 Investigated/Verbal counsel	2/26/07	
			Complainant failed to follow up on allegation once charges adjudicated/Inactive	4/11/07	Inactive

162	KANSAS COMMISSION ON PEACE OFFICERS' STANDARDS & TRAINING	0
163	KANSAS DEPT OF REVENUE- ALCOHOLIC BEVERAGE CONTROL	0
164	KANSAS DEPT OF WILDLIFE AND PARKS	0
165	KANSAS HIGHWAY PATROL	9

4/11/07	Complainant failed to follow up on allegation once charges adjudicated/Inactive	Inactive
4/26/07	Complainant failed to follow up on allegation once charges adjudicated/Inactive	Inactive
8/6/07	Investigated/No discipline	8/6/07
9/5/07	Under investigation by KHRC	Active
9/13/07	Investigated/No discipline	9/21/07
9/27/07	Investigated/Verbal counsel	10/5/07
9/28/07	Complainant failed to follow up on allegation once charges adjudicated/Inactive	Inactive
12/5/07	Pending court adjudication	Pending
12/17/07	Pending court adjudication	Pending
1/7/07	Investigated/Unfounded	5/7/07
2/12/07	No KHP contact w/ complainant to warrant complaint/Withdrawn	6/11/07
3/29/07	Investigated/Non-sustained	5/16/07
4/9/07	No formal complaint filed/Closed	5/11/07
7/31/07	Investigation by KHRC/Open	Pending



			8/29/07 Investigated/Open	On-going
			10/8/07 Investigated/Open	On-going
			10/22/07 No formal complaint filed/Closed	12/3/07
			12/14/07 Investigated by KHRC/Open	On-going
166	KANSAS LOTTERY SECURITY DIVISION	0		
167	KANSAS STATE RACING AND GAMING COMMISSION	0		
168	KANSAS STATE UNIVERSITY POLICE	0		
169	KEARNY COUNTY SHERIFF'S OFFICE	0		
170	KECHI POLICE DEPT.	2	6/21/07 Investigated Officer terminated	9/7/07
			7/18/07 Investigated Officer terminated	9/7/07
171	KINGMAN CO SHERIFF'S OFFICE	0		
172	KINGMAN POLICE DEPT	0		
173	KIOWA COUNTY SHERIFF'S OFFICE	0		
174	KIOWA POLICE DEPT	0		
175	LABETTE CO SHERIFF'S OFFICE	0		
176	LA CYGNE POLICE DEPT	0		
177	LA HARPE POLICE DEPT	0		
178	LAKE QUIVIRA POLICE DEPT	0		
179	LANE CO SHERIFF'S OFFICE	0		
180	LANSING POLICE DEPT	0		
181	LARNED POLICE DEPT	0		
182	LAWRENCE POLICE DEPT	1	7/18/07 Investiated/Unfounded	9/7/07
183	LEAVENWORTH CO SHERIFF'S OFFICE	0		
184	LEAVENWORTH POLICE DEPT	0		
185	LEAWOOD POLICE DEPT	3	2/6/07 Investigated/Unfounded 3/13/07 Investigated/Unfounded 4/11/07 Investigated/Unfounded	2/9/07 3/16/07 4/16/07
186	LEBO POLICE DEPT	0		

187	LENEXA POLICE DEPT	1	9/27/07 Investigated/ Exonerated	11/7/07
8	LEON POLICE DEPT	0		
189	LE ROY POLICE DEPT	4	4/10/07 Internal Investigation Not Sustained	5/23/07
			7/3/07 Internal investigation Unfounded	9/12/07
			7/25/07 Investigated by KS Human Rights Comm. Dismissed	11/5/07
			12/13/07 Investigated by KS Human Rights Comm. Open	On-going
190	LIBERAL POLICE DEPT	4	4/10/07 Investigated Not Sustained	5/23/07
			7/3/07 Investigated/Unfounded	9/12/07
			7/25/07 Investigated by KHRC Dismissed	11/5/07
			12/13/07 Investigated by KHRC Open	On-going
191	LINCOLN CO SHERIFF'S OFFICE	0		
192	LINDSBORG POLICE DEPT	0		
193	LINN CO SHERIFF'S DEPT	0		
194	LINN VALLEY POLICE DEPT.	0		
195	LOGAN CO SHERIFF'S OFFICE	0		
196	LOUISBURG POLICE DEPT	0		
			9/13/07 Investigated/Referred to Ins. Co./KHRC Unfounded/LYSO Pending/KHRC	Pending
197	LYON CO SHERIFF'S OFFICE	1		
198	LYONS POLICE DEPT	0		
199	MACKSVILLE POLICE DEPT	0		
200	MAIZE POLICE DEPT	0		
201	MARION CO SHERIFF'S OFFICE	0		
202	MARION POLICE DEPT	0		
203	MARSHALL CO SHERIFF'S OFFICE	0		
204	MARYSVILLE POLICE DEPT	0		
205	MAYETTA POLICE DEPT	0		
206	MCLOUTH POLICE DEPT	0		

207	MCPHERSON CO SHERIFF'S OFFICE	0		
8	MCPHERSON POLICE DEPT	0		
09	MEADE CO SHERIFF'S OFFICE	0		
210	MEADE POLICE DEPT	0		
211	MELVERN POLICE DEPT	0		
212	MERRIAM POLICE DEPT	1	8/23/07 Investigated/Unfounded	8/24/07
213	MIAMI CO SHERIFF'S OFFICE	0		
214	MINNEAPOLIS POLICE DEPT	0		
215	MISSION POLICE DEPT	2	7/10/07 Investigated/Unfounded 11/26/07 Investigated/Unfounded	7/23/07 1/24/08
216	MITCHELL CO SHERIFF'S OFFICE	0		
217	MONTEZUMA POLICE DEPT	0		
218	MONTGOMERY CO SHERIFF'S OFFICE	0		
219	MORAN POLICE DEPT	0		
220	MORRIS CO SHERIFF'S OFFICE	0		
221	MORTON CO SHERIFF'S OFFICE	0		
222	MOUNDRIDGE POLICE DEPT	0		
223	MOUNT HOPE POLICE DEPT	0		
224	MULVANE POLICE DEPT	0		
225	NEMAHA CO SHERIFF'S DEPT	0		
226	NEODESHA POLICE DEPT	0		
227	NEOSHO CO SHERIFF'S DEPT	0		
228	NESS COUNTY SHERIFF'S OFFICE	0		
229	NEWTON POLICE DEPT	6	6/8/07 Investigated/Unfounded 6/8/07 Investigated/Unfounded 6/8/07 Investigated/Unfounded 6/8/07 Investigated/Unfounded 6/17/07 Investigated/Unfounded 6/19/07 Investigated/Unfounded	7/19/07 12/27/07 12/27/07 12/27/07 12/31/07 12/31/07
230	NICKERSON POLICE DEPT	0		
231	NORTON CO SHERIFF'S OFFICE	0		
232	NORTH NEWTON POLICE DEPT	0		
233	NORTON POLICE DEPT	0		
234	NORTONVILLE POLICE DEPT.	0		
235	NORWICH POLICE DEPT	0		

236	OAKLEY POLICE DEPT	0		
237	OBERLIN POLICE DEPT	0		
9	OLATHE POLICE DEPT	5	1/25/07 Investigated/Unfounded	4/13/07
			3/20/07 Investigated/Unfounded	5/10/07
			8/10/07 Investigated/Unfounded	Pending
			8/23/07 Investigated/Unfounded	9/10/07
			10/25/07 Investigation/Pending	Pending
239	ONAGA POLICE DEPT	0		
240	OSAGE CITY POLICE DEPT	0		
241	OSAGE CO SHERIFF'S DEPT	0		
242	OSAWATOMIE POLICE DEPT	0		
243	OSBORNE CO SHERIFF'S DEPT	0		
244	OSBORNE POLICE DEPT	0		
245	OSKALOOSA POLICE DEPT	0		
246	OTTAWA CO. SHERIFF' S DEPT	0		
247	OTTAWA POLICE DEPT	0		
248	OVERBROOK POLICE DEPT	0		
249	OVERLAND PARK POLICE DEPT	4	2/27/07 Investigated/Unfounded	7/18/07
			Investigated/	
			2/23/07 Unsubstantiated	12/20/07
			7/2/07 Investigated/Unfounded	12/20/07
			7/25/07 Investigated/Unfounded	12/20/07
250	OXFORD POLICE DEPT	0		
			Investigated/Unfounded	12/01/07
			KS Human Rights	
251	PAOLA POLICE DEPT	1	9/20/07 Comm. Open	
252	PARK CITY POLICE DEPT	0		
253	PARSONS POLICE DEPT	1	7/20/07 Investigated/Unfounded	7/24/07
254	PAWNEE CO SHERIFF'S OFFICE	0		
255	PEABODY POLICE DEPT	0		
256	PERRY POLICE DEPT	0		
257	PHILLIPS CO SHERIFF'S DEPT	0		
258	PITTSBURG POLICE DEPT	0		
	PITTSBURG STATE UNIVERSITY			
259	POLICE DEPT	0		
260	PLAINVILLE POLICE DEPT	0		
261	PLEASANTON POLICE DEPT	0		

262	POTTAWATOMIE CO SHERIFF'S OFFICE	0		
263	PRAIRIE BAND POTAWATOMI TRIBAL POLICE DEPT	0		
264	PRAIRIE VILLAGE POLICE DEPT	6	2/11/07 Investigated/Unfounded 2/22/07 Investigated/Unfounded  4/7/07 Investigated/Unfounded 6/29/07 Investigated/Unfounded 8/3/07 Investigated/Unfounded 8/14/07 Investigated/Unfounded	2/12/07 2/27/07  4/19/07 6/29/07 8/31/07 9/7/07
265	PRATT POLICE DEPT	0		
266	PRATT COUNTY SHERIFF'S OFFICE	0		
267	PROTECTION POLICE DEPT	0		
268	RAWLINS CO SHERIFF'S DEPT	0		
269	RENO COUNTY SHERIFF'S DEPT	0		
270	REPUBLIC CO SHERIFF'S OFFICE	0		
271	RICHMOND POLICE DEPT	0		
272	RILEY COUNTY POLICE DEPT	3	10/3/07 Investigated/Unfounded Investigated/ 2/14/07 Unsubstantiated 9/10/07 Investigated/Unfounded	11/28/07  9/24/07 1/18/08
273	ROELAND PARK POLICE DEPT	3	8/12/07 Investigated/Unfounded 8/27/07 Investigated/Unfounded 10/25/07 Investigated/Unfounded	8/20/07 9/27/07 10/30/07
274	ROLLA POLICE DEPT	0		
275	ROOKS CO SHERIFF'S DEPT	0		
276	ROSE HILL POLICE DEPT	0		
277	ROSSVILLE POLICE DEPT	0		
278	RUSH CO SHERIFF'S DEPT	0		
279	RUSSELL CO SHERIFF'S DEPT	0		
280	RUSSELL POLICE DEPT	0		
281	SABETHA POLICE DEPT	0		
282	SAC AND FOX NATION OF MISSOURI POLICE DEPT	0		
283	ST FRANCIS POLICE DEPT	0		
284	ST GEORGE POLICE DEPT	0		
285	ST JOHN POLICE DEPT	0		

286	ST MARYS POLICE DEPT	0		
287	SALINA POLICE DEPT	1	6/1/07 Investigated/Unfounded	7/5/07
3	SALINE CO SHERIFF'S DEPT	0		
289	SCOTT CITY POLICE DEPT	0		
290	SCOTT CO SHERIFF'S DEPT	0		
291	SECURITIES COMMISSIONER OF KS	0		
292	SEDGWICK CO SHERIFF'S DEPT	8	5/24/07 Investigated/Unfounded	6/28/07
			5/21/07 Investigated/Unfounded	6/6/07
			Investigated/	
			7/2/07 Not Sustained	8/8/07
			9/4/07 Investigated/Unfounded	9/21/07
			9/7/07 Investigated/Unfounded	9/25/07
			9/25/07 Investigated/Unfounded	10/10/07
			9/24/07 Investigated/Unfounded	11/9/07
			12/18/07 Investigated/Pending	Pending
293	SEDGWICK POLICE DEPT	0		
294	SENECA POLICE DEPT			
295	SEWARD CO SHERIFF'S OFFICE	0		
296	SHAWNEE CO SHERIFF'S OFFICE	2	3/27/07 Investigated/Unfounded	4/4/07
			6/9/07 Investigated/Unfounded	6/27/07
			Investigated/	
			Misconduct Not	
297	SHAWNEE POLICE DEPT	4	1/29/07 Established	2/13/07
			Investigated/	
			Misconduct Not	
			8/28/07 Established	9/25/07
			Investigated/	
			Misconduct Not	
			8/28/07 Established	9/25/07
			Investigated/	
			Misconduct Not	
			9/5/07 Established	11/6/07
298	SHERIDAN CO SHERIFF'S OFFICE	0		
299	SHERMAN CO SHERIFF'S OFFICE	0		
300	SILVER LAKE POLICE DEPT	0		
301	SMITH COUNTY SHERIFF'S DEPT	0		

2-14

302	SOUTH HUTCHINSON POLICE DEPT	0		
303	SPEARVILLE POLICE DEPT	0		
304	SPRING HILL POLICE DEPT	0		
305	STAFFORD CO SHERIFF'S OFFICE	0		
306	STAFFORD POLICE DEPT	0		
307	STANTON CO SHERIFF'S OFFICE	0		
308	STERLING POLICE DEPT	0		
309	STEVENS CO SHERIFF'S DEPT	0		
310	STOCKTON POLICE DEPT	0		
311	SUMNER CO SHERIFF'S OFFICE	0		
312	THOMAS CO SHERIFF'S DEPT	3	1/26/07 Investigated/Not Substantiated	4/12/07
			5/29/07 KHRC Investigation	Open
			3/22/07 Mailed citizen complaint form/not returned	4/30/07
313	TONGANOXIE POLICE DEPT	0		
314	TOPEKA POLICE DEPARTMENT	1	10/17/07 Investigated/ Exonerated	10/26/07
315	TOWANDA POLICE DEPT	0		
316	TREGO CO SHERIFF'S OFFICE	0		
317	TROY POLICE DEPT	0		
318	UDALL POLICE DEPT	0		
319	ULYSSES POLICE DEPT	0		
	UNIFIED GOVT. WYANDOTTE CO/KANSAS CITY KANSAS PARK RANGERS	0		
320	RANGERS			
321	USD 501 CAMPUS POLICE DEPT.	0		
	UNIVERSITY OF KANSAS MEDICAL CENTER POLICE DEPT.	0		
322	UNIVERSITY OF KANSAS PUBLIC SAFETY OFFICE	0		
323	SAFETY OFFICE	0		
324	VALLEY CENTER POLICE DEPT	0		
325	VALLEY FALLS POLICE DEPT.	0		
326	VICTORIA POLICE DEPT	0		
	WABAUNSEE CO SHERIFF'S OFFICE	0		
327	OFFICE	0		

328	WAKEENEY POLICE DEPT	0		
329	WAKEFIELD POLICE DEPT	0		
0	WALLACE CO SHERIFF'S DEPT	0		
31	WAMEGO POLICE DEPT	0		
	WASHBURN UNIVERSITY POLICE			
332	DEPT	0		
333	WASHINGTON CO SHERIFF'S DEPT	0		
334	WATERVILLE POLICE DEPT	0		
335	WATHENA POLICE DEPT	0		
336	WAVERLY POLICE DEPT	0		
337	WELLINGTON POLICE DEPT	0		
338	WELLSVILLE POLICE DEPT			
339	WESTWOOD POLICE DEPART	3	1/23/07 Investigated/Unfounded	3/21/07
			2/18/07 Investigated/Unfounded	5/1/07
			2/23/07 Investigated/Unfounded	3/21/07
340	WICHITA CO SHERIFF'S OFFICE	0		
341	WICHITA POLICE DEPARTMENT	58	2/17/07 Investigated/Unfounded	3/8/07
			2/27/07 Investigated/Unfounded	4/16/07
			3/1/07 Investigated/Unfounded	3/29/07
			3/5/07 Investigated/Unfounded	4/23/07
			3/7/07 Investigated/Unfounded	3/22/07
			3/19/07 Investigated/Unfounded	4/27/07
			3/21/07 Investigated/Unfounded	8/8/07
			3/22/07 Investigated/Unfounded	5/10/07
			3/26/07 Investigated/Unfounded	4/9/07
			4/5/07 Investigated/Unfounded	4/24/07
			4/8/07 Investigated/Unfounded	4/24/07
			4/16/07 Investigated/Unfounded	5/3/07
			4/20/07 Investigated/Unfounded	5/4/07
			4/26/07 Investigated/Unfounded	6/1/07
			5/4/07 Investigated/Unfounded	5/21/07
			5/17/07 Investigated/Unfounded	8/3/07
			5/18/07 Investigated/Unfounded	7/18/07
			5/25/07 Investigated/Unfounded	6/11/07
			5/25/07 Investigated/Unfounded	6/11/07
			5/25/07 Investigated/Unfounded	6/11/07
			5/27/07 Investigated/Unfounded	6/11/07

