

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Pete Brungardt at 10:30 a.m. on February 25, 2009, in Room 136-N of the Capitol.

All members were present.

Committee staff present:

Jason Long, Office of the Revisor of Statutes
Julian Efird, Kansas Legislative Research Department
Dennis Hodgins, Kansas Legislative Research Department
Connie Burns, Committee Assistant

Conferees appearing before the committee:

Danielle Dempsey-Swopes, Executive Director, Kansas African American Affairs Commission
Mike Watson, Governor's Task Force on Racial Profiling
Shirley Wishom, Women in Action Inc.
Jimmy L. Bullock Sr., Crime Prevention
Sheriff Frank Denning, Kansas Sheriff's Association
Captain Don Krone, Kansas Association of Chiefs of Police
Ed Klumpp, Kansas Peace Officers Association
Steve Bukaty, Legal Counsel, Kansas Fraternal Order of Police
Colonel Terry Maple, Kansas State Troopers Association

Others attending:

See attached list.

Introduction of Bills:

Senator Brungardt introduced a bill regarding legislation to replace the partisan politics of redrawing legislative and congressional district boundaries.

Senator Brungardt moved that the two requests should be introduced as committee bills. Senator Francisco seconded the motion. The motion carried.

SB 179 - Racial profiling; definition thereof, required policies by law enforcement agencies; investigation of complaints.

Chairman Brungardt opened the hearing on **SB 179**.

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

Proponents:

Danielle Dempsey-Swopes, Executive Director, Kansas African American Affairs Commission, provided testimony for Steve Cisneros, Executive Director, Kansas Hispanic and Latino American Affairs Commission and herself, in favor of the bill and the Task Force amendment. (Attachment 2) The Task Force amendment:

- Clarifies the definition of profiling and clearly indicates the exceptions to the general rule
- Requires the Task Force to implement a method for the collection of traffic stop data for drivers and passengers
- Mandates that the Kansas Commission of Peace Officers Standards and Training (KSCPOST) review complaints and initiate discipline when necessary

The passage of the Task Force proposed amendment to the bill will allow the state to receive an additional one million dollars; this funding is provided by the National Highway Transportation Safety Administration can be used to enhance existing community policing programs and to expand law enforcement training, research, data collection and analysis.

Shirley Wishom, Women in Action Inc., appeared in favor of the bill. (Attachment 3) Ms. Wishom supports the new version of the bill, that includes the majority of the Governor's Task Force on Racial Profiling balloon amendments, specifically pedestrians added; and supports the communities call for mandating the recording of officer stops.

CONTINUATION SHEET

Minutes of the Senate Federal And State Affairs Committee at 10:30 a.m. on February 25, 2009, in Room 136-N of the Capitol.

Mike Watson, Governor's Task Force on Racial Profiling, provided a brief history of the Task Force and the methods of pre-emptive Racial Profiling. Mr. Watson requested to extend the Task Force to further develop the data collection process of the bill. (No written testimony was provided)

Jimmy L. Bullock Sr., Crime Prevention, appeared as a proponent of the bill. (Attachment 4) Mr. Bullock stated that the mandatory use of dashboard mounted video cameras and audio recorders by law enforcement officers provide the evidence to support citizens' complaints and curb racial profiling.

Neutral/Informative:

Colonel Terry Maple, Kansas State Troopers Association, provided neutral information on the bill. (Attachment 5) The bill would provide several adjustments to current law regarding racial profiling and express some general concerns:

- Definitions - Law enforcement is concerned about removing "sole factor" from existing definition of racial profiling. A workable definition is necessary.
- Due process - Consideration of due process for officers/agencies accused of racial profiling is warranted
- Data collection - If implemented, a methodology for bench marking and/or analysis of data must be established. Requires a cost to all agencies involved. Currently to comply the KHP would have to create a paper form and aggregate data manually.
- Uniform Traffic Citation - the state, via the Traffic Records Committee, is currently working on this issue. It is important not to duplicate effort or negate progress already made by that group

Kansas Human Rights Commission, Rick Fischli provided written testimony addressing the portions of the bill that directly impact the Kansas Human Rights Commission. (Attachment 6)

Opponents:

Sheriff Frank Denning, Kansas Sheriff's Association, (KSA) appeared in opposition to the bill. (Attachment 7) The KSA is opposed to changing the current definition of racial profiling and the clear lack of due process afforded agencies and officers in the bill. A balloon was provided.

Capatin Don Krone, Kansas Association of Chiefs of Police, spoke in opposition to the bill. (Attachment 8) The Association recommends removing the data collection provisions from the statutory language:

- Page 1 delete all of lines 17 - 18
- Page 2 delete line 23 and 24, and delete the word "The" at the end of line 39, and lines 40-43.
- Page 3 delete everything before "The"
- Page 6 delete line 32-37

Ed Klumpp, Kansas Peace Officers Association, appeared as an opponent on the bill. (Attachment 9) Mr. Klumpp's area of concern is the lack of due process for the officers and the agency in the investigative process; and he provided a balloon. The Association does support extending the sunset provision for the task force.

Steve Bukaty, Legal Counsel, Kansas Fraternal Order of Police, spoke in opposition to the bill. (Attachment 10) Mr. Bukaty stated the proposed bill will have a detrimental effect on the ability of the police officers of the state to carry out their duties, while not enhancing the objectives of the Racial Profiling Statute. The current state of the economy has placed increased burdens on municipalities; the proposed changes will increase not only the expenses of all police departments in the state, but also will greatly enhance the responsibilities and expenses of the Kansas CPOST. This proposed change will constitute an unfunded mandate.

Chairman Brungardt continued the hearing on SB 179 to Tuesday, March 5, 2009.

The next meeting is scheduled for February 26, 2009. The meeting was adjourned at 12:02

SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

GUEST LIST

DATE 2-25-09

NAME	REPRESENTING
Chief Bob Sage	Rose Hill PD
SET CURTIS WINN	PRairie Village P.D.
Jabari Wamble AG's office	
TROY RETTIG	LEAWOOD KS P.D.
TIM SCHWARTZKOPF	PRairie Village KS PD
RICK FISCHLI	KS Affirmative RIGHTS Com.
Joshanna Stone	KAAAC
Steve Cisneros	/
Nynelle Dempsey-Swope	KAAAC
Michael Waters	KAAAC/ KALAAC / STFORP
RICH Mergen	SHAWNEE CO. SHERIFF'S OFFICE
John Osteenow	Shawnee Co. Sheriff's Office
Brad Metz	Shawnee Co Sher Pt
Emily Adams	Shawnee Co. Sheriff
GORDON LANSFORD	Director, KCTTS
Joseph DiNitto	Kansas Public Radio
Shirley Wishom	Woman In Action
JIMMY L. BULLOCKS Sr.	Stardusters Crime Prev. Inc
STEVEN Culp	KS - CPOST
Terri Moses	Wichita Police Dept.
Ed H Pavey	KLETC
Eric Williams	KS-CPOST
MIKE WATSON	Gov. Task Force on Racial Profiling
Bob Storg	Junction City Police Dept.
JOHN GREEN	KLETC
Ken McGovern	Kansas Sheriff Assoc
Melissa Wangemann	KS Assoc of Counties

**SENATE FEDERAL AND STATE AFFAIRS COMMITTEE
GUEST LIST**

DATE _____

NAME	REPRESENTING
Rick Jeda	Wichita Kans.
Michelle Schroeder	Danner Govt Relations
Ed KLUPP	KPOA & KACP
Ed Klupp	UPD
CHESTER PINKSTON	KANSAS STATE FRATERNAL ORDER OF POLICE
Steve A. J. Busby	attorney, Ks State FDP
Terry Maple	Kansas Hwy. Patrol
Michael Kellum	Andover Police Dept.
Gandy Jacquet	LKM
Frank Dennis	KS Sheriff Assoc.
Dan Morse	KANSAS ASSOCIATION OF CHIEFS OF POLICE
Walt Shappell	WICHITA P.D. RACIAL PROF. CITIZEN BOARD
Maria Gonzalez	Kansas United Corporation (Non-profit)
Beatriz Ledezma	Wichita Racial Prof. Citizens Board
Anthony T. Suber	"Elected" " " " "
Wanda Cole	?
Sheba O'Hara	Wichita Racial Prof. CAB

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

**An Overview of the Current Law Regarding Racial Profiling and
Amendments Proposed by Senate Bill 179**

Jason B. Long
Assistant Revisor
Office of Revisor of Statutes

February 25, 2009

Current Law Regarding Racial Profiling

The laws concerning racial profiling are contained in K.S.A. 22-4606 through 22-4611. First, K.S.A. 22-4608 prohibits law enforcement agencies and law enforcement officers from engaging in racial profiling. “Racial profiling” is defined in K.S.A. 22-4606 as the practice of relying solely on race, ethnicity, national origin, gender or religious dress in selecting an individual to subject to a routine investigatory activity, or in determining the scope and substance of further law enforcement activity following the initial routine investigatory activity. “Routine investigatory activity” is law enforcement activity, including, but not limited to, frisks and other body searches and consensual and non-consensual property searches conducted in conjunction with traffic stops. Thus, racial profiling is essentially stopping and searching a person or vehicle when the sole reason for doing so is the race, ethnicity, national origin, gender or religious dress of the person or driver. It should be noted that “racial profiling” does not include the reliance on race, ethnicity, national origin, gender or religious dress of the individual in combination with other identifying factors when the law enforcement officer is seeking to apprehend a specific

suspect whose race, ethnicity, national origin, gender or religious dress is part of the description of the suspect.

In addition to the general prohibition on racial profiling, K.S.A. 22-4609 prohibits the use of race, ethnicity, national origin, gender or religious dress as the sole factor in determining whether probable cause exists to arrest an individual, or whether a reasonable and articulable suspicion exists to justify the detention of an individual or the investigatory stop of a vehicle. Constitutional case law generally requires probable cause to arrest an individual and a reasonable suspicion of unlawful activity to detain an individual or stop a vehicle. Under Kansas law an individual's race, ethnicity, national origin, gender or religious dress cannot be the sole factor in determining whether probable cause or reasonable suspicion exists.

