

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Pete Brungardt at 10:30 a.m. on March 3, 2009, in Room 136-N of the Capitol.

All members were present except:

Senator Steve Morris- excused

Committee staff present:

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

Conferees appearing before the committee:

Sherry Diel, Kansas Real Estate Commission  
Luke Bell, Kansas Association of Realtors  
Tony Scott, Kansas Society of Certified Public Accountants  
Susan Somers, Executive Director, Kansas Board of Accountancy  
Sandy Jacquot, League of Kansas Municipalities  
Walt Chappell, Racial Profiling Citizen Advisory Board - Wichita  
Sheila Officer, Racial Profiling Citizen Advisory Board - Wichita  
Anthony Suber, Racial Profiling Citizen Advisory Board  
Sheriff Frank Denning, Kansas Sheriff's Association  
Mike Watson, Governor's Task Force on Racial Profiling

Others attending:

See attached list.

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

**HB 2068 - Real estate brokers and salespersons; licensure; deactivation.**

Chairman Brungardt opened the hearing on **HB 2068**.

Sherry Diel, Kansas Real Estate Commission, spoke in favor of the bill. ([Attachment 2](#)) The bill would revise the definition of "office" to include any permanent location where one or more licensees regularly conduct real estate business; and would allow the Commission to pursue disciplinary action for violations even if a licensee is not engaged in a real estate transaction. The bill would also authorize the Commission to designate a course of study to fulfill any specific education requirement by rules and regulations; current statute limits the testing requirement to licensees for the mandatory core continuing education requirement.

Luke Bell, Kansas Association of Realtors, appeared in favor of the bill. ([Attachment 3](#)) The bill would make several technical and substantive changes to the Real Estate License Act; and provide a major step forward in protecting consumers and ensuring the professional responsibility of real estate licensees.

Chairman Brungardt closed the hearing on **HB 2068**.

**Sub HB 2339 - Concerning certified public accounts, mobility, practice privilege, powers of the board of accountancy and peer review.**

Chairman Brungardt opened the hearing on **Sub HB 2339**.

Staff provided an overview of the bill. ([Attachment 4](#))

Tony Scott, Kansas Society of Certified Public Accountants, spoke in favor of the bill. ([Attachment 5](#)) The bill would allow out-of-state certified public accountants (CPA) to practice in Kansas without having to be individually licensed.

CONTINUATION SHEET

Minutes of the Senate Federal And State Affairs Committee at 10:30 a.m. on March 3, 2009, in Room 136-N of the Capitol.

Susan Somers, Executive Director, Kansas Board of Accountancy, appeared in favor of the bill. (Attachment 6) The bill addresses the nationwide movement to adopt the "mobility" provision; currently there are 35 states that have adopted this provision and eight states pending, including Kansas. This action may require in-state CPA's to pay higher fees to cover the revenue loss of those coming in from out of state; however, the quid-pro-quo is that Kansas CPA's will be able to go to other states without having to pay individual fees to those other states.

Chairman Brungardt closed the hearing on **Sub HB 2339**

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

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

Sandy Jacquot, League of Kansas Municipalities, appeared in opposition to the bill. (Attachment 7) The original bill required that only cities of the first class be required to have a citizen advisory board on racial profiling; this bill would amend that section to require such boards for cities with more than 10 full-time law enforcement officers. This would include relatively small cities that have difficulty getting citizens to serve on the governing body, much less one more committee; there LKM requests that the requirement continue only for cities of the first class.

Walt Chappell, Racial Profiling Citizen Advisory Board, Wichita, spoke in opposition to the bill. (Attachment 8) Mr. Chappell stated that the citizens' board opposes the language in the bill, but supports the balloon amendment which the Governor's Task Force on Racial Profiling will recommend. Also provided: an article, "*Traffic Stop Data Collection Policies for State Police, 2001*" from the U.S. Department of Justice

Sheila Officer, Racial Profiling Citizen Advisory Board, Wichita, appeared in opposition to the bill. (Attachment 9) Ms. Officer provided additional language to the Task Force balloon. Also provided: statutes from Missouri and Texas.

Anthony Suber, Racial Profiling Citizen Advisory Board, spoke in opposition to the bill. (Attachment 10) Mr. Suber stated that traffic stop data collection systems are needed, to respond to the perception of racial profiling.

Kansas State Troopers Association, (Attachment 11) City of Wichita, (Attachment 12) and Christy Blackman, Wichita, (Attachment 13) provided written testimony in opposition to the bill.

Kansas Human Rights Commission provided written testimony on the proposed amendments. (Attachment 14)

Sheriff Frank Denning, Kansas Sheriff's Association, addressed concerns from the committee. (Attachment 15) The changes reflected from existing law to accommodate the application of a grant to receive funds from the National Highway Safety Administration, and in large part these changes were dictated by the eligibility requirement of the NHTSA grant. The Association questions whether the changes to the law should be motivated by grant funding; and that any changes should not be burdensome to law enforcement officers and their agencies.

Law enforcement remains opposed to data collection as a means to measure the existence of racial profiling in Kansas.

Mike Watson, Governor's Task Force on Racial Profiling, (Attachment 16) Provided an explanation of the Task Force changes to the definition of racial profiling in the bill.

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

The next meeting is scheduled for March 4, 2009. The meeting was adjourned at 12:06 pm.

SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

GUEST LIST

DATE 3-03-09

NAME	REPRESENTING
Sandy Jacquot	LKM
Brad Stuffer	Carter Group
Michael Kellan	Andover Police Dept.
Bob Sage	Rose Hill PD
Walt Chappell	WPD-RACIAL PROF. ADVISORY BRD.
Anthony Suber	" " " " "
Beatriz Ledezma	WPD-RACIAL ADVISORY BRD.
Charity Blackmon	Justice Keepers
Shelia D. Rice	WPD Racial Prof. Adv. Bd.
Rick Yoffe	" " " "
Wanda Cole	?
Hugo Torres	Kansas United Corporation
Maria G. Gonzalez	Kansas United Corporation
STEVEN Culp	Ks - CPOST
Bob Keller	JCSO
FRANK DENNING	JCSO
MIKE WATSON	GOV. TASK FORCE ON RACIAL PROFILING
Jeremiah O'Neill	myself
Sharon Joseph	self-
Alicia Barber	Racial profiling Committee
CHRIS BORTZ	KDOT
Tony A. Scott	KSCPA
Herma Jones	KHP
Ed Kuyper	KACP & KPOA
Ken McGovern	DG Co Sheriff's office
Tina Wood	Faust-Gondean





**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

**Overview of House Bill 2068**  
**Amendments to the Real Estate Brokers' and Salespersons' License Act**

Jason B. Long  
Assistant Revisor  
Office of Revisor of Statutes

March 3, 2009

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House Bill 2068 makes various amendments to the Real Estate Brokers' and Salespersons' License Act. The following are the substantive changes in the law proposed in the bill:

(1) On page 2 of the bill the definition of "office" in K.S.A. 58-3035 would be amended from any broker's place of business to "any permanent location where one or more licensees regularly conduct real estate business . . . or a location held out as an office."

(2) On page 5 the real estate commissions rule and regulation authority would be amended such that in designating a course of study to fulfill any specific requirement, such course of study may include a testing requirement.

(3) On page 6 the bill amends K.S.A. 58-3050 regarding when a licensee may be disciplined for violations of the law or rules and regulations. Language is stricken in lines 10-12 so that a licensee does need to be engaged in a real estate transaction in order to pursue disciplinary action for a violation of the law or rules and regulations.

(4) On page 14 the bill amends K.S.A. 58-3062 which prohibits a licensee from physically abusing or harassing clients, customers or other licensees. The bill would expand the

list of potential victims to include real estate commission members and staff, staff of the office of administrative hearings, staff of any real estate trade association or multiple listing service and any person from another business or industry whose services are requested or required as part of a real estate transaction.

(5) HB 2068 amends certain statutes pertaining to supervising brokers or branch brokers to provide for the deactivation of such brokers' license. In such event if another supervising or branch broker is not authorized to act as supervising or branch broker then all licenses of the licensees associated with or employed by the supervising or branch broker are rendered inactive. Currently, these statutes only address expired licenses.

HB 2068 makes other technical and conforming amendments in addition to what has been described above.

# KANSAS

KANSAS REAL ESTATE COMMISSION.  
SHERRY C. DIEL, EXECUTIVE DIRECTOR

KATHLEEN SEBELIUS, GOVERNOR

Memo To: Chairperson Brungardt and Members of the Senate Federal and State Affairs Committee  
From: Sherry C. Diel, Executive Director, Kansas Real Estate Commission  
RE: HB 2068—Relating to licensure of real estate salespersons and brokers  
Date: March 2, 2009

HB 2068 was requested by the Kansas Real Estate Commission to clarify existing law. The Commission and its disciplinary committee are requesting the proposed amendments to existing law to address issues that have arisen during policy discussions and disciplinary investigations. The Commission has consulted with the trade association, the Kansas Association of Realtors, in drafting the proposed amendments. The Kansas Association of Realtors supports the proposed legislation. The requested legislation would:

- **Page 2, Lines 27-35:** Amend K.S.A. 58-3035 to revise the definition of "office" to include any permanent location where one or more licensees regularly conduct real estate business or a location that is held out as such an office. Temporary facilities that are used as model home sales offices in a new homes subdivision are exempted from the definition of office if the real estate transaction files are maintained in the primary office or branch office. If the records are maintained at the model home office, the location would be considered an office. Real estate business is described to have the same definition as "broker" as defined in subsection (f) of K.S.A. 58-3035.

The purpose of this amendment is to clarify what is considered an "office" for purposes of designating a primary office and branch office in accordance with K.S.A. 58-3060(b), which requires that a supervising broker or branch broker be designated to supervise the office. The definition of "office" also ties into K.S.A. 58-3086 regarding advertising requirements. The intent is that temporary facilities in a new home subdivision that are used as a sales office, such as a model home, a temporary trailer, or the clubhouse, would not be considered to be an "office" and not required to be designated as a primary office or branch office as long as the transaction files are maintained at the actual primary office or branch office. If the files are maintained at the temporary sales office, the location would be considered an "office" and would have to be designated as a primary office or branch office. Any other facility where sales activity is regularly conducted or that the licensee holds out to the public to be an office that is not in a new homes subdivision would need to be designated as a primary office or branch office and have a supervising broker or branch broker designated to supervise the office.

- **Page 5, Lines 17-21:** Amend K.S.A. 58-3046a to authorize the Commission to designate a course of study to fulfill any specific education requirement by rules and regulation, which may include a testing requirement.