2-16



5/30/07	Investigated/Unfounded	6/11/07
6/19/07	Investigated/Unfounded	7/9/07
6/22/07	Investigated/Unfounded	7/11/07
6/23/07	Investigated/Unfounded	7/11/07
6/26/07	Investigated/Unfounded	7/11/07
7/11/07	Investigated/Unfounded	7/20/07
7/11/07	Investigated/Unfounded	7/17/07
7/24/07	Investigated/Unfounded	7/30/07
7/24/07	Investigated/Unfounded	8/3/07
8/3/07	Investigated/Unfounded	8/29/07
8/8/07	Investigated/Unfounded	8/17/07
8/15/07	Investigated/Unfounded	8/28/07
8/18/07	Investigated/Unfounded	9/7/07
8/22/07	Investigated/Unfounded	9/7/07
9/4/07	Investigated/Unfounded	9/24/07
9/14/07	Investigated/Unfounded	11/16/07
9/16/07	Investigated/Unfounded	9/27/07
9/19/07	Investigated/Unfounded	10/4/07
9/19/07	Investigated/Unfounded	10/22/07
9/28/07	Investigated/Unfounded	10/4/07
10/2/07	Investigated/Unfounded	11/20/07
10/17/07	Investigated/Unfounded	11/15/07
10/17/07	Investigated/Unfounded	11/7/07
10/20/07	Investigated/Unfounded	11/7/07
10/20/07	Investigated/Unfounded	10/25/07
10/26/07	Investigated/Unfounded	11/7/07
10/29/07	Investigated/Unfounded	11/7/07
11/2/07	Investigated/Unfounded	11/30/07
11/15/07	Investigated/Unfounded	11/27/07
11/17/07	Investigated/Unfounded	12/11/07
11/20/07	Investigated/Unfounded	12/6/07
11/26/07	Investigated/Unfounded	12/6/07
11/28/07	Investigated/Unfounded	12/14/07
11/29/07	Investigated/Unfounded	12/12/07
12/2/07	Investigated/Unfounded	12/19/07
12/3/07	Investigated/Unfounded	12/27/07

			12/25/07 Investigated/Unfounded	12/27/07
2	WICHITA STATE UNIVERSITY POLICE DEPT	1	9/27/07 Investigated/Unfounded	1/2/08
343	WILSON CO SHERIFF'S OFFICE	0		
344	WINCHESTER POLICE DEPT	0		
345	WINFIELD POLICE DEPT	0		
346	WOODSON CO SHERIFF'S OFFICE	0		
347	WYANDOTTE CO SHERIFF'S OFFICE	1	11/28/07 Interview/Unfounded	11/28/07
348	YATES CENTER POLICE DEPT	0		

Revised: 03/04/08

2-18

**DONALD BETTS JR.**

SENATOR, 29TH DISTRICT  
SEDGWICK COUNTY

STATE CAPITOL BUILDING  
ROOM 404-N  
TOPEKA, KANSAS 66612-1504

(785) 296-7387 • 1-800-432-3924

1505 N. MATLOCK DR.  
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## COMMITTEE ASSIGNMENTS

- RANKING MINORITY MEMBER: • ELECTIONS & LOCAL GOVERNMENT
- MEMBER: • WAYS & MEANS
- JOINT COMMITTEE ON ADMINISTRATIVE RULES & REGULATIONS
- JUDICIARY

**Senate Committee on Federal and State Affairs**  
**Testimony SB 610**  
**March 6, 2008**

Racial profiling may have been a relatively new term in the State of Kansas, but for many citizens, it has been an all too familiar practice. In 2005, we passed SB 77, an act concerning racial profiling. For the proponents of this legislation, it was a mere baby step in the right direction. Although, the state of Kansas has finally joined neighboring states in putting in place a racial profiling policy, it is time for us to take the next step in complying with the law this legislature passed.

As you hear from the other speakers today, you will see that a remarkable coalition of people and groups came together to work on a bill that sets the policy for the State of Kansas. With the passage of SB 77, came a responsibility of a 15-member task force 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.”

SB 610, would have been brought to you during the 2006 legislative session, however, it has taken the taskforce three years to do what the law has mandated they do in one. Because it has taken so long for the taskforce to provide a final report to the governor and the Legislature, (which was finally complete in 2008), the independent citizen advisory board for cities of the first class (created by the legislature) also provided some recommendations that they felt would make the law more enforceable, and add “teeth” to the legislation.

Mr. Chairman, because the recommendations were to be submitted by November 1, 2005 the citizens are frustrated with the delay of time it has taken for the next step. Furthermore, the citizens seem to think that the taskforce wants nothing at all to happen, and are purposely delaying time.

Law Enforcement believes it is imperative that they have practical legislation that enables law enforcement agencies to work in partnerships with citizens; however, it is believed that the current racial profiling procedures and remedies are weighed heavily in favor of the complainant and against the agency and individual officers.

STATE OF KANSAS

**DONALD BETTS JR.**

SENATOR, 29TH DISTRICT  
SEDGWICK COUNTY

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COMMITTEE ASSIGNMENTS

RANKING MINORITY MEMBER: • ELECTIONS & LOCAL GOVERNMENT

MEMBER: • WAYS & MEANS

• JOINT COMMITTEE ON ADMINISTRATIVE RULES & REGULATIONS

• JUDICIARY

Although the taskforce has delayed their reporting to the legislature by three years, they have managed to garner \$1.1 million dollars in federal grant funding to be used for additional training, research, the implementation of data collection and analysis, and the continuation of community and law enforcement dialog.

Mr. Chairman and Honorable Committee Members, I ask that you review this legislation, and adopt the appropriate amendments that will strengthen this policy in Kansas. Community, Law Enforcement, the Human Rights Commission, and the Governors Task force on Racial Profiling are all leaning on your comprehensive direction. Thank you for hearing this bill, and I look forward to its passage.

STATE OF KANSAS



TOPEKA

HOUSE OF  
REPRESENTATIVES

OLETHA FAUST-GOUDEAU

REPRESENTATIVE, 84TH DISTRICT

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(SESSION ONLY)

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MEMBER: ENERGY AND UTILITIES  
FEDERAL AND STATE AFFAIRS  
INSURANCE AND FINANCIAL INSTITUTIONS

March 6, 2008

Good Morning.

Honorable Chairman Pete Brungardt and Distinguished Committee Members of the Senate Federal and State Affairs Committee, it's an honor to appear before you today.

I rise in support of Senate Bill 610 regarding Racial Profiling. This is an issue of concern that negatively affects a majority of citizens in the 84<sup>th</sup> District and others across the state of Kansas.

As legislators, we want to implement fair and just laws as we represent our constituency. I feel the passage of Senate Bill 610 will certainly help to provide a resource to address the concerns of Kansans who feel they are unfairly racially profiled against.

With this Mr. Chairman, I humbly and respectfully ask for your support of Senate Bill 610. I stand for questions.

Representative Oletha Faust-Goudeau  
84<sup>th</sup> District

Sen Fed & State

Attachment 4  
3-06-08

OFFICE  
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# STATE OF KANSAS



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SENATE CHAMBER

**DAVID B. HALEY**

SENATOR  
DISTRICT 4  
WYANDOTTE COUNTY

IN RE: RACIAL PROFILING (SB 610)

Thank you, Mr. Chairman and Members of the Federal and State Affairs Committee, for allowing me to offer my observations of Senate Bill 610, which concerns the ongoing discussion, negotiations and attempts by this Legislature, and interested parties, to perfect our law prohibiting racial and other profiling by law enforcement in the State of Kansas.

A decade or so ago, I and then Rep. Doug Johnston, of Wichita, introduced a House Bill to ban racial profiling. After much concern and debate by interested parties, a watered-down bill (with a large six figure appropriation) passed the Legislature designed to commission a study as to whether, or not, racial and other profiling was even occurring in Kansas. A year (and almost half of a million dollars) later, the report by the Police Foundation affirmed what thousands of Kansas drivers (and those drivers passing through our state) have always known.

Law enforcement, with no probable cause, stops drivers (and pedestrians) of color at a higher percentage than their demographic. Further, law enforcement (still under the pretext, or "color", of law) utilized other methods of profiling such as a driver's age and/or gender and/or license tag state, or county, of origin; etc.

COMMITTEE ASSIGNMENTS  
ASSESSMENT & TAXATION  
JUDICIARY REAPPORTIONMENT  
PUBLIC HEALTH & WELFARE  
HEALTH CARE STRATEGIES

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JOINT COMMITT  
STATE TRIB/  
CORRECTIONS &  
HEALTH POLI  
CHILDRE

Sen Fed & State

Attachment 5  
3-06-08

Essentially, that report “earned” a big “so what?” from the Legislature. Nothing was done to prohibit the practice.

And then a few years ago, I, at the invitation of Sen. Donald Betts, of Wichita, cosponsored a Senate Bill to ban racial profiling. After much concern and debate by interested parties, and great political maneuvering and compromising, a bill passed the Legislature designed to ban racial profiling!

But Mr. Chairman, Members of the Committee, I am here to tell you that since we passed that law outlawing racial and other profiling, and since this task force has been enacted and after we have created staff positions, and so forth... that still, today, in Kansas, the sick practice of racial and other profiling by law enforcement is alive and “well”.

Several factors can aid and abet an errant “officer” who intends to deprive, with no true probable cause, some person of their right to be free from unimpeded liberty or from unreasonable searches or even seizure. For example, modern technology (especially radioing the station with license tag information of a vehicle prior to a traffic stop) helps “prejudge” based on potential owner/driver information, etc.

SB610 before us today is, in part, only the latest incarnation to evade the premise that all people should be free from prejudgement AND SB 610 strives to create yet another level of bureaucracy between an alleged victim of profiling and justice.

The KHRC should remain as the investigatory agency and not a newly minted entity (this "KSCPOST") which potentially creates an additional administrative hurdle.

Further, the uniform statistical date/information can be implemented by next year (2009); waiting until 2011 unnecessarily delays the statistical date of stops necessary to compare if a complaint is filed.

In closing, this debate unfortunately continues to rage in our state. I am disappointed that after over a decade, we still must waste precious time and resources to, simply, do the right thing by all people in an equal and just society.

Thank you. I'd be happy to stand for any questions.



HEARD 2006

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

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

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

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

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

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

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

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

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

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

Thank you Mr. Chairman. Questions?

**State of Kansas**  
**Senate Committee on Federal and State Affairs**  
**Testimony regarding SB610**  
**Allen Smith, Co-Chair Governor's Task Force on Racial Profiling**  
**March 6, 2008**

Chairman Brungardt, members of the committee,

The Governor's Task Force on Racial Profiling has brought together an extraordinary group of people representing community groups and law enforcement agencies to provide assistance in implementing statutes prohibiting racial profiling. The fifteen (15) member Governor's Task Force on Racial Profiling was authorized by statute and appointed by the Governor. The membership consists of 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 of African American Affairs, the Department of Revenue, the Kansas Human Rights Commission, Kansas District Courts and Kansas civil rights advocates. Kansas statutes direct the task force to recommend policies and procedures for the full implementation of the Kansas statutes prohibiting racial profiling, KSA 22-4606 through 22-4611.

The task force has been meeting monthly for the previous two years. The task force has recommended and assisted in the implementation of changes in: Kansas law enforcement training; departmental policies preempting racial profiling; disciplinary measures for officers found to be racially profiling; filing complaints internally and externally regarding racial profiling; community outreach; and the use of citizen advisory boards. During the FY06 the task force worked to develop a process for the collection of data and received a \$600,000 federal grant to continue its work. During the FY07, the task force has worked to identify a means of data collection and analysis that will not disrupt the work of law enforcement officers. The task force met in several communities, hosting six town hall meetings to allow Kansas citizens to share their concerns regarding racial profiling. The task force has also received an additional \$500,000 federal grant to continue its unique partnership among communities and law enforcement to prevent profiling.

As a result of the task force meetings, input from citizens, and discussion with law enforcement leaders, we find that some revision to the statutes is necessary. Therefore, the task force recommended changes to the statutes (See attached). Most of the statute changes recommended are represented in SB 610; however, some of the changes are not. Because the task force membership is comprised of both law enforcement and community representatives, we believe the task force best represents the desires of Kansas citizens while recognizing the need for law enforcement to effectively serve

their communities. As Co-Chair, I respectfully request that you review the task force recommendations for an amendment to SB 610.

The Task Force amendment to SB 610:

- a. Maintains the current definition of profiling and adds clarification regarding profiling on the basis of ethnicity.
- b. Requires the task force to implement a method for the collection and analysis of traffic stop data within a reasonable time.
- c. Mandates that the Kansas Commission on Peace Officers Standards and Training (KSCPOST) review complaints and initiate discipline against officers engaged in profiling.
- d. Mandates the use of a uniform traffic citation for the collection of data statewide.

The task force members firmly believe that the continuation of its work and the implementation of its recommendations will address the concerns of Kansas communities regarding racial profiling, without creating a significant burden on law enforcement agencies. We look forward to our continued work together to address this issue and ask that you support SB 610 with the recommended amendments.

Pastor Allen Smith, Salina  
Co-Chair, Governor's Task Force on Racial Profiling

Changes to statutes, recommended by the Governor's Task  
Force on Racial Profiling  
January 30, 2008

22-4606

Chapter 22.--CRIMINAL PROCEDURE  
KANSAS CODE OF CRIMINAL PROCEDURE  
Article 46.--GENERAL PROVISIONS

**22-4606. Racial and other profiling; definitions.** 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 **and domiciles**, dormitory rooms, school lockers, homes and apartments.

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

(g) ***"Profiling on the basis of ethnicity means the practice of unlawfully utilizing information regarding members of a cultural group with a shared identity, ancestry or linguistic characteristics common to the members or their affiliates. Ethnic groups may also have a common religious association or history."***

History: L. 2005, ch. 159, § 1; July 1.

## 22-4607

### Chapter 22.--CRIMINAL PROCEDURE KANSAS CODE OF CRIMINAL PROCEDURE Article 46.--GENERAL PROVISIONS

**22-4607. Same; task force; review of and recommendations on policies and procedures.** [(a)] A 15-member task force on racial profiling shall be appointed by the governor. 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 performance of the functions of the task force.

(b) The governor's task force on racial profiling shall work in partnership with local and state law enforcement agencies **and the general public to design, by January 1, 2011, method(s) for the collection, analysis and public dissemination of data regarding traffic stops collected utilizing the uniform traffic citation.**

(c) The task force shall review current policies and make recommendations for future policies, procedures **and training programs** statewide for the full implementation of the provisions of K.S.A. 2006 Supp. 22-4606 through 22-4611, and amendments thereto. The task force shall hold public hearings and meetings as needed to involve and inform the public on issues related to racial profiling.

(d) Members of the task force serving on the effective date of this act shall continue to serve terms until July 1, 2007. Thereafter, members shall be appointed for terms of two years. Vacancies shall be filled by appointment for the unexpired term. Upon expiration of a member's term, the member shall serve until a successor is appointed and qualifies. **No member shall serve more than two consecutive full terms.**

(d) The chairperson of the task force shall be designated by the governor. The task force shall meet at the call of the chairperson at least quarterly or as often as necessary to carry out the functions of the task force.

(e) **The executive director of the Kansas advisory commission on African American affairs and the executive director of the Hispanic/Latino American Affairs Commission shall serve as ex-officio members of the task force.** The staff of the Kansas advisory commission on African-American affairs and the Kansas Hispanic/Latino American affairs commission shall provide administrative support to the task force and its chairperson.

(f) Members of the task force attending a meeting of the task force, or any subcommittee meeting authorized by the task force, shall receive amounts provided for in subsection (e) of K.S.A. 75-3223, and amendments thereto.

(g) The task force shall make a report of its activity to the public each calendar year.

~~(h) The provisions of this section shall expire on July 1, 2009-2015.~~  
— **History:** L. 2005, ch. 159, § 2; L. 2006, ch. 179, § 1; May 25.

**22-4609**

**Chapter 22.--CRIMINAL PROCEDURE  
KANSAS CODE OF CRIMINAL PROCEDURE  
Article 46.--GENERAL PROVISIONS**

**22-4609. Same; prohibited as sole basis for making stop or arrest.** 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.

**History:** L. 2005, ch. 159, § 4; July 1.

## 22-4610

### Chapter 22.--CRIMINAL PROCEDURE KANSAS CODE OF CRIMINAL PROCEDURE Article 46.--GENERAL PROVISIONS

**22-4610. Same; policies preempting profiling, requirements; annual reports of complaints.** (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 K.S.A. 2006 Supp. 22-4606, 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, **and shall be** ~~The policies 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) **Each law enforcement agency shall provide minimum of (2) hours of racial profiling training for law enforcement officers each fiscal year.** The 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 cities of the first class~~ **law enforcement agencies with ten or more certified officers licensed pursuant to K.S.A. 74-5602, shall establish or use** ~~establishment or use of current independent~~ citizen advisory boards which include participants who ~~reflect~~ **represent** 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 **internal law enforcement agency** 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 **disciplinary** 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 **August 1** to the office of the attorney general for review. **Agencies that have not received complaints during the year shall also file a report.** The annual report shall include: (1) The **number of complaints and** date the complaint(s) is **was** 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. (5) **whether all officers employed by the agency received the statutorily required annual racial profiling training for the prior training year, July 1 to June 30;** (6) **whether the agency has a written policy that will prohibit racial profiling;** (7) **whether the agency mandates specific discipline of law enforcement officers who engage in racial profiling** (8) **whether the policy details the discipline to be administered for racial profiling;** (9) **whether the policy includes provisions outlining the individuals right to file complaints with the agency and/or with the Kansas Attorney General and the specific procedures for individuals to file complaints with the agency and** (10) **whether the agency has a citizen advisory board.**

- (e) Annual reports filed pursuant to this subsection shall be open public records and shall be posted on the official website of the attorney general.

