

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Pete Brungardt at 10:30 a.m. on February 9, 2011, in Room 144-S of the Capitol.

All members were present except:  
Senator Steve Morris - excused

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

Conferees appearing before the Committee:  
Representative Melanie Meier  
Mike Watson, Governor's Task Force on Racial Profiling  
Curtis Whitten, Governor's Task Force on Racial Profiling  
Ed Klumpp, Kansas Association of Chiefs of Police  
Steve A. J. Bukaty, State Lodge of the Fraternal Order of Police

Others attending:  
See attached list.

**Introduction of Bills**

Representative Melanie Meier requested a bill introduction relating to electronic gaming machines and Veterans' service organization.

Senator Ostmeyer moved that this request should be introduced as a committee bill. Senator Owens seconded the motion. The motion carried.

**SB 82-Amendments to laws regarding racial profiling and SB 93-Law enforcement; racial profiling and biased policing**

Chairman Brungardt opened the hearings on **SB 93 and SB 82.**

**SB 93-Law enforcement; racial profiling and biased policing**

Staff provided an overview of the bill.

Curtis Whitten and Mike Watson, Co-Chairs of the Governor's Task Force on Racial Profiling, (GTFORP) testified in support **SB 93.** (Attachment 1) This bill represents the final recommendations of the task force. In accordance with statute Kansas law enforcement agencies have reported annually all complaints of racial profiling and the outcome of the respective investigations to the Kansas Attorney General's Office, the results of which can be found on the AG's website. The amendments in the bill enhance these results and will help prohibit and preempt the practice of racial profiling and biased policing in the state of Kansas without unduly interfering and adversely affecting appropriate law enforcement activities. The Task Force supports the bill and requests that the committee give appropriate attention to the issues the Task Force was unable to come to consensus on : what agency should conduct investigations at the state level and what entity should be responsible for oversight and accountability.

Kansas Human Rights Commission provided neutral written testimony on the bill. (Attachment 2) The neutral stance reflects the need for the Commission's determinations regarding racial profiling (or biased policing) complaints to be accepted and credible.

**SB 82-Amendments to laws regarding racial profiling**

Staff provided an overview of the bill.

## CONTINUATION SHEET

The minutes of the Federal and State Committee at 10:30 a.m. on February 9, 2011, in Room 144-S of the Capitol.

Ed Klumpp, Kansas Association of Chiefs of Police, Kansas Sheriffs' Association, and Kansas Peace Officers Association, appeared in favor of **SB 82**. (Attachment 3) The bill is designed to generally follow the recommendations of the Governor's Task Force on Racial Profiling with some of the gaps filled in where the Task Force was unable to reach a final recommendation. The bill is designed to address those issues through training, awareness, and understanding; it also allows the application of discipline as provided by the state certifying agency, the city or county personnel standards, and, where applicable labor contracts. The bill includes the following:

- Recommended definition of biased policing including the term "enforcement action" which the Task Force did not define
- Included a list of minimum data elements for data collections and community advisory boards
- Changes to the annual report, training, and KC-POST handling of complaint investigations

Sandy Jacquot, Director of Law/General Counsel, League of Kansas Municipalities, (LKM) provided testimony in support of **SB 82**. (Attachment 4) LKM continues to encourage the Legislature to adopt an approach that strikes a balance between onerous requirements on law enforcement and to take a proactive approach to eliminating racial profiling, and agrees with the law enforcement community that **SB 82** is the most effective means of achieving any needed improvement in the law.

Kansas Human Rights Commission provided neutral written testimony on **SB 82**. (Attachment 5) This bill proposes to place significant investigatory duties on KC-Post. The Commission stands in firm opposition to any suggestion that any of its dwindling resources should be transferred to KC-Post in order for it to fulfill its new duties; this would further hamstring the Commission's ability to fulfill its statutory duty to investigate and remedy allegations of discrimination in employment, housing and public accommodations.