The current statute limits the testing requirement to licensees for the mandatory core continuing education requirement. The Commission compiled a group of stakeholders to review ways of improving standards for distance education for pre-license and continuing education courses. Amongst other recommendations, the stakeholders recommended that a person taking a course via distance education pass a test showing competency over the material in the current module before the person could move to the next module. The proposed amendment will allow the Commission to implement the recommendations of the stakeholders to improve distance education standards by rules and regulations and to adjust to changes in distance education standards as needed.

- **Page 6, Lines 10-12** Amend K.S.A. 58-3050 to clarify that the Commission is authorized to pursue disciplinary action even if a licensee is not engaged in a real estate transaction. The Commission has authority in other sections of the license law and regulations to take disciplinary action when the licensee is not acting as an agent, transaction broker or a principal.

There are several instances throughout the statutes when the licensee does not have to be involved in a transaction for the Commission to take disciplinary action. K.S.A. 58-3050(a)(1) creates a conflict because it implies that a licensee must be acting as an agent, transaction broker or a principal for the Commission to take disciplinary action when there is a violation of the license law, K.S.A. 58-3034 et seq., the Brokerage Relationships in Real Estate Transactions Act, K.S.A. 58-30,101 et seq., or regulations promulgated thereunder. However, the "prohibited acts" section of the license law, K.S.A. 58-3062(e), provides the Commission authority to take disciplinary action in matters outside of a transaction (harassment or physical harm or threatening of physical harm to another licensee or a client or customer, threatening to file a lien on residential property, etc.). Likewise, additional provisions have been added to the license law in recent years that result in violations (see K.S.A. 58-3079 through K.S.A. 58-3086). Licensees are also cited for violating regulations that may fall outside of a transaction, i.e. failure to report required information, such as an arrest or conviction of a felony, litigation involving real property, or a change of address.

- **Page 6, Lines 20-21** Amend K.S.A. 58-3050 to clarify that misrepresentation on an application includes a reinstatement and an attempt to obtain or reinstate a license.
- **Page 14, Lines 7-22** Amend K.S.A. 58-3062(e) to expand the list of persons who could be subject to threats or are the victims of physical abuse or harassment from a licensee.

The list would be expanded to include persons involved in a real estate transaction, persons involved in the real estate business or a closely related business, or persons that may be involved because of issues that arise during the prosecution of a complaint. In addition to a client or customer or another licensee that are already covered by the current statute, the proposed legislation would provide the Commission jurisdiction if attempts were made or the following persons were threatened, physically abused or harassed: a commissioner or staff member from the Commission, a staff member from the Office of Administrative Hearings, staff from any real estate trade association or multiple listing service; or any person from



another business or industry whose services are requested or required as part of a real estate transaction.

- **Pages 15-17** Amend K.S.A. 58-3080 through 58-3085 to address what happens to the licenses of affiliated licensees and pending transactions when the license of a supervising broker or branch broker is either voluntarily or involuntarily deactivated.

Just as a supervising broker or branch broker may allow his or her license to expire, the broker may also place the license on inactive status. Also, the Commission may place conditions on a license of a supervising broker or branch broker that include that the license be placed on inactive status.

- **Page 17, Lines 39-41** Amend K.S.A. 58-3086 to clarify that advertising of an "office" where real estate activity is conducted that is not designated as a primary office or branch office is a violation of K.S.A. 58-3086. The legislation refers to "office" as defined by K.S.A. 58-3035 rather than "location", which is not defined in current law.

The amendment would tie back to the definition of "office" so that advertising of a temporary facility, such as a model home, trailer, or clubhouse, that is used as a sales office in a new home subdivision would not constitute a violation of K.S.A. 58-3086(a)(3) provided the transaction files are maintained at the primary office or branch office.

The Commission believes that the only fiscal impact from the proposed legislation would be approximately \$5,000 per year from increased attorney fees and costs due to the expansion of the list of covered persons that would be protected from harassment or acts of or threats of physical harm towards others conducted by a licensee. The Commission does not anticipate receiving more than 1-2 more complaints per year, and the Commission would have to find that sufficient evidence exists to pursue disciplinary action against a licensee in order to incur any costs.

The Commission appreciates the Committee's consideration of this important legislation. I will be happy to stand for questions.



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To: Senate Federal and State Affairs Committee  
From: Luke Bell, KAR Vice President of Governmental Affairs  
Date: March 3, 2009  
Subject: **HB 2068** – Enacting Numerous Technical and Substantive Changes to the Kansas Real Estate Brokers' and Salespersons' License Act

Chairman Brungardt and members of the Senate Federal and State Affairs Committee, thank you for the opportunity to appear today on behalf of the Kansas Association of REALTORS® (KAR) to offer testimony in support of **HB 2068**. KAR has faithfully represented the interests of the 9,000 real estate professionals and over 700,000 homeowners in the State of Kansas for over 85 years.

**HB 2068** would make several technical and substantive changes to the real estate license act. We would like to express our gratitude to the Kansas Real Estate Commission for agreeing to work with the association over the course of this past year on this legislation.

As a direct result of this collaborative process, we believe that **HB 2068** would be a major step forward in protecting consumers and ensuring the professional responsibility of real estate licensees. Among other things, this legislation will strengthen our continuing education requirements, clarify the Commission's jurisdiction on disciplinary actions against real estate licensees and protect a greater number of individuals from harassment and physical abuse.

Thank you for the opportunity to appear before you today. I would be happy to respond to any questions at the appropriate time.



785.267.3610  
VOICE

800.366.0069  
TOLL FREE

785.267.1867  
FAX

3644 S  
Topeka, K  
www.kansas

Sen Fed & State  
Attachment 3  
3-03-09

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**MARY ANN TORRENCE**, ATTORNEY  
REVISOR OF STATUTES  
**JAMES A. WILSON III**, ATTORNEY  
FIRST ASSISTANT REVISOR  
**GORDON L. SELF**, ATTORNEY  
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**Overview of Substitute for House Bill 2339**  
**Amendments Regarding Certified Public Accountants**

Jason B. Long  
Assistant Revisor  
Office of Revisor of Statutes

March 3, 2009

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Substitute for House Bill 2339 creates new statutes and amends others regarding certified public accounts, powers of the board of accountancy and the mobility of practice privilege for certified public accountants.

Section 1 of the bill creates a new statute clarifying the board's authority to enforce the laws regarding the practice of certified public accountancy. This section clarifies the board's ability to investigate violations of the accountancy statutes and rules and regulations. Subsection (g) gives the board the power to issue subpoenas and compel the attendance of witnesses and the production of all necessary papers, books, records, documentary evidence and materials as necessary during the course of an investigation or disciplinary matter. Subsection (h) allows a person subpoenaed by the board to petition the board to revoke, limit or modify such subpoena within five days after service of the subpoena.

Section 2 of the bill allows the board to recoup reasonable costs incurred by the board in any proceeding conducted under the Kansas administrative procedure act when the board is the prevailing party. Such costs may be assessed against the parties in such proportion as the board may determine upon consideration of all relevant circumstances including the nature of the

proceeding and the level of participation by the parties. An order assessing reasonable costs shall include findings and conclusions in support of the assessment of costs.

Section 3 amends K.S.A. 1-301 to allow a fee to be charged and collected for a firm registration and to increase the maximum amount to be charged for various fees.

Section 6 amends K.S.A. 1-308 regarding firm registration to engage in the practice of certified public accountancy in this state. New subsection (b) requires any firm with an office in this state that practices certified public accountancy and any firm that does not have an office in this state, but offers to perform attest services for a client having its home office in this state to be registered by the board. New subsection (c) allows a firm which is not required to be registered under subsection (b) to perform nonattest services and to use the designations "certified public accountant," "CPA" or "CPA firm" upon meeting certain requirements. Under new subsection (d) an individual who has practice privileges under subsection (a) of K.S.A. 1-322 and who performs or offers to perform services for which firm registration is required, need not obtain a certificate or permit to practice.

Section 8 amends K.S.A. 1-311 to allow discipline of persons with practice privileges and to increase the cap on the amount of the administrative fine from \$2,000 to \$5000. Section 9 also increases the administrative fine cap for a firm violating K.S.A. 1-312 from \$2,000 to \$5,000.

Section 13 amends K.S.A. 1-322 regarding practice privilege permits. Subsection (a)(2) on page 17 of the bill sets out requirements to be met by an individual whose principal place of business is not in this state, but who has an active license to practice certified public accountancy from any state which the board has not verified to be in substantial equivalency with the licensure requirements of the uniform certified public accountancy act. An individual meeting those requirements need not obtain a permit to practice under K.S.A. 1-310, but can obtain a practice privilege permit under K.S.A. 1-322. Additionally, any individual who passed the uniform certified public accountancy examination and who holds a valid license to practice certified public accountancy in another state prior to January 1, 2012, may be exempt from the education requirement under subsection (a)(2).



New language in subsection (b) of K.S.A. 1-322 on page 18 of the bill provides that an individual who offers or renders professional services on or after November 1, 2009, and who possesses qualifications under subsection (a), shall be granted practice privileges in this state. Subsection (d) sets out conditions the out-of-state licensee and the firm employing such licensee must agree to in order for the out-of-state licensee to be granted a practice privilege permit under subsection (b). Subsection (e) provides that an individual who has been granted practice privileges under subsection (b), and who performs any of the services set out in subsection (e) for a client having its home office in this state, may only perform such services through a firm which has registered pursuant to K.S.A. 1-308.

The amendments in sections 4, 5, 10, 11 and 12 of the bill are conforming amendments necessary to conform those statutes to the new provisions regarding the practice privilege permit contained in section 13. Section 7 of the bill contains technical clean up amendments. Finally, section 14 of the bill amends K.S.A. 1-501 to clarify duties of a firm upon issuance of the first report subject to peer review.

The act would take effect upon publication in the Kansas register.



# Kansas Society of Certified Public Accountants

100 SE 9th Street, Suite 502 • PO Box 4291 • Topeka, Kansas 66604-0291 • 785-272-4366 • Fax 785-272-4468

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## TESTIMONY

To: The Honorable Pete Brungardt, Chairperson  
Members, Senate Committee on Federal and State Affairs

From: Tony A. Scott

Re: Support for Sub HB 2339

Date: March 3, 2009

Mr. Chairman and Members of the Committee:

Approximately 2,600 members strong, the Kansas Society of Certified Public Accountants is the statewide professional association of CPAs *dedicated to implementing strategies that enhance the well-being of our members, the accounting profession and the general public.* My name is Tony A. Scott and I am Executive Director of the KSCPA. **Today I am testifying in support of Sub HB 2339.**

Sub HB 2339 involves a number of issues, but the overarching reason for its introduction is to implement “practice mobility” in Kansas. Simply stated, practice mobility for CPAs is the ability to easily gain a practice privilege outside of their home licensing state without obtaining additional licenses in other states. The electronic age and today’s global economy make conducting business across state borders an everyday occurrence. As a result there is a critical need for all states to adopt a uniform mobility system that will allow licensed CPAs to provide services across state lines without unnecessary regulatory burdens that do not protect the public.