**History:** L. 2005, ch. 159, § 5; July 1.

## 22-4611

### Chapter 22.--CRIMINAL PROCEDURE KANSAS CODE OF CRIMINAL PROCEDURE

#### Article 46.--GENERAL PROVISIONS

**22-4611. Same; complaints, procedure; civil action.** (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 ~~office of the attorney general. human rights commission.~~ **office of the attorney general or general's designee commission** shall review and, if necessary, investigate the complaint. ~~The attorney general or commission's~~ **attorney general or general's designee** shall ~~report their finding to~~ **report their finding to** with the head of the law enforcement agency ~~before making~~ **including** final recommendations regarding discipline of any law enforcement officer or other disposition of the complaint.

**(b) The attorney general or designee shall inform the complainant of the outcome or disposition of the complaint in writing. Such writing shall be made in accordance with K.S.A 45-221, and amendments thereto.**

**(c) The attorney general or designee shall forward a report of each profiling investigation and finding to the Kansas Peace Officers Standards and Training Commission (KSCPOST), for further review regarding discipline or other sanction available through the KSCPOST authority. Officers shall utilize the due process procedures established by KSCPOST.**

**(d)** Upon disposition of a complaint as provided for in subsection (C) 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.

**History:** L. 2005, ch. 159, § 6; July 1.

**State of Kansas**  
**Senate Federal and State Affairs Committee**  
**Testimony in regard to SB610**  
**Mike Watson, Member, Governor's Task Force on Racial Profiling**  
**March 6, 2008**

Chairman Brungardt, members of the committee,

As one of the original members and the law enforcement representative serving for hundreds of chief's of police on the Governor's Racial Profiling Task Force I would ask you to support SB610 as amended by the balloon amendment submitted by the Racial Profiling Task Force.

Kansas statutes direct to the task force to recommend policies and procedures for the full implementation of the Kansas statutes prohibiting racial profiling, KSA 22-4606 through 22-4611.

This Task Force has recommended and assisted in the implementation of significant changes in Kansas law enforcement training, departmental policies preempting racial profiling, disciplinary measures for officers found to be racially profiling, filing complaints internally and externally regarding racial profiling, community outreach and the use of citizen advisory boards in the past two years.

The Task Force has collaborated with the Kansas Attorney General's Office, the Kansas Law Enforcement Training Center, the Kansas Department of Transportation, the Kansas Highway Patrol, the Kansas Commission on Peace Officer Standards and Training, the Kansas Association of Chiefs of Police, the Kansas Sheriff's Association, the Kansas Peace Officer's Association, the Kansas Human Rights Commission, community organizations, individual interested citizens, individual law enforcement agencies, and others.

The Task Force has conducted six formal community meetings in Wichita, Pittsburg, Olathe, Kansas City, Topeka and Salina. Two more meetings are planned for Dodge City and a yet to be determined city in northwest Kansas. The first phase of the community meeting includes a meeting with area law enforcement agency leaders and officers as well as city and county officials to hear and discuss their concerns, explain facets of the racial profiling statutes and take recommendations from the law enforcement perspective. The second phase of the community meeting includes a meeting with

citizens to hear concerns and recommendations from citizens and citizen groups regarding racial profiling issues, complaints and policy/legislative recommendations.

The Task Force has also conducted monthly meetings researching and reviewing training, policies and procedures, complaint investigations, legislation, data collection methods and instruments, benchmarking methods and theories, and other related topics. The Task Force has acquired two National Highway Traffic Safety Administration grants in excess of one million dollars to support the administration of the Task Force, assist in the training of law enforcement officers, and continuing implementation of the racial profiling statutes including the collecting, analyzing and utilizing of law enforcement traffic stop data to assist in the preemption of racial profiling.

In conclusion I would ask you to support:

- 1) retaining current wording "sole factor" in the definition of racial profiling rather than SB610's "a factor",
- 2) deleting "pedestrian stops" as added in SB610,
- 3) allowing adequate time for design and implementation of data collection until 2011,
- 4) transferring investigations from KHRC to the Attorney General or his designee and then reporting for sanctions to KS CPOST,
- 5) retaining current cost recovery for the prevailing party rather than only the prevailing plaintiff,
- 6) retaining current language holding officer and agency or both civilly liable rather than adding "any person with supervisory authority over such officer".

Changes to statutes, recommended by the Governor's Task  
Force on Racial Profiling  
January 30, 2008

22-4606

Chapter 22.--CRIMINAL PROCEDURE  
KANSAS CODE OF CRIMINAL PROCEDURE  
Article 46.--GENERAL PROVISIONS

**22-4606. Racial and other profiling; definitions.** 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 **and domiciles**, dormitory rooms, school lockers, homes and apartments.

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

(g) **"Profiling on the basis of ethnicity means the practice of unlawfully utilizing information regarding members of a cultural group with a shared identity, ancestry or linguistic characteristics common to the members or their affiliates. Ethnic groups may also have a common religious association or history.**

History: L. 2005, ch. 159, § 1; July 1.

## 22-4607

### Chapter 22.--CRIMINAL PROCEDURE KANSAS CODE OF CRIMINAL PROCEDURE Article 46.--GENERAL PROVISIONS

**22-4607. Same; task force; review of and recommendations on policies and procedures.** [(a)] A 15-member task force on racial profiling shall be appointed by the governor. 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 performance of the functions of the task force.

(b) The governor's task force on racial profiling shall work in partnership with ~~local and state~~ law enforcement agencies **and the general public to design, by January 1, 2011, method(s) for the collection, analysis and public dissemination of data regarding traffic stops collected utilizing the uniform traffic citation.**

(c) The task force shall review current policies and make recommendations for future policies, procedures **and training programs** statewide for the full implementation of the provisions of K.S.A. 2006 Supp. 22-4606 through 22-4611, and amendments thereto. The task force shall hold public hearings and meetings as needed to involve and inform the public on issues related to racial profiling.

(d) Members of the task force serving on the effective date of this act shall continue to serve terms until July 1, 2007. Thereafter, members shall be appointed for terms of two years. Vacancies shall be filled by appointment for the unexpired term. Upon expiration of a member's term, the member shall serve until a successor is appointed and qualifies. **No member shall serve more than two consecutive full terms.**

(d) The chairperson of the task force shall be designated by the governor. The task force shall meet at the call of the chairperson at least quarterly or as often as necessary to carry out the functions of the task force.

(e) **The executive director of the Kansas advisory commission on African American affairs and the executive director of the Hispanic/Latino American Affairs Commission shall serve as ex-officio members of the task force.** The staff of the Kansas advisory commission on African-American affairs and the Kansas Hispanic/Latino American affairs commission shall provide administrative support to the task force and its chairperson.

(f) Members of the task force attending a meeting of the task force, or any subcommittee meeting authorized by the task force, shall receive amounts provided for in subsection (e) of K.S.A. 75-3223, and amendments thereto.

(g) The task force shall make a report of its activity to the public each calendar year.

~~(h) The provisions of this section shall expire on July 1, 2009 2015.~~

— **History:** L. 2005, ch. 159, § 2; L. 2006, ch. 179, § 1; May 25.

## 22-4609

### Chapter 22.--CRIMINAL PROCEDURE KANSAS CODE OF CRIMINAL PROCEDURE

#### Article 46.--GENERAL PROVISIONS

**22-4609. Same; prohibited as sole basis for making stop or arrest.** 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.

**History:** L. 2005, ch. 159, § 4; July 1.

## 22-4610

### Chapter 22.--CRIMINAL PROCEDURE KANSAS CODE OF CRIMINAL PROCEDURE Article 46.--GENERAL PROVISIONS

**22-4610. Same; policies preempting profiling, requirements; annual reports of complaints.** (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 K.S.A. 2006 Supp. 22-4606, 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, **and shall be** ~~The policies 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) **Each law enforcement agency shall provide minimum of (2) hours of racial profiling training for law enforcement officers each fiscal year. The 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 cities of the first class~~ **law enforcement agencies with ten or more certified officers licensed pursuant to K.S.A. 74-5602, shall establish or use establishment or use of current independent** citizen advisory boards which include participants who ~~reflect~~ **represent** 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 **internal law enforcement agency** 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 **disciplinary** 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~~ **August 1** to the office of the attorney general for review. **Agencies that have not received complaints during the year shall also file a report.** The annual report shall include: (1) The **number of complaints and date the complaint(s) is was** 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. **(5) whether all officers employed by the agency received the statutorily required annual racial profiling training for the prior training year, July 1 to June 30; (6) whether the agency has a written policy that will prohibit racial profiling; (7) whether the agency mandates specific discipline of law enforcement officers who engage in racial profiling (8) whether the policy details the discipline to be administered for racial profiling; (9) whether the policy includes provisions outlining the individuals right to file complaints with the agency and/or with the Kansas Attorney General and the specific procedures for individuals to file complaints with the agency and (10) whether the agency has a citizen advisory board.**

- (e) Annual reports filed pursuant to this subsection shall be open public records and shall be posted on the official website of the attorney general.

**History:** L. 2005, ch. 159, § 5; July 1.

## 22-4611

### Chapter 22.--CRIMINAL PROCEDURE KANSAS CODE OF CRIMINAL PROCEDURE

#### Article 46.--GENERAL PROVISIONS

**22-4611. Same; complaints, procedure; civil action.** (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 ~~office of the attorney general. human rights commission.~~ The ~~attorney general or general's designee commission~~ shall review and, if necessary, investigate the complaint. ~~The attorney general or commission's~~ designee shall ~~report their finding to~~ with the head of the law enforcement agency ~~before making~~ including final recommendations regarding discipline of any law enforcement officer or other disposition of the complaint.

*(b) The attorney general or designee shall inform the complainant of the outcome or disposition of the complaint in writing. Such writing shall be made in accordance with K.S.A 45-221, and amendments thereto.*

*(c) The attorney general or designee shall forward a report of each profiling investigation and finding to the Kansas Peace Officers Standards and Training Commission (KSCPOST), for further review regarding discipline or other sanction available through the KSCPOST authority. Officers shall utilize the due process procedures established by KSCPOST.*

*(d) Upon disposition of a complaint as provided for in subsection (C) 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.*

**History:** L. 2005, ch. 159, § 6; July 1.

**State of Kansas**  
**Senate Committee on Federal and State Affairs**  
**Testimony regarding SB610**  
**Danielle Dempsey-Swopes,**  
**Executive Director, Kansas African American Affairs Commission**  
**Administrator, Governor's Task Force on Racial Profiling**  
**March 6, 2008**

Chairman Brungardt, members of the committee,

The Kansas African American Affairs Commission, (KAAAC) is made up of seven commissioners statewide, who work together to address the concerns of the African American community in the State of Kansas. Our Commissioners provide a vital link for the community to address concerns within state government. I have worked closely with the Governor's Task Force on Racial Profiling on behalf of the KAAAC over the previous two years to implement the Kansas statutes prohibiting racial profiling, KSA 22-4606 through 22-4611.

The Governor's Task Force has provided a unique opportunity for community members and law enforcement leaders to work in partnership to address this very important issue. The membership of the task force is balanced, including 5 community or civil rights organization representatives, 5 members who represent law enforcement, 2 members who represent the state courts, one member representing the attorney general, one person representing a juvenile service agency and there is one vacant position at this time. The task force is a diverse group of Kansans by race, ethnicity, gender and geographical home and all of the members are passionate about preventing the practice of racial profiling.

The task force has made significant strides in addressing the issue of racial profiling in our state. The task force has applied for and received 1.1 million dollars in federal grant funding. This funding will be used for additional training, research, the implementation of data collection and analysis, and the continuation of community and law enforcement dialog on the issue. The Task force may also apply for additional grant funding to support this effort for 2009.

I have attended every task force meeting and want to reiterate that the task force has worked collectively, without undue influence from any particular members, to craft their recommended changes to the Kansas statues. The task force recommendations represent their collective research and discussion with community members and law enforcement officers throughout our state. The task force has done an excellent job in managing the concerns of the community and the impact of the statues on the law enforcement community statewide. SB610, with the changes recommended by the task force, will provide for significant and necessary changes to the law that do not unnecessarily burden law enforcement in their work to protect citizens.

The prevention of racial profiling ultimately depends upon the cultural competence of our law enforcement officers and community trust in law enforcement leadership. The task force has provided the leadership to facilitate the training for such competence and the dialog for such trust to make Kansas a safer place for all to live and work. I respectfully ask that you amend SB610, as recommended by the Governor's Task Force on Racial Profiling, so that we may all continue working together to address this issue.

# Changes to statutes, recommended by the Governor's Task Force on Racial Profiling

January 30, 2008

## 22-4606

### Chapter 22.--CRIMINAL PROCEDURE KANSAS CODE OF CRIMINAL PROCEDURE Article 46.--GENERAL PROVISIONS

**22-4606. Racial and other profiling; definitions.** 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 **and domiciles, dormitory rooms, school lockers, homes and apartments.**

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

(g) **"Profiling on the basis of ethnicity means the practice of unlawfully utilizing information regarding members of a cultural group with a shared identity, ancestry or linguistic characteristics common to the members or their affiliates. Ethnic groups may also have a common religious association or history.**

History: L. 2005, ch. 159, § 1; July 1.

## 22-4607

### Chapter 22.--CRIMINAL PROCEDURE KANSAS CODE OF CRIMINAL PROCEDURE Article 46.--GENERAL PROVISIONS

**22-4607. Same; task force; review of and recommendations on policies and procedures.** [(a)] A 15-member task force on racial profiling shall be appointed by the governor. 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 performance of the functions of the task force.

- (b) The governor's task force on racial profiling shall work in partnership with ~~local and state law enforcement agencies~~ **and the general public to design, by January 1, 2011, method(s) for the collection, analysis and public dissemination of data regarding traffic stops collected utilizing the uniform traffic citation.**
- (c) The task force shall review current policies and make recommendations for future policies, procedures **and training programs** statewide for the full implementation of the provisions of K.S.A. 2006 Supp. 22-4606 through 22-4611, and amendments thereto. The task force shall hold public hearings and meetings as needed to involve and inform the public on issues related to racial profiling.
- (d) Members of the task force serving on the effective date of this act shall continue to serve terms until July 1, 2007. Thereafter, members shall be appointed for terms of two years. Vacancies shall be filled by appointment for the unexpired term. Upon expiration of a member's term, the member shall serve until a successor is appointed and qualifies. **No member shall serve more than two consecutive full terms.**
- (d) The chairperson of the task force shall be designated by the governor. The task force shall meet at the call of the chairperson at least quarterly or as often as necessary to carry out the functions of the task force.
- (e) **The executive director of the Kansas advisory commission on African American affairs and the executive director of the Hispanic/Latino American Affairs Commission shall serve as ex-officio members of the task force.** The staff of the Kansas advisory commission on African-American affairs and the Kansas Hispanic/Latino American affairs commission shall provide administrative support to the task force and its chairperson.
- (f) Members of the task force attending a meeting of the task force, or any subcommittee meeting authorized by the task force, shall receive amounts provided for in subsection (e) of K.S.A. 75-3223, and amendments thereto.
- (g) The task force shall make a report of its activity to the public each calendar year.
- ~~(h) The provisions of this section shall expire on July 1, 2009 2015.~~
- **History:** L. 2005, ch. 159, § 2; L. 2006, ch. 179, § 1; May 25.

**22-4609**

**Chapter 22.--CRIMINAL PROCEDURE  
KANSAS CODE OF CRIMINAL PROCEDURE**

**Article 46.--GENERAL PROVISIONS**

**22-4609. Same; prohibited as sole basis for making stop or arrest.** 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.

**History:** L. 2005, ch. 159, § 4; July 1.

## 22-4610

### Chapter 22.--CRIMINAL PROCEDURE KANSAS CODE OF CRIMINAL PROCEDURE Article 46.--GENERAL PROVISIONS

**22-4610. Same; policies preempting profiling, requirements; annual reports of complaints.** (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 K.S.A. 2006 Supp. 22-4606, 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, **and shall be** ~~The policies 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) **Each law enforcement agency shall provide minimum of (2) hours of racial profiling training for law enforcement officers each fiscal year. The 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 cities of the first class~~ **law enforcement agencies with ten or more certified officers licensed pursuant to K.S.A. 74-5602, shall establish or use** establishment or use of current independent citizen advisory boards which include participants who reflect **represent** 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 **internal law enforcement agency** 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 **disciplinary** 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~~ **August 1** to the office of the attorney general for review. **Agencies that have not received complaints during the year shall also file a report.** The annual report shall include: (1) The **number of complaints and** date the complaint(s) ~~is~~ **was** 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. **(5) whether all officers employed by the agency received the statutorily required annual racial profiling training for the prior training year, July 1 to June 30; (6) whether the agency has a written policy that will prohibit racial profiling; (7) whether the agency mandates specific discipline of law enforcement officers who engage in racial profiling (8) whether the policy details the discipline to be administered for racial profiling; (9) whether the policy includes provisions outlining the individuals right to file complaints with the agency and/or with the Kansas Attorney General and the specific procedures for individuals to file complaints with the agency and (10) whether the agency has a citizen advisory board.**

- (e) Annual reports filed pursuant to this subsection shall be open public records and shall be posted on the official website of the attorney general.