### **SB 93-Law enforcement; racial profiling and biased policing**

#### **SB 82-Amendments to laws regarding racial profiling**

Steve A.J. Bukaty, State Lodge Attorney for the Kansas State Lodge of the Fraternal Order of Police, (FOP) testified as a proponent who is supporting both bills with reservations. (Attachment 6) FOP has concerns about the data collections and complaints. All current police departments have internal affairs or professional standards units which are trained in the investigation of complaints against their officers, and there is no reason to change this procedure. The FOP is concerned that allowing CPOST to conduct such investigations and conduct a hearing into the matter, may conflict with the due process rights of many of its members.

Written testimony was provided by Hans Asmussen and Chester Pinkston, Fraternal Order of Police, Wichita Lodge 5, in opposition to the bills. (Attachment 7) The FOP cannot be in favor of amending the statute to give the Kansas Commission of Police Officer Standards and Training (CPOST) the power to investigate racial profiling complaints as it deems necessary.

Chairman Brungardt closed the hearing on **SB 82 and SB 93**.

The next meeting is scheduled for February 10, 2011. The meeting was adjourned at 11:58 a.m.

SENATE FEDERAL AND STATE AFFAIRS COMMITTEEGUEST LISTDATE 2-9-11

| NAME                 | REPRESENTING             |
|----------------------|--------------------------|
| Laurel Klein Searles | KCSO                     |
| Sara Rust-Martin     | KCSO                     |
| Bob Keller           | JCS                      |
| John Simmons         | Fairway PA               |
| Don Krone            | LENEXA P.D.              |
| Ellen Hanson         | Lenexa P.D.              |
| Kyle Shapps          | Prairie Village P.D.     |
| Sandy Jacquot        | LKM                      |
| Rick Fischer         | KS Human Rights Comm.    |
| Mary Rinehart        | Wyandotte County S.O.    |
| Kelli Bailiff        | Wyandotte County Sheriff |
| Megan Pinegar        | AG                       |
| Kyle Smith           | AG                       |
| Steve Hensley        | CS                       |
| Mandy Miller         | SCA                      |
| Steve Kearney        | KSTA                     |
| Nothan Lindsey       | Kearney Associates       |
| Steve Albright       | State FOP                |
| Ron Brown            | STATE FOP                |
| Mike Toepffer        | KS State FOP             |
| Blaine Dryden        | KS State FOP             |
| Ed Kumpf             | KACP/KPOA/KSA            |
| Eric Williams        | KS CPOST                 |
| STEVEN CULP          | KS CPOST                 |
| Mike Watson          | GT FOP                   |
| Curtis Whitlun       | GT FOP                   |

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

DATE \_\_\_\_\_

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**Senate Committee on Federal and State Affairs**  
**Senate Bill 93, Racial Profiling**  
**Kansas State Capitol, Room 144-S**  
**February 9, 2011**

Chairman Brungardt, members of the committee, we are Curtis Whitten and Mike Watson, Co-chairs of the Governor's Task Force on Racial Profiling (GTFORP). We are here to testify in support of Senate bill 93 which represents the final recommendations of the task force. For detailed information and the GTFORP justification for the specific recommendations we would refer you to the GTFORP final report and recommendations which were submitted December 10, 2010 to the Governor's Office, the House and Senate.