Prior to the recent nationwide initiative to implement mobility throughout the country, each state had its own rules, regulations and requirements to allow out-of-state CPAs to provide services in that state. The result was a patchwork regulatory system that was inefficient and increasingly difficult for CPAs to navigate.

After analyzing the traditional system for gaining practice privileges across state lines, the American Institute of CPAs (AICPA), National Association of State Boards of Accountancy (NASBA), state CPA societies, state regulatory boards, and practitioners collectively concluded that it was not working. In 2007 the AICPA and NASBA began working with state boards of accountancy and state CPA societies throughout the country to implement uniform interstate practice mobility through the Uniform Accountancy Act. Since that time, thirty-five (35) states have enacted provisions similar to the one proposed for Kansas. Eight (8) states, including Kansas, are currently working on mobility legislation.

In a system of multiple, cumbersome processes, and with disparities in requirements from state to state, regulatory compliance and enforcement becomes increasingly difficult. Today’s business realities, including an increase in interstate commerce and virtual technologies, require a uniform system that facilitates practice across state lines. Businesses today are often located in

Sen Fed & State

Attachment 5  
3-03-09

**TESTIMONY in Support of Sub HB 2339**

The Honorable Pete Brungardt, Chairperson  
Members, Senate Committee on Federal and State Affairs  
March 3, 2009

multiple states and have compliance responsibilities in multiple jurisdictions. A uniform process such as the one proposed in Sub HB 2339 will give CPAs in Kansas and throughout the country the flexibility to better serve the needs of their clients. Clients, or consumers of CPA services, will also receive more timely services from the CPA best suited to the job regardless of geographic location and without the undue regulatory requirements, registration filings, and payments of fees that do not protect the public interest.

The Kansas Board of Accountancy (KBOA) regulates the CPA profession in and for the State of Kansas. Provisions in Sub HB 2339 strengthen the KBOA's regulatory authority by providing for automatic jurisdiction, or "no escape," should a CPA enter Kansas and perform substandard work or otherwise perform an unethical or illegal act. Certified Public Accountants in Kansas appreciate and publicly thank members of the KBOA and staff for their joint support of practice mobility and Sub HB 2339.

**For the reasons stated herein above, we respectfully urge members of the Committee to vote in favor of Sub HB 2339.**

It is my honor and privilege to appear before you today. I will be pleased to stand for questions at the appropriate time.

Respectfully Submitted,

Tony A. Scott

TAS/mmi

TESTIMONY ON HB 2339

Mr. Chairman, members of the Committee, I am Susan Somers, Executive Director of the Kansas Board of Accountancy. I am here today on behalf of the entire Board of Accountancy as a proponent to HB 2339.

The provisions contained in HB 2339 are a result of a collaboration of both the members of the Kansas Board of Accountancy and Board members of the Kansas Society of CPAs.

There is a nationwide movement for all state Boards of Accountancy to adopt a "mobility" or "practice privilege" standard, whereby CPAs may move more freely from state to state without the need to register as individuals. The provisions contained in this Bill address the nationwide movement, and at the same time, afford the Board the ability and authority to regulate those who would benefit from mobility, in furtherance of the Board's statutory obligation to protect the public. Currently 35 states have adopted the "mobility" provision, with 8 states (including Kansas) pending.

The Bill contains all the components necessary to accommodate practice privilege and for the Board to be able to continue its mission in regulating the profession and ensuring the protection of the public.

Because there is a fiscal impact to this legislation, and because the Board has reached its maximum level of fees that may be imposed, changes to the maximum amount of fees are also included in the Bill to allow the Board the option to increase its fees to offset any negative revenue impact that may occur, if needed. It should be noted that the Board has not raised its fees since 1999.

The provisions of this Bill may require in-state CPAs to pay higher fees to cover the revenue loss of those coming in from out of state; however, the quid-pro-quo is that Kansas CPAs will be able to go to other states without having to pay individual fees to those other states.

Thank you. I will be happy to stand for any questions.

\* \* \* \*





League of Kansas Municipalities

300 SW 8th Avenue  
Topeka, Kansas 66603-3912  
Phone: (785) 354-9565  
Fax: (785) 354-4186

7

**To:** Senate Federal and State Affairs Committee  
**From:** Sandy Jacquot, Director of Law/General Counsel  
**Re:** Opposition to SB 179  
**Date:** February 25, 2009

First, I would like to thank the Committee for allowing the League to testify in opposition to SB 179. As LKM has previously testified on the subject of racial profiling, we are not opposed to a bill that seeks to prohibit unlawfully using race, ethnicity or gender as a pretext for law enforcement to subject individuals to investigatory activities. In addition, the racial profiling bill that passed several years ago thoughtfully balanced the need to prohibit such unlawful activity, while still allowing law enforcement to use accepted investigatory practices to maintain the safety of our communities.

SB 179 amends much of the law that passed to establish new definitions and standards. You will be hearing from law enforcement officers and agencies regarding the impact and unintended consequences of these proposed changes, both in the base bill and the balloon being proposed by the task force. In an effort to keep this testimony a reasonable length, LKM will focus on several other changes. First, SB 179 will require that every law enforcement agency file a report with the Attorney General, regardless of whether or not the agency received any racial profiling complaints. It is an exercise in busy work requiring the agency to state that the agency complied with the law in making sure it has policies, its officers have been trained, disciplinary policies are in place, that it has a citizen advisory board, and other such types of information that the law already requires. This is merely a bureaucratic exercise that is unnecessary and a waste of time.

Section 5(b) would require the Kansas Human Rights Commission to forward all probable cause findings of racial profiling to the commission on peace officer standards and training for investigation and possible action regarding an officer's law enforcement certification. This would occur on a mere probable cause finding, before any public hearing occurs at the administrative agency level. This is akin to allowing a finding of guilty before the accused gets the benefit of a trial. LKM believes that this provision could subject law enforcement officers to potential disciplinary actions that are more appropriately left until later in the process.

Finally, when hearings were held on the original racial profiling bill several years ago, LKM appeared and requested that only cities of the first class be required to have citizen advisory boards on racial profiling, which was codified into law. This bill would amend that section to require such boards for cities with more than 10 full-time law enforcement officers. That is too low a threshold and shows a lack of understanding of cities in Kansas. This would still sweep up relatively small cities that have difficulty getting citizens to serve on the governing body, much less one more committee. LKM requests that the requirement continue only for cities of the first class.

Thank you for allowing me to testify on behalf of LKM and its member cities in opposition to SB 179. I will be available for any questions the committee may have.

[www.lkm.org](http://www.lkm.org)

Sen Fed & State

Attachment 7  
3-03-09

**Honorable Pete Brungardt & Members of the Senate Federal & State Cmt.  
Testimony for the February 25th, 2009 hearing on SB179**

My name is Dr. Walt Chappell. I am Chairman of the Wichita Police Department Racial Profiling Citizen Advisory Board. Grass roots citizens' organizations from Wichita and across Kansas helped write and pass SB77 in 2005. Our citizens' board has been working to end racial profiling in Wichita and Kansas since then.

The WPD-RPCAB is opposed to the language in SB179 **BUT** supports the Balloon amendment which has been introduced by the Governor's Task Force on Racial Profiling. We are especially supportive of the new definitions in K.S.A. 22-4606 and the clarification language of K.S.A. 22-4609 in the Balloon. However, we suggest the following:

1. Our citizens' board would like to have "religious dress" added back into the K.S.A. 22-4606 definition. After 9/11, many Muslim men and women were profiled due to their head wear. Other religions also have special clothing which can make them a target of unequal law enforcement.
2. When SB77 was passed in 2005, a Governor's Task Force was formed as a compromise to having specific data elements in the statute. Here is the only "task" which the Governor's Task Force was to accomplish.

*"A 15-member task force shall be appointed by the governor to design a method for the uniform collection of data..... The task force shall make a final report and recommendations to the governor and the legislature not later than November 1, 2005."*

3. It has now been 3.5 years since November, 2005, and the Governor's Task Force on Racial Profiling still has not designed a method to collect data to show the patterns of discriminatory stops of minority drivers in Kansas. In SB179, they have again moved the date forward to January 1, 2010 and keep coming up with things to go on indefinitely.
4. States all around Kansas such as Texas, Illinois, Nebraska, Missouri, and Oklahoma have been collecting data on vehicle stops for years. Why is it necessary for Kansas to "reinvent the wheel" and keep moving the start date forward?
5. The Balloon language to SB179 does not even include a date to have this first step done. And since the Governor's Task Force on Racial Profiling has not accomplished anything

of substance, seldom has a quorum, does not include citizen input, will not even announce its meetings or post its minutes, they are a waste of taxpayer money.

6. Therefore, it is our recommendation that the full section of **K.S.A. 22-4607** be left **unchanged so the Task Force “sunsets” as called for in law by July 1, 2009.**
7. In its place, the **amendment to K.S.A. 74-9501** as introduced in SB179 should be passed by this legislature. The **Kansas Criminal Justice Coordinating Council** is ready to implement statewide data collection on all traffic stops and accidents. There is no need for the Governor’s Task Force on Racial Profiling to duplicate their efforts. Therefore, the following language from SB179 should be passed this legislative session to read:
  8. ***K.S.A. 74-9501(5) “Oversee the development, implementation and management of a uniform traffic citation for use by all Kansas law enforcement agencies to collect data on traffic stops. The collection of data shall include information necessary to conduct analysis and dissemination of results of traffic stops with regard to race, gender and ethnicity of drivers. The uniform traffic citation shall be available for use by all Kansas law enforcement agencies not later than January 1, 2010.”***
9. Finally, our citizens coalition recommends that **K.S.A. 22-4608** be amended to read:

***22-4608. Unlawful for law enforcement to engage in.***  
***(a) It shall be unlawful for any law enforcement officer or any law enforcement agency to engage in racial profiling.***  
***(b) A violation of this section is a class A misdemeanor.***  
***(c) This section shall be a part of and supplemental to the Kansas criminal code.***
10. Currently, K.S.A. 22-4608 does not state what the crime is if found guilty of racial profiling. Just saying that racial profiling is unlawful is meaningless. The Court needs to know what the crime is to assess a penalty.
11. We urge meaningful amendments to the racial profiling statutes of Kansas so this egregious, discriminatory, unequal enforcement of laws is stopped. Please work and pass this bill with the recommended changes offered by our citizens’ coalition.