**History:** L. 2005, ch. 159, § 5; July 1.



## 22-4611

### Chapter 22.--CRIMINAL PROCEDURE KANSAS CODE OF CRIMINAL PROCEDURE Article 46.--GENERAL PROVISIONS

**22-4611. Same; complaints, procedure; civil action.** (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 ~~office of the attorney general. human rights commission.~~ **attorney general or general's designee commission** shall review and, if necessary, investigate the complaint. ~~The attorney general or commission's~~ **designee shall confer report their finding to** with the head of the law enforcement agency ~~before making- including~~ final recommendations regarding discipline of any law enforcement officer or other disposition of the complaint.

**(b) The attorney general or designee shall inform the complainant of the outcome or disposition of the complaint in writing. Such writing shall be made in accordance with K.S.A 45-221, and amendments thereto.**

**(c) The attorney general or designee shall forward a report of each profiling investigation and finding to the Kansas Peace Officers Standards and Training Commission (KSCPOST), for further review regarding discipline or other sanction available through the KSCPOST authority. Officers shall utilize the due process procedures established by KSCPOST.**

**(d)** Upon disposition of a complaint as provided for in subsection **(C)** 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.

**History:** L. 2005, ch. 159, § 6; July 1.

## SENATE BILL No. 610

By Committee on Federal and State Affairs

2-13

9 AN ACT concerning racial profiling; prescribing duties for the attorney  
10 general; requiring training for law enforcement agencies and person-  
11 nel; amending K.S.A. 22-4606, 22-4607, 22-4609, 22-4610 and 22-4611  
12 and K.S.A. 2007 Supp. 74-9501 and repealing the existing sections.  
13

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

15 Section 1. K.S.A. 22-4606 is hereby amended to read as follows: 22-  
16 4606. As used in this act:

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

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

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

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

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

40 (f) "Collection of data" means that information collected by Kansas  
41 law enforcement officers after each traffic ~~and pedestrian~~ stop.

42 (g) "Profiling on the basis of ethnicity" means the practice of unlaw-  
43 fully utilizing information regarding members of a cultural group with a

[Keep "the sole" and strike "a"]

8-8

1 shared identity, ancestry or linguistic characteristics common to the mem-  
2 bers or their affiliates. Ethnic groups may also have a common religious  
3 association or history.

4 Sec. 2. K.S.A. 22-4607 is hereby amended to read as follows: 22-  
5 4607. (a) A 15-member task force on racial profiling shall be appointed  
6 by the governor. The task force shall include representatives of the Kansas  
7 attorney general's office, the Kansas highway patrol, city and county law  
8 enforcement agencies, the Hispanic and Latino American affairs com-  
9 mission, the advisory commission on ~~African-American~~ African American  
10 affairs, the department of revenue, Kansas human rights commission,  
11 Kansas district courts, Kansas civil rights advocates and others who can  
12 assist in the performance of the functions of the task force.

13 (b) The governor's task force on racial profiling shall work in part-  
14 nership with ~~local and state~~ law enforcement agencies ~~to~~ and the general  
15 public to design methods for the collection, analysis and public dissemi-  
16 nation of data regarding traffic stops ~~and pedestrian stops~~ utilizing the  
17 uniform traffic citation. The methods for the collection, analysis and pub-  
18 lic dissemination of data required by this subsection shall be designed no  
19 later than January 1, ~~2009~~ and fully implemented no later than January  
20 1, ~~2010~~

2010  
2011

21 (c) The task force shall review current policies and make recommen-  
22 dations for training programs, future policies and procedures statewide  
23 for the full implementation of the provisions of K.S.A. 22-4606 through  
24 22-4611, and amendments thereto. The task force shall hold public hear-  
25 ings and meetings as needed to involve and inform the public on issues  
26 related to racial profiling.

27 ~~(e)~~ (d) Members of the task force serving on the effective date of this  
28 act shall continue to serve terms until July 1, 2007. Thereafter, members  
29 shall be appointed for terms of two years. Vacancies shall be filled by  
30 appointment for the unexpired term. Upon expiration of a member's  
31 term, the member shall serve until a successor is appointed and qualifies.  
32 ~~No member shall serve more than two consecutive full terms.~~

33 ~~(d)~~ (e) The chairperson of the task force shall be designated by the  
34 governor. The task force shall meet at the call of the chairperson at least  
35 quarterly or as often as necessary to carry out the functions of the task  
36 force.

37 ~~(e)~~ (f) The executive director of the Kansas advisory commission on  
38 African American affairs and the executive director of the Hispanic/Latino  
39 American affairs committee shall serve as ex officio members of the task  
40 force. The staff of the Kansas advisory commission on ~~African-American~~  
41 African American affairs and the Kansas Hispanic/Latino American affairs  
42 commission shall provide administrative support to the task force and its  
43 chairperson.

1    ~~(f)~~ (g) Members of the task force attending a meeting of the task  
2 force, or any subcommittee meeting authorized by the task force, shall  
3 receive amounts provided for in subsection (e) of K.S.A. 75-3223, and  
4 amendments thereto.

5    ~~(g)~~ (h) The task force shall make a report of its activity to the public  
6 each calendar year.

7    ~~(h)~~ The provisions of this section shall expire on July 1, 2009.

8    Sec. 3. K.S.A. 22-4609 is hereby amended to read as follows: 22-  
9 4609. The race, ethnicity, ~~national origin~~, gender or religious dress of an  
10 individual or group shall not be the sole factor in determining the exist-  
11 ence of probable cause to take into custody or to arrest an individual or  
12 in constituting a reasonable and articulable suspicion that an offense has  
13 been or is being committed so as to justify the detention of an individual  
14 or the investigatory stop of a vehicle ~~or pedestrian~~.

15    Sec. 4. K.S.A. 22-4610 is hereby amended to read as follows: 22-  
16 4610. (a) All law enforcement agencies in this state shall adopt a detailed,  
17 written policy to preempt racial profiling. Each agency's policy shall in-  
18 clude the definition of racial profiling found in K.S.A. 22-4606, and  
19 amendments thereto.

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

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

26    (1) A prohibition of racial profiling.

27    (2) ~~Annual educational~~ *Each law enforcement agency shall provide a*  
28 *minimum of two hours of racial profiling training for law enforcement*  
29 *officers each fiscal year. The training which shall include, but not be*  
30 *limited to, an understanding of the historical and cultural systems that*  
31 *perpetuate racial profiling, assistance in identifying racial profiling prac-*  
32 *tices, and providing officers with self-evaluation strategies to preempt*  
33 *racial profiling prior to stopping a citizen.*

34    (3) ~~For law enforcement agencies of cities of the first class, establish-~~  
35 ~~ment or use of current independent~~ *with 10 or more officers certified*  
36 *pursuant to K.S.A. 74-5602, and amendments thereto, shall establish or*  
37 *use citizen advisory boards which include participants who reflect rep-*  
38 *resent the racial and ethnic community, to advise and assist in policy*  
39 *development, education and community outreach and communications*  
40 *related to racial profiling by law enforcement officers and agencies.*

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

43    (5) A provision that, if the *internal law enforcement agency investi-*

1 gation of a complaint of racial profiling reveals the officer was in direct  
2 violation of the law enforcement agency's written policies regarding racial  
3 profiling, the employing law enforcement agency shall take appropriate  
4 *disciplinary* action consistent with applicable laws, rules and regulations,  
5 resolutions, ordinances or policies, including demerits, suspension or re-  
6 ~~moval of the officer from the agency and ordinances.~~

7 (6) Provisions for community outreach and communications efforts  
8 to inform the public of the individual's right to file with the law enforce-  
9 ment agency or the Kansas human rights commission complaints regard-  
10 ing racial profiling, which outreach and communications to the commu-  
11 nity shall include ongoing efforts to notify the public of the law  
12 enforcement agency's complaint process.

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

16 (d) Each law enforcement agency shall compile an annual report of  
17 all complaints of racial profiling received and shall submit the report on  
18 or before ~~January 31~~ *August 1* to the office of the attorney general for  
19 review. *Each law enforcement agency that did not receive any complaints*  
20 *during year shall also file a report.* The annual report shall include: (1)  
21 *The number of complaints and the date the complaint is was filed;* (2)  
22 *action taken in response to the complaint;* (3) *the decision upon dispo-*  
23 *sition of the complaint; and* (4) *the date the complaint is closed; ;* (5)  
24 *whether all officers employed by the agency received the statutorily re-*  
25 *quired annual racial profiling training for the prior training year July 1*  
26 *to June 30;* (6) *whether the agency has a written policy that will prohibit*  
27 *racial profiling;* (7) *whether the agency mandates specific discipline of*  
28 *law enforcement officers who engage in racial profiling;* (8) *whether the*  
29 *policy details the discipline to be administered for racial profiling;* (9)  
30 *whether the policy includes provisions outlining the individual's right to*  
31 *file complaints with the agency or with the Kansas attorney general, or*  
32 *both, and the specific procedures for individuals to file complaints with*  
33 *the agency; and* (10) *whether the agency has a citizen advisory board.*

34 (e) Annual reports filed pursuant to this subsection shall be open  
35 public records and shall be posted on the official website of the attorney  
36 general.

37 Sec. 5. K.S.A. 22-4611 is hereby amended to read as follows: 22-  
38 4611. (a) Any person who believes such person has been subjected to  
39 racial profiling by a law enforcement officer or agency may file a com-  
40 plaint with the law enforcement agency. The complainant may also file a  
41 complaint with the Kansas ~~human rights commission.~~ *The commission,*  
42 *shall review and, if necessary, investigate the complaint. The commission's*  
43 *designee shall consult with the head of the law enforcement agency be-*

office of the attorney general

attorney general, or the attorney general's designee,

1 fore making final recommendations regarding discipline of any law en-  
2 forcement officer or other disposition of the complaint.

3 ~~(b) Upon disposition of a complaint as provided for in subsection (a)~~  
4 ~~the complainant shall have a civil cause of action in the district court~~  
5 ~~against the law enforcement officer or law enforcement agency, or both,~~  
6 ~~and shall be entitled to recover damages if it is determined by the court~~  
7 ~~that such persons or agency engaged in racial profiling. The court may~~  
8 ~~allow the prevailing party reasonable attorney fees and court costs.~~

9 ~~(b) The Kansas human rights commission (KHRC) shall forward all~~  
10 ~~findings of probable cause to the Kansas commission on peace officer~~  
11 ~~standards and training (KSCPOST).~~

12 ~~(1) The KHRC shall notify the office of the attorney general of all~~  
13 ~~probable cause findings forwarded to KSCPOST for review.~~

14 ~~(2) The KHRC shall inform the complainant of the outcome or dis-~~  
15 ~~position of the complaint in writing. Such writing shall be made in ac-~~  
16 ~~cordance with K.S.A. 45-221 and amendments thereto.~~

17 ~~(c) KSCPOST shall review the findings of the KHRC or initiate fur-~~  
18 ~~ther investigation if necessary. Pursuant to K.S.A. 74-5616, and amend-~~  
19 ~~ments thereto, KSCPOST shall make a determination regarding discipline~~  
20 ~~of any law enforcement officer engaged in unlawful profiling.~~

21 ~~(d) Where KSCPOST findings are not sufficient to sustain a KHRC~~  
22 ~~finding of probable cause, KSCPOST shall forward the complaint to the~~  
23 ~~Kansas attorney general for a final administrative determination. The at-~~  
24 ~~torney general, or the general's designee, shall review the complaint, or~~  
25 ~~conduct an investigation if necessary, to make a final determination and~~  
26 ~~disposition of the complaint.~~

27 ~~(e) This complaint process shall not prevent a motorist or pedestrian~~  
28 ~~who feels that their civil rights or constitutional rights have been violated~~  
29 ~~to go directly to the appropriate district attorney to bring criminal charges~~  
30 ~~or to file a civil law suit against the law enforcement officer or agency to~~  
31 ~~seek justice.~~

32 ~~(f) Any person who is subjected to racial profiling shall have a civil~~  
33 ~~cause of action against any law enforcement officer or agency, or both,~~  
34 ~~and shall be entitled to recover damages from any such officer, any person~~  
35 ~~with supervisory authority over such officer and agency if it is determined~~  
36 ~~by a jury that such persons or agency engaged in racial profiling. The~~  
37 ~~jury may allow the prevailing plaintiff reasonable attorney fees, expert~~  
38 ~~witness costs and other litigation costs reasonably incurred.~~

39 Sec. 6. K.S.A. 2007 Supp. 74-9501 is hereby amended to read as  
40 follows: 74-9501. (a) There is hereby established the Kansas criminal jus-  
41 tice coordinating council.

42 (b) The council shall consist of the governor or designee, the chief  
43 justice of the supreme court or designee, the attorney general or designee,

[Reinstate language in the statute with changes in bold and stricken language underlined.

"The commission's attorney general, or attorney general's designee, shall consult with report findings to the head of the law enforcement agency before making, and shall include final recommendations regarding discipline of any law enforcement officer or other disposition of the complaint."]

(b) The attorney general, or attorney general's designee, shall inform the complainant of the outcome or disposition of the complaint in writing. Such writing shall be made in accordance with K.S.A. 45-221, and amendments thereto.

(c) The attorney general, or attorney general's designee, shall forward a report of each profiling investigation and finding to the Kansas commission on peace officers' standards and training (KSCPOST) for further review regarding discipline or other sanction available through the KSCPOST. Officers shall utilize the due process procedures established by the KSCPOST.

[Reinstate language in the statute with changes in bold and stricken language underlined.

(b) ~~(d)~~ Upon disposition of a complaint as provided for in subsection ~~(a)~~ **(c)**, 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.]

1 the secretary of corrections, the superintendent of the highway patrol,  
2 the commissioner of juvenile justice and the director of the Kansas bureau  
of investigation.

4 (c) The governor shall designate staff to the Kansas criminal justice  
5 coordinating council. The staff shall attend all meetings of the council,  
6 be responsible for keeping a record of council meetings, prepare reports  
7 of the council and perform such other duties as directed by the council.

8 (d) The council shall elect a chairperson and vice-chairperson from  
9 among the members of the council.

10 (e) The council shall:

11 (1) Appoint a standing local government advisory group to consult  
12 and advise the council concerning local government criminal justice issues  
13 and the impact of state criminal justice policy and decisions on local units  
14 of government. The advisory group shall consist of a sheriff, chief of  
15 police, county or district attorney, a member of a city governing body and  
16 a county commissioner. Appointees to such advisory group shall serve  
17 without compensation or reimbursement for travel and subsistence or any  
18 other expenses;

19 (2) define and analyze issues and processes in the criminal justice  
20 system, identify alternative solutions and make recommendations for  
21 improvements;

22 (3) perform such criminal justice studies or tasks as requested by the  
23 governor, the attorney general, the legislature or the chief justice, as  
24 deemed appropriate or feasible by the council;

25 (4) oversee development and management of a criminal justice da-  
26 tabase. All criminal justice agencies as defined in subsection (c) of K.S.A.  
27 22-4701 and amendments thereto and the juvenile justice authority shall  
28 provide any data or information, including juvenile offender information  
29 which is requested by the council, in a form and manner established by  
30 the council, in order to facilitate the development and management of  
31 the criminal justice council database;

32 (5) *oversee the development, implementation and management of a*  
33 *uniform traffic citation for use by all Kansas law enforcement agencies to*  
34 *collect data on traffic and pedestrian stops. The collection of data shall*  
35 *include information necessary to conduct analysis of traffic and pedestrian*  
36 *stops with regard to race, gender and ethnicity of drivers and pedestrians.*  
37 *The uniform traffic citation shall be available for use by law enforcement*  
38 *agencies not later than January 1, 2011.*

39 ~~(5)~~ (6) develop and oversee reporting of all criminal justice federal  
40 funding available to the state or local units of government including as-  
41 suming the designation and functions of administering the United States  
42 bureau of justice assistance grants;

43 ~~(6)~~ (7) form such task groups as necessary and appoint individuals

1 who appropriately represent law enforcement, the judiciary, legal profes-  
2 sion, state, local, or federal government, the public, or other professions  
3 or groups as determined by the council, to represent the various aspects  
4 of the issue being analyzed or studied, when analyzing criminal justice  
5 issues and performing criminal justice studies. Members of the legislature  
6 may be appointed ex officio members to such task groups. A member of  
7 the council shall serve as the chairperson of each task group appointed  
8 by the council. The council may appoint other members of the council  
9 to any task group formed by the council;

10 ~~(7)~~ (8) review reports submitted by each task group named by the  
11 council and shall submit the report with the council's recommendations  
12 pertaining thereto to the governor, the attorney general, the chief justice  
13 of the supreme court, the chief clerk of the house of representatives and  
14 the secretary of the senate; and

15 ~~(8)~~ (9) (A) establish the sex offender policy board to consult and ad-  
16 vise the council concerning issues and policies pertaining to the treat-  
17 ment, sentencing, rehabilitation, reintegration and supervision of sex  
18 offenders.