If an individual believes they have been subjected to racial profiling, then the individual may file a complaint pursuant to K.S.A. 22-4611. The complaint may be filed with either the law enforcement agency employing the law enforcement officer who has engaged in racial profiling, or with the Kansas Human Rights Commission (KHRC). Upon receiving a complaint the KHRC must review and may investigate the complaint. The KHRC must consult with the head of the law enforcement agency before making a final decision regarding the complaint, including any recommendation regarding the discipline of any law enforcement officer. After a final decision on the complaint has been rendered the complaining individual may file a civil lawsuit against the law enforcement officer or law enforcement agency to recover damages suffered as a result of the racial profiling. Such damages may include reasonable attorney fees and court costs.

K.S.A. 22-4610 requires that all law enforcement agencies adopt written policies to preempt racial profiling. Such policies must include the statutory definition of "racial profiling" and be available for public inspection. The policies must include, but are not limited to, the following: (1) A prohibition on racial profiling; (2) annual training on the historical and cultural systems that perpetuate racial profiling, assistance in identifying racial profiling and self-evaluation strategies to preempt racial profiling; (3) the establishment and use of independent citizen advisory boards by cities of the first class to advise and assist in policy development, education and community outreach; (4) discipline of law enforcement officers engaging in racial profiling; (5) provisions for taking appropriate action in the event an investigation reveals

officers have been engaging in racial profiling; (6) provisions for community outreach and communication on the right to file a complaint and the complaint procedure; and (7) procedures for filing a complaint. Additionally, all law enforcement agencies must file an annual report with the office of the attorney general on the racial profiling complaints received for the past year.

Finally, K.S.A. 22-4607 establishes a governor's task force on racial profiling which may include members of the office of the attorney general, the highway patrol, local law enforcement agencies, the Hispanic and Latino American Affairs Commission, the Advisory Commission on African-American Affairs, the department of revenue, the KHRC, the district courts and civil rights advocates. Members are appointed by the governor and serve two-year terms. Members cannot serve more than two consecutive full terms. The task force's purpose is to work with state and local law enforcement agencies in reviewing current policies on racial profiling and making recommendations for new policies and procedures to implement the provisions of the racial profiling statutes. The task force is required to publish an annual report of its activities. K.S.A. 22-4607 expires on July 1, 2009.

Senate Bill 179

Section 1 of the bill amends K.S.A. 22-4606 to change the definition of "racial profiling." Under the bill "racial profiling" is the practice of unlawfully selecting or subjecting an individual to routine investigatory activities or deciding the scope and substance of law enforcement activity based on the individual's race, ethnicity or gender when the law enforcement officer: (1) Does not have a reason to believe the individual has violated any traffic laws; (2) does not have trustworthy information leading a reasonable law enforcement officer to believe the individual is committing, has committed or is about to commit a crime; (3) does not have trustworthy information leading a reasonable law enforcement officer to believe probable cause exists to arrest the individual; or (4) is not seeking to apprehend a suspect whose race, ethnicity or gender is part of the description of the suspect. "Racial profiling" does not include contact by a law enforcement officer for the purposes of seeking information from a person, checking a person's welfare or performing community outreach.

Under SB 179 national origin and religious dress are stricken from the definition as traits of an individual that cannot be used as a basis for subjecting an individual to routine investigatory activities. Also, the definition of “racial profiling” is based on the absence of any reasonable belief to otherwise lawfully stop or arrest the individual. This is different from the “sole factor” basis in the current definition.

Section 1 of the bill also amends the definition of “routine investigatory activity” by striking “dormitory rooms, school lockers, homes and apartments” and inserting “domiciles.” A definition of “profiling on the basis of ethnicity” is added to K.S.A. 22-4606 as a means of clarifying what constitutes the ethnicity of an individual.

SB 179 does not amend the general prohibition on racial profiling contained in K.S.A. 22-4608, but does amend K.S.A. 22-4609 regarding the existence of probable cause or reasonable suspicion. The bill strikes the specific list of traits and replaces that language with a reference to “racial profiling.” The bill also replaces “the sole factor” with “used.” Thus, under SB 179 racial profiling cannot be used in determining probable cause or reasonable suspicion, whereas currently race, ethnicity, national origin, gender and religious dress cannot be the sole factor.

K.S.A. 22-4611 is amended by the bill to provide that in addition to KHRC’s review and investigation of a complaint of racial profiling, KHRC shall forward findings of probable cause to the Kansas Commission on Peace Officer Standards and Training (KCPOST). This is a statutorily created commission whose purpose is to establish standards for law enforcement officer training and certification. Under SB 179 the KCPOST would review the findings of KHRC and make a determination regarding the certification of any law enforcement officer engaged in racial profiling.

The bill amends K.S.A. 22-4610 regarding the written policies law enforcement agencies must adopt. The requirement of establishing an independent citizen advisory board would be extended to any law enforcement agency with more than ten full-time law enforcement officers. Currently this requirement only applies to cities of the first class. The annual report to be submitted to the attorney general would be required regardless of whether the law enforcement agency received any racial profiling complaints during the year. Also, in addition to the current

information that must be contained in the report the following would also be required: (1) Whether all law enforcement officers had received the required annual training on racial profiling; (2) whether the agency had a written policy prohibiting racial profiling; (3) whether the agency mandates specific discipline for engaging in racial profiling; (4) whether the policy details the discipline to be administered for racial profiling; (5) whether the policy outlines an individual's right to file a complaint and the procedure for doing so; and (6) whether the agency has a citizen advisory board.

SB 179 also amends K.S.A. 22-4607 regarding the governor's task force on racial profiling. The bill includes the Kansas State Lodge of the Fraternal Order of Police as one of the listed entities from which members may be appointed. The bill extends the task force's purpose to include the design of methods for the collection, analysis and public dissemination of data regarding traffic stops utilizing the uniform traffic citation. These methods must be designed by January 1, 2010. The restriction on the number of terms a member can serve is stricken, as is the sunset of July 1, 2009.

Finally, the bill amends K.S.A. 74-9501, which establishes the Kansas Criminal Justice Coordinating Council. SB 179 would require the council to oversee the development and implementation of a uniform traffic citation to be used to collect data regarding traffic stops such as the race, ethnicity and gender of drivers. The uniform traffic citation is to be available for use by January 1, 2011.

(2)

State of Kansas
Senate Committee on Federal and State Affairs
Testimony regarding SB179

Danielle Dempsey-Swopes

Executive Director, Kansas African American Affairs Commission

Steve Cisneros

Executive Director, Kansas Hispanic and Latino American Affairs Commission

Administrators, Governor's Task Force on Racial Profiling

February 25, 2009

Chairman Brungardt, members of the committee,

On behalf of our commissioners statewide, Mr. Cisneros and I serve as administrators to the Governor's Task Force on Racial Profiling (Task Force) to implement the Kansas statutes prohibiting racial profiling, KSA 22-4606 through 22-4611.

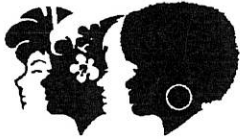
During the past year, the Task Force made significant strides in addressing the issue of racial profiling. In 2007, the Task Force applied for and received 1.1 million dollars in federal grant funding. The passage of the Task Force proposed amendment to SB179 will allow the state to receive an additional 1 million, and potentially up to 3.2 million additional dollars. This funding provided by the National Highway Transportation Safety Administration can be used to enhance existing community policing programs and to expand law enforcement training, research, data collection and analysis.

The Governor's Task Force provides a unique opportunity for community members and law enforcement leaders to work in partnership to address this very important issue. The Task Force is composed of a diverse group of Kansans by race, ethnicity, gender, occupation, geographical home and all of the members are passionate about preventing the practice of racial profiling.

The proposed amendment to SB179 represents the Task Force's collective research and discussion with community members and law enforcement officers throughout our state. The Task Force amendment:

- Clarifies the definition of profiling and clearly indicates the exceptions to the general rule.
- Requires the Task Force to implement a method for the collection of traffic stop data for drivers and passengers.
- Mandates that the Kansas Commission on Peace Officers Standards and Training (KSCPOST) review complaints and initiate discipline when necessary.

The prevention of racial profiling ultimately depends upon community trust in law enforcement leadership and the cultural competence of our law enforcement officers. The Task Force provides leadership to facilitate the training for cultural competence and the dialog for greater public trust. We respectfully ask that you amend SB179, as recommended by the Governor's Task Force on Racial Profiling, so that we may all continue working together to address this issue.



3

Women In Action, mission is to take actions to improve the quality of life and ensure equal protection of the law for all citizens as we fight to eliminate or at least minimize racial discrimination.

WOMEN IN ACTION
917 1/2 SE 12th ST.
Topeka, KS 66607
Email: svoice247@yahoo.com

24 February 2009

Senator Brungardt, Chair
Federal and State Affairs Committee
State Capitol, Room 136 – N,
Topeka, KS.

TESTIMONY IN SUPPORT OF SB179; WITH GOVERNORS TASK FORCE ON RACIAL PROFILING “BALLOON AMENDMENTS”; & SUGGESTIONS

Senators, Women In Action, Inc, is a non-profit community organization focused on the elimination of racism and social injustice. We provided input on the, original Racial Profiling bill, SB77. Today we are here to support a new version of SB179, that includes the majority of the Governors Task Force on Racial Profiling balloon amendments, specifically pedestrians added; and we support the communities call for mandating the recording of officer stops.

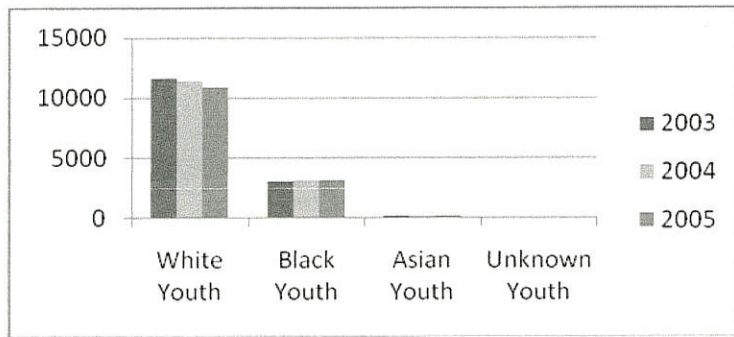
Governor’s Task Force on Racial Profiling Balloon Amendments: WIA have participated in meetings with the Governor’s Task Force on Racial Profiling, and discussed their Balloon changes. Our major support of the balloon recommendations is the inclusion and clarification of pedestrians to the definition of police stops. The current bill, SB179 does not contain this language.