Respectfully submitted,  
  
Dr. Walt Chappell  
(316)838-7900  
equalenforcement@cox.net



# Bureau of Justice Statistics Fact Sheet

December 2001, NCJ 191158

## Traffic Stop Data Collection Policies for State Police, 2001

As of March 2001, 16 of the Nation's 49 State law enforcement agencies whose primary duties include highway patrol required all their officers with traffic patrol duties to record the motorists' race and ethnicity for each traffic stop. The 16 State police agencies collecting these data represent an increase of 7 States since 1999.\*

An additional 23 State police agencies required their officers to collect race and ethnicity data under more limited circumstances, such as if an arrest occurred, or if force was used. Ten State police agencies did not require traffic patrol officers to collect race data for any stops.

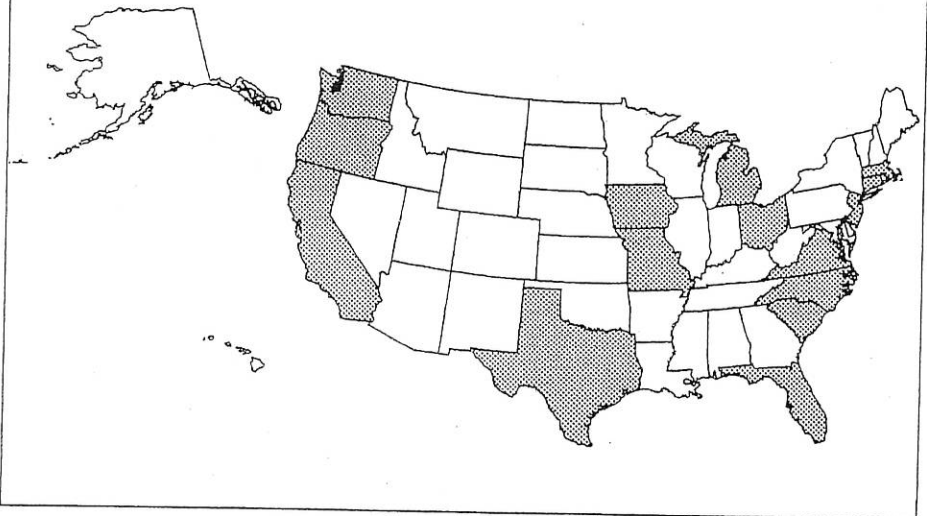
A few States reported that only some of their specialized units were required to collect race data. For example, Oklahoma and Idaho required only their criminal interdiction teams to collect race data.

### State laws prohibit racial profiling

In addition to the increase in the number of States that required State law enforcement agencies to collect race and ethnicity statistics during traffic stops, States have recently enacted statutes that prohibit law enforcement officers from engaging in racial profiling (California, Connecticut, Kentucky, Oklahoma, and Rhode

\*BJS undertook a similar data collection project in 1999. See *Traffic Stop Data Collection Policies for State Police, 1999*, February 2000, NCJ 180776.

In March 2001, 16 State police agencies required all their officers to collect race and ethnicity data for all traffic stops, an increase from 9 State agencies in 1999



Island). These statutes generally defined racial profiling as stopping a person based solely on race or ethnicity instead of an individualized suspicion arising from the person's behavior. (See *Selected State statutes* on page 3.)

Certain States have instituted new data collections as concerns over racial profiling have arisen in the media, the courts, and State legislatures. State police agencies (most frequently

designated as State police or State highway patrol) across the Nation have different procedures for collecting data on the race and ethnicity of drivers involved in a traffic stop.

To catalog State police data collection policies, BJS contacted each of the 49 State agencies. Hawaii and the District of Columbia do not have a formal State police agency.



## WHY WE MUST STOP RACIAL PROFILING

Racial profiling of Black and Hispanic drivers is a major problem in Wichita, Kansas and throughout the USA. This unequal enforcement of traffic laws is a tremendous financial and social burden for Minority drivers and their families. Then taxes go up for more jail cells, judicial system employees and financial assistance to minorities who loose their jobs due to these "pretext" stops.

The Wichita Police department study of 37,454 traffic and pedestrian stops in 2001 found:

1. Blacks are twice as likely to be stopped by WPD.
2. Blacks were 3 times more likely to be searched, arrested or have officers use excessive force.
3. Black and Hispanic drivers were more likely to be stopped at night than White drivers.

A similar Wichita Police Department study in 2003 showed the same results. Plus, the study done by the Washington, D.C. based Police Foundation for the State of Kansas showed that Blacks are twice as likely to be stopped as Whites in Wichita. This means that nearly **8,000 more Blacks are pulled over each year than if no racial profiling was done by the WPD.**

When the Wichita Municipal Court or Sedgwick County Traffic Court is in session, over half of the defendants standing in front of the Judges are Black and Hispanic. And, since traffic stops begin the legal process, it is no surprise that nearly half of the inmates in Kansas jails are Minorities. Now, to house more prisoners, the County Sheriff says he wants taxpayers to spend \$52 million for additional cells.

These illegal racial profiling stops and the resulting fines or jail time are also creating a major financial hardship on Black and Hispanic families. Since the early 1990's, there has been a 300% increase in revenue to the City of Wichita from fines. This means that Blacks and Hispanics in Wichita are paying over **\$2 million dollars per year more** than their share for fines. It is estimated that money collected in Kansas from Blacks and Hispanics due to racial profiling exceeds **\$7 million per year.**

**In ADDITION to these excessive fines,** the vehicle insurance premiums for Black and Hispanic drivers goes up with each new traffic ticket, making it harder to keep policies paid. Without insurance, Minority drivers are left vulnerable to huge debt from accidents plus their driver's license will be suspended if they can not afford to pay the higher cost of their vehicle insurance.

Then, if caught driving with a suspended license, the Minority owned car can be impounded and the driver put in jail. The financial disaster to Black and Hispanic families who depend on that driver and car is huge. Family members loose their jobs when they can not get to work. Whole families are then evicted from the house they were renting or buying because of the lost income.

In most cases, racial profiling starts with a traffic stop for which White drivers would seldom be given a ticket. Instead, some police officers or sheriff deputies are using phony traffic violations as their "probable cause pretext" to stop people of color to question or search them and/or their vehicles. As a result, thousands of innocent minority drivers are ticketed and fined after these racially biased stops.

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

We must all work together to change these police tactics which target Minority drivers for race based traffic stops. Report complaints of racial profiling to the ACLU, NAACP, or the Kansas Human Rights Commission. It is time to stand up for dignity and equal justice.

*Walt Chappell, Ph.D.,* Chairman  
WPD-Racial Profiling Citizens Advisory Board  
(316)838-7900(P) / [equalenforcement@cox.net](mailto:equalenforcement@cox.net)

**WICHITA STUDY OF 37,454 STOPS**  
**BLACKS 2XS MORE LIKELY TO BE STOPPED**

When compared to their proportional representation throughout the community, Black citizens are stopped at disproportionately higher rates than White, Asian, Native American and Other Race citizens. Based on the U.S. Census 2000 data, Black citizens represent 11.4% of the overall population of the city of Wichita and 20.7% of the stops (See Table 3.5).

Table 3.5 Race of citizens stopped

Race	Percent of population	Number of stops	Percent or stops
Asian	4.0	1081	2.9
<b>Black</b>	<b>11.4</b>	<b>7743</b>	<b>20.7</b>
Native American	1.2	104	.3
White	75.2	26618	71.1
Other Race	8.2	1853	4.9
Not reported	-	55	.1
Total	100	37454	100

This level of disparity does not appear evident among the Hispanic community. Based on the U.S. Census 2000 data, Hispanic citizens (of all races) represent 9.6% of the overall population of the city of Wichita and 9.2% of the stops (See Table 3.6).

\*\*\*\*\*

(As reported on page 18 in the Wichita Police Department Stop Study from data gathered between January through June of 2001.)

# 1999 SURVEY OF MINORITIES IN WICHITA MUNICIPAL COURT

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Date	Crt. Rm.	Male	Female	<25	26-45	>46	Black	Hispanic	Asian	White	% Minority
02/24/1999	Traffic	33	6	23	13	3	13	3	3	20	
03/01/1999	Traffic	25	14	24	15	0	14	9	0	16	
03/03/1999	Traffic	12	6	8	7	3	6	4	0	8	
Subtotal	Traffic	70	26	55	35	6	33	16	3	44	
<b>%</b>		<b>73%</b>	<b>27%</b>	<b>57%</b>	<b>36%</b>	<b>5%</b>	<b>34%</b>	<b>17%</b>	<b>3%</b>	<b>46%</b>	
<b>% Minority</b>	<b>Traffic</b>										<b>54%</b>
03/01/1999	Rm. A	28	12	19	20	1	13	5	2	20	
03/01/1999	Rm. C	11	14	8	13	4	12	1	0	12	
03/03/1999	Rm. A	13	10	4	19	0	10	2	0	11	
Subtotal	Mun.Crt.	52	36	31	52	5	35	8	2	43	
<b>%</b>		<b>59%</b>	<b>41%</b>	<b>35%</b>	<b>59%</b>	<b>6%</b>	<b>40%</b>	<b>9%</b>	<b>1%</b>	<b>49%</b>	
<b>% Minority</b>	<b>Mun.Crt.</b>										<b>51%</b>
03/01/1999	Clerk's Off.	27	16	18	20	5	25	7	0	11	
03/03/1999	Clerk's Off.	16	4	11	6	3	12	0	0	8	
Subtotal	Clerk's Off.	43	20	29	26	8	37	7	0	19	
<b>%</b>		<b>68%</b>	<b>32%</b>	<b>46%</b>	<b>41%</b>	<b>13%</b>	<b>59%</b>	<b>11%</b>	<b>0%</b>	<b>30%</b>	
<b>% Minority</b>	<b>Clerk's</b>										<b>70%</b>
<b>TOTALS</b>	<b>247 People</b>	<b>165</b>	<b>82</b>	<b>115</b>	<b>113</b>	<b>19</b>	<b>105</b>	<b>31</b>	<b>5</b>	<b>106</b>	
<b>%</b>		<b>67%</b>	<b>33%</b>	<b>47%</b>	<b>45%</b>	<b>8%</b>	<b>43%</b>	<b>12%</b>	<b>2%</b>	<b>43%</b>	
<b>% Minority</b>	<b>Total</b>										<b>58%</b>

For further information, contact *Wichita Citizens for Equal Law Enforcement* (316)838-7900

Testimony before the State & Affairs Committee  
RE: Senate Bill 179 and the Balloon Amendment  
By Sheila Officer  
March 3, 2009

My name is Sheila Officer and I am a resident of Wichita, Kansas. I am a registered active voter and I am with the Citizens Advisory Board for Racial Profiling. I am also the Training Committee Chair .