19 (B) The sex offender policy board shall consist of the secretary of  
20 corrections, the commissioner of juvenile justice, the secretary of social  
21 and rehabilitation services, the director of the Kansas bureau of investi-  
22 gation and the chief justice of the supreme court or the chief justice's  
23 designee and two persons appointed by the criminal justice coordinating  
24 council. Of the persons appointed by the criminal justice coordinating  
25 council, one shall be a mental health service provider and the other shall  
26 be engaged in the provision of services involving child welfare or crime  
27 victims.

28 (C) Each member of the board shall receive compensation, subsis-  
29 tence allowances, mileage and other expenses as provided for in K.S.A.  
30 75-3223, and amendments thereto, except that the public members of  
31 the board shall receive compensation in the amount provided for legis-  
32 lators pursuant to K.S.A. 75-3212, and amendments thereto, for each day  
33 or part thereof actually spent on board activities. No per diem compen-  
34 sation shall be paid under this subsection to salaried state, county or city  
35 officers or employees.

36 (D) The sex offender policy board shall elect a chairperson from its  
37 membership and shall meet upon the call of its chairperson as necessary  
38 to carry out its duties.

39 (E) Each appointed member of the sex offender policy board shall  
40 be appointed for a term of two years and shall continue to serve during  
41 that time as long as the member occupies the position which made the  
42 member eligible for the appointment. Each member shall continue in  
43 office until a successor is appointed and qualifies. Members shall be eli-



1 gible for reappointment, and appointment may be made to fill an unex-  
2 pired term.

3 (F) The board shall submit its reports to the criminal justice coordi-  
4 nating council and to the governor, the attorney general, the chief justice  
5 of the supreme court, the chief clerk of the house of representatives and  
6 the secretary of the senate.

7 (i) The board shall submit a report regarding public notification per-  
8 taining to sex offenders, restrictions on the residence of released sex of-  
9 fenders, utilization of electronic monitoring, and the management of ju-  
10 venile sex offenders by the first day of the 2007 legislative session.

11 (ii) The board shall submit a report regarding treatment and super-  
12 vision standards for sex offenders, suitability of lifetime release supervi-  
13 sion and safety education and prevention strategies for the public by the  
14 first day of the 2008 legislative session.

15 (iii) The board shall submit reports regarding any other studies, issues  
16 or policy recommendations as completed.

17 (G) The sex offender policy board established pursuant to subsection  
18 (e)(8) of this section shall expire on June 30, 2008.

19 Sec. 7. K.S.A. 22-4606, 22-4607, 22-4609, 22-4610 and 22-4611 and  
20 K.S.A. 2007 Supp. 74-9501 are hereby repealed.

21 Sec. 8. This act shall take effect and be in force from and after its  
22 publication in the statute book.

## 74-9501

### Chapter 74.--STATE BOARDS, COMMISSIONS AND AUTHORITIES Article 95.--KANSAS CRIMINAL JUSTICE COORDINATING COUNCIL

**74-9501. Kansas criminal justice coordinating council; membership; powers and duties; local government advisory group; task forces; sex offender policy board.** (a) There is hereby established the Kansas criminal justice coordinating council.

(b) The council shall consist of the governor or designee, the chief justice of the supreme court or designee, the attorney general or designee, the secretary of corrections, the superintendent of the highway patrol, the commissioner of juvenile justice and the director of the Kansas bureau of investigation.

(c) The governor shall designate staff to the Kansas criminal justice coordinating council. The staff shall attend all meetings of the council, be responsible for keeping a record of council meetings, prepare reports of the council and perform such other duties as directed by the council.

(d) The council shall elect a chairperson and vice-chairperson from among the members of the council.

(e) The council shall:

(1) Appoint a standing local government advisory group to consult and advise the council concerning local government criminal justice issues and the impact of state criminal justice policy and decisions on local units of government. The advisory group shall consist of a sheriff, chief of police, county or district attorney, a member of a city governing body and a county commissioner. Appointees to such advisory group shall serve without compensation or reimbursement for travel and subsistence or any other expenses;

(2) define and analyze issues and processes in the criminal justice system, identify alternative solutions and make recommendations for improvements;

(3) perform such criminal justice studies or tasks as requested by the governor, the attorney general, the legislature or the chief justice, as deemed appropriate or feasible by the council;

(4) oversee development and management of a criminal justice database including assuming the designation and functions of the state statistical analysis center currently assigned to the Kansas bureau of investigation pursuant to K.S.A. 75-712a and amendments thereto. All criminal justice agencies as defined in subsection (c) of K.S.A. 22-4701 and amendments thereto and the juvenile justice authority shall provide any data or information, including juvenile offender information which is requested by the council, in a form and manner established by the council, in order to facilitate the development and management of the criminal justice council database;

(5) ***oversee the development, implementation and management of a uniform traffic citation for use by all Kansas law enforcement agencies to collect data on traffic and pedestrian stops. The collection of data shall include information necessary to conduct analysis of traffic and pedestrian stops with regard to race, gender and ethnicity of drivers and pedestrians. The citation shall be available for use by law enforcement agencies by January 1, 2011.***

(6) develop and oversee reporting of all criminal justice federal funding available to the state or local units of government including assuming the designation and functions of administering the United States bureau of justice assistance grants;

(6) form such task groups as necessary and appoint individuals who appropriately represent law enforcement, the judiciary, legal profession, state, local, or federal government, the public, or other professions or groups as determined by the council, to represent the various aspects of the issue being analyzed or studied, when analyzing criminal justice issues and performing criminal justice studies. Members of the legislature may be appointed ex officio members to such task groups. A member of the council shall serve as the chairperson of each task group appointed by the council. The council may appoint other members of the council to any task group formed by the council;

(7) review reports submitted by each task group named by the council and shall submit the report with the council's recommendations pertaining thereto to the governor, the attorney general, the chief justice of the supreme court, the chief clerk of the house of representatives and the secretary of the senate; and

(8) (A) establish the sex offender policy board to consult and advise the council concerning issues and policies pertaining to the treatment, sentencing, rehabilitation, reintegration and supervision of sex offenders.

(B) The sex offender policy board shall consist of the secretary of corrections, the commissioner of juvenile justice, the secretary of social and rehabilitation services, the director of the Kansas bureau of investigation and the chief justice of the supreme court or the chief justice's designee and two persons appointed by the criminal justice coordinating council. Of the persons appointed by the criminal justice coordinating council, one shall be a mental health service provider and the other shall be engaged in the provision of services involving child welfare or crime victims.

(C) Each member of the board shall receive compensation, subsistence allowances, mileage and other expenses as provided for in K.S.A. 75-3223, and amendments thereto, except that the public members of the board shall receive compensation in the amount provided for legislators pursuant to K.S.A. 75-3212, and amendments thereto, for each day or part thereof actually spent on board activities. No per diem compensation shall be paid under this subsection to salaried state, county or city officers or employees.

(D) The sex offender policy board shall elect a chairperson from its membership and shall meet upon the call of its chairperson as necessary to carry out its duties.

(E) Each appointed member of the sex offender policy board shall be appointed for a term of two years and shall continue to serve during that time as long as the member occupies the position which made the member eligible for the appointment. Each member shall continue in office until a successor is appointed and qualifies. Members shall be eligible for reappointment, and appointment may be made to fill an unexpired term.

(F) The board shall submit its reports to the criminal justice coordinating council and to the governor, the attorney general, the chief justice of the supreme court, the chief clerk of the house of representatives and the secretary of the senate.

(i) The board shall submit a report regarding public notification pertaining to sex offenders, restrictions on the residence of released sex offenders, utilization of electronic monitoring, and the management of juvenile sex offenders by the first day of the 2007 legislative session.

(ii) The board shall submit a report regarding treatment and supervision standards for sex offenders, suitability of lifetime release supervision and safety education and prevention strategies for the public by the first day of the 2008 legislative session.

(iii) The board shall submit reports regarding any other studies, issues or policy recommendations as completed.

(G) The sex offender policy board established pursuant to subsection (e)(8) of this section shall expire on June 30, 2008.

**History:** L. 1994, ch. 315, § 1; L. 1996, ch. 229, § 127; L. 1997, ch. 156, § 87; L. 2004, ch. 160, § 6; L. 2006, ch. 214, § 14; June 1.

**State of Kansas**  
**Senate Committee on Federal and State Affairs**  
**Testimony regarding SB610**  
**Steve A. Cisneros,**  
**Executive Director, Kansas Hispanic and Latino Affairs Commission**  
**Administrator, Governor's Task Force on Racial Profiling**  
**March 6, 2008**

Chairman Brungardt, members of the committee,

The Kansas Hispanic and Latino American Affairs Commission, (KHLAAC) is made up of seven commissioners statewide, who work together to address the concerns of the Hispanic community in the State of Kansas. Our Commissioners provide a vital link for the community to address concerns within state government. Over the past year I worked closely with the Governor's Task Force on Racial Profiling on behalf of the KHLAAC to implement the Kansas statutes prohibiting racial profiling, KSA 22-4606 through 22-4611.

The Governor's Task Force provides opportunities for community members and law enforcement leaders to work in partnership to address this issue. The membership of the Task Force is balanced, including 5 community or civil rights organization representatives, 5 members who represent law enforcement, 2 members who represent the state courts, one member representing the attorney general, and one person representing a juvenile service agency. There is currently one vacant position. The Task Force is diverse by race, ethnicity, gender, and geographical location. One similarity among this group of Kansans is that they are passionate about preventing the practice of racial profiling.

The Task Force recommendations represent their collective research and discussion with community members and law enforcement throughout our state. The recommendations are crafted to include a proud base approach to a complicated and complex issue. SB610 clarifies the definition of racial profiling and gives law enforcement greater due process through the Kansas Commission of Peace Officers and Standards and Training.

Eliminating racial profiling is about increasing community trust. The Task Force provides the leadership to facilitate training to assist in creating a trust between the community and law enforcement and its leadership. The Kansas Hispanic and Latino Affairs Commission ask that you amend SB610, as recommended by the Governor's Task Force on Racial Profiling, so that we may continue to work on this very important issue.



STATE OF KANSAS  
OFFICE OF THE ATTORNEY GENERAL

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**Senate Federal & State Affairs Committee**

SB 610

Deputy Solicitor General Jared S. Maag

March 6, 2008

Mr. Chairman and members of the committee, I want to thank you for allowing me to deliver testimony on behalf of the Attorney General on this very important issue.

SB 610 demonstrates concerns toward the discipline of officers who engage in racial profiling. The Office of the Attorney General, without reservation, supports the general effort to establish a process to address this issue. However, as currently written, New Section 5(d) of SB 610 which amends K.S.A. 22-4611 is problematic because it mandates that the Office of the Attorney General make a final administrative determination of a racial profiling complaint, following review by both the Kansas Human Rights Commission (KHRC) and the Kansas Commission on Peace Officer Standards and Training (KSCPOST).

Two immediate issues arise with this language. First, the Office of the Attorney General has never historically acted as an administrative agency reviewing complaints and making final determinations. KSCPOST was created solely to perform this administrative function, and arguably the process as set out in SB 610 should begin and end there. SB 610 adds a layer into the process which involves the Attorney General which is at odds with the administrative procedure process. Relatedly, the language in SB 610, while not directly stated, implies the right of the officer to appeal any administrative decision made by the Attorney General. In essence, under SB 610, an officer would have the right to appeal the decision by the Attorney General in accordance with K.S.A. 77-607. Thus, the language appears to give an officer the right to appeal a determination by the Attorney General solely on the grounds that an investigation is necessary.

Secondly, the Office of the Attorney General regularly has Assistant Attorneys General sit as legal advisors during hearings before KSCPOST. To that end, New Section 5(d) poses a potential conflict with that process.

Sen Fed & State

Attachment 10  
3-06-08

Page 2

Given that KSCPOST is fully equipped to handle these types of complaints, and operates under the Administrative Procedure Act, it is recommended that New Section 5(d) simply be stripped from the legislation.

Respectfully submitted

OFFICE OF THE ATTORNEY GENERAL  
STEPHEN N. SIX



Jared S. Maag  
Deputy Solicitor General

**KANSAS SENATE FEDERAL & STATE AFFAIRS COMMITTEE**

**TESTIMONY RE: SB610**

**presented by**

**Dr. Walt Chappell, Chairman**

**Wichita Police Department Racial Profiling Citizens Advisory Board**

I am in support of SB610 with amendments. This bill will help end racial profiling in Kansas and hold law enforcement officers, their supervisors and agencies accountable if key changes are made in the Sections which I will outline in my testimony.

The fact is, that little has changed since SB77 was enacted into law in 2005. Racially motivated stops by law enforcement officers still impact the lives of over 50,000 Blacks and Hispanics in Kansas every year. The disproportionate fines due to racial profiling are estimated at \$15 million dollars annually resulting from traffic stops which would seldom be made on White drivers.

The State Legislature funded a racial profiling study by the Police Foundation in 2003. It found that both Black and Hispanic motorists and pedestrians are nearly twice as likely to be stopped as White people. Two studies of every stop made during a 6 month period in Wichita, Kansas in 2001 and 2004 show that Blacks are 2xs more likely to be stopped. Furthermore, Blacks are 3xs more likely to be searched, arrested or have excessive force used against them after these stops. In numerous cases, people-of-color have been beaten so bad at these stops or after being arrested, that they have been blinded, have broken bones, loss of hearing or end up in intensive care unable to eat or breath. Some have died as a result of their injuries.

Yet, even with all of the evidence from stop studies, hospital reports, jail and prison records and the passage of SB77 in 2005, most law enforcement agencies in Kansas still deny that they selectively stop Blacks and Hispanics. Not one complaint has reached the point that any officer or law enforcement agency has been disciplined or a court case concluded. The three complaints which have been sustained by the KHRC in the past 3 years are all being fought by the law enforcement agencies where the officers work.

Denial is no excuse!! Racial profiling is a crime. It impacts the lives of people-of-color for years after the stop. It must end!!

SB610 is an effort to put back into the bill key sections which were taken out to appease law enforcement in 2005. Even though states all around Kansas have been doing uniform data collection for years, the Governor's Racial Profiling Task Force (GRPTF) has failed miserably to implement any of the provisions of K.S.A. 22-4606-11. Now they want to stall the data collection until 2011 and extend their existence indefinitely.



The fact is, that the GRPTF was to have data collection designed by November 1, 2005 and ready to implement in 2006. (See the attached K.S.A. 22-4607 as originally passed.) That was all the time the Legislature gave to do their work. Then, the GRPTF came back in 2006 to extend their existence until 2012. Instead the Legislature voted to end their service in July 1, 2009. Now, in SB610, they are trying to extend their existence indefinitely.

This GRPTF is made up of nearly all law enforcement officers plus State agencies which deal with law enforcement. They meet in Topeka during the week—at the taxpayers' expense—during work time. So, anyone from the Community who was selected to be on this GRPTF has to take time off work—at no pay—to attend. Furthermore, the meetings are not announced to the public and most of the time this group does not even have a quorum to vote or make decisions.

The very existence of the GRPTF was an after thought during the debate on SB77 in 2005. But, in reality, this group has accomplished nothing and the data collection activities they were supposed to complete in 2005 are being implemented already by the Kansas Criminal Justice Coordinating Council. This interagency Coordinating Council is charged with developing and implementing a uniform, statewide citation. It will be ready for use in 2009. SB610 clearly makes this clarification on page 6, amending K.S.A. 74-9501(e)(5) starting on line 32. So, the GRPTF has no function or reason to continue wasting taxpayer money.

Instead, the NAACP and the WPD-Racial Profiling Advisory Board have voted to endorse amendments to replace K.S.A. 22-4607 and remove the GRPTF. Data collection was already being done by Texas, Illinois, Missouri, and Colorado prior to 2005. Thirty seven states are voluntarily analyzing stop data to identify patterns of racial profiling so this egregious behavior can finally end. Yet even with the passage of SB77, the data collection in Kansas has not even started.

The substitute language we offer today, specifies the data to be collected on each uniform citizen contact form. The only reason for spending the money and taking the extra time to collect any data, is to use it to make informed decisions. So, the law needs to be clear that the data on these stop forms shall be transferred to the State wide central database within 15 days after each stop is made. Then, quarterly analyses and reports need to be completed and shared with the public and law enforcement agencies so that timely action can be taken to do more training, change policies or implement discipline recommended by the Attorney General.

Without accountability and data to make sound judgments, racial profiling will not end. So, not only is it important to collect and report the data, but it is also necessary to define what the crime is in K.S.A. 22-4608. In Oklahoma, for example, it is a felony for any law enforcement officer found guilty of racial profiling. Currently, the Kansas statute just says that “It shall be unlawful for any law enforcement officer or any law enforcement agency to engage in racial profiling.”

The original wording of SB77 included a subsection (b) which stated that "A violation of this section is a class A misdemeanor." This wording needs to be reinserted into the statute so that Courts and juries know what the crime is that has been committed and decide on appropriate punishment. (See the attached wording in the handouts attached to this testimony.)

Finally, to clean up the language in SB610, it is important to make the following changes.