Over the last five years the task force has worked with law enforcement, state agencies, community groups, national and state experts and individual citizens to research and devise methods to preempt racial profiling and biased policing in the state of Kansas. Although some would like to eviscerate the current legislation, the GTFORP believes that the past collaboration which resulted in the current K.S.A. 22-4606 through 22-4611 is a good foundation and SB 93 builds upon those successes. As a result of this collaboration and the efforts of all involved (including this committee), 435 law enforcement agencies in the state of Kansas have developed and implemented policies prohibiting racial profiling, established discipline for racial profiling, established community outreach to inform the public of their right to file racial profiling complaints with the individual departments or with the Kansas Human Rights Commission (KHRC), investigated racial profiling complaints and provided tens of thousands of hours of racial profiling training to 8067 law enforcement officers throughout the state of Kansas. In accordance with statute Kansas law enforcement agencies have reported annually all complaints of racial profiling and the outcome of the respective investigations to the Kansas Attorney General's Office, the results of which can be found on the Attorney General's website. The amendments in this bill enhance these results and will help prohibit and preempt the practice of racial profiling and biased policing in the state of Kansas without unduly interfering and adversely affecting appropriate law enforcement activities.

The task force believes that training, collaboration, understanding, and trust between the community and the police are extremely important measures in preempting biased policing, however investigations, discipline and other legal remedies are also necessary in some cases. The individual task force members disagree concerning which state agency should be responsible for conducting the investigations of allegations of racial profiling and biased policing. The two state agencies generally suggested are, the Kansas Human Rights Commission that currently investigates allegations made to the state and the Kansas Commission on Police Officer Standards and Training that licenses and investigates other allegations of misconduct by Kansas law enforcement officers. Both entities have their advantages and disadvantages and the solution may be a combination of efforts regarding investigations and sanctions that result in fair and impartial investigations and due process for both the individuals who believe they were the victims of biased policing and the law enforcement officers.

The GTFORP is scheduled to sunset on July 1, 2011 however it is the belief of the task force members that some entity should be appointed the responsibility and authority to oversee the provisions of these statutes, K.S.A. 22-4606 through 22-4611 and insure that there is a reasonable measure of accountability.

In conclusion, we request that the committee support Senate bill 93 and give appropriate attention to the issues the task force was unable to come to consensus on: what agency should conduct investigations at the state level and what entity should be responsible for oversight and accountability.

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RICK FISCHLI  
RACIAL AND OTHER PROFILING  
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BETH MONTGOMERY  
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**TESTIMONY OF  
THE KANSAS HUMAN RIGHTS COMMISSION  
REGARDING S.B. 93**

**February 9, 2011**

Staff Attending Hearing: William V. Minner, Executive Director  
Joseph P. Mastro Simone, Chief Legal Counsel  
Ruth Glover, Assistant Director  
Rick Fischli, Racial/Other Profiling Adm

S.B. 93 proposes to amend the Kansas racial and other profiling law, Kan. Stat. Ann. § 22-4606 *et seq.* (the “Act”). The Act currently makes it unlawful for law enforcement to engage in “racial profiling.” S.B. 93 would replace “racial profiling” with the broader term “biased policing.” “Biased policing” is defined as “the unreasonable use of race, ethnicity, national origin, socio-economic status, gender, or religion by a law enforcement officer in deciding to initiate an enforcement action.” While the bill does not define an “enforcement action,” it does make clear that the use of such factors in combination with other identifying factors as part of a specific individual description is not biased policing. The Commission recommends defining “enforcement action” in the bill. S.B. 93 would also require a more robust annual reporting by the Attorney General regarding allegations of biased policing and their resolution.

The Kansas Human Rights Commission (the “Commission”) is responsible, along with local law enforcement agencies, for investigating allegations of unlawful racial profiling. Under current law, racial profiling is limited to the selection of individuals to subject to “routine investigatory activities” and deciding on “the scope and substance” of law enforcement activity following the initial routine investigatory activity. Current law limits the scope of protection to situations involving “traffic stops.”

S.B. 93 would both expand and contract the scope of the Act's protections. First, S.B. 93 would remove the reference to "traffic stops" in defining what constitutes "biased policing." The removal of this limitation would apply the Act's protections to initiation of any "enforcement action" – whether or not it arises from a traffic stop. Second, S.B. 93 would limit the Act's protections to only the decision to "initiate" an enforcement action and appears to remove coverage regarding decisions made regarding the "scope and substance" of the law enforcement activity subsequent to the initial "enforcement action." Accordingly, a fair reading of S.B. 93 would result in the Act applying to an officer's decision to stop a citizen on the street or a vehicle on the road but would not extend to the officer's subsequent decision to employ the use of a police dog or other investigatory methods other than a specific decision to search the individual or conveyance.