**Opponent: for SB 179**

**Proponent: for SB 179 Balloon Amendment with our proposed changes**

Racial profiling or Racially Based Policing or Driving While Black, Driving While Brown, Walking While black, or Walking While Brown, whatever name you want to give the beast, when practiced, it is a violation of the civil rights of people of color.

It is unsound policing and to use it as a patrol tactic is unconstitutional.

It is intolerable to accept "blackness" or "brownness" as a standard indicator of criminality.

Now in American we have a governing document that states"

**We hold this to be self evident that all men are created equal. That they**

**are endowed by their creator with certain inalienable rights; that among**

**these are life, liberty and the pursuit of happiness."**

**These rights are guaranteed by The Bill Of Rights. Rights that are trampled over, ignored and abused by some leo.**

The policy of treating all citizens like criminals in order to catch any offender strikes the wrong balance because it says, " preventions over all other values at any cost, civil rights, human rights, social rights, etc".

Citizens of Kansas have endured this treatment by our LEO for too long! In 2005 we stood before this same committee with SB 77/ 610. Legislation was passed. Henceforth the birth of KSA 22-4606-4611. But, back then, the bill was gutted and it became too passive with no level of accountability, responsibility or measures for ensuring equal enforcement of the law.

**Accountability- 22-4608.** Accountability at the agency level and accountability at the individual level. Accountability that ensures ethical performance of law enforcement agencies with respect to providing ethical services to the public. Individual accountability which involves the conduct of law enforcement officers with respect to lawful, respectful and equal treatment of all citizens.

That in 22-4608 the language should include that for any officer to engage in racial profiling will be a **Class A Misdemeanor and that 22-4608 become a part of the Kansas Criminal Codes.**

Also, that if any law enforcement officer or its agency is found to be in violation of state law, **that the Governor shall withhold any state funds appropriated to the noncompliant law enforcement agency.**

**Responsibility-** With respect to the SB 179 Balloon Amendment regarding Citizens Advisory Boards, we propose that all Citizens Advisory Boards be independent boards. And, that the board should **reflect and not represent** the communities they serve.

Reflect implies that the board will be a mirror of the community they serve, whereas represent means to act the part of representatives for the community, but not necessarily reflecting the true makeup of the community.

**Equitable Enforcement of the Law- 22-4607** Birthed by SB 77/610.

Data collection- the implementation analysis and dissemination of traffic stop data confers two important messages:

- 1) That biased based policing will not be tolerated towards our citizens.
- 2) That agency personnel are accountable to the citizens they serve.

It is the first step among several towards addressing racial profiling. It is necessary for identifying the problem and giving directions to effort to eliminate profiling practice and institution policy.

With my testimony you should have examples of TX, MO and OK State Statutes on racial profiling. These states have implemented data collection, analysis, and dissemination of traffic stop data in their statutes, with explicit details of the variables it **must** contain. Some states have voluntarily implemented data collection. They are; OR, WA, UT and MN, just to name a few.

Now last week we heard testimony on why we shouldn't implement data collection. Some of the reasons given were;

- 1)Not cost effective
- 2)It would only show disparities (This is true, but it would show disparities in the treatment of the people of color by our leo)
- 3)It's being reactive instead of proactive
- 4)It denies due process if an officer is found to be guilty of profiling
- 5) Some just didn't want any changes to the bill, passive as it is.

Data collection is just one step in eliminating racial profiling. It's a resource that **must be** implemented. It should be considered as a management tool and not a punitive tool. We must remember that the primary motivation for any stop **MUST always be** "enforcement of the violation that forms the basis of the stop". Not a "fishing expedition." Profiling and pretextual stops are hand in hand poor patrol tactics, and we as citizens of Kansas have had enough !



On behalf of the citizens of Kansas, we ask that you work and pass this Balloon Amendment to SB 179 **with our proposed changes.**

Sheila Officer  
316-516-4211

# *Missouri Revised Statutes*

## **Chapter 590** **Peace Officers, Selection, Training and Discipline** **Section 590.650**

August 28, 2008

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### **Racial profiling--minority group defined--reporting requirements--annual report--review of findings--failure to comply--funds for audio-visual equipment--sobriety check points exempt.**

590.650. 1. As used in this section "minority group" means individuals of African, Hispanic, Native American or Asian descent.

2. Each time a peace officer stops a driver of a motor vehicle, that officer shall report the following information to the law enforcement agency that employs the officer:

- (1) The age, gender and race or minority group of the individual stopped;
- (2) The reasons for the stop;
- (3) Whether a search was conducted as a result of the stop;
- (4) If a search was conducted, whether the individual consented to the search, the probable cause for the search, whether the person was searched, whether the person's property was searched, and the duration of the search;
- (5) Whether any contraband was discovered in the course of the search and the type of any contraband discovered;
- (6) Whether any warning or citation was issued as a result of the stop;
- (7) If a warning or citation was issued, the violation charged or warning provided;
- (8) Whether an arrest was made as a result of either the stop or the search;
- (9) If an arrest was made, the crime charged; and
- (10) The location of the stop.

Such information may be reported using a format determined by the department of public safety which uses existing citation and report forms.

3. (1) Each law enforcement agency shall compile the data described in subsection 2 of this section for

the calendar year into a report to the attorney general.

(2) Each law enforcement agency shall submit the report to the attorney general no later than March first of the following calendar year.

(3) The attorney general shall determine the format that all law enforcement agencies shall use to submit the report.

4. (1) The attorney general shall analyze the annual reports of law enforcement agencies required by this section and submit a report of the findings to the governor, the general assembly and each law enforcement agency no later than June first of each year.

(2) The report of the attorney general shall include at least the following information for each agency:

(a) The total number of vehicles stopped by peace officers during the previous calendar year;

(b) The number and percentage of stopped motor vehicles that were driven by members of each particular minority group;

(c) A comparison of the percentage of stopped motor vehicles driven by each minority group and the percentage of the state's population that each minority group comprises; and

(d) A compilation of the information reported by law enforcement agencies pursuant to subsection 2 of this section.

5. Each law enforcement agency shall adopt a policy on race-based traffic stops that:

(1) Prohibits the practice of routinely stopping members of minority groups for violations of vehicle laws as a pretext for investigating other violations of criminal law;

(2) Provides for periodic reviews by the law enforcement agency of the annual report of the attorney general required by subsection 4 of this section that:

(a) Determine whether any peace officers of the law enforcement agency have a pattern of stopping members of minority groups for violations of vehicle laws in a number disproportionate to the population of minority groups residing or traveling within the jurisdiction of the law enforcement agency; and

(b) If the review reveals a pattern, require an investigation to determine whether any peace officers of the law enforcement agency routinely stop members of minority groups for violations of vehicle laws as a pretext for investigating other violations of criminal law; and

(3) Provides for appropriate counseling and training of any peace officer found to have engaged in race-based traffic stops within ninety days of the review.

The course or courses of instruction and the guidelines shall stress understanding and respect for racial and cultural differences, and development of effective, noncombative methods of carrying out law enforcement duties in a racially and culturally diverse environment.

6. If a law enforcement agency fails to comply with the provisions of this section, the governor may

withhold any state funds appropriated to the noncompliant law enforcement agency.

7. Each law enforcement agency in this state may utilize federal funds from community-oriented policing services grants or any other federal sources to equip each vehicle used for traffic stops with a video camera and voice-activated microphone.

8. A peace officer who stops a driver of a motor vehicle pursuant to a lawfully conducted sobriety check point or road block shall be exempt from the reporting requirements of subsection 2 of this section.

(L. 2000 S.B. 1053, A.L. 2001 H.B. 80, A.L. 2004 S.B. 1233, et al.)

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Missouri General Assembly

force which exceeds the degree of physical force permitted by law or by the policies and guidelines of the law enforcement entity, shall report such use of excessive force to such officer's immediate supervisor.

B. At a minimum, the report required by this section shall include:

1. The date, time, and place of the occurrence;
2. The identity, if known, and description of the participants;
3. A description of the events and the force used.

C. A copy of an arrest report or other similar report required as a part of a peace officer's duties can be substituted for the report required by this section, as long as it includes the information specified in subsection B of this section. The report shall be made in writing within ten (10) days of the occurrence of the use of such force.

D. Any peace officer who fails to report such use of excessive force in the manner prescribed in this section, or who knowingly makes a materially false statement which the officer does not believe to be true in any report made pursuant to this section, upon conviction, shall be guilty of a misdemeanor.

Added by Laws 1992, c. 146, § 2, eff. July 1, 1992.

Comment [1]: BDERIV

§22-34.3. Racial profiling prohibited.

A. For the purposes of this section, "racial profiling" means the detention, interdiction or other disparate treatment of an individual solely on the basis of the racial or ethnic status of such individual.

B. No officer of any municipal, county or state law enforcement agency shall engage in racial profiling.

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

D. A violation of this section shall be a misdemeanor.

E. Every municipal, county, and state law enforcement agency shall adopt a detailed written policy that clearly defines the elements constituting racial profiling. Each agency's policy shall prohibit racial profiling based solely on an individual's race or ethnicity. The policy shall be available for public inspection during normal business hours.

Comment [2]: EDERIV



25 February 2009

Wichita Police Department  
Racial Profiling Citizens Advisory Board  
4101 South 4<sup>th</sup> Trafficway Street  
Building # 160 Box # 135  
Leavenworth Kansas 66048  
Email: [suberat@yahoo.com](mailto:suberat@yahoo.com)

Senator Brungardt, Chair  
Federal and State Affairs Committee  
State Capitol, Room 136-N,  
Topeka, Kansas

TESTIMONY IS OPPOSED TO THE LANGUAGE IN SB179 BUT SUPPORTS THE  
BALLOON AMENDMENT WHICH HAS BEEN INTRODUCED BY THE  
GOVERNOR’S TASK FORCE ON RACIAL PROFILING.