1. On page 1, line 31, add the words "or stop a specific suspect or witness" after the word "apprehend".
2. Remove all references to the 15 member task force on racial profiling on page 2 and replace K.S.A. 22-4607 with the language proposed earlier on data collection. At the very least, subsection (h) needs to remain so this Task Force "expires on July 1, 2009".
3. On page 3, line 10, insert the word "a" instead of "sole" factor to be consistent with line 25 on page 1 under K.S.A. 22-4606 definitions. An attorney at KHRC has recommended this important change in the definition.
4. The proposed language for K.S.A. 22-4611 on page 5, starting on line 21, subsection (d) must be deleted. As written, it gives KSCPOST veto power over the KHRC findings. Law enforcement should not be allowed to over ride a probable cause ruling by KHRC. That is for a court or jury to do. This is a major part of the problem already. Hundreds of racial profiling complaints have been filed with local agencies but seldom if any are ever found for the person profiled. The main purpose of KSCPOST being added to the statute is to decertify an officer if that is the discipline necessary to get this person with his or her racial biases out of law enforcement.
5. On page 6, line 38 of amendments to K.S.A. 74-9501, the date needs to be changed to January 1, 2009. We have been assured by the Criminal Justice Coordinating Council that this is a realistic time to start implementing a uniform citizen contact form. The State wide implementation of this data collection system is scheduled to be fully completed by January 1, 2010.

Thank you for allowing me to share these specific amendments. This is a very important bill which needs to be passed—as amended—this legislative session.

I will be glad to stand for questions from the Committee.

Respectfully submitted,



Walt Chappell, Ph.D., Chairman

WPD-Racial Profiling

Citizens Advisory Board

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[Home](#) > [Statutes](#) > Statute

[Previous](#)

[Next](#)

### 22-4607

#### Chapter 22.--CRIMINAL PROCEDURE KANSAS CODE OF CRIMINAL PROCEDURE Article 46.--GENERAL PROVISIONS

**22-4607. Same; uniform collection of data; task force to design method; report and recommendations.** 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.

**History:** L. 2005, ch. 159, § 2; July 1.

## SUBSTITUTE LANGUAGE FOR SB610

### **22-4607. Uniform Data Collection**

(a) Starting January 1, 2009, an optically scanable "Uniform Citizen Contact Data Form" shall be completed and ready for use by all Kansas law enforcement officers to collect data on each traffic or pedestrian stop. This "Uniform Citizen Contact Data Form" shall replace the various traffic tickets used by the law enforcement agencies throughout the State of Kansas. It is to be designed by the Kansas Criminal Justice Coordinating Council in consultation with representatives from the police officers, sheriffs, Kansas Highway Patrol, National Association for the Advancement of Colored Persons, American Civil Liberties Union, Kansas Human Rights Commission and Kansas civil rights advocates.

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

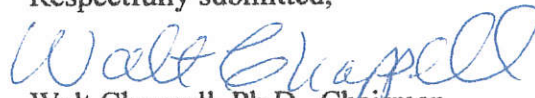
- (1) Officer identification number;
- (2) law enforcement agency code;
- (3) month, day, and year of stop;
- (4) hour and minute of stop;
- (5) who was stopped, a motorist or pedestrian;
- (6) gender of person stopped, male or female;
- (7) specific age of person stopped;
- (8) race of person stopped, African American, Hispanic, Native American, Caucasian, Asian, Arabic or other as stated by person stopped or by officer observation;
- (9) reason for stop: Violation of the criminal code; violation of a county resolution or city ordinance; calls for service; suspect or vehicle description or pre-existing knowledge or information, such as a warrant; citizens assist or welfare; or traffic violation such as a moving violation, equipment failure or license plate violation. If a moving violation, the officer shall indicate the specific violation;
- (10) result of stop: Citation, warning or arrest;
- (11) if person was arrested, what crime or violation was alleged;
- (12) number of passengers;
- (13) what was the nature of the search done on the pedestrian, driver or passenger, or of the vehicle or property or no search was conducted;
- (14) search authority: By consent; tow inventory; odor of drugs/alcohol; plain view contraband; incidental to arrest; dog alert; search warrant; or other;
- (15) was contraband discovered? If yes, was it illegal drugs; drug paraphernalia; weapons; alcohol; currency or stolen property; or other;
- (16) stop location in agency boundaries, using the specific address of each stop including street address or highway mile marker, city and county;
- (17) duration of stop listing the number of minutes; <5 min or 5-9 min or 20-29 min or 30-39 min or 40-49 min or 50-59 min or >60 min
- (18) vehicle license plate number; and
- (19) signature of law enforcement officer making the stop.

- (c) Such "Uniform Citizen Contact Data Form" shall be fully implemented and used by all Kansas law enforcement agencies by January 1, 2010.
- (d) A copy of this completed form shall be given by the law enforcement officer to the motorist or pedestrian who was stopped.
- (e) Within 15 days after each stop, such forms will be mailed, faxed, optically scanned or sent electronically by each Kansas law enforcement agency to the office of the Department of Motor Vehicles where these data will be compiled into a statewide citizen contact database.
- (f) The Kansas attorney general shall monthly compile data received from law enforcement agencies and make such data available to the public and all law enforcement agencies.
- (g) The data will be analyzed by statistical experts for patterns of racial profiling at least once every three months. The results of each three-month analysis shall be posted on the official website of the attorney general.
- (h) Law enforcement agencies or individual officers who need to correct their racially biased behavior will be contacted by the attorney general's office within two weeks after a pattern of racial discrimination is identified as one standard deviation above the mean for all races of motorists and pedestrians stopped in a five block radius in a town or city or a 10 mile section of road or highway.
- (i) An annual report summarizing the types of citizen contacts and which law enforcement agencies need to end their racially biased policing shall be prepared by the Attorney General and submitted to the legislature, governor and Kansas law enforcement agencies on or before January 31 of each year. Each annual report shall be posted on the official website of the attorney general.

**22-4608. Unlawful for law enforcement to engage in.**

- (a) It shall be unlawful for any law enforcement officer or any law enforcement agency to engage in racial profiling.
- (b) A violation of this section is a class A misdemeanor.
- (c) This section shall be a part of and supplemental to the Kansas criminal code.

Respectfully submitted,



Walt Chappell, Ph.D., Chairman

WPD-Racial Profiling

Citizens Advisory Board

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March 4, 2008

**REMARKS OF SEAN P. McCAULEY, ATTORNEY  
FOR KANSAS STATE LODGE OF THE FRATERNAL ORDER OF POLICE**

**TO: THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS**

**CHAIRMAN BRUNGARDT AND MEMBERS OF THE COMMITTEE:**

My name is Sean McCauley and I am an attorney for the Kansas State Lodge of the Fraternal Order of Police. My law firm primarily represents police officers in all matters of labor relations and also serves as counsel to a majority of local FOP lodges throughout the state. I am here today to address the proposed changes to the racial profiling legislation enacted two short years ago.

Allow me to begin by saying that my client, the FOP and its members, are adamantly opposed to any form of racial profiling. Race, as the sole factor in determining whether to stop or investigate a pedestrian or vehicle, is abhorrent to every officer's sense of justice, and will never be condoned by the FOP as an organization. With that said, the FOP has a number of concerns with regard to the changes being considered in SB 610 and its possible effects on FOP members and on law enforcement in general. I will attempt to address the proposed changes in the order in which they appear in Senate Bill 610.

1. Changes to KSA 22-4606(d), or the definition of racial profiling.

As this committee is no doubt aware, KSA 22-4606(d), as it currently reads, defines

racial profiling 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 deciding upon the scope and substance of law enforcement activity following the initial routine investigatory activity. Under the proposed changes found in SB 610, the phrase “as the sole factor” would be changed to “a factor.” From the FOP’s perspective, this change would create a number of practical and legal problems for the officers working in the field.

First, it should be noted that the purpose of the racial profiling legislation is to prohibit individuals from being stopped solely because of their race. To effectuate the purpose of this legislation, the Legislature intentionally limited the definition of racial profiling to stops or investigatory activities based solely on race or ethnicity. Broadening the definition of racial profiling would not effectuate the intent and purpose of the legislation.

Furthermore, the change from “a” to “sole factor” would have a detrimental effect on officers’ abilities to make appropriate probable cause determinations in the field. Take for example a situation where officers are briefed at roll call that homicide detectives are searching for a black male, approximately 25 years of age, driving a maroon Ford Taurus who is a person on interest in a homicide committed the previous day. The officers, while on routine patrol will be on the look out for a vehicle and person fitting that description. With this information, officers would be permitted to make investigatory stops of vehicles and persons fitting the suspect’s description. Under the current definition of racial profiling, officers would not be guilty of impermissible racial profiling because race was not the sole factor initiating these investigatory stops. However, under the proposed changes found in Senate Bill 610, these officers would be guilty of racial profiling because a factor that led the

officers to stop the vehicle was the race of the individual even though he fit the description of a homicide suspect. Certainly, no one would question the merits of an officer's ability to perform these kinds of investigatory stops when the sole incentive is to take a murder suspect into custody. But, if these changes found in Senate Bill 610 are adopted, officers may hesitate to perform such investigatory stops for fear of being subjected to a possible racial profiling complaint, which could potentially lead to the officer being sued. The chilling and rippling effect of the proposed changes sought in Senate Bill 610 would have a significant and detrimental impact on law enforcement's investigatory powers. That certainly was not the purpose of this legislation when it was enacted, and, therefore, the change to the overly-broad definition of racial profiling should not be adopted.

2. References to disciplining of officers in KSA 22-4610(c)(5) and KSA 22-4611(c).

Other issues that have presented concerns for the FOP are the proposed changes regarding the disciplining of officers. The majority of police departments in Kansas are parties to collective bargaining agreements with local FOP lodges. As mentioned, FOP Lodge No. 4 has been a party to a series of Memoranda of Understanding (MOU) or collective bargaining agreements since the late 1970's. Under most of those collective bargaining agreements, the authority to discipline officers lies exclusively with the Chief of Police. Police Chiefs take into account a number of factors and criteria before issuing discipline. Also, officers covered by the collective bargaining agreements are "just cause" employees, giving the officers an established property right in their employment. All of these issues and many more are taken into account before an officer is disciplined. However, the proposed changes found in Senate Bill 610 effectively usurp the authority of the Chiefs of Police, and eliminate any semblance of due process rights for officers under these collective bargaining agreements.



Under the proposed changes found in Senate Bill 610, KSCPOST would have the exclusive authority to make a determination as to the level of discipline issued after a complaint is sustained without having to take into account such factors as the officer's record, his length of service, the amount of discipline other officers have received for similar offenses and other disciplinary considerations that Chiefs must take into account when operating under a "just cause" provision of a collective bargaining agreement. Moreover, officers would have no recourse to challenge disciplinary actions issued by KSCPOST. If a Police Chief had issued the same discipline, the officers would have the right to challenge that determination through the collective bargaining grievance procedure. Almost every collective bargaining agreement provides some procedure to challenge disciplinary determinations through an unbiased hearing process. For example, the MOU between FOP No. 4 and the Unified Government of Wyandotte County/Kansas City, Kansas culminates in binding arbitration, a fair forum allowing the officer certain fundamental rights in challenging disciplinary action. In contrast, Senate Bill 610 usurps the Chief's authority to issue discipline, and allows an outside agency to make such determinations, while providing no due process rights for the individual officers. The FOP certainly has the legal obligation to its members to ensure that their rights are protected. FOP Lodge No. 4 has negotiated in good faith for over almost three decades to provide such binding contractual rights to its members. If Senate Bill 610 is enacted, those rights would be effectively eliminated.

Again, the purpose of this legislation was to prevent racial profiling, but the changes found in Senate Bill 610, would trample upon officers rights and give them no legal recourse in challenging what they may feel are unjustified determinations. For this reason, the FOP opposes the changes sought in SB 610.

### **3. Complaint Review Process**

The final issue that concerns the FOP is the review process found in Senate Bill 610. Under the current language of K.S.A. 22-4611, the Kansas Human Rights Commission (KHRC) has the sole jurisdiction to investigate complaints of racial profiling. Under the newly proposed changes found in Senate Bill 610, the complaint of racial profiling would first be investigated by KHRC, and those complaints found to have merit would then be forwarded to KSCPOST for review and possible disciplinary dispositions. If, however, KSCPOST finds that the KHRC probable cause finding is in error, the KSCPOST has no authority to issue a determination that the complaint was unfounded or lacked evidentiary support. Instead, KSCPOST is required to forward the complaint to the Attorney General's office for a reinvestigation.

The entire system, as outlined in Senate Bill 610, again lacks any level of fundamental due process for the accused officer and does not provide even the right for the officer to engage in the process once the KHRC investigation is completed. It leaves it to the sole discretion of KSCPOST and/or the Attorney General's office to possibly contact the officers for additional information or statements. It also forces the Attorney General's Office to second guess the determinations of KSCPOST when a complaint is determined to be without merit. No such secondary reviews are provided when the complaint is sustained by KSCPOST. It seems that the process, as provided in Senate Bill 610, calls for a procedure weighed in favor of sustaining complaints, rather than an objective system to investigate complaints free of political or outside pressure. For this reason, the FOP opposes any changes to the investigation procedures as outlined in Senate Bill 610.

**The FOP thanks the Committee for its time in reviewing this matter and hopes that the information provided will prove beneficial in their consideration of Senate Bill 610. The FOP encourages this Committee to take no action on Senate Bill 610 and urges the Committee not to adopt any of the proposed suggested changes in Senate Bill 610. I would be happy to answer any further questions or provide any additional information to the Committee as it deems necessary.**

**Thank you again for your time.**

**Respectfully submitted,**

**Sean P. McCauley**

**Attorney for Kansas State Lodge of the FOP**

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# Kansas Peace Officers' Association

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## TESTIMONY TO THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE IN OPPOSITION TO SB 610

Presented by Ed Klumpp

March 6, 2008

The Kansas Peace Officers Association wants to be clear that racial profiling is not an acceptable police practice. We also recognize that the response to racial profiling concerns must be balanced in a manner to allow law enforcement to take appropriate actions to prevent, detect, and investigate criminal activity. Law enforcement must also be able to resolve the multitude of non-criminal complaints we are called upon to resolve in our communities.

The provisions of SB610 contain provisions that we support, provisions that we can accept but not necessarily support, and provisions that will be detrimental to the ability of law enforcement to prevent, detect and investigate criminal activity and to resolve many non-criminal complaints. In short, some of the provisions will be detrimental to public safety.

It is the following provisions that we see as problematic that we will address in our testimony. You will find attached to our testimony a more detailed discussion of the issues found in SB610.

- The removal of "sole factor" from the definition on page 1, line 25.
- The change to plaintiff only language regarding the prevailing party collecting attorney fees and costs. On page 5, lines 36-38.
- The inclusion of an officer's supervisors in the liability of an officer's action without a finding of wrong doing or contributing conduct on the part of the supervisors. On page 5, lines 32-36.
- Inclusion of pedestrian stops in the statute, especially in data collection. Page 1, line 41, page 2, lines 16, page 3, line 14, page 6, lines 34, 35, and 36.
- The implementation dates for data collection found on page 2, lines 19-20 are unrealistic.
- The continuation of the Kansas Human Rights Commission as the investigative agency and the convoluted three stage process found on page 5, lines 9-26. It is our opinion the investigation should be completed by the Kansas Commission on Police Officer Standards and Training.

Sen Fed & State

Attachment 13

3-06-08

*In Unity There Is Strength*

There are several things in the bill we agree with, including:

- Proposed changes to the definition of “Routine investigatory activities” are acceptable. Page 1, lines 34-39.
- We don’t see any particular problem with adding the definition of “profiling on the bases of ethnicity.” Page 1, line 42 – Page 2, line 3.
- The task force to make recommendations in regards to training. Page 2, line 22.
- The addition to the task force of the executive director of the Kansas advisory commission on African American Affairs and the executive director of the Hispanic/Latino American affairs committee as ex-officio members. Page 2 lines 37-40.
- The elimination of the sunset for the Racial Profiling Task Force. Page 3, line 7.
- The change in reporting parameters regarding an annual report from law enforcement agencies to the Attorney General. Page 4, lines 16-33.

Additional items we recommend amending include:

- We oppose setting any timeline other than a deadline for the task force to report back to the legislature on a proposed data collection model. A deadline for actual implementation is impractical until we know what is to be collected, how it is to be analyzed, how it is to be used, the costs and how it is to be paid for, and the time necessary to develop any associated processes including legislative changes to the uniform notice to appear and software databases. Page 2, lines 13-20.
- Remove the 2 hours training mandate. A specific number of training hours by topic should not be mandated every year. Mandating training on the topic every year is appropriate. However, specifying set hours is a cookie cutter approach that often does not fit the small agency and large agency appropriately nor does it address changing needs over time. Page 3, lines 27-29.
- Delete the expansion of mandated advisory boards. The local governing body is in the best position to determine if this is a viable option. This should be a local option, not a state mandate, especially in small cities and counties. Page 3, lines 35-37.

See the attachment for a more thorough discussion on the above topics.

The Kansas Peace Officers Association requests the Committee take the time to be sure the final bill language is well thought out with a clear balance between the need to address any actual racial profiling concerns with the law enforcement functionality necessary to provide public safety by the prevention, deterrence and investigation of crime; the investigation of suspected violations of the law; the resolution to non-criminal issues; and the daily community contacts necessary to enhance the law enforcement-community trust.