Kansas Human Rights Staff Information: Inclusion of Pedestrians: Since the passage of the Racial Profiling bill, the Kansas Human Rights office, who is designated by statute to investigate RP complaints, has only investigated vehicle stops. This creates a disparity for victims of police racial profiling, who may not own a vehicle, yet are racially profiled while walking, riding a bike, etc; we have testimony of a victim being stopped while jogging. WIA are submitting a copy of suggested language from the Assistant Director of the KHRC, which adds to the definition of routine investigatory activities: “ (3) other interactions with individuals during the execution of law enforcement activities.” This may not be needed as the balloon amendment, addresses pedestrians, however, WIA want it clear for the purpose of KHR office following though with complaint investigations.

Disproportionate Minority Contacts (DMC): This language is used by the Juvenile Justice Authority in monitoring the disparity of minority youth over represented in the youth prison population. African American youth, are detained by police at disproportionately high rates, compared to their white peers. Arrest rates for African American youth are increasing and white youth arrest rates decreasing, according to the Kansas Juvenile Justice Intake and assessment statistics, reported for 2003 – 2005.

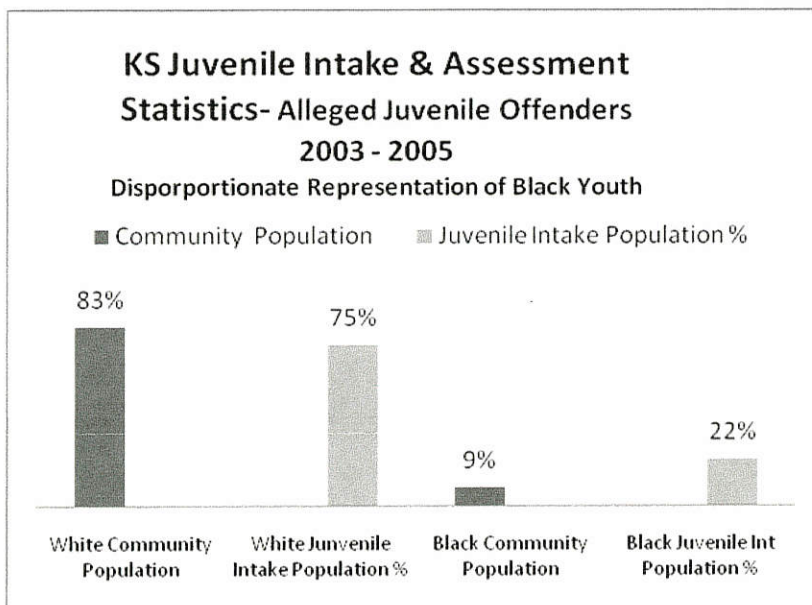
Sen Fed & State

Attachment 3
2-25-09



KS Juvenile Intake & Assess. Statistics 1

The Intake and assessment contact with white juveniles has shows a constant decrease from 2003 to 2005; compared to a constant increase in black youth intake and assessments. In addition black youth are disporptionately over represented in the juvenile youth intakes and assessments.



KS Juvenile Intake & Assess. Statistics 2

According to Jennifer A. Pealer, Ph.D. , state presentation on: “What Works to Reduce Future Juvenile Offending , Dr. Pealer points out the Antisocial/Pro criminal attitudes, examples include: “Negative expressions about the law– Negative expressions about conventional institutions, values, rules, procedureds, etc – Negative expression toward ability to achieve through conventional means.”

An officer racial profiling of African American youth, stimulates these same attitudes, when you are a victim of RP. Dr. Pealer also stated “Lessons learned from the research: assessment is the engine that drives correctional programs.” Racial Profiling is an assessment made by law enforcement, which provokes a negative attitudes, which can lead to offense. We cannot overlook the impact this may have on the over representation of minority youth in our Juvenile justice system.

School to Prison Pipeline: According to the ACLU: “ The American Civil Liberties Union’s Racial Justice Program aims to preserve and extend the constitutional rights of people of color. Committed to combating racism in all its forms, our advocacy includes litigation, community organizing and training, legislative initiatives, and public education

DEFENDING THE RIGHTS OF MINORS

Removed from their communities and kept out of sight, people in the criminal justice system can easily become victims of government abuses of power. Within this group, juvenile suspects, defendants, offenders and prisoners are among the most vulnerable. Limited life experience and ignorance of their basic rights can make it difficult for youthful offenders to protect their own interests, and too often, juveniles forgo their rights without realizing that they have done so. The ACLU works to ensure [adequate representation, decent care and conditions during periods of incarceration](#), and other rights for juveniles in the justice system. Through our focus on the [School to Prison Pipeline](#), we also challenge policies and practices in public schools that channel children out of schools and into the juvenile and criminal justice systems.”

We need to include pedestrians in SB179, which includes Kansas Youth.

If you have any questions or need further information please contact us.

Respectfully,

Shirley Wishom
President & CEO
Women In Action, Inc.

Enclosures

From: Glover, Ruth E [KHRC] (Ruth.Glover@khrc.state.ks.us)
To: svoice247@yahoo.com
Date: Tuesday, February 10, 2009 5:04:58 PM
Subject: Your requested proposed changes to profiling bill

Dear Ms. Wishom,

You and Michael Waters of the Governor's Task Force on Profiling recently stopped by our office to inquire about ideas to expand the profiling law beyond traffic stops to other law enforcement activities. You asked us to submit draft language to you for your consideration.

Although we discussed a possible amendment to the Kansas Act Against Discrimination to include law enforcement activities, it would appear easier for your purposes to request an amendment to Senate Bill 179, which currently proposes changes to the profiling law. In particular, the following passage might meet your needs:

(g) "Routine investigatory activities" includes, but is not limited to *traffic stops or*; the following activities conducted by law enforcement officers and ~~agencies in conjunction with traffic stops~~: (1) Frisks and other types of body searches,; and (2) consensual or nonconsensual searches of persons or possessions, including vehicles, ~~dormitory rooms, school lockers, homes and apartments and domiciles~~; *(3) other interactions with individuals during the execution of law enforcement activities.*

I do not yet see a hearing scheduled on Senate Bill 179.

If the profiling law were to be expanded beyond traffic stops, we would anticipate the KHRC could potentially need additional staff and funding to carry out any new duties.

I hope the above meets your needs.

Ruth Glover
Assistant Director
Kansas Human Rights Commission
Ph. (785) 296-2806
Fax (785) 296-0589
Visit the KHRC website at www.khrc.net

To: Senator Pete Brungardt, Chairman
Senate Federal and State Affairs Committee
Submitted by: Jimmy L. Bullocks, Sr., President & CEO, Stardusters Crime Prevention, Inc., & KS. C.U.R.E.; 917 SE 12th, Topeka, KS. (Testimony Senate Bill 179)

Racial Profiling, Prove It: Turn on the Police recorders!

The Kansas Attorney general's 2007 Annual report on racial profiling in Kansas identifies 292 Law enforcement agencies reporting a total of 164 racial profiling complaints. Of the 164 complaints reported only two, which appeared to be from the same incident were found to have probable cause. Does this mean that racial profiling is not a problem in Kansas? According to the reports from Law enforcement investigations, 99% of Kansas citizen complaints in 2007 were unfounded, are we to believe only .01 percent of these Kansas citizens' were telling the truth? Or is racial profiling hard to prove when the case boils down to the suspects/complainant's word against the word of Law enforcement officers? Would the mandatory use of dashboard mounted video cameras and audio recorders by law enforcement officers provide the evidence to support citizens' complaints and curb racial profiling?

Racial Profiling - Kansas

The 2000 session of the Kansas Legislature commissioned a study, which was conducted by the Police Foundation, to determine if racial profiling was occurring in Kansas. The study represented a multijurisdictional assessment of racial profiling by examining ten different law enforcement agencies throughout the state. The report found: "The results of this study demonstrate, by and large, that the State of Kansas is experiencing profiling of Hispanic and Black motorist." (Police Foundation, a

Multijurisdictional Assessment of Traffic Enforcement and Data Collection in Kansas, 2003). In 2005 Kansas Law Makers passed the laws prohibiting racial profiling in Kansas, (KSA 22-4606 through 22-4611). Racial Profiling is defined by the Kansas Statutes to mean: “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.”

Racial Profiling

The popular Wikipedia, an on line reference, defines racial profiling as: “the inclusion of racial or ethnic characteristics in determining whether a person is considered likely to commit a particular type of crime or an illegal act.”

According to the U.S. of Department of Justice, Civil Rights Division section, “Guidance Regarding the Use of race by Federal Law Enforcement Agencies”, in 2001 President George W. Bush spoke to a Joint Session of Congress, and declared racial profiling to be: “wrong and we will end it in America”. The president directed the US Attorney General to review Federal law enforcement authorities use of racial profiling as a factor in conducting stops, searches and other law enforcement investigative procedures. The DOJ Guidance regarding the use of race provides case law that supports the ineffectiveness and unconstitutionality of racial profiling: 1) “Race-based assumptions in law enforcement perpetuate negative racial stereotypes that are harmful to our rich and diverse democracy, and materially impair our efforts to maintain a fair and just society. . . . *United States v. Montero-Camargo*, 208 F.3d 1122, 1135 (9th Cir.2000).” 2) “The Constitution prohibits selective enforcement of the law based on

consideration such as race. . . . *Whern v. United States*, 517 U.S. 806, 813 (1996).”

The federal courts have also held that law enforcement policies which use race to determine who to stop, detain and search violate the Equal Protection Clause, *United States v. Avery*, 137 f.3d 343, 355 (6th Cir. 1997). (DOJ June 2003).

Today the issues surrounding racial profiling are not what profiling means or even if it exist, but whether if it is a justifiable investigate tool that should continue to be used by law enforcement to fight crime. For example, Stephen B. Presser’s article in the American Bar Assoc. Journal, “Have We Overreacted to the Fear of Racial Profiling?” argues that:

"The racial profiling guidance bars federal law enforcement officials from engaging in racial profiling--even where such profiling would otherwise be permitted by the Constitution and laws. Specifically, the guidance provides that in making routine law enforcement decisions--such as deciding which motorist to stop for traffic infractions--consideration of the driver's race or ethnicity is absolutely forbidden." Nevertheless, the Justice Department did state that it recognized the President's views that "federal law enforcement personnel must use all available and legitimate tools to prevent future catastrophic terrorist attacks," and thus the new guidelines provided "that race and ethnicity may be used in terrorist identification, but only to the extent permitted by the nation's laws and the Constitution."