Senators, “Half of the harm that is done in this world, Is due to people who want to feel important. They don’t mean to do harm – the harm does not interest them, or they do not see it, or they justify it, because they are absorbed in the endless struggle, to think well of themselves.” – T.S. Eliot

I stand before you today not just as a member of the WPD-Racial Profiling Citizens Advisory Board Member but, also as a Facilitator Trainer on the Perspectives on Profiling. Perspectives on Profiling are an interactive virtual learning experience that compels users to make critical choices in testing situations. Users’ decisions will alter storylines and lead to different outcomes. At numerous intervals, the virtual experience solicits input, emphasizes learning points, asks questions, summarizes knowledge, provides a record of previous events, and offers positive and negative feedback. Unique to this product is the ability to see the outcome of these choices and evaluate their consequences. Racial Profiling occurs if officer acts on suspicion based primarily on race even where there is probable cause or reasonable suspicion.

The practice of racial profiling involves the inappropriate use of race as primary motivation for law enforcement action. The legal understanding sits squarely on the 4<sup>th</sup> and 14<sup>th</sup> Amendments of the United States Constitution. The 4<sup>th</sup> Amendment speaks to unreasonable search and seizure. Probable cause or reasonable suspicion is needed for searches. The 14<sup>th</sup> Amendment requires equal application of the laws. The 14<sup>th</sup> Amendment speaks to the motivation of the individual officer. While most officers will not stop someone without probable cause, probable cause does not dismiss valid accusation of racial profiling if the stop was motivated by an inappropriate use of race. Was the motivating factoring based criminal behavior, suspect description, or race? Officers need to comply with both the 4<sup>th</sup> Amendment, but the 14<sup>th</sup> Amendment is more complex because it requires self-reflection.

Accountability in policing is one of the cornerstones of maintaining a department’s integrity. Accountability can also have an impact in combating racial profiling. If the issue of racial profiling revolves around the motivation of individual officers, how can it be detected? Besides family and friends, peers are in the best position to detect if bias is

entering into an officer's decision-making skills. Partners hear the comments that are made in the patrol cars, fellow officers are privy to the jokes being told in the locker rooms. Additionally, because of the bonds that officers have with one another, peer to peer accountability may be the most effective way of addressing this issue. One of the current problems between law enforcement and the community is a lack of common understanding of the term "racial profiling". This is further complicated because most line officers do not have a uniform definition either. There are definitely passionate feelings about this topic. It is interesting that with all the amount of experience, we don't have a definitive definition of racial profiling.

Research when into creating the Perspectives On Profiling during this research nationwide focus groups were conducted, representing over 36 agencies and 120 different officers, mostly from line level. When asked about the definition of racial profiling, a large majority of officers defined it in the following way: Law Enforcement: Define it as based solely on race. "Stopping people because of race". What is the problem with this definition of racial profiling? When we define racial profiling in this manner, it relegates the issue to racist officers and therefore, makes it easy to dismiss. "If I'm not a racist, I must not be racial profiling." This definition is a blunt one and does not capture the nuances of the issue. When we think about it, this definition should and does anger officers because racial profiling is associated with racism. When we examined the media's and community's definition, racial profiling was often defined as: Community & Media: Relying on race, whether in part or whole. "Use of race in traffic or pedestrian stops, even if race is only one of many factors used in a profile." (Time Magazine 7/28/01). What is the problem with this definition of racial profiling? How many people notice race when we look at the officers that is here today in this room. Potential response everyone does. Then according to this definition, we are all racially profiling all the time. This definition of racial profiling is asking us to ignore race altogether. Acknowledge and reinforce that there are appropriate times when race must be used. If we are to adopt the officer's definition of racial profiling, then no one is engaged in it. However, if we are to embrace the community/media definition, then everyone is engaged in racial profiling. These two definitions sit on the extremes and unfortunately, we see that each side has become more aggressive in trying to defend an untenable position. However, there is a moral, ethical and legal definition of racial profiling and it is multi-layered.

We are not here for right and wrong answers, but rather examining how we work in the gray areas. The community acknowledges to the officers that we believe that they are professionals. However, we also understand that in their jobs they come across many dilemmas that are not easily solved. This is why we need K.S.A. 74-9501(5) to read as follows: "Oversee the development, implementation and management of a uniform traffic citation for use by all Kansas law enforcement agencies to collect data on traffic stops. The collection of data shall include information necessary to conduct analysis and dissemination of results of traffic stops with regard to race, gender and ethnicity of drivers and pedestrians. The uniform traffic citation shall be available for use by all Kansas law enforcement agencies not later than January 1, 2010.

Finally our citizens recommend that K.S.A. 22-4608 be amended to read:  
22-408. Unlawful for law enforcement to engage in.

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

The Court needs to also know what the crime is to assess a penalty.

The Racial Profiling Study and Services of February 2003, a multijurisdictional assessment of Traffic Enforcement and Data Collection in Kansas conducted by the Police foundation By John C. Lamberth, PhD of Washington D.C. The purpose of this study was to answer a basic question: "Are law enforcement agencies in Kansas engaged in racial [ethnic] profiling?" Simply stated, the answer to this is Yes. So with this said what is needed to be done to correct the situation at hand. It is time to address this issue and put racial profiling in the great state of Kansas to bed. (See enclosed information)

Traffic stop data collection systems are needed to respond to the perceptions of racial profiling, to measure the reality, and to bridge the gap between minorities and police. Publicizing traffic stop data can help build trust between public law enforcement agencies and the public. To address public perception about racial profiling and to strengthen police and community relationships, the methodology for collecting and analyzing stop data is critical.

Be the difference.

We all hold the world in our hands. We all have the power to make a difference.

Large or small – we can choose to be the difference in our world today.

Together we can change the world!

Thank you for your attention to this matter.

Respectfully submitted



Anthony T. Suber  
ASAPP Director  
913-565-0769  
[suberat@yahoo.com](mailto:suberat@yahoo.com)

Enclosures

# RACIAL PROFILING STUDY AND SERVICES

## A Multijurisdictional Assessment of Traffic Enforcement and Data Collection in Kansas

Conducted by the POLICE FOUNDATION

by

John C. Lamberth, PhD  
Chief Executive Officer, Lamberth Consulting, LLC  
Project Director

February 2003



Washington, DC

**T**he Police Foundation is a private, independent, nonprofit organization dedicated to supporting innovation and improvement in policing. Established in 1970, the foundation has conducted seminal research in police behavior, policy, and procedure, and works to transfer to local agencies the best new information about practices for dealing effectively with a range of important police operational and administrative concerns. Motivating all of the foundation's efforts is the goal of efficient, humane policing that operates within the framework of democratic principles and the highest ideals of the nation.

POLICE FOUNDATION  
1201 Connecticut Avenue, N.W.  
Washington, D.C. 20036-2636  
(202) 833-1460  
Fax: (202) 659-9149  
E-mail: [pinfo@policefoundation.org](mailto:pinfo@policefoundation.org)  
On the Web: <http://www.policefoundation.org>



## **DISCUSSION**

The purpose of this study was to answer a basic question: "Are law enforcement agencies in Kansas engaged in racial [ethnic] profiling?" Simply stated, the answer to this is yes. Simple statements seldom can stand without explanations that are often more complex than the statements, as is the case here. In this section, explanations to support that simple statement are provided.

In all scientific endeavors, balancing pure scientific methodology with real-world issues and concerns is crucial. The study of racial and ethnic profiling in the State of Kansas is certainly no exception. Throughout the study, various problems were encountered by the researchers in their attempts to collect reliable and valid data. First, it became evident at the earliest stages that the vast majority of agencies in Kansas did not have the necessary data to complete the study. In addition, many agencies needed to be provided with stop data collection forms, as well as training on how to properly collect the data. Further, two agencies misinterpreted the training and, as a result, were not able to provide reliable or accurate data to the researchers. Nevertheless, the project team was able to overcome the problems and produce this final report.

While the report would be more comprehensive if reliable data were obtained from all of the departments, it is unlikely that the conclusions would be different even if the data from the 30 percent of departments whose data were unusable were considered. It is likely that the only way to reach different conclusions would be if those three departments differed dramatically from all but one of the departments assessed in this

**A Multijurisdictional Assessment of Traffic Enforcement and Data Collection in Kansas**

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study. As none of those departments had the precursors that seem so important in Wichita, it is highly unlikely that they would have shown such a small amount of racial disparity and no ethnic disparity.

To begin with, Table D-1 presents the odds ratios for both race and ethnicity for each department assessed.

**Table D-1: Odds Ratios for Stops of Black and Hispanic Motorists in Assessed Departments**

Department	Odds Ratio Blacks	Odds Ratio Hispanics	Number of Stops
Kansas City	N/A	N/A	N/A
Overland Park	1.93	N/A	6140
Wichita	1.76	1.15	1142
Emporia	0.70	2.85	204
Hutchinson	N/A	N/A	N/A
Olathe	1.93	2.28	701
Marysville	N/A	N/A	N/A
Osage County	3.89	5.32	302
Park City	0.29	2.92	216
Kansas Highway Patrol	3.03	3.12	1959

Of the seven departments assessed with regard to Black motorists, five appear to be targeting those motorists. The exceptions include Emporia and Park City. With regard to Hispanic motorists, five departments were clearly targeting them. Wichita is the exception as there is no indication that Hispanics are being targeted by the Wichita Police Department.

## A Multijurisdictional Assessment of Traffic Enforcement and Data Collection in Kansas

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Of the seven departments that we were able to assess, all are targeting either Blacks or Hispanics and three of the six who were assessed for both Blacks and Hispanics are targeting both. Hispanics are being targeted more than are Blacks, both when one considers the number of departments as well as the size of the odds ratios.

This is the first study that we know of that has utilized appropriate benchmarks and assessed racial profiling for more than one minority group. Earlier studies have tended to concentrate on one minority, primarily because stop data were unavailable (as in Overland Park) or census data were used as the benchmark. The methodology used in this study is extremely sensitive and allows the assessment of different minorities thus enabling researchers to determine that one minority (Hispanics) is being targeted and one (Blacks) is not, as in Emporia and Park City.

It is important to note of the six departments we assessed for targeting both Blacks and Hispanics (Overland Park did not have data on Hispanic stops), half of them are targeting both groups and the other half are targeting either Blacks or Hispanics.

KANSAS STATE TROOPERS ASSOCIATION TESTIMONY  
SENATE BILL 179

TO: SENATE FEDERAL AND STATE AFFAIRS COMMITTEE  
FROM: STEVE KEARNEY - OPPONENT  
SUBJECT: SB 179  
DATE: 2/25/2009

Chairman Brungardt and members of the Committee:

Thank you for taking time today to consider the implications of Senate Bill 179. I am offering this testimony today in my capacity as Executive Vice President/General Counsel with the Kansas State Troopers Association. Our organization represents over 400 troopers, motor carrier inspectors and capital police officers.