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### **Definition of Racial Profiling**

The first and most problematic is the change to the definition of racial profiling. The problem is that removing the “sole factor” language (found on page 1, line 25) will make many law enforcement activities authorized under 22-2402 open to racial profiling accusations when racial profiling has not occurred. We believe this will result in hesitancy of many officers to investigate suspicious activities since it won’t matter that the person stopped committed a crime. The accusation can just be that the officer took the action because of the person’s race or other protected factor and would have ignored the violation if committed by someone else. This kind of accusation can only be determined by looking into the mind of the officer at the time of the action. This kind of complaint simply cannot be resolved and will only serve to further divide the community and law enforcement. We have heard the argument that the statement in the definition about looking for “specific suspects” negates the situations we are concerned about. However, the majority of police-citizen contact is not based on the search for a “specific suspect.” That only addresses the law enforcement reactive role after the crime has occurred and been reported to us. Many of our contacts relating to criminal or suspicious activity are done under the authority of KSA 22-2402, which allows us to stop a person who an officer reasonably believes is committing, has committed or is about to commit a crime. But the probably the majority of our contacts are related to traffic stops that do not relate to a “crime” but to a traffic infraction. The “sole factor” clause allows law enforcement officers to conduct such legitimate activity. Without those words, any legitimate law enforcement activity other than the stopping of a “specific suspect” will be subject to complaint of racial profiling and requiring an investigation of the complaint.

Under the provisions of this section of SB610 a person who is stopped committing a serious traffic violation or even a serious criminal act will be able to claim they were the subject of racial profiling when the officer intervened in their unlawful conduct.

We support the Task Force recommendations in this area.

### **Change in language for Cause of Civil Action**

Another very problematic provision is the cause for civil action language found on page 5, lines 32-38. Under the proposed language, if a civil court jury finds an officer did employ racial profiling practices, all of that officer’s supervisors could also be held liable. Under this wording it does not require any finding those supervisors contributed to the profiling in any manner. It only requires that they supervised an officer who has been judged to have employed racial profiling. Additionally, it changes the current language which allows the prevailing party to recover attorney fees and court costs. Under the new provisions, only the plaintiff can recover such fees and costs. It removes absolutely any protection against frivolous lawsuits. This language will likely be interpreted that in no case can the defendant be awarded attorney fees, even if the court would find the case was totally baseless and frivolous.

This provision alone will make potentially good supervisors think twice before taking a promotion if they can be held liable for the actions of another person without any finding they contributed to the prohibited action. These civil actions and the entire racial profiling investigative process can result in further deterioration of the recruitment of quality officers, if the process is not addressed properly.

We support the Task Force recommendation to leave the current language for this topic.

### **Data Collection Issues**

The proposed changes in data collection also concern us. There are many challenges to developing a meaningful data collection format and system.

The most basic and the most challenging is determining what the collected data is compared to for an accurate evaluation of what it means. It clearly is not as simple as comparing it to the demographic

distribution of the community. Many things other than racial profiling can create disproportionality in citizen contacts.

Second is the problem of identifying the proper data to collect to be able to evaluate law enforcement practices without overburdening the officers with meaningless data collection points.

The third problem is how to collect the necessary data in a manner that balances the need for the data with the officer's time to record it and how to do it without unintended consequences.

The fourth problem is determining which law enforcement activities to collect data on, for example should it be collected on all law enforcement-citizen contacts or just on car stops. We believe there are two major areas in this regard.

We believe the data collection should focus on car stops initially. This will allow us to test the system and make sure the process is working appropriately. At that point a decision can be made on whether or not to expand it to pedestrian stops. And if that decision is made to include them a decision can be made on how to define which non-vehicle stops will require data collection.

The other area is the time it takes to collect the data. In FY2007, Kansas law enforcement issued about 700,000 traffic citations. There is no way to accurately state how many car stops were made where no traffic citations were issued. Very conservatively we can estimate there were over one million total car stops in the state. In reality we believe that number to be 3 or 4 times the number of citations issued. Even at the one million car stop assumption, if it takes one minute to complete the racial profiling data collection that is over 16,000 hours of law enforcement officers' time. That is the equivalent to over 8 full time positions. And that doesn't include any clerical support it will require. The dollar cost in officer's time easily exceeds \$300,000 and in reality is probably closer to \$1.5 million if the true number of car stops were known. And that cost doesn't even include the materials, data entry, software, and hardware necessary to collect the data and enter it into the system. If pedestrian stops are included those numbers will increase dramatically.

We must consider the balance between the problem and the costs. During the last two years the data shows that an average of less than 100 complaints a year were filed alleging racial profiling. The KHRC has found probable cause on only two cases in two years. And while we concur that even one true case of racial profiling is too many, we question the wisdom of spending enormous resources collecting data that won't definitively reveal if, when, and by whom racial profiling occurs.

The Task Force continues its work on determining how to proceed with data collection. We believe setting dates beyond a report back to the legislature by the Task Force is ill advised. It would certainly be reasonable to set a deadline for the Task Force to report on a plan including what data is to be collected and how that data will be used and analyzed. But the complexity of establishing the method of collecting the data determined to be necessary makes it impossible to project how long implementation will take, the best method of collection, as well as the cost and determining who will pay for it until we know what we data we will collect.

In all likelihood the data collection will require modifications to local software. Time must be provided for the local governments to budget for those expenses and to implement those changes prior to a mandated implementation date.

There are many potential pitfalls that can produce unintended consequences in the current and proposed statutes. For example, the use of the uniform traffic citation form to collect data can result in an increase in tickets issued, with fewer warnings, because officers will be mandated to use that form for the data

collection. The focus of traffic stops should be to improve driver obedience to the laws. A ticket is not always necessary to accomplish that change in behavior. The decision to ticket should never be made based on race, ethnicity, etc. nor should it be based on financial revenues or a requirement to collect data. We have already been given an indication that HRC investigators are more highly suspect of wrong doing if a citation is not issued in a stop, than a stop where a ticket is written. This seems to us to be backwards from what would be expected if an officer was basing car stops on a racial or ethnic bias.

We support the Task Force recommendations in this area, including the dates.

### **Annual Law Enforcement Reporting**

We concur with the changes in reporting proposed in SB610. The change to an August 1 reporting date will coincide with the state mandated training year which runs from July 1 to June 30. We recommend directing the Office of Attorney General be required to mail notice, including a report form, to each law enforcement agency of the state just prior to the end of each state fiscal year. A follow-up request should be mailed to any agency not reporting by the August 1 deadline. Current law does not direct the Office of Attorney General to do any more than collect the reports submitted, put them on the website, and make them available as a public document.

Last year there were several media stories indicating law enforcement was not complying with the statute in regards to reporting. The current statute had been interpreted to require reporting of any complaints received and does not require every agency to file a report if they received no complaints. In spite of that interpretation, the law enforcement associations worked diligently encouraging agencies to file a report even if they received no complaints. That effort resulted in many more agencies filing reports. It is very important to recognize that no agency was found to have received a racial profiling complaint that had not reported.

We believe law enforcement agencies can easily comply with the expanded reporting requirements and those reports should improve the public trust and understanding of law enforcement agencies in regards to racial profiling.

### **The Investigative Process**

We have found the investigations by the KHRC to be incomplete and not thorough. In some cases not all witnesses are interviewed. We have indications that investigators consider things such as whether a ticket was issued or not and whether a car stop was pre-emptive (which has been upheld by the Supreme Court and is a legal law enforcement investigative tool) in their view of whether probable cause of racial profiling exists. We are also told that the investigation is not reviewed by the Commission, but only has to have a single commissioner concur with the investigators conclusions of probable cause. That finding also does not provide for any due process for the officer. A probable cause finding by KHRC is viewed by many to be a finding that racial profiling occurred. This results in an expectation that the agency should terminate or otherwise discipline the officer on that basis alone. We have heard that opinion voiced by some of the people from Wichita when they tell us that no one has been disciplined even after they were found to have racially profiled. The fact is that under the process the only course for final determination is through a civil suit, which can only occur if the complainant chooses to pursue it. And, so far, no civil suit for racial profiling in Kansas has reached that final determination.

We propose the investigation should be done by the Kansas Commission on Police Officer Standards and Training. (KsCPOST) KsCPOST is authorized in KSA 74-5607 to subpoena persons for testimony, to take sworn statements, and obtain documents as needed in their investigations. They also have the authority to suspend or terminate the certification of law enforcement officers for certain violations. This obviously gives KsCPOST a investigative ability superior to that of the KHRC and the ability to take



action against an officer found to engage in racial profiling. The KsPOST process also allows the accused officer due process. This is also consistent with how other professions are held accountable in Kansas.

It is our opinion that the proposed process can result in three different investigations of the same incident with varying investigative tools available at each step. The initial investigation is the weakest of the three. These multiple investigations could take months to complete leaving the citizen and the officer in limbo for an unreasonable time. If a case occurs where racial profiling is found to occur, that officer could remain in their position for an extended period of time potentially still carrying out their misconduct on the public while the string of investigations grinds on.

KsCPOST investigations would be quicker, more thorough, and immediately in the hands of a group statutorily empowered to investigate and take action against an offending officer. We don't oppose that investigation then being shared with the Attorney General for review or even with the KHRC for review. But with a KsPOST investigation there shouldn't be a need for multiple investigations. If that investigation is shared with the KHRC it would not be inappropriate for the investigative file to be reviewed by the entire Commission for a determination of probable cause for their purposes. A review by the Attorney General or the County/District Attorney would assure a fair and thorough investigation has been completed and allow for a determination of any law violation. This is a process used by law enforcement for many complaints of a potential criminal nature and for cases of use of force.

### **Training Mandate**

We agree that annual training needs to be done. However, we believe there are concerns in setting the training hours by statute. Statutorily requiring the inclusion of the subject matter in training every year is not an issue. The problem with setting annual training hours starts with a cookie cutter approach. The needs are different in every training area from agency to agency. Two hours may make sense in Wichita, Kansas City, or Topeka. It may not make sense for Auburn or Sedan. As we progress in officer development with regards to the racial profiling issue, we will hopefully reach a point where the proper law enforcement awareness and abilities no longer warrant a two hour annual training block. But if the hours mandate passes, the only way that can be changed is coming back to the legislature and amending the statute.

KLETC uses a needs assessment approach to assure training is meeting current needs. The task Force also is charged with determining training needs each year. This is the best way to determine training priorities, not through the legislation of set hours.

### **Advisory Boards**

Current statutes require cities of the first class to have advisory boards. Most agencies of that size already had advisory boards in place when the law was passed. The proposal will require any agency with ten or more officers to have an advisory board. We believe this is too big of a leap. For smaller agencies, it is our belief the local governing body is in the best position to determine the appropriateness of an advisory board. There are several advantages to a local option including creating a need for the local governing body to become engaged in the racial profiling issue. This heightened local governing body awareness will create a level of local oversight that cannot be gained through state mandates.



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State of Kansas  
Senate Federal and State Affairs Committee  
Testimony, SB610, Racial Profiling  
Chief Robert S. Sage, President  
Kansas Association of Chief's of Police  
March 6, 2008

Chairman Brungardt and Honorable Senators of the committee:

SB610 is a dramatic departure from the original legislation passed 2 years ago under SB77. The current legislation did not happen overnight. There was considerable debate and many compromises between all sides of the issue. Since the passage, large strides have been achieved towards eliminating racial profiling. The Governor's Task Force on Racial Profiling was created and is working diligently on data collection, training and legislative recommendations. Law enforcement has developed and implemented policies and completed the required community outreach. Agencies in cities of the 1st class have created the required advisory boards. Officers have been trained and departments are reporting annually in increasing numbers. Complaints of racial profiling have been investigated and officers have been disciplined. At least 1 officer has been terminated as a result of racial profiling. All of this has essentially happened within the last year and a half.

Some believe the accomplishments from SB77 are too little too late. SB610 contains some radical changes that law enforcement cannot support at this time.

- Page 1 Line 25 changes the language "the sole factor" to "a factor." We are concerned that this change in language will create a situation where an officer will become liable for racial profiling when conducting appropriate law enforcement activities. Examples of this could include the investigation of suspicious activity where the description of the subjects includes race. It may also include situations where officers are looking for suspects (or witnesses) in a particular incident and race is a part of the description. The qualifying language, which starts on line 29 does not (in our opinion) adequately cover these (and other) situations. The potential *unintended consequence* of this language change could be "de-

Sen Fed & State

policing" due to officer's unwillingness to contact persons in these situations. We are open to a change in the definition as long as these concerns are taken into account and the language adequately allows for legitimate law enforcement actions.

- Page 2 Line 14 begins a substantial change in data collection. Currently, we do not support data collection until the means by which and the interpretation of the data can be determined. One of our concerns is that the data could be easily misinterpreted. It is a complicated task to determine the "makeup" of a given area. Some factors that will influence the makeup include the time of day and the presence of highways, schools or other institutions that will attract people from outside the general area. All of these factors will change over time and will need to be continuously monitored and updated. In addition, officers may not patrol the same area day to day. Given these factors, at what point will the data establish profiling? Unless we can resolve these issues the immediate result will be the unwillingness of officers to do their jobs. Another obstacle to data collection is the way in which the information is obtained. At this point it would appear the only way to get most of the information is to ask the person. This has the potential to be very offensive and obtrusive and could actually cause complaints. Lastly, it will take officer's time to complete the required data collection form. The Task Force has already created a form and found it takes approximately 1 minute to fill out. One very conservative estimate indicates there was at least 1 million traffic stops during 2007 in the state of Kansas. If officers were filling out the forms created by the Task Force it would have taken over **16,500** hours, which could have been spent patrolling or conducting other law enforcement duties. Until these issues are resolved we believe it is not appropriate to add pedestrian stops or to establish a deadline for data collection. Rather, we believe the Task Force should continue researching the issue and provide a report concerning data collection at a later date.
- Page 3 Line 28 requires 2 hours of mandatory training for law enforcement officers. It is our opinion that establishing a minimum amount of training does not take into consideration the diverse needs of law enforcement throughout the entire State. Training that is appropriate and practical in a large metropolitan area may not fit with a small rural jurisdiction. It also stands to reason that as an officer receives training (over time) the need for further training should be reduced. One potential solution to this issue would be through online courses similar to N.I.M.S. certifications. This would allow departments the flexibility to control over-time that could result with other avenues of training.
- Page 2 line 5 adds citizen advisory boards as a requirement for agencies with 10 or more certified officers. It is our opinion that this decision is best left up to local control. The vast majority of law enforcement agencies in the State have less than 15 officers. Many of the agencies that will fall within this provision serve communities with little or no diversity. It doesn't seem appropriate to apply the same requirement of cities of the 1st class where there is a large very diverse population. Local control would allow for the creation of citizen advisory boards as the need presents itself.
- Page 4 line 42 begins a very complicated and cumbersome complaint process that **heavily favors** the complainant. Currently, the KACP is very disappointed with the investigative process of the Kansas Human Rights Commission. It is apparent the investigators routinely fail to interview ALL potential witnesses to a complaint. Their investigation centers on the complainant and the officer (or officers) involved. The final determination can be made with only 1 commissioner reviewing the case summary. This lack of thoroughness could easily result in the wrong conclusion being obtained (either for or against the officer). In addition, officers have **no ability to defend themselves or appeal**

*a decision.* The KACP supports moving the investigative responsibility from the KHRC to the Commission on Peace Officer Standards and Training (CPOST). CPOST is already tasked with investigating law enforcement officers and has the authority to take disciplinary action up to and including revocation of their certification. If this is done we would ask that the positions currently funded with the KHRC be transferred to CPOST.

The KACP does support different provisions of SB610.

- We support the inclusions of a definition of "Profiling on the basis of ethnicity" on line 42 of page 1.
- We support the inclusion of the executive directors of the Kansas advisory commission on African American affairs and the Hispanic/Latino American affairs committee to the Task Force as ex -officio members. Line 37 page 2
- We support the continuation of the Task Force and the removal of term limits. Beginning line 27 page 2.
- We support the change to August 1st for annual reporting as it coincides with our training year. We also support the suggested changes and requirements of the annual report. Beginning line 18 page 4.

In conclusion, law enforcement is an extremely difficult and stressful profession. Officers are routinely in a position where their decisions and actions will be unpopular. It is the nature of our profession. We agree that racial profiling is wrong and officers should be disciplined (including termination) if found in violation. We only ask that the legislation is an appropriate and that it not hinder our ability to conduct legitimate law enforcement activities to protect the citizens we serve.

Respectfully submitted,

Chief Robert S. Sage, President  
Kansas Association of Chiefs of Police

# Kansas Sheriffs Association

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To: Chairperson Brungardt, Vice-Chairperson Reitz, and distinguished members of the Federal and State Affairs Committee:

My name is Frank Denning and I'm the Sheriff of Johnson County Kansas. I represent the Kansas Sheriff's Association (KSA) and offer testimony this morning in opposition to SB 610.

In 2005, the Kansas Legislature passed SB 77 that directly addressed the issue of racial profiling in a comprehensive fashion. SB 77 mandated that law enforcement agencies: adopt written policies to preempt racial profiling, discipline officers that engage in racial profiling, and provide annual education training into the historical and cultural systems that perpetuate the practice of racial profiling.

SB77 mandated the creation of a 15 member task force appointed by the Governor to design the uniform collection of data, and make further recommendations to the legislature as they deem appropriate. The task force members represent different stakeholders whose voices must be heard on the issue of racial profiling. Senate Bill 610 is an attempt to recreate all of the work that has already been accomplished in Senate Bill 77.