And yet racial profiling, which circumscribes investigations of criminal behavior in order to target those most likely to have committed

particular crimes based on their race or ethnicity, also can be seen as sensible law enforcement behavior--behavior that has received the approval of the U.S. Supreme Court. (*Contra* David A. Harris, "Racial Profiling Revisited: 'Just Common Sense' in the Fight against Terror?" Vol. 17, No. 2 *Criminal Justice* at 36.)

Presser's argument appears: if you can use racial profiling in the fight against terror, then why can't it be used by law enforcement to fight crime? He further suggest racial profiling would actually help those that are racially profiled by arresting more people in their communities; based upon studies of the decrease in arrest made by law enforcement officers in Cincinnati, when officers claimed they feared arrest for racial profiling. (pg 4)

I am from the old school, a 62 year old, long time recipient [victim] of racial profiling, referred to as: "DWB." The term is defined by the online Ethnic Majority, "*Racial Profiling of African, Hispanic (Latino), and Asian Americans*," article: "DWB", otherwise known as "driving while black." The practice of targeting African Americans for traffic stops because they believe that African Americans are more likely to participate in criminal activity." For 33 years I have served as the President and CEO of Stardusters Crime Prevention, Inc., a community based organization, often described as a "Social Justice" organization because of their many struggles with the system in securing resources for the poor and minority communities. My personal encounters with law enforcement officers and discussions with disadvantaged blacks as well as black businessmen, doctors and lawyers; leads me to disagree with Presser's claim that

a reduction in arrest equals inadequate police protection. I submit if law enforcement officers were equipped with college level social work & legal education, there would be a reduction in arrest; if law enforcement officers were mandated to use audio and video cameras during police stops, there would also be a reduction in arrest. To go closer to the real problem, if only 25 percent of the money spent on law enforcement and corrections, was put into prevention efforts, e.g., building disadvantaged people with education, job training, and jobs; the need for arrest would reduce.

There is a word used to describe the ongoing arguments supporting racial profiling: "Rambling" something that goes on but accomplishes nothing, yet is effective in distracting attention from developing concrete solutions to the real problem at hand.

Brandon Garrett articulates this problem another way in his Human Rights Law Review article, *Remedying Racial Profiling*:

"The overnight successes of the movement to end racial profiling provide new hope in a time when civil rights victories come grudgingly. Litigation played a groundbreaking role in challenging police practices and in making racial profiling an issue of national concern. However, the same legal work that has helped to create an opportunity for change has distracted lawyers, advocates, commentators, and police from focusing on the creation of effective remedies for racial profiling." (33 *Colum. Human Rights L. Rev.* 41)

Nationally, advocates against racial profiling are calling for action, an article by Michael Higgins, *Accomplishing Equality*, published by the American Bar Association in 1999, supports action not talk, on racial profiling. Higgins quotes Paulette Brown of East Orange, N.J., who chairs the ABA Council on Racial and Ethnic Justice. Brown emphasizes the time for “sharing feelings and brainstorming is over”, and calls for concrete steps that can be taken, her message: “Don’t just bring good ideas; bring an implementation plan. “Otherwise,” Brown says, “why bother? It would just be another meeting of people talking and this is exactly what we don’t want.’ “As an example of concrete action, Brown cites her own state of New Jersey, which recently outfitted state patrol cars with video cameras to get a better record of what goes on during traffic stops.” (1)

At a racial profiling forum held in Topeka by the Topeka’s Human Relations Commission, the KTKA News source web site headline read: “Police Recording Policy Under scrutiny.” The reporters’ covered a Racial Profiling community meeting where citizens called for a mandated police policy that requires officers to turn on their audio and video recorders during traffic stops. The Shawnee County Sheriff’s department have a mandated policy that requires officers to turn their recorders on during such stops; the sheriff called it an “excellent tool for law enforcement” yet the Topeka (urban) do not require officer use the devices.

Racial Profiling Solutions

The issues will continue to be debated, however the laws are in place, it is time to move on and focus on solutions. My first thoughts on how to end racial profiling

began with: 1) mandate police audio recorders & video cruiser cams be turned on during all police stops, 2) mandate the officers have college level social and legal knowledge, 3) direct funds to the communities that are being targeted to address crime prevention.

Solutions are being implemented around the world, an article by the Commonwealth Human Rights Initiative, credits installing min-cams in police cars for curbing racial profiling: "Ontario Provincial police have installed mini-cams to document evidenced of behavior in cruisers, showing both the prisoner and arresting officer. It adds to the credibility if the issue is raised in court and secures the rights of both parties when conflict occurs."

A Cincinnati online Enquirer reporter, Gregory Korte wrote: "Dashboard mounted video cameras in Cincinnati police cruisers often break down or aren't turned on by officers, frustrating investigators in police misconduct case. . . . Too often, board members said, there is no video tape to corroborate either version, leading them to find insufficient evidence of police misconduct. . . . The state highway patrol seems to have no problem with their microphones working or their videotapes working. "

It's clear more needs to be done, my suggestions to upgrade the educational requirements of officers to include social and legal studies is needed; directing funds to disadvantaged communities to establish and build crime prevention through economic development, is essential. However, these issues will attract years of debate and rambling. But the mandatory recordings by officers can be done now as many recorders are already in place within law enforcement. This one should not be

debatable. We just can't except that 99 percent of those complaining of racial profiling in Kansas are all frauds, lets first make it provable, record it. When the case boils down to the suspects/complainant's word against the word of Law enforcement officers, there will be evidence to review. The mandatory use of dashboard mounted video cameras and audio recorders will change the findings and/or curb the activity if officers are mandated to turn them on!

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Notes

ⁱ Disadvantaged is used in this context to mean persons of color who lack social and economic stature, and/or are known targets of racial profiling, "young black men".

**Written Testimony on Senate Bill 179
Senate Federal and State Affairs Committee**

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

February 25, 2009

The Kansas Highway Patrol appreciates the opportunity to provide written testimony regarding Senate Bill 179. This bill would provide several adjustments to current law regarding racial profiling.

The Patrol has historically and continues to demand professional conduct from its officers. Our longstanding motto of Service-Courtesy-Protection is expounded upon within the Agency's Mission and Goals which states in part, "We believe in treating all persons with courtesy and respect. The preservation of individual dignity and **constitutional rights** is paramount in performing our duties." We support the basic intent of Senate Bill 179 because its prohibition of racial profiling is inherent with professional policing and has no effect on behavior currently unacceptable by the Patrol.

It is my understanding that the Governor's Task Force on Racial Profiling intends to offer some suggestions for amending the current content of this bill. It is also my understanding that various law enforcement associations intend to offer suggestions to mitigate the impact this bill could have on their member agencies. As a result, it seems plausible that the language within Senate Bill 179 could change as it is worked by the committee.

It is hoped that common ground can be achieved to address the various perspectives presented today. I am compelled to express some general concerns about the bill that I am certain will also be addressed by others:

- Definitions: Law enforcement is concerned about removing "sole factor" from existing definition of racial profiling. A workable definition is necessary.
- Due process: Consideration of due process for officers/agencies accused of racial profiling is warranted.
- Data collection: If implemented, a methodology for benchmarking and/or analysis of data must be established. Requires a cost to all agencies involved. Currently, to comply, the KHP would have to create a paper form and aggregate data manually.
- Uniform Traffic Citation: the state, via the Traffic Records Committee, is currently working on this issue. It is important not to duplicate effort or negate progress already made by that group.

Again, the Kansas Highway Patrol appreciates the opportunity to provide its input regarding Senate Bill 179. It is our hope that the committee carefully and cautiously considers the components of this bill and its impact on law enforcement and the citizens we all serve.

###

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Senate Federal and State Affairs Committee
SB 179 Written Testimony
February 25, 2009

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RACIAL AND OTHER PROFILING
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BETH MONTGOMERY
OFFICE MANAGER

Representative: Rick Fischli, Racial and Other Profiling Administrator

The Kansas Human Rights Commission (KHRC) appreciates the opportunity to provide testimony in regards to Senate Bill 179. Because only portions of SB 179 directly impact the Kansas Human Rights Commission, we will limit our comments to those passages.

Section 1 proposes redefining “racial profiling” in K.S.A. 22-4606. The threshold of “sole factor” is to be eliminated and proposed portions of the definition rely on “the law enforcement officer does not have trustworthy information leading a reasonable law enforcement officer to believe....”. The listing of prohibited bases which cannot be used for legal law enforcement activity is proposed to be changed from “race, ethnicity, national origin, gender or religious dress” to “race, ethnicity or gender”. However, “profiling on the basis of ethnicity” has been added as a definition and means the practice of unlawfully using information regarding members of a cultural group with a shared identity, ancestry or linguistic characteristics, and may include a common religious association. “Racial profiling” also excludes contact by a law enforcement officer for informational purposes regarding the investigation of a complaint, crime or suspicious activity, checking on the person’s welfare, or community outreach or community policing.

The Commission does not oppose proposed changes to K.S.A. 22-4611, as outlined in section 5. Proposals include:

- Requires the KHRC to forward all findings of probable cause to the Kansas Commission on Peace Officer Standards and Training (KS-POST). We do not object to forwarding findings of probable cause to KS-POST because such information is currently available to KS-POST and other requesting entities through the Kansas Open Records Act, with certain statutory exceptions.
- Requires KHRC to inform the complainant, officer(s) and the law enforcement agency of the outcome or disposition of the complaint in writing. The KHRC already notifies the complainant and the responding law enforcement agency of the outcome or disposition of the complaint in writing. We have not previously directly notified individual officer(s) of the outcome or disposition of the complaint in writing because the responding law enforcement agency was notified in writing. This procedure is consistent with our practice in employment cases, wherein the complainant and the respondent are notified, but individual employees of the respondent are not officially notified by the KHRC. However, we do not object to the proposal that the KHRC inform officer(s) of the outcome or disposition of the complaint in writing.