Senate Bill 179 in its current form makes wholesale changes to the current racial profiling statute and creates what appear to be unworkable definitions in the actual application of the law.

The Kansas State Troopers Association opposes the suggested changes first regarding striking lines 31 - 40 on page one which has to date contained the trigger for racial profiling in the language "sole factor" for initiating investigation or contact with a member of the public. The proposed language is so vague and subject to interpretation that is it unworkable.

Once again in this measure on page 3, lines 24 and 25, "sole factor" is again stricken leaving the door open for interpretative vaguery and speculation. The proof necessary for determination of clear standard such as the one that exists today with "sole factor" is made even more obscure by the proposed changes.

These changes at the State level are unnecessary with the very effective and well established remedies at Federal law including 42 USC 1983 actions.

One policy question that does not appear to be being asked is whether or not the Task Force need continue at all. The legislature placed a sunset on the Task Force of July 1, 2009 for a reason. Without the passage of this bill the Task Force will have completed its work.

While the actual sunset of any government program seems to be a rare practice that discussion should take place in your deliberations. When the sunset was enacted was a discussion or debate concerning its continuing necessity contemplated? Does the evidence actually support this continuing effort after several years of training, investigation and discussion? Is this measure today simply a Task Force looking for a reason to continue?

Lastly, and perhaps most important in a year when the State faces a budget crisis of historic proportions, what is the fiscal note for the Task Force in its current form or its proposed expanded

form? What is the fiscal note for the expansion this measure proposes to the State and Local agencies?

At a time when your sister Ways and Means committee is telling state agencies, including the Highway Patrol to submit budgets for fiscal year 2010 with reductions of 10% and 18% percent, which will without question effect the public health, safety and welfare of Kansans, a discussion of the budget implications of this law should be held.

These are unprecedented budget times when programs for the most vulnerable of our population are on the chopping block, as well as K-12 and Higher Education. Coupled with the risk to our public safety in cuts to law enforcement and corrections the cost of this Task Force and/or its expansion across the board needs to be carefully considered before moving ahead in any fashion.

Thank you for considering our concerns.





# TESTIMONY

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Dale Goter  
Government Relations Manager

City of Wichita  
455 N Main, Wichita, KS. 67202  
Wichita Phone: 316.268.4351  
dgoter@wichita.gov

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## City of Wichita Testimony SB179

**Senate Federal and State Affairs Committee Feb. 25, 2009**

Current statutory language defines racial profiling as action initiated with consideration of race as "the sole factor". That definition is appropriate and effective and should be retained.

However, Sections 1 and 3 of SB 179 shifts this test to one requiring "trustworthy information." This new, undefined standard launches into uncharted territory, and will require the appellate courts to interpret and craft the resulting statute as they will. More importantly, it provides the officers no guidance to evaluate their actions, as it employs a standard not found in criminal or civil statutes or case law. It also is a major shift in focus, from one that presumes officers act in accordance with the law, to the assumption that any stop of a person of color is improper racial profiling, unless the officer can show otherwise.

The US Supreme Court has expressly approved pre-textual stops as a constitutionally permissible tool for law enforcement, necessary for community safety. SB 179, through its new standard requiring trustworthy information, would eliminate this option for Kansas law enforcement, making Kansas less safe generally.

The current statute allows racial profiling complaints to be filed with the Kansas Human Rights Commission. The KHRC enters findings on probable cause only, and affords no opportunity to the affected officers for due process. There is no viable mechanism for an officer to have a "name clearing hearing" to remove from his or her record the stigma of discriminatory allegations which are so easily leveled.

The City recognizes that review of complaints by an external agency was desired due to citizen misunderstandings over agency self-regulation. However, the KHRC has no expertise in law enforcement training or field work, and is not designed to address the concerns of the involved officers.

Section 5 of SB 179 starts in a better direction, but does not go far enough. It would require KHRC findings of probable cause to be sent to the Kansas Commission on Peace Officer Standards and Training for a determination on officer certification. KSCPOST has built-in due process procedures, and valuable law enforcement expertise it could bring to bear as well. However, under the proposed scheme, KSCPOST would step in only after the damage to officer reputation has already been done.

Sen Fed & State

Attachment 12

3-03-09

A better procedure would have racial profiling complaints filed directly with KSCPOST for initial processing. Both the complainant and the officer would have their interests protected in a knowledgeable forum structured with due process protections. The claimant loses nothing, as the proposed amendment expressly allows a direct lawsuit without prior resort to the KHRC. In addition, the real possibility of contradictory results between the KHRC and KSCPOST is eliminated.

Section 2 of SB 179 would place in the hands of the task force on racial profiling for the first time a process that has been underway for several years through the Kansas Criminal Justice Coordinating Council. Creation of a uniform traffic citation format includes many considerations in addition to that of gathering statistical data relating to the potential of profiling. Indeed, section 6 of SB 179 reinforces the charge for KCJCC to complete the task of creating a uniform traffic complaint, but sets the completion date a year later (2011) than the task force's charge for the racial profiling statistics component (2010).

Section 2 of SB 179 calls for the task force to hold public hearings and meetings to involve and inform the public in design methods for the uniform traffic citation. The KCJCC can hold such hearings directly, again simplifying the process, reducing multiple efforts toward the same goal, and insuring consistency of outcome.

Greetings:

We The People greet you with the abundance of spirit, strength, and courage as we yield to divine order. As this correspondence arrives prayerfully without ceasing, optimistically assured that the contents submitted will adhere to condubus consideration for inspirational healing and divine intervention.

Justice keepers ask that there be some additions to the Racial Profiling bill. Concerned citizens have formed to encourage the "full" development of this bill; Additions to be made to the bill shall ensure the rights of citizens to justice and the pursuit of happiness.

In an effort to unravel the seriousness of this problem, We recognize in more indepth effort and approach to healing communities that have been overwhelmed and inundated for decades with generational vestiges of Miseducation, Racism, Welfare/Poverty, Discrimination, High unemployment, and most recently the violent crime wave resulting in gang warfare, drug infestations and murderous manifestations.

In acknowledging the various problems, It diminishes the pervasive "Spirit of denial" that compounds and entangles the soul. The journey worthwhile certainly deserves an more indepth honest approach surrendering

to healing verses the Decades of punishments yielded consistently, and continually towards African American communities in virtue of persistent disparities.

As a community of concerned citizens emerging daily to promote the spirit of healing and conscious compliance of the laws consistently and fairly. The conscious connection encourages the sincerity of the ~~judicial~~<sup>congressional</sup> system to examine and observe to resolve the racial realities so profoundly prevalent in sentencing disparity guidelines, jury selections/dismissals, extensive bonds, referrals for treatment client/lawyer misrepresentation etc, in our community and our society today.

Open dialogue and inclusion are necessary steps in the healing process to resurrect a failing system. We would gladly appreciate your time and effort in responding to our very serious concerns of Racial Profiling. Thanking you in advance for a prompt favorable reply.

Sincerely and admirably,

Chaz Blackmon

LOU ANN THOMS, Chair  
TOPEKA  
TERRY CROWDER  
TOPEKA  
DAVID HANSON  
TOPEKA  
CLYDE HOWARD  
MANHATTAN  
ANTHONY VILLEGAS, SR.  
KANSAS CITY  
JEROME WILLIAMS  
WICHITA

TTY (785) 296-0245  
FAX (785) 296-0589  
800# 1-888-793-6874



# K A N S A S

## KANSAS HUMAN RIGHTS COMMISSION

LANDON STATE OFFICE BLDG. – 5<sup>TH</sup> FLOOR  
900 S.W. JACKSON – SUITE 568 S.  
TOPEKA, KANSAS 66612-1258  
(785) 296-3206  
www.khrc.net

**KATHLEEN SEBELIUS, GOVERNOR**  
WILLIAM V. MINNER  
EXECUTIVE DIRECTOR  
RUTH GLOVER  
ASSISTANT DIRECTOR  
BRANDON L. MYERS  
CHIEF LEGAL COUNSEL  
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ADMINISTRATOR  
ORIE KIRKSEY  
TOPEKA INVESTIGATIVE  
ADMINISTRATOR  
JANE L. NEAVE  
WICHITA INVESTIGATIVE  
ADMINISTRATOR  
RICK FISCHLI  
RACIAL AND OTHER PROFILING  
ADMINISTRATOR  
BETH MONTGOMERY  
OFFICE MANAGER

**Senate Federal and State Affairs Committee**  
**Written Testimony Regarding Proposed Amendments to SB 179 and K.S.A. 22-4611**  
**March 3, 2009**

Representative: Rick Fischli, Racial and Other Profiling Administrator

The purpose of this testimony is to oppose the proposed amendments to Senate Bill 179 made during the Senate Federal and State Affairs Committee hearing on February 25, 2009 to change K.S.A. 22-4611.

We understand these proposals have been made in an attempt to establish so-called "due process" for law enforcement officer(s) alleged to have violated the profiling law. However, the Kansas Human Rights Commission believes that due process is already provided under current investigative procedures and law.

Due process is based on the concept of "fundamental fairness." As construed by the courts, it includes an individual's right to be adequately notified of the alleged charges, the opportunity to be heard, and that the person making the decision over the proceedings be impartial in regards to the matter before them. Therefore, it is incumbent on the Kansas Human Rights Commission to present a fair and impartial process for profiling complaints where all parties are adequately notified of the complaint, all parties are given the opportunity to tell their side during the investigative process, and where the determination is made by an impartial party.

In 2005, when the Kansas Human Rights Commission was given unsolicited the duty of administering the complaint and investigative process for profiling complaints, the Commission carefully and thoughtfully considered the procedure to best carry out these duties in a neutral, fact-finding manner. Since profiling complaints are by their nature claims of discrimination and the profiling law gave no guidance on complaint, investigative and determination procedures, the Commission decided, after a period available for the public to comment, to adopt Guidelines for Complaints Alleging Racial or Other Profiling ("Guidelines") for the receipt, investigation, and determination of profiling complaints. This administrative process for profiling complaints, although not as extensive, is patterned after procedures outlined in the Kansas Act Against Discrimination (KAAD), adopted more than 55 years ago. (Note: The profiling statute did not give the Commission authority to adopt Kansas Administrative Regulations as to profiling complaints, and gave the Commission no enforcement or subpoena powers as to such complaints.)