Because S.B. 93 appears to both expand and contract coverage, the Commission believes that it can continue to enforce the Act as amended by S.B. 93 without the need for additional resources. As an unbiased investigative body, the Commission takes a neutral stance on the passage of S.B. 93. That neutral stance reflects the need for the Commission's determinations regarding racial profiling (or biased policing) complaints to be accepted and credible. Accordingly, the Commission's neutrality regarding this bill is necessary to avoid the appearance that it may favor one side or the other if S.B. 93 is adopted.

We will be glad to answer any questions that Committee may have.





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**Testimony to the Senate Federal and State Affairs Committee  
In Support of SB82  
Amendments to Racial Profiling Statutes  
February 9, 2011**

Over the past several years, the Kansas Association of Chiefs of Police, the Kansas Sheriffs Association, and the Kansas Peace Officers Association have been active in attending the meetings of the Racial Profiling Task Force, attended Task Force community events, listening to the concerns of the people in Kansas regarding racial profiling, and participating in developing and carrying out training programs for law enforcement regarding racial profiling. In particular, during the last year and a half, we participated as much as possible in the dialog of the Task Force. As a result of those efforts we asked for SB82 to be drafted. It is designed to generally follow the recommendations of the Governor's Task Force on Racial Profiling with some of the gaps filled in where the Task Force was unable to reach a final recommendation. We have attended National Seminars on the topic and engaged with national experts in the field.

We support SB82. Although we are not totally unhappy with existing statute, we recognize there are some gaps between current provisions and the continued concerns by some citizen groups. We recognize the importance of attempting to close those gaps. This bill proposal is a statement of our support, in general, for the work completed by the Task Force. It includes some Task Force recommendations we struggle with, but addresses them in a manner with a give and take approach.

Law enforcement absolutely agrees policing decisions based on personal biases is not only counterproductive to our communities, but destructive of the trust necessary between the community and law enforcement to effectively provide law enforcement services. It is not our desire to debate the existence of biased policing. Reality or perception, intentional or unintentional, a person contacted by law enforcement who believes a law enforcement decision was made due to a bias generates the same obstacles to trust. Our bill is designed to address those issues through training, awareness, and understanding. It provides for retraining, direction, and correction when an officer's actions are unreasonable. It allows the application of discipline as provided by the state certifying agency, the city or county personnel standards and, where applicable labor contracts.

During the past 5-and-a-half years, there have been 87 complaints of racial profiling filed with the Kansas Human Rights Commission. (Through November 2010.) Six of those complaints resulted in a probable cause finding. We are only aware of one of those probable cause findings ultimately ending up in court. In that case the court dismissed the allegation against the police. So we are averaging about 1 probable cause finding a year. And none of those have been sustained by a court of law to this point. This leaves the officers in the other five probable cause findings with that cloud hanging over them with no way to contest the finding. They are not allowed to challenge the finding in court. Only the complainant can do that.

We have attempted to present a bill that is not particularly high on our wish list, but one we feel addresses the concerns in a comprehensive and thorough manner with balance between our desires and those of concerned citizens. In some cases our recommendations are broader than the Task Force recommendations and in some cases more clear in the direction to law enforcement.

The following summarizes our bill and why we believe the provisions of SB 82 are the best alternatives to move forward in the legislative process.

Through the Task Force process, law enforcement was persistent about using the term "biased policing" instead of "racial profiling." Biased policing is broader and more inclusive than racial profiling. This is the level of professionalism and understanding Kansas law enforcement strives to produce in their officers through the selection processes and training.