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- Provides that nothing in the outcome or disposition of the complaint shall be deemed an exception to the Kansas Open Records Act. We do not interpret this requirement as a change to our current procedure under the Kansas Open Records Act. Therefore, little or no impact on the KHRC is anticipated.
- Proposes that KS-POST shall review the findings of the KHRC and initiate further investigation as necessary. As we understand the intent of this passage, it is not a review of the merits of the KHRC's probable cause finding, but is simply a method for facilitating the KS-POST's review of allegations for compliance with their own statutory requirements for the certification of law enforcement personnel. With that understanding in place, we do not object to this provision of the bill.

In 2005, the Legislature chose 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, if there were any proposal for another agency or party to administratively review the merit of the KHRC's findings, the KHRC would object. Such a proposal would be inefficient, repetitive in terms of effort, fiscally duplicative, and, possibly cause confusion regarding when a civil action may be filed.

Although the KHRC did not seek to have duties assigned to it during the original consideration of the profiling statutes in 2005, 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 complaints of discrimination. They are not allegations of criminal violations of law, but are matters involving civil and administrative law. As a neutral, fact-finder, 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. Since being assigned these duties in 2005, the KHRC has successfully 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 informed all interested parties and the public of our neutral, fact-finder role. We have established a successful routine for the receipt, investigation, and disposition of profiling complaints. 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, making the KHRC uniquely qualified to investigate and determine profiling complaints. The Commission remains willing and able to fairly and appropriately administer the duties assigned it by the Legislature regarding the profiling statutes.

Note: We understand that an amendment maybe introduced to provide passengers and pedestrians the right to file complaints with the KHRC. If such an amendment is made, it will be necessary for the KHRC to attach a fiscal note for costs associated with the additional duties. If it is the desire of the Legislature for the profiling law to protect passengers and pedestrians, it would be beneficial for the Legislature to consider changing the definition of "routine investigatory activities" in the current K.S.A. 22-4606 (e) so that is not limited to traffic stops by striking the word "traffic" or similar action.

7

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From: The Kansas Sheriff's Association

Date: February 25, 2009

Chairman Brungardt and Members of the Committee,

My name is Frank Denning and I'm the Sheriff of Johnson County and appear before the committee this morning representing the Kansas Sheriff's Association (KSA). The KSA is opposed to changing the current definition of racial profiling and the clear lack of due process afforded agencies and officers in SB 179.

Our opposition is two-fold. First, the status quo definition of racial profiling is fundamentally sound and does not require the unnecessarily limiting modifications suggested in SB 179. Second, SB 179 fails to afford due process to those officers or agencies that may be alleged to have violated its mandates.

The Kansas Code of Criminal Procedure currently states that

“Racial profiling” means the practice of a law enforcement officer or agency relying, ***as a sole factor***, on race, ethnicity, national origin, gender or religious dress in selecting which individuals to subject to routine investigatory activities, or in deciding upon the scope and substance of law enforcement activity following the initial routine investigatory activity.
(emphasis added)

This definition was crafted after careful and deliberate consideration. The “sole factor” clause is critically important. It provides a bright line distinction that clearly forbids prohibited practices while still allowing law enforcement the flexibility to consider the totality of circumstances in the decision-making process. The federal courts have recognized the importance of this distinction. The Sixth Circuit for the US Court of Appeals explained that “if law enforcement adopts a policy, employs a practice, or in a given situation takes steps to initiate an investigation of a citizen ***based solely upon that citizen's race***, without more, then a violation of the Equal Protection Clause has occurred.” (emphasis added) *United States v. Avery*, 137 F.3d 343, 355 (6th Cir. 1997) The Court went on to say that “A person cannot become the target of a police investigation ***solely*** on the basis of skin color. Such selective law enforcement is forbidden” (emphasis added) *Id.* at 354.

Taking law enforcement action based solely on race is illegal, unethical, and ultimately unproductive. However, law enforcement officers should not be forbidden from considering demographic identifiers as part of the totality of circumstances when making decisions. The modifications suggested by SB 179 would substantially change the definition of racial profiling and limit quality decision-making in law enforcement activities.

Our opposition to SB 179 is further reinforced by the fact that it fails to provide for any substantial due process for a law enforcement officer alleged to have engaged in racial profiling. There were only 109 racial profiling complaints state-wide in 2008. Of these, 87 have already been deemed “unfounded”. Additionally, none of the remaining 22 complaints have resulted in a finding that racial profiling occurred. These statistics strongly suggest that the vast majority of our state’s law enforcement officers routinely conduct business in an exceptionally professional manner. We owe it to these professionals to ensure that they are protected from the potentially frivolous accusations that occasionally accompany their profession.

In summary, we agree that racial profiling is a practice that should be absolutely forbidden. We have two primary objections to SB 179. First, the status quo is fundamentally sound. The current statutory definition of “racial profiling” mirrors federal standards. Racial profiling statistics in the state indicate that the status quo is effective. Finally, SB 179 fails to provide any due process for the law enforcement officers that may be subjected to an allegation of racial profiling.

Thank you for your consideration in this matter. I’m happy to stand for questions.

Sheriff Frank Denning
Legislative Chair, Kansas Sheriff’s Association

SENATE BILL No. 179

By Committee on Federal and State Affairs

2-3

9 AN ACT concerning racial and other profiling; relating to the governor's
10 task force, adoption of policies against and investigation of complaint;
11 amending K.S.A. 22-4606, 22-4607, 22-4609, 22-4610 and 22-4611 and
12 K.S.A. 2008 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) "Collection of data" means that information collected by Kansas~~
18 ~~law enforcement officers after each traffic stop.~~

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

22 ~~(c) "Law enforcement agency" means the governmental unit em-~~
23 ~~ploying the law enforcement officer.~~

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

26 ~~(e) "Profiling on the basis of ethnicity" means the practice of unlaw-~~
27 ~~fully utilizing information regarding members of a cultural group with a~~
28 ~~shared identity, ancestry or linguistic characteristics common to the mem-~~
29 ~~bers or their affiliates. Ethnic groups may also have a common religious~~
30 ~~association or history.~~

31 ~~(f) (1) "Racial profiling" means the practice of a law enforcement~~
32 ~~officer or agency relying, as the sole factor, on race, ethnicity, national~~
33 ~~origin, gender or religious dress in selecting which individuals to subject~~
34 ~~to routine investigatory activities, or in deciding upon the scope and sub-~~
35 ~~stance of law enforcement activity following the initial routine investiga-~~
36 ~~tory activity. Racial profiling does not include reliance on such criteria in~~
37 ~~combination with other identifying factors when the law enforcement~~
38 ~~officer or agency is seeking to apprehend a specific suspect whose race,~~
39 ~~ethnicity, national origin, gender or religious dress is part of the descrip-~~
40 ~~tion of the suspect unlawfully selecting or subjecting an individual to~~
41 ~~routine investigatory activities, or in deciding upon the scope and sub-~~
42 ~~stance of law enforcement activity based upon the individual's race, eth-~~
43 ~~nicity or gender when: (A) The law enforcement officer does not have a~~

means the practice of a law enforcement officer or agency engaging in unreasonable reliance on race, ethnicity, or gender 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 gender is part of the description of the suspect

1 ~~reason to believe the person has committed a violation of traffic laws or~~
 2 ~~ordinances; (B) the law enforcement officer does not have trustworthy~~
 3 ~~information leading a reasonable law enforcement officer to believe the~~
 4 ~~person stopped is committing, has committed or is about to commit a~~
 5 ~~crime as provided in K.S.A. 22-2402, and amendments thereto; (C) the~~
 6 ~~law enforcement officer does not have trustworthy information leading a~~
 7 ~~reasonable law enforcement officer to believe probable cause exists to ar-~~
 8 ~~rest the person as provided in K.S.A. 22-2401, and amendments thereto;~~
 9 ~~or (D) the law enforcement officer or agency is not seeking to apprehend~~
 10 ~~a suspect whose race, ethnicity, gender or religious dress is part of the~~
 11 ~~description of a suspect.~~

12 (2) "Racial profiling" does not include a contact by a law enforcement
 13 officer of a person when the contact is only for the purpose of asking the
 14 person if they have information regarding the investigation of a complaint,
 15 crime or suspicious activity, checking a person's welfare or as part of
 16 community outreach or community policing.

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

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

25 Sec. 2. K.S.A. 22-4607 is hereby amended to read as follows: 22-
 26 4607. (a) A 15-member task force on racial profiling shall be appointed
 27 by the governor. The task force shall include representatives of the Kansas
 28 attorney general's office, the Kansas highway patrol, city and county law
 29 enforcement agencies, *the Kansas state lodge of the fraternal order of*
 30 *police*, the Hispanic and Latino American affairs commission, the advisory
 31 commission on African-American affairs, the department of revenue,
 32 Kansas human rights commission, Kansas district courts, Kansas civil
 33 rights advocates and others who can assist in the performance of the
 34 functions of the task force.

35 (b) The governor's task force on racial profiling shall work in part-
 36 nership with local and state law enforcement agencies to review current
 37 policies and make recommendations *for training programs and* for future
 38 policies and procedures statewide for the full implementation of the pro-
 39 visions of K.S.A. 22-4606 through 22-4611, and amendments thereto. ~~The~~
 40 ~~task force shall work in partnership with law enforcement and the public~~
 41 ~~to design methods for the collection, analysis and public dissemination of~~
 42 ~~data regarding traffic stops utilizing the uniform traffic citation. The~~
 43 ~~methods for collection, analysis and dissemination of data required by~~

1 ~~this subsection shall be designed no later than January 1, 2010.~~ The task
 2 force shall hold public hearings and meetings as needed to involve and
 3 inform the public on issues related to racial profiling.

4 (c) Members of the task force serving on the effective date of this act
 5 shall continue to serve terms until July 1, 2007. Thereafter, members shall
 6 be appointed for terms of two years. Vacancies shall be filled by appoint-
 7 ment for the unexpired term. Upon expiration of a member's term, the
 8 member shall serve until a successor is appointed and qualifies. ~~No mem-
 9 ber shall serve more than two consecutive full terms.~~

10 (d) The chairperson of the task force shall be designated by the gov-
 11 ernor. The task force shall meet at the call of the chairperson at least
 12 quarterly or as often as necessary to carry out the functions of the task
 13 force.

14 (e) The staff of the Kansas advisory commission on African-American
 15 affairs and the Kansas Hispanic/Latino American affairs commission shall
 16 provide administrative support to the task force and its chairperson.