The following actions under the Guidelines constitute the first step of due process, which is the individual's right to be adequately notified of the alleged charges:



- Like the KAAD, the Guidelines require a profiling complaint to be in writing, and signed and dated by the complainant.
- The Guidelines require the complaint to state the date of the incident which alleged to have violated the profiling law and a statement of facts upon which the complaint is based. This procedure is similarly followed with complaints alleging employment, housing, or public accommodation discrimination.
- Like the KAAD, the Commission is required by the Guidelines to, within seven days after the filing of a profiling complaint, to serve a copy of the complaint upon each of the parties alleged to have violated the profiling law. Our practice has been to notify the responding law enforcement agency. We also send a copy of the docketed complaint to the complainant as a means of notification that we are in receipt of their complaint.

The second step of due process is to provide an individual the opportunity to be heard. We provide this opportunity to all parties to the complaint: the complainant, the law enforcement agency, and individual law enforcement officer(s). Our investigative staff contacts and interviews the complainant and any witnesses in order to obtain their viewpoint of factual events. When the profiling complaint is forwarded to the law enforcement agency, the agency is requested to provide a response to the allegations. Through the investigative process, a KHRC representative will interview any officers alleged to have conducted profiling for their viewpoint. It is our practice to interview witnesses with first hand knowledge of the alleged incident, review reports, audio or video recordings, and various policies. Superior officers and co-officers are interviewed if they have knowledge of the alleged incident. The responding law enforcement agencies are provided an opportunity to present a vigorous defense, and many use an attorney as their point of contact. Without subpoena power, the Commission must rely upon the cooperation of the parties and the witnesses involved.

The final step of due process is the provision that the person making the investigative determination is impartial. As outlined in our previous testimony on SB 179, 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.

It is apparent that some provisions of the proposed amendments to K.S.A. 22-4611 are meant to restrict the KHRC. For example, one proposal says the findings of the KHRC shall not be based on whether or not a summons was issued to the person stopped. However, one of the key principles of civil rights is determining if an individual was singled out and treated differently because of a prohibited basis (race, ethnicity, national origin, gender, religious dress in the case of profiling). If two individuals are in the exact same circumstances and the only difference between the two individuals is one of the prohibited bases for profiling, but one receives a ticket and one receives a warning, the incident begs to question if discrimination has occurred.

Other proposed provisions for profiling complaints differ from the process for other types of discrimination complaints investigated by the KHRC, will encumber the process and add financial costs with little or no benefit to any of the parties. Requirements that all investigative reports be presented at a meeting of the Commission, providing all parties to the complaint an opportunity to address the Commission at the presentation of the investigative report, and requiring the Commission to vote on profiling cases significantly



differs from the process for other types of complaints, will add additional State General Fund costs for the Commission to meet and confer for longer periods of time and perhaps to meet more frequently. These proposals essentially require a hearing to be conducted before the Commission for profiling complaints, whereas none of the other complaints investigated by the KHRC for alleged discrimination in employment, housing, or public accommodations do so. (In other types of complaints before the KHRC, the complaint only proceeds to the public hearing level after a probable cause determination has been rendered and conciliation has failed. Even then, the public hearing is conducted by the Office of Administrative Hearings, which issues an initial order. Then the Commission reviews the record of the hearing conducted by the Office of Administrative Hearings before issuing a final order. In short, there is no right in other types of complaints before the KHRC to a hearing conducted directly before the Commission merely regarding the investigative determination of probable cause/no cause.)

The proposal to have a hearing before the Commission simply confuses the process and adds unnecessary additional costs. Providing the proposed appeal process under the "Kansas administrative appeals process" is vague and differs from the process provided to complainants and respondents in the employment, housing and public accommodation complaints. In addition, it confuses when a civil action may be taken by an individual because the profiling statute does not currently specify a particular limitation period for filing the civil action authorized to be brought by persons alleging their rights were violated under the law. We believe some questions exist about whether any such limitation period is tolled while administrative actions are completed. Furthermore, the Commission may be forced to expend additional State General Funds to defend its findings at a higher level.

Above all, it should be remembered the profiling complaint procedure through the KHRC is an administrative process, wherein the findings are recommendations. As currently provided, KHRC's recommendations are non-binding and advisory only. Although we have recommended that law enforcement agencies review their own policies and procedures for violations of their own policies, we have not opted to date to directly recommend discipline of any law enforcement officer. The ultimate means of determining if profiling has occurred is through the complainant's right to bring a civil action in district court, where the parties are fully accorded all legal protections and due process in the determination of whether the law was violated and whether a remedy should be awarded.

We hope the above clarifies the KHRC process for profiling complaints: As administered by the KHRC as a neutral third-party, our process is fair and impartial, provides due process to all parties of a profiling complaint, and that the proposed amendments to SB 179 changing K.S.A. 22-4611 are unnecessary.

Mr. Chairman and Committee Members,

Over the last 5 days representatives of the Kansas Sheriff's Association, the Kansas Association of Chiefs of Police, and the Kansas Peace Officers Association have met with the Governor's Task Force on Racial Profiling and others to find common ground on Senate Bill 179. All participants agree that racial profiling is wrong and cannot be tolerated in professional modern law enforcement. Our combined efforts in pre-empting racial profiling have proven productive in crafting substantial and meaningful changes in Senate Bill 179 from how it existed last week. We believe that the bill, as originally offered last week, reflected changes from existing law to accommodate the application of a grant to receive funds from the National Highway Safety Administration. In large part, these changes were dictated by the eligibility requirements of the NHTSA grant. The Associations still question whether the changes to the law should be motivated by grant funding. We must be concerned that any changes should not be burdensome to law enforcement officers and their agencies.

There were three major points of law enforcement concern contained in the bill as proposed last week; the change in the definition of racial profiling, data collection and lack of due process for law enforcement officers and law enforcement agencies should there be a disputed finding of probable cause by the Kansas Human Rights Commission.

The definition offered today facilitates the removal of the words "sole factor" as required by grant eligibility. The new, compromise definition clearly articulates the unacceptable behaviors of police officers that would constitute the exercise of race, ethnic and gender bias. The definition also speaks to police actions that are not associated to be an exercise of bias. These exceptions draw language from current Kansas laws that establish the threshold of reasonable suspicion and probable cause as the basis for any traffic stop, detention or arrest of an individual.

Law enforcement remains opposed to data collection as a means to measure the existence of racial profiling in Kansas. However, the Task Force is agreeable to sponsoring a forum to be facilitated by a national expert on traffic stop data in the context of racial profiling. Law enforcement is eager for this training opportunity and will re-evaluate our position on data collection until after this forum.

The third change proposed is fully supported by law enforcement and sets forth a mechanism for appealing the findings of the KHRC. There are also performance

requirements established that KHRC must follow upon the initiation of a racial profiling investigation.

These changes establish the necessary due process rights of officers and agencies and provide a balance that serves all parties in the KHRC complaint process. We embrace the provisions in 22-4611 (f) and (g) that call for a review by the Kansas Commission on Peace Officer Standards and Training (KCPOST) of any finding of probable cause by the KHRC. This follows established protocols of other professionals allowing for a board to examine the issues in the findings and take relevant action.

As the committee considers data collection, you should know the grant money would only be available one time and requires a twenty percent (20%) match. Upon expiration of the grant the State will be responsible for continuation of any funding.

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Governor's Task Force on Racial Profiling  
900 SW Jackson, Room 101  
Landon State Office Building  
Topeka, Kansas

Testimony for the Senate  
Federal and State Affairs Committee  
SB 179

Mr. Chairman, members of the committee, I am Mike Watson, a member of the Governor's Task Force on Racial Profiling and former chief of police in Wichita and former director of the Riley County Police Department. I am here representing the task force and specifically Chairman Allen Smith who was unable to attend this hearing due to an employment conflict.

I am here to testify today at the request of Chairman Brungardt who asked that the task force return to explain the changes to the definition of racial profiling in this bill. The task force's new definition of racial profiling would be as follows:

- (1) "Racial Profiling" means the practice of a law enforcement officer or agency selecting or subjecting an individual to routine investigatory activities, or in deciding upon the scope and substance of law enforcement activity, in whole or in part, based upon the individual's race, ethnicity, or gender except when the officer has reason to believe: A) the person has committed a violation of traffic laws or ordinances; (B) the person stopped is committing, has committed or is about to commit a crime as provided in K.S.A. 22-2402, and amendments thereto; (C) probable cause exists to arrest the person as provided in K.S.A. 22-2401, and amendments thereto; or (D) the law enforcement officer or agency is seeking to apprehend a suspect whose race, ethnicity, or gender is part of the description of a suspect.
- (2) "Racial Profiling" does not include contact by a law enforcement officer of a person when the contact is only for the purpose of asking the person if they have information regarding the investigation of a complaint, crime or suspicious activity, checking a person's welfare or as part of community outreach or community policing.

The task force has requested to modify the definition of racial profiling for two reasons. The first reason is a requirement to qualify for a federal grant from the National Highway Traffic Safety Administration (NHTSA). The second reason is because we received input from citizens and citizen groups complaining that the current definition that uses the phrase "as the sole factor" virtually makes it impossible to find an officer guilty of racial profiling.

The task force has acquired a grant for the last two years from NHTSA through the Kansas Department of Transportation (KDOT). To apply for the third and last year of the

3/3/04  
Attachment  
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grant we cannot have the language "as the sole factor" in the Kansas law. The language must be similar to what we have suggested, "in whole or in part".

We believe that the citizen groups are correct in their belief that the phrase "as the sole factor" is so narrow in scope that it is nearly impossible to prove racial profiling. We believe that the definition in our balloon amendment protects the rights of the citizens in regard to racial profiling while not unreasonably obstructing the duties and responsibilities of our law enforcement officers.

The task force has attempted to determine an appropriate definition of racial profiling that will be acceptable to citizen groups and law enforcement. We have researched federal sources, other states and other agencies on a nationwide basis. We have learned that these sources do not agree on a definition and individual federal agencies even have different definitions of racial profiling. We have learned that there is a great deal of incorrect information on the computer web sites as to racial profiling information. We have settled on this definition because we believe it will be best for the state of Kansas.

The problem with defining racial profiling is finding a way to define what is essentially the motivation of an individual to take action. It is what goes on inside the mind of an individual before they act. Even though data collected regarding the actions of an officer may show disparity regarding the classes of individuals who are stopped or are the subjects of enforcement action, that does not prove racial profiling which is basically discrimination. With that being said, lack of disparity does not prove that racial profiling has not taken place. While there may be nefarious reasons for action taken, it may also be some subconscious level of bias or anything in between.

We do not have universal acceptance of this definition, however we do have significant support of citizens, the task force members and I believe we have concurrence from the representatives of the three law enforcement associations that we have been working with, the Kansas Sheriff's Association (KSA), the Kansas Association of Chiefs of Police (KACP), and the Kansas Peace Officer's Association (KPOA).