SB 610 would mandate that every law enforcement agency with 10 or more officers establish a citizen advisory board. The KSA maintains that the need for an advisory board is best determined by the local officials that govern their communities. Every community is unique and a one-size fits all solution is a recipe for poor public policy.

The KSA supports the language in Senate Bill 610 that calls for the annual provision of a minimum of two hours of racial profiling training for every law enforcement officer. Employee turnover and court decisions make this a prudent practice.

In closing, passing SB 610 out of committee represents a significant step backward on the journey we have taken to address the issue of racial profiling in our state. I urge the committee to take no further action on the bill.

Respectfully,

Frank Denning  
Legislative Chair  
Kansas Sheriff's Association

Executive Director Darrell Wilson   Officer Manager Carol Wilson   Legal Counsel Bob Stephan

**Testimony of Sheila Officer  
Chair of the Training Committee on  
Wichita Police Department Racial Profiling  
Citizen's Advisory Board**

**March 7, 2008**

**Our Proposed Amendments to SB610**

22: 4611- CPOST to oversee complaints of LEO –Disagree/ **Keep with KHRC**

22:4608- Class a Misdemeanor- **Agree for accountability**

22:4607- Data Collection- **Agree to be implemented 2009**

22:4607- Elimination of Governor's Task Force- **Eliminated immediately-no  
productive work with taxpayer's money**

**ACCOUNTABILITY**

- I. Components of Increased Accountability
  - A. Education
  - B. Training
    - 1. Tools for Tolerance- Racial Profiling Training
    - 2. America's All- Historical/Cultural prospective of racial profiling
  
- II. Accountability
  - A. Individual Accountability
  - B. Law Enforcement Agency Accountability
  
- III. Data Collection

## **NO-ACCOUNTABILITY OR ENFORCEABILITY**

- I. Police overseeing police
- II. Training- No Historical or cultural prospective on the history of racial profiling
- III. No Data Collection to assist in establishing a "pattern and practice". With data collection, we have a tool to use to help address where the problem is, and to eliminate it.
- IV. No consequences for officer's intentional, illegal actions.

**CLOSING: "There should be no trade-off between effective law enforcement and the protection of the civil rights of all AMERICANS. " WE MUST HAVE BOTH!!!"**



Dale Goter  
Government Relations Manager

# TESTIMONY

City of Wichita  
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**Kansas Senate Federal and State Affairs Committee**  
**March 6, 2008**  
**Testimony by Wichita Police Chief Norman Williams**

The Wichita Police Department has a zero tolerance policy for racial profiling and will continue to proactively address that issue. It is imperative that we have practical legislation that enables law enforcement agencies to work in partnerships with citizens, neighborhood associations, the business community, civic organizations and the media to make our communities safe and secure.

From that perspective, we share the concerns of the Kansas Association of Chiefs of Police regarding Senate Bill 610. The bill contains several elements that will adversely impact our ability to proactively provide public safety service in our communities.

- Changing the language of “sole factor” to “a factor” serves to denigrate the law and make it more confusing. This seemingly minor change will make the daily activities of officers much harder. The clarifying sentence after this clause covers only the description of a suspect. Officers make decisions about witnesses as well as suspects. They will move into the area of a crime with only the knowledge of where the crime occurred, and then use that knowledge to determine who might or might not be involved. This minor change will multiply the legal exposure of law enforcement agencies. To impose damages, a jury must only find that race was a minor or insignificant factor in the officer’s decision. The conclusion that officers will draw from this change is that “de-policing” is an alternative, which is unacceptable for the community.
- The provision for the awarding of attorneys fees has been changed from “prevailing party” to “prevailing plaintiff”. This effect is obvious. The only recourse an officer or an agency has against totally frivolous lawsuits is the possibility of recovering fees and expenses. This legislation takes it away and is even harsher on the municipality than federal civil rights actions. They at least give the defendant some possibility for recovery.
- The cause of action under the new bill can now include as defendants “**any person with supervisory authority over such officer**” who has been found to have racially profiled an individual, regardless of whether or not the supervisor was involved with the activity. The current statute already has a significant problem because it is not clear if the city has vicarious liability for its officers’ actions or whether, as in federal civil actions, it must be found to be deliberately indifferent in its training, supervision etc. Federal civil rights law does not recognize vicarious liability for civil rights violations. “Supervisory authority” is not defined.

Sen Fed & State

Attachment 17  
3-06-08



- The administrative review process for complaints of racial profiling has been expanded to include not only KHRC but also the Kansas Commission on Peace Officer Standards and Training (KSCPOST) and the Attorney General's Office. Under the new bill, a complaint is filed with KHRC and the finding is forwarded to KSCPOST. If KSCPOST then makes a no-probable-cause finding, the complaint is forwarded to the Attorney General. In essence, this means that a complainant gets at least three administrative bites of the apple and the city has to defend this action three different times.
- Part of the problem with the current legislation is that KHRC can make a probable cause finding and the officer, according to the agencies' disciplinary code, must be disciplined. Under the current and proposed law, the officer (and now the supervisors) do not even have to be interviewed. The agency can make a finding that has a severe effect on an officer's career without even having to get his or her side of the story.
- Under the current law, the KHRC is required to consult with the head of the law enforcement agency before making a recommendation concerning discipline. This has been eliminated.
- Compared to other civil rights remedies in Kansas (employment, housing etc.), the current racial profiling procedures and remedies are weighed heavily in favor of the complainant and against the agency and individual officers.
- Collection of data on pedestrian stops is another concern. The current legislation focuses on vehicle stops. This creates yet another expectation for law enforcement officers to complete a data collection task, which removes them from managing their beats and being available to respond to calls for service from citizens.
- The proposed legislation, similar to the current legislation, does not include due process for the accused law enforcement officer and agency when they are unjustly accused of racial profiling. We have dealt with drug dealers in Wichita who have openly stated, "all they have to do is accuse a police officer of racial profiling and that will get them off their backs".



# The Wichita Branch NAACP

*"99 years, Speaking Truth to Power"*

Testimony against SB610 'Racial Profiling' 03/06/08

Kevin Myles  
President

Lavonta Williams  
1<sup>st</sup> Vice

Carolyn Wallace  
2<sup>nd</sup> Vice

Kenya Cox  
3<sup>rd</sup> Vice

Elaine Guillory  
Secretary

Mark Ritchey  
Treasurer

Limuel Vinson  
Mike Morton  
Cowley-Summer

V.J. Sessions  
Sharon Gordon  
Political/Social

Mary Dean  
Legal Redress

Rev. Mark Smith  
Membership

Horace Elliott  
Kenya Cox  
EW Dogan  
Life Membership

Carolyn Wallace  
Military/Vet Affairs

Dorothy Nixon  
WIN

Rev. Ruben Eckels  
Rev. Mark Smith  
Religious Affairs

Elaine Guillory  
Freedom Fund

Mary Breckenridge  
Barbara Mackey  
Sandra Rankin  
Education co-chairs

Brenda Davis  
Community Health

Otey Moss  
Communications

Chairman Brungardt, Vice Chair Reitz, and members of the Fed & State Committee,

My name is Kevin Myles, and I serve as the President of the Wichita Branch NAACP, and the Political Affairs Chairman for the Kansas State NAACP Conference of Branches. Additionally, I serve as Governor Sebelius's appointee to the State Racial Profiling Task Force; representing the interests of the community in our discussions. I am submitting my testimony to urge you to vote **against** SB610.

**SB610** is purported to be a compromise bill containing a number of recommended changes from both the community and Law Enforcement. Despite our objections, we do acknowledge the fact that there are some much needed language changes contained in the bill. SB610 would prohibit the use of race as "a factor" instead of the current statutory language which says race cannot be the "sole factor". This is an important and necessary shift because the current statutory language; "Sole Factor" implies that **ANY** verbalized justification offered by an officer would by definition disqualify a claim of Racial Profiling. SB610 also include language which would include Pedestrian Stops in the definition of Racial Profiling. This is also a profound and much needed shift because currently our definition is too narrowly focused to eliminate the unlawful practice of racial profiling. However, this bill also contains two onerous provisions which pose a compound challenge to its enforceability thereby nullifying its earlier benefits.

SB610 as introduced contains what I consider to be two "Fatal Flaws" which I as a community representative on the Task Force strongly object to on the grounds that they would render the bill virtually unenforceable. One item that I strongly object to is the language in SB610 that states that limiting damage awards. Under the language in SB610 (Section 5, subparagraph F), damages are described as simply compensatory, thereby eliminating any material deterrent to the commission of this unlawful act. A prevailing plaintiff would only be entitled to the recovery of 'reasonable' court costs, thereby discouraging the pursuit of any civil claim. A citizen who felt they had been racially profiled would face the prospect of a lengthy and expensive court trial in which the offending officer and department would face only nominal financial liability, and their award, should they prevail, would be limited to a 'reasonable' interpretation of the costs they'd already incurred.

A second **Fatal Flaw** in this bill is found in the proposed changes to the process for investigating Racial Profiling claims. Under current statute, charges of Racial Profiling are investigated by the **Kansas Human Rights Commission (KHRC)**. The KHRC is an independent agency, created by statute, charged with investigating human and civil rights violations. The KHRC does not have enforcement powers, but instead, may render findings of probable cause whose evidentiary value can assist with subsequent civil actions. Since SB77 which prohibited Racial Profiling went into effect in 2005, the KHRC has issued two findings of probable cause against officers here in the Wichita Police Department. While those civil actions are still ongoing, changes are proposed within SB610 which would take any future findings of the KHRC and forward them to CPOST (*which is essentially another Law Enforcement agency*). The findings of the KHRC would no longer be actionable; rather they would be subject to reinvestigation by Law Enforcement. CPOST would have to *concur* with the findings of the KHRC before they would recommend disciplinary action. We view this as an attempt to give Law Enforcement a Veto over the findings of an independent statutory agency.

So while there are some proposed changes in SB610 that are needed and necessary, the inclusion of these two provisions would have the compound effect of reducing if not eliminating the likelihood that any Kansas Law Enforcement officer could ever actually be cited for Racially Profiling a citizen. And in the unlikely event that they were, the limitation to compensatory rather than punitive damages would discourage the pursuit of any civil claim. Instead of protecting citizens from Racial Profiling, these proposed changes would serve only to protect Law Enforcement officers from accountability under the law.

For these reasons, we are urging you as members of the Senate Federal and State Affairs Committee to vote **AGAINST SB610**.

Kevin Myles  
President; Wichita Branch NAACP  
Political Affairs Chairman; Kansas State NAACP  
Member; Kansas State Racial Profiling Task Force

Sen Fed & State

Attachment 18

3-06-08



**Kansas Human Rights Commission  
Testimony  
On  
Senate Bill 610  
Before the  
Senate Federal and State Affairs Committee  
March 6, 2008**

Attendees:

William V. Minner, Executive Director  
Brandon L. Myers, Chief Legal Counsel  
Ruth Glover, Assistant Director  
Rick Fischli, Racial and Other Profiling Administrator

The Kansas Human Rights Commission (KHRC) appreciates the opportunity to provide testimony in regards to Senate Bill 610.

The Commission believes that various provisions of this bill should be supported. For instance, the extension of coverage to stop of pedestrians addresses an additional area of public concern. In addition, changing the K.S.A. 22-4606 definition of "racial profiling" from the threshold of being based upon "the sole factor" to situations where an impermissible consideration of race, etc. is "a factor" may be seen as more consistent with standards generally utilized in cases under other laws prohibiting race and other discrimination in areas such as employment and otherwise. Please note that the bill at K.S.A. 22-4609 continues to refer to "sole factor" as a standard. We recommend that this section be amended to reference "a factor" to correspond with the language proposed for K.S.A. 22-4606.

The Commission, however, respectfully opposes the proposed amendments to K.S.A. 22-4611. The proposed amendments impose several more steps than the current administrative review process. The proposal would require the KHRC to forward all findings of probable cause to the Kansas Commission on Peace Officer Standards and Training (KSCPOST) and to notify the Attorney General of all probable cause findings forwarded to KSCPOST for review.

With these proposals, a complaint has the potential of being investigated three times during the administrative process—first by the KHRC, then by KSCPOST, and finally by the Attorney General. Since neither the current law nor the proposed amendments give any administrative agency enforcement authority, the proposed additional steps would merely add the potential of what amounts to two more advisory opinions regarding the allegations beyond that issued by KHRC. The Legislature has chosen to grant a person the right to bring a civil action in district court as the means of ultimately determining the factual merits of whether the profiling law has been violated and whether damages should be assessed. In light of the above, these proposed additional administrative steps seem inefficient, repetitive in terms of effort, fiscally duplicative, and confusing regarding when a civil action may be filed.

Because the bill is unclear about when or under what circumstances a civil law suit can be filed, the Commission suggests that consideration be given to clarifying that the time limitation for filing a civil law suit be tolled while the administrative process is being pursued.

Although the KHRC did not seek to have such duties assigned to it during the original consideration of the profiling statutes, it is logical that such duties be assigned to the KHRC as is presently established. Allegations that persons are subjected to profiling due to their race or other impermissible consideration are ultimately in the nature of complaints of discrimination. They are not allegations of criminal violations of law, but are matters involving civil and administrative law. The KHRC has been investigating and determining administrative complaints alleging violations of human and civil rights laws for decades, so it follows that the KHRC can conduct such duties in an efficient and effective manner.

It is in the best interests of the public and law enforcement that investigation and determinations of profiling complaints be considered credible by all interested parties. To that end, even if the Legislature at some point chooses that the KHRC not be responsible for investigating profiling complaints in future years, the Commission firmly believes that profiling complaints should continue to be investigated by a neutral, independent body outside the matrix or chain of command of the law enforcement community. It is our understanding that amendments to SB 610 may be proposed to assign duties to the Attorney General's office, with further review by KCPOST. Although the Commission fully respects the abilities and capacities of those offices, the Commission believes such proposals raise the same basic issues and create essentially the same concerns as the current version of SB610, and the Commission believes it would be obligated to also oppose that proposed amendment, should it be made.

Since being assigned these duties in 2005, the KHRC has implemented the laws to the best of our ability by maintaining our neutral investigative stance, just as we do in our investigation of employment, housing and public accommodations discrimination cases under the Kansas Act Against Discrimination and Kansas Age Discrimination in Employment Act. We have taken an objective approach to profiling complaints by relying on a combination of former law enforcement personnel with traffic experience to investigate the complaints and non-law enforcement Commissioners to make determinations of no probable cause/probable cause. This process has provided for expertise to evaluate the traffic stop, but also provides for a lay-person's point of view during the determination process. Additional information was provided to the Division of the Budget regarding current implementation of the law and case processing. The Commission remains willing and able to fairly and appropriately administer the duties assigned it by the Legislature regarding the profiling statutes.

We will be glad to stand for questions.

Point of clarification: The fiscal note, dated March 4, 2008, indicates on page two that currently the KHRC determines the officer's discipline. However, the current K.S.A. 22-4611 only provides for the KHRC to make "recommendations".

**Testimony on SB 610  
Racial Profiling  
Senate Federal and State Affairs Committee**

**Presented by  
Colonel Terry Maple  
Kansas Highway Patrol**

**March 6, 2008**

The Kansas Highway Patrol presents this written testimony to express its concern over the provisions of Senate Bill 610 and to offer our support of the Governor's Task Force on Racial Profiling and the Kansas law enforcement community. The Kansas Highway Patrol does not tolerate racial profiling. The agency has implemented a policy prohibiting it and conducted all the required training pursuant to Senate Bill 77 enacted in 2005. The Patrol has accomplished all requirements of the 2005 bill and is actively represented on the task force.

Two years ago, the Legislature, through this committee, reached a compromise via Senate Bill 77 to address the seriousness of racial profiling and a collective opposition to it by the public and law enforcement. The task force, created in that bill, is a racially, ethnically, geographically, and gender diverse body that was charged with ensuring the statutory provisions were carried out. Since that time, the task force and law enforcement agencies across the state have made phenomenal strides toward stopping and preventing racial profiling in Kansas.

The Kansas Highway Patrol shares the concerns of the task force and law enforcement with Senate Bill 610. The Patrol believes the task force's recommendations have merit and warrant consideration. The language outlined on Page 5, lines 9 through 38, including the provision that would allow an individual to file criminal charges against an officer cause the Patrol great concern. Additionally, the Patrol supports the following:

- Retain "sole factor" in the racial profiling definition,
- Delete "pedestrian stops" from the data collection requirements,
- Keep the original timeline of 2011 to implement a data collection system,
- Transfer investigations from the KHRC to the Attorney General or KS CPOST,
- Retain cost recovery for the prevailing party, rather than prevailing plaintiff, and
- Retain current language of holding an officer, the agency, and/or both civilly liable, rather than adding "any person with supervisory authority over such officer."

Some of the concerns outlined in Senate Bill 610 have merit. However, the provisions should be considered carefully and should not be rushed into without proper discussion among the task force, law enforcement, and the interested parties. It is not possible to adequately address all the concerns in a short time frame, which is why the Highway Patrol would like to urge this committee to allow the task force to study the concerns outlined in Senate Bill 610 and come back with its recommendations. The task force does good work in bringing communities and law enforcement together in a positive manner, and we should allow the task force to continue accomplishing its assigned mission. I appreciate the opportunity to share these concerns with you, and I am available to answer your questions.

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