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

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

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

24 Sec. 3. K.S.A. 22-4609 is hereby amended to read as follows: 22-
 25 4609. ~~The race, ethnicity, national origin, gender or religious dress~~ *Racial*
 26 *profiling* of an individual or group shall not be ~~the sole factor used~~ in
 27 determining the existence of probable cause to take into custody or to
 28 arrest an individual or in constituting a reasonable and articulable suspi-
 29 cion that an offense has been or is being committed so as to justify the
 30 detention of an individual or the investigatory stop of a vehicle.

31 Sec. 4. K.S.A. 22-4610 is hereby amended to read as follows: 22-
 32 4610. (a) All law enforcement agencies in this state shall adopt a detailed,
 33 written policy to preempt racial profiling. Each agency's policy shall in-
 34 clude the definition of racial profiling found in K.S.A. 22-4606, and
 35 amendments thereto.

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

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

42 (1) A prohibition of racial profiling.

43 (2) Annual educational training which shall include, but not be lim-

1 ited to, an understanding of the historical and cultural systems that per-
2 petuate racial profiling, assistance in identifying racial profiling practices,
3 and providing officers with self-evaluation strategies to preempt racial
4 profiling prior to stopping a citizen.

5 (3) For law enforcement agencies of cities of the first class with more
6 than 10 full-time certified law enforcement officers, establishment or use
7 of current independent citizen advisory boards which include participants
8 who reflect represent the racial and ethnic community, to advise and assist
9 in policy development, education and community outreach and commu-
10 nications related to racial profiling by law enforcement officers and
11 agencies.

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

14 (5) A provision that, if the investigation of a complaint of racial pro-
15 filing reveals the officer was in direct violation of the law enforcement
16 agency's written policies regarding racial profiling, the employing law en-
17 forcement agency shall take appropriate disciplinary action consistent
18 with applicable laws, rules and regulations, resolutions, and ordinances
19 or policies, including demerits, suspension or removal of the officer from
20 the agency.

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

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

30 (d) ~~Each law enforcement agency shall compile an annual report of~~
31 ~~all complaints of racial profiling received and shall submit the report on~~
32 ~~or before January 31 to the office of the attorney general for review. Each~~
33 ~~law enforcement agency shall compile and submit an annual report on or~~
34 ~~before August 1 of each year to the attorney general regardless of whether~~
35 ~~the agency received any racial profiling complaints between July 1 of the~~
36 ~~previous year and June 30 of the current year. The annual report shall~~
37 ~~include: (1) The date the complaint is filed; (2) action taken in response~~
38 ~~to the complaint; (3) the decision upon disposition of the complaint; and~~
39 ~~(4) the date the complaint is closed; (5) whether all officers employed by~~
40 ~~the agency received the statutorily required annual racial profiling train-~~
41 ~~ing for the prior training year running from July 1 of the previous year~~
42 ~~to June 30 of the current year; (6) whether the agency has a written policy~~
43 ~~that prohibits racial profiling; (7) whether the agency mandates specific~~

1 ~~discipline of law enforcement officers who engage in racial profiling; (8)~~
2 ~~whether the policy details the discipline to be administered for racial~~
3 ~~profiling; (9) whether the policy includes provisions outlining the individ-~~
4 ~~ual's right to file complaints with the agency or with the Kansas human~~
5 ~~rights commission, or both, and the specific procedures for individuals to~~
6 ~~file complaints with the agency; and (10) whether the agency has a citizen~~
7 ~~advisory board. Annual reports filed pursuant to this subsection shall be~~
8 ~~open public records and shall be posted on the official website of the~~
9 ~~attorney general.~~

(7) whether the policy provides for discipline of law enforcement officers who engage in racial profiling.
(8) whether the policy requires the agency to take appropriate disciplinary action consistent with applicable laws, rules and regulations, resolutions and ordinances.

1 discipline of law enforcement officers who engage in racial profiling; (8)
 2 whether the policy details the discipline to be administered for racial
 3 profiling; (9) whether the policy includes provisions outlining the individ-
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 6 file complaints with the agency; and (10) whether the agency has a citizen
 7 advisory board. Annual reports filed pursuant to this subsection shall be
 8 open public records and shall be posted on the official website of the
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10 Sec. 5. K.S.A. 22-4611 is hereby amended to read as follows: 22-
 11 4611. (a) Any person who believes such person has been subjected to
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 13 plaint with the law enforcement agency. The complainant may also file a
 14 complaint with the Kansas human rights commission. The commission
 15 shall review and, if necessary, investigate the complaint. The commission's
 16 designee shall consult with the head of the law enforcement agency be-
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(f) 19 ~~(b)~~ The Kansas human rights commission shall forward all findings
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 21 and training. The Kansas human rights commission shall inform the com-
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 23 agency of the outcome or disposition of the complaint in writing. Nothing
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 31 shall not prevent a motorist who feels that their rights have been violated
 32 to file a civil law suit against the law enforcement officer or agency.

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 35 against the law enforcement officer or law enforcement agency, or both,
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 38 allow the prevailing party reasonable attorney fees and court costs.

39 Sec. 6. K.S.A. 2008 Supp. 74-9501 is hereby amended to read as
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Upon finding that an investigation is necessary, the commission shall be responsible for timely notification of the law enforcement officer(s) and their respective law enforcement agency that an investigation has been initiated and shall provide at the outset of the investigation:

1. A copy of the signed complaint,
2. A copy of any and all documentation and evidence provided in support of the claim of unlawful racial profiling, and
3. The factors considered by the commission specific to the incident which support the necessity to investigate the claim of racial profiling.

At the conclusion of the investigation, the investigator

to the commission

(b) Any investigation authorized by this section shall be thoroughly conducted, including but not limited to:

- (1) Reviewing any reports, audio recordings, or video recordings made available by the law enforcement agency.
- (2) Providing an opportunity for any person known to be involved in or witnessing the alleged incident to be interviewed.

(c) The findings of the commission shall not be based on whether or not a summons was issued to the person stopped, or based on the reasons for the stop other than racial profiling.

(d) The investigative report shall be presented by the investigator at a meeting of the commission. The complaining party, the officer(s) accused of wrong doing, and a representative of the law enforcement agency shall have an opportunity to address the commission. The finding of the commission shall be by a majority vote of the commission.

(e) If the commission makes a determination of probable cause, the officer or the agency shall have the right to appeal under the Kansas administrative appeal process.

and supporting investigative reports

head of the

Such notice shall include a summary of the rationale for the finding

1 the secretary of corrections, the superintendent of the highway patrol,
2 the commissioner of juvenile justice and the director of the Kansas bureau
3 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 stops. The collection of data shall include informa-~~
35 ~~tion necessary to conduct analysis of traffic stops with regard to race,~~
36 ~~gender and ethnicity of drivers. The uniform traffic citation shall be avail-~~
37 ~~able for use by law enforcement agencies not later than January 1, 2011.~~

38 ~~(5)~~ (6) Develop and oversee reporting of all criminal justice federal
39 funding available to the state or local units of government including as-
40 suming the designation and functions of administering the United States
41 bureau of justice assistance grants.

42 (6) (7) Form such task groups as necessary and appoint individuals
43 who appropriately represent law enforcement, the judiciary, legal profes-



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Testimony of Capt. Don Krone
On behalf of the Kansas Association of Chiefs of Police
Senate Bill 179

February 25, 2009

**Testimony to the Senate Federal and State Affairs Committee
In Opposition to SB179 Racial Profiling**

Mr. Chairman and committee members,

Good morning. I am Captain Don Krone with the Lenexa, Kansas Police Department. I am speaking today on behalf of the Kansas Association of Chiefs of Police. First, we support the positions presented to you today by Sheriff Denning and the Kansas Sheriff's Association, as well as the testimony of Ed Klumpp on behalf of the Kansas Peace Officers Association. I appreciate the time afforded to me to speak on the topic of data collection as it relates to Senate Bill 179.

Over the last 10 years there has been a movement to employ traffic stop data collection methods by various organizations and community stakeholders to measure the extent, or lack, of racial profiling. Many resources have been expended toward this goal and many lessons learned. In considering whether to design and implement a data collection, one must ask,

- What are the goals of implementing a data collection system?
- What data collection systems have been successful and attained those goals?
- What are the costs of data collection?
- Are there other more economical and proven effective means to address racial profiling?

Nationally, there have been overly optimistic expectations regarding the ability of social science methods to turn traffic stop data into meaningful conclusions regarding the existence of racially biased policing. In fact, data collection cannot provide unequivocal answers to questions about the existence or lack of racial profiling by police in a jurisdiction. Data collection may only indicate disparity among a defined demographic, but does nothing to speak to the reasons for the disparity. For example, in

Missouri, which has a law that mandates data collection, the Kansas City Police department reported that 65% of the traffic stops involved male drivers while 35% involved female drivers. Males make up approximately 48% of the driving age population of Kansas City while females make up approximately 52%. Does this indicate gender bias on the part of the Kansas City police department? It is unclear from the data but most of us are disinclined to jump to that conclusion because other factors could account for the disparity. Those factors in this statewide data collection system are not addressed.

Every traffic contact is unique as to the facts and circumstances upon which an officer decides to initiate a stop and what enforcement action that officer takes. Data collection strips away those unique aspects completely. Many have already learned that quality analysis of vehicle stop data is not as simple as comparing vehicle stop information to basic census information. A lack of quality in designing and implementing a data collection system will lead to frustration among all stakeholders and possibly mistrust between the community and police organizations.

A quality data collection system begins with the design. The relevant questions to be answered by the data must be identified. The type of data to be collected must correspond to and answer the questions identified. An appropriate benchmark must be established. Specific criteria must be in place by which the data results must be interpreted. There must be an agreement by the stakeholders how the results will be interpreted and disseminated. At risk is the temptation by special interest and advocacy groups, the media, and even law enforcement to interpret the data collected for their own purposes and in a manner never intended. The potential for this type of independent analysis is great and only frustrates any dialogue pertaining to the extent or existence of racial profiling.

The decision to implement data collection must include a cost-benefit analysis. What are the tangible and intangible costs and what information will be produced? Will it answer the questions stakeholders' want answered? A great amount of resources are required to design, implement and maintain a data collection system. One of the biggest issues to overcome is researching and determining an appropriate benchmark to compare against the data collected. Next, there must be research on the type of data to collect and the design of a reporting tool for officers to use. Law enforcement administrators must develop policy, procedures, and training to implement a system. Line officers must fill out and report the data, which must be submitted to supervisors to review for accuracy and completeness. Last year our research found that Kansas law enforcement officers conducted approximately 2.2 million traffic stops. If it took one minute to complete the form it would be equivalent of 18 full time officers statewide doing nothing but completing forms. Form completion constitutes the smallest cost of implementing a data collection system. Incomplete forms must be returned for correction. One of the most time consuming and costly aspects of a data collection system is in the analysis. A responsible law enforcement agency will maintain their own records and perform their own analysis. Finally, there is the dissemination phase. Many law enforcement administrators have reported a struggle in trying to explain the results of the data collection effort, whether favorable or not, due to the complicated manner in which the data has been interpreted by scientific means. The inability to explain the results in an understandable manner leads to frustration and distrust in the process. The potential then exists that public opinion will invalidate the process, regardless of the costs of resources expended.

We have learned the lesson that implementation of data collection systems has raised concerns that the data will be used to harm the agency or its personnel. Police executives have concerns that questionable data interpretations will be used irresponsibly by agency critics, including the media, and/or used in lawsuits against the agency. Line officers have expressed great concern that data will be used against them in legal or disciplinary actions, despite legitimate questions as to the data's validity. When information linking disparate impact to a specific officer without explanation or interpretation is made public there can be significant harm to the officer.

Finally, many experts studying this issue suggest that the decision to implement a data collection system should rest with each individual law enforcement executive in partnership with the community served. Chief executives should evaluate the cost-benefits of implementing a data collection system. The experience of others has shown that other, more cost effective and beneficial practices can be put in place. Most of these practices are already in place by way of the current racial profiling laws enacted in Kansas in 2005. They include a comprehensive policy against racial profiling, an effective citizen complaint process, a citizen advisory board on racial profiling, and the existence of an independent entity, the Kansas Human Rights Commission, which can investigate complaints of racial profiling. While there are currently due process issues related to that process, those issues can be mitigated. One of the most cost effective and beneficial means to pre-empt racial profiling is through training. This is an area where law enforcement has made great strides over the last 10 years but where there is still room for improvement and we would welcome the opportunity to put our limited but valuable resources toward continuing to do so. The use of in-car video systems in police cars has also proven to be effective in resolving claims of racial profiling.

Data collection has proven to be a distraction away from more effective means of addressing and pre-empting racial profiling. Frustration and distrust are the result of unrealized expectations of what data collection can actually provide. Otherwise meaningful and positive dialogue between the police and the community has been obstructed by murky interpretations of data. For these reasons it is the position of the Kansas Association of Chiefs of Police that the design and implementation of a data collection system related to racial profiling would not be cost effective and would detract resources away from other positive and proven means of pre-empting racial profiling.

Senate bill 179 refers to "data regarding traffic stops utilizing the uniform traffic citation." There currently is not a uniform traffic citation in Kansas. The development and implementation of such a citation would cause a financial burden on many police departments to transition to a uniform citation. Many departments are developing or have developed electronic tickets systems. There is a potential of substantial costs to change the software to meet the standards of a uniform citation.

Senate bill 179 also calls for the design of a data collection system by January 1, 2010. This would only allow 9 months for the Task Force to partner with state and local law enforcement agencies and the public to develop methodology for collection, analysis, and dissemination of the data. This is a rather ambitious timeline if the end product is to be of sufficient quality to meet the goals of a successful data collection system.

We recommend removing the data collection provisions from the statutory language. That can be accomplished by deleting the following sections:

- On page 1 delete all of lines 17 and 18.
- On page 2 delete all of lines 23 and 24. Also delete the word “The” at the end of line 39 and all of lines 40-43.
- On page 3 delete everything before “The”.
- On page 6 delete all of lines 32-37.

Thank you for your consideration of this matter.

Captain Don Krone
Lenexa, Kansas Police Department
On behalf of the Kansas Association of Chiefs of Police

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Kansas Bt... Investigation
Topc... 66612

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Pratt Police Department
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Kansas C-Post
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AL THIMMESCH, Secretary Treasurer
Wichita Police Department (Ret.)
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TOM PRUNIER, ...ent at Arms
Derby Police L...ent (Ret.)
Derby, k... 67

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- CHUCK DUNN
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- DENNIS GASSMAN
Kansas Highway Patrol
Salina, KS 67401

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- DELBERT HAWEL
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- LARRY COLE
Kansas Highway Patrol
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- MATT COLE
Garden City Police Dept.
Garden City, KS 67846

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- WARREN PETERSON
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Great Bend, KS 67530
- DAN HESKET
KS Dept of Wildlife & Parks
Pratt, KS 67124
- VERNON "SONNY" RALSTON
St. John Police Dept.
St. John, KS 67576

DISTRICT 7

- DON READ
Cowley County Sheriff's Office
Winfield, KS 67156
- BILL EDWARDS
Park City Police Dept.
Park City, KS 67219
- DAVE FALLETTI
KS Bureau of Investigation
Winfield, KS 67156

DISTRICT 8

- SANDY HORTON
Crawford County Sheriff's Office
Girard, KS 66743
- STEVE BERRY
Caney Police Dept.
Caney, KS 67333
- KEITH RATHER
KS Dept. of Wildlife & Parks
Chanute, KS 66720

Kansas Peace Officers' Association

INCORPORATED

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P.O. BOX 2592 • WICHITA, KANSAS 67201



February 25, 2009

Testimony to the Senate Judiciary Committee In Opposition to SB179 Racial Profiling

Chairman Brungardt and committee members,

The Kansas Peace Officers Association is aware of the testimony of the Kansas Sheriffs Association and the Kansas Association of Chiefs of Police and we support their positions in regards to this bill.

The area of concern we are going to focus on is the lack of due process for the officers and the agency in the investigative process. This is a critical area of concern and is exacerbated by what we perceive to be a problematic KHRC process. The central problems to be addressed are:

	The Problem:	The Solution:
1.	The KHRC has no written criteria or standardized method of evaluating when the complaint warrants an investigation.	Create a mechanism where the KHRC must notify the officer, the agency, and the complainant at the outset of the investigation of the contents of the complaint and the criteria used to establish cause to investigate.
2.	In our experience, the KHRC investigations are not thorough. We find not all witnesses, persons in the stop, or law enforcement officers always contacted.	The lack of thoroughness is unfair to the complainant and to the officer and can result in a decision based on incomplete factual information.
3.	Once the investigation is completed, the KHRC investigator only has to confer with one commissioner to obtain a finding of probable cause. The entire KHRC is not involved in the determination.	The investigator should present the findings to the entire commission who then takes a formal action to decide whether a probable cause finding should be entered.
4.	The officer, the law enforcement agency, nor the complainant has an opportunity to summarize their position in the case to the commission.	The is a basic due process issue resolved by simply allowing the parties an opportunity to brief the commission on why they believe the actions were or were not racial profiling.

In Unity There Is Strength

Sen Fed & State

Attachment 9
2-25-09

	The Problem:	The Solution:
5.	The finding of probable cause is damaging to an officer's reputation and endangers the opportunity for promotion and hiring by another agency. In the current system the officer has no place to force a hearing or trial on the issue and no mechanism to clear their name if they are innocent of the allegations. If the complainant decides not to pursue a law suit the officer is left with the probable cause finding on their record with no way to challenge it. The proposed follow-up KS-CPOST investigation only will apply to any action against the officer's certification. It does not offer a mechanism to reverse the KHRC decision.	Allow the officer an opportunity to appeal the decision through the existing state administrative hearing process.
6.	The KHRC investigators have told us they consider the giving of a warning as an indicator of racial profiling.	Prohibit the use of whether or not a summons was issued in determining if racial profiling occurred.

The solutions can be implemented in one of two ways.

1. Change the system to treat law enforcement like every other profession in Kansas with state certification or licensing and place the investigation and ruling authority to the organization with jurisdiction over the profession's certification. In this case that would be the KS-CPOST. CPOST already has a procedure in place that assures all of the listed solutions. Funding the investigators for CPOST wouldn't be an issue since the existing funding added for KHRC racial profiling investigators can be transferred to KPOST. This change can be adopted by simply changing all referrals to the "Kansas human rights commission" in section 5 to "Kansas Commission on Police Officer Standards and Training."
2. Create those minimal due process provisions in the statute to assure KHRC implements them and to assure the officer has an opportunity to clear their name and reputation if they are not guilty of the accusation. This process is outlined in the attached amendments to section 5 on page 5. The proposed changes will not diminish the opportunity to find probable cause exists when it is appropriately supported with investigative evidence.

Due process is a basic legal right when a property right is placed in jeopardy. In this case, the officer has a property right in retaining a job in their profession. The agencies are also harmed by misguided findings. Such findings create an atmosphere in the community of wrong doing and generate mistrust in the community, the same as the actual act of racial profiling does. But if the finding creates those negative results based on incomplete investigations and less than full consideration of the facts before rendering a ruling, which also is a wrong to the community.

Another area of concern we would like to point out is the provisions to include certain things in the agency annual report of racial profiling complaints found on page 4 starting on line 30 through line 9 on page 5. Those reporting provisions need to reflect the requirements found in section 4 starting on line 32 on page 3 through line 29 on page 4. However, the proposed list has added things to the report not required in the statute. For example, items 7 and 8 on lines 43, page 4 through line 3, page 5 adds language that is not contained in paragraph (5) found on page 4, lines 14-20. The reporting provisions need to be amended as we suggest in the attached proposed balloon amendment.

We do support extending the sunset provision for the task force. We believe the task force is the only opportunity for the interested parties to continue their efforts to reach the correct conclusions for all Kansans in this critical issue.

We respectfully ask you to consider these proposals if you decide to pass this bill out of committee.

Ed Klumpp
 Legislative Committee Chair
eklumpp@cox.net
 (785) 640-1102

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 2 whether the policy details the discipline to be administered for racial
 3 profiling; (9) whether the policy includes provisions outlining the individ-
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1. A copy of the signed complaint,
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3. The factors considered by the commission specific to the incident which support the necessity to investigate the claim of racial profiling.

At the conclusion of the investigation, the investigator

to the commission

(b) Any investigation authorized by this section shall be thoroughly conducted, including but not limited to:

- (1) Reviewing any reports, audio recordings, or video recordings made available by the law enforcement agency.
- (2) Providing an opportunity for any person known to be involved in or witnessing the alleged incident to be interviewed.

(c) The findings of the commission shall not be based on whether or not a summons was issued to the person stopped, or based on the reasons for the stop other than racial profiling.

(d) The investigative report shall be presented by the investigator at a meeting of the commission. The complaining party, the officer(s) accused of wrong doing, and a representative of the law enforcement agency shall have an opportunity to address the commission. The finding of the commission shall be by a majority vote of the commission.

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and supporting investigative reports

head of the

Such notice shall include a summary of the rationale for the finding

1 ited to, an understanding of the historical and cultural systems that per-
2 petuate racial profiling, assistance in identifying racial profiling practices,
3 and providing officers with self-evaluation strategies to preempt racial
4 profiling prior to stopping a citizen.

5 (3) For law enforcement agencies of cities of the first class with more
6 than 10 full-time certified law enforcement officers, establishment or use
7 of current independent citizen advisory boards which include participants
8 who reflect represent the racial and ethnic community, to advise and assist
9 in policy development, education and community outreach and commu-
10 nications related to racial profiling by law enforcement officers and
11 agencies.

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

14 (5) A provision that, if the investigation of a complaint of racial pro-
15 filing reveals the officer was in direct violation of the law enforcement
16 agency's written policies regarding racial profiling, the employing law en-
17 forcement agency shall take appropriate disciplinary action consistent
18 with applicable laws, rules and regulations, resolutions, and ordinances
19 or policies, including demerits, suspension or removal of the officer from
20 the agency.

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

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

30 (d) Each law enforcement agency shall compile an annual report of
31 all complaints of racial profiling received and shall submit the report on
32 or before January 31 to the office of the attorney general for review. Each
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36 previous year and June 30 of the current year. The annual report shall
37 include: (1) The date the complaint is filed; (2) action taken in response
38 to the complaint; (3) the decision upon disposition of the complaint; and
39 (4) the date the complaint is closed; (5) whether all officers employed by
40 the agency received the statutorily required annual racial profiling train-
41 ing for the prior training year running from July 1 of the previous year
42 to June 30 of the current year; (6) whether the agency has a written policy
43 that prohibits racial profiling; (7) whether the agency mandates specific

1 ~~discipline of law enforcement officers who engage in racial profiling;~~ (8)
2 ~~whether the policy details the discipline to be administered for racial~~
3 ~~profiling;~~ (9) whether the policy includes provisions outlining the individ-
4 ual's right to file complaints with the agency or with the Kansas human
5 rights commission, or both, and the specific procedures for individuals to
6 file complaints with the agency; and (10) whether the agency has a citizen
7 advisory board. Annual reports filed pursuant to this subsection shall be
8 open public records and shall be posted on the official website of the
9 attorney general.

(7) whether the policy provides for discipline of law enforcement officers who engage in racial profiling.
(8) whether the policy requires the agency to take appropriate disciplinary action consistent with applicable laws, rules and regulations, resolutions and ordinances.

9-4

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February 25, 2009

REMARKS OF STEVE A.J. BUKATY, STATE LODGE ATTORNEY, KANSAS STATE LODGE FRATERNAL ORDER OF POLICE

TO: Senate Committee on Federal and State Affairs

Chairman Brungart and Members of the Committee:

My name is Steve A.J. Bukaty. I have served as the State Lodge Attorney for the Kansas State Lodge of the Fraternal Order of Police (FOP) since 1987. The majority of the practice of our law firm is devoted to the representation of police officers in matters such as labor relations, internal affairs investigations, and disciplinary hearings. We serve as legal counsel to most of the FOP local lodges in the State of Kansas.

I am here today to address the proposed changes to the Racial Profiling Statute contained in Senate Bill No. 179.

The FOP and its members are unequivocally 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. However, the FOP has several concerns with the changes proposed by Senate Bill No. 179 which, in our opinion, will have a detrimental effect on the ability of the police officers of the State of Kansas to carry out their duties, while not enhancing the objectives of the Racial Profiling Statute.

Following are the principal concerns which the FOP has with the changes proposed in Senate Bill No. 179.

Section 1. The definition of racial profiling (K.S.A. 22-4606(e) and (f)(1)).

Currently, K.S.A. 22-4606(e) 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 in deciding upon the scope and substance of law enforcement activity following the initial routine investigatory activity. Under the proposed changes contained in Senate Bill No. 179, the phrase, "as the sole factor," is eliminated. In its stead is placed a very complex, confusing and unworkable definition.

The original purpose of the Racial Profiling Statute was to prohibit individuals from being stopped solely because of their race or ethnicity. To effectuate this purpose, the Legislature intentionally limited the definition of racial profiling to stops or investigatory activities which were based solely on race or ethnicity. The broad and confusing expansion of that definition, as contained in Senate Bill No. 179, will not effectuate the intent and purpose of the original statute, and will have a deleterious effect on officers' abilities to protect the public.

Among the changes contained in this section of the statute are the insertion of the word "trustworthy" in subparagraphs (B) and (C) of K.S.A. 22-4606(f)(1) which would transform a legitimate traffic or investigatory stop into racial profiling, unless the officer has "trustworthy information leading a reasonable law enforcement officer to believe the person stopped is committing, has committed or is about to commit a crime" or that the officer has "trustworthy information leading a reasonable officer to believe probable cause exists to arrest the person." (Emphasis added). No guidance is given as to the definition of the word "trustworthy."

Every day officers must act on tips, hunches and suspicions in carrying out their duties in order to keep the public safe from criminals. A big part of what police officers do is to conduct detailed investigations to determine the extent to which the information they have received is "trustworthy." The insertion of these words in the statute will place an impossible burden upon police officers, which will, in essence, require them to do a substantial investigation every time they receive information before they can act on that information. If the Legislature were to impose such an unrealistic obligation upon its officers, it will greatly impede their ability to protect the citizens of this state and to apprehend criminals. Indeed, if these proposed changes are adopted, officers will be forced to let many suspects go free as they will not be able to immediately determine the trustworthiness of the information upon which they are relying.

There has been no showing that the current definition of race or ethnicity as a sole fact is unworkable, or has led to an increase in racial profiling. Indeed, very few cases of racial profiling are filed, and in the only one to reach the courts, the District Court of Sedgwick County granted summary judgment to the officers involved. While racial profiling is abhorrent, it is clear that Kansas does not have a problem with racial profiling. This legislation creates many more problems than it could possibly solve.

Section 2. The Governor's Task Force (K.S.A. 22-4607).

The only change contained in Senate Bill 179 which the FOP can endorse is that which would require that a representative of the Kansas State Lodge of the Fraternal Order of Police shall serve as a member of the Governor's Racial Profiling Task Force.

Section 3. Determination of Probable Cause (K.S.A. 22-4609).

The change in Section 3 makes no sense. Currently, that section recites that race, ethnicity, national origin, gender or religious dress will not be the sole factor in determining the existence of probable cause. The proposed change in Section 3 would provide that "Racial profiling of an individual or a group shall not be used in determining the existence of probable cause." The proposed language, if adopted, would be immediately subject to challenge on the grounds that it is unconstitutionally vague and confusing. By making this change, the Legislature would be converting what is now a clear statutory mandate into a vague and ambiguous directive which will weaken its enforceability, and lead to numerous court challenges, further depleting the resources of the State's police departments and CPOST.

Section 5. Administrative Investigations (K.S.A. 22-4611).

Under the current statute, the biggest problem with the investigations conducted by the Kansas Human Rights Commission (KHRC) is that there is no due process hearing. Determinations are made by the agency as to the merits of racial profiling complaints, without ever conducting an evidentiary hearing; without ever giving the accused officer the opportunity to present evidence, cross-examine witnesses or test the sufficiency of the evidence. Senate Bill No. 179 does not address this problem. However, it does now bring Kansas CPOST into the equation. The FOP is opposed to this change.

CPOST is charged with maintaining the standards for training of police officers, and for maintaining their certification and commissions. It would be wholly inappropriate to have that agency conduct administrative due process hearings over individual allegations against police officers, which should be handled by KHRC, in the first instance.

Also, the proposed changes which would give CPOST jurisdiction to review and conduct hearings in these matters will conflict with the numerous collective bargaining agreements which cover many police officers in the State and which have their own grievance procedures and disciplinary hearing processes. This is an unnecessary and unwarranted change which will also greatly increase the cost of enforcing this statute, without providing any benefits, as well as running afoul of the grievance procedures officers have available to them on their individual departments.

Furthermore, under the proposed changes, those complaints which were found to have merit by KHRC (without any hearing) would then be forwarded to Kansas CPOST for review and possible disciplinary dispositions. However, there is no provision under the statute addressing what should occur if CPOST finds that the KHRC probable cause finding is in error.

The simple solution is to provide for a due process hearing before the Kansas Human Rights Commission, and to leave with the KHRC the exclusive jurisdiction for conducting the administrative investigation and evidentiary hearing of such complaints, pursuant to the Kansas Administrative Procedures Act.

As this Legislature is well aware, the current state of the economy has placed increased burdens on municipalities throughout this state to marshal their resources wisely and to curtail expenditures whenever possible. The proposed changes in this statute will have the opposite effect; they will increase not only the expenses of all police departments in the state, they will greatly enhance the responsibilities and expenses of the Kansas CPOST. As such, the proposed changes in the statute will constitute an unfunded mandate.

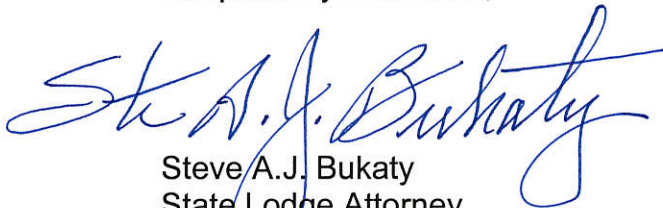
The FOP thanks the committee for its time in reviewing this matter and hopes that the information provided will prove beneficial in its consideration of Senate Bill 179. The FOP encourages this committee not to adopt any of the proposed suggested changes in the Racial Profiling Statute, contained in Senate Bill 179, other than the appointment of an FOP representative to the Governor's Task Force.

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I will be happy to answer any questions or provide any additional information to the committee as it deems necessary.

Thank you for your time and attention.

Respectfully submitted,



Steve A.J. Bukaty
State Lodge Attorney
Kansas State Lodge, Fraternal Order of Police

SAJB/keb