SB82 proposes adopting the definition as recommended by the task force with one exception. We did not include "socio-economic status." This term is very broad and we are not aware of it being voiced as a concern by the public. It is not a normally observed or identifiable characteristic leading to a law enforcement decision. And it is not easily categorized. It is a topic to be included in training curricula but it is not an clearly definable term. Therefore we chose not to include it. This is found on page 1, lines 23-29 of SB82 and on page 1, lines 16-30 of SB93.

Additionally, the recommended definition of biased policing included the term "enforcement action" which the Task Force did not define. As a result we recommend the changes to Section 1, subsection (e) on page 1, line 31 through page 2, line 3. This change is not found in SB93. We removed the definition of "routine investigatory activities" since that term is no longer used in the statutes.

In SB82 we have recommended repeal of KSA 22-4608 stating racial profiling (now biased policing) is illegal. Our only reason for repealing it is because it is duplicative of the provisions we added on page 2, lines 6-16 in SB82.

The Task Force recommendations included a balance reached in regards to data collection. SB82 includes those provisions in Section 3 starting on page 3, line 22. It follows the Task Force recommendation of either 1) develop a comprehensive plan, or 2) collect traffic stop data. This found on page 13 of the Task Force report.

Additionally, the Task Force recommended requiring agencies having 10 or more full-time certified officers to have a community advisory board. Our recommendation, found starting in SB82 on page 3, line 22, incorporates that provision but adds it to the alternative of a comprehensive plan, just as the data collection was recommended by the Task Force. You will also see on page 4, line 10 the requirement for the question of whether the agency will utilize a community advisory board is to be one of the determinations of the community/law enforcement group developing the comprehensive plan. This allows the local communities to decide this issue when a comprehensive plan is used. So either those agencies use a comprehensive plan including a community decision about a community advisory board, or they must use a community advisory board. We also maintained that all first class cities retain the requirement to have a community advisory board, even if they choose the comprehensive plan route.

We included a list of minimum data elements for data collection. This starts on page 4, line 11. Neither the Task Force report nor SB93 included this.

You will find the recommended changes to the policy required by each agency in SB82 on page 5, lines 9-39. We propose the use of attorney general recommendations for defining "acts constituting biased policing" as an option. We pondered not including this language at all but chose to include it since it was the Task Force desire to add it. However, we feel the definition in the amended KSA 22-4606 should be the definition used in policy. Further understanding of that definition is an issue best left to local determination, perhaps as part of the comprehensive plan or with recommendations from a community advisory board preferably to be included in training. On page 5, lines 14 and 15 of SB82 is the requirement for the local policy to include this information and encourages consideration of any attorney general developed clarifications.

The Task Force recommended changes to the annual report. See their report starting on page 10, recommendations 10, 11 and 12. We incorporated those changes in SB82 starting on page 5, line 40. Those provisions are found on page 3, line 18 through page 4, line 1 in SB93. We proposed two clarifications. First, we wanted to make it clearer that every agency, even if they received no biased policing complaints, will report. We did that on page 6, line 4 by requiring the listing of the number of complaints. So zero complaints still need a listing. Second, we proposed clearer language in reporting of training. This can be

found in SB82 on page 6 lines 13-16. We proposed the reporting of the number of officers who completed training required by the statutes or by the comprehensive plan. The provisions of KSA 74-5607a are added because they provide how KS-CPOST can excuse officers from required training for things like extended military leave, extended sick leave, or other issues where an officer is unable to complete training.

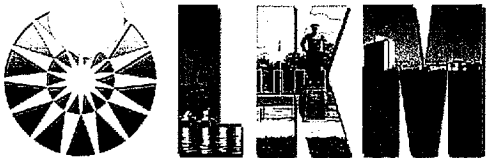
The Task Force recommended *annual* training. We propose allowing the agency to determine the frequency and amount of training. This will, in most cases, be part of the comprehensive plan or part of recommendations from a community advisory board where applicable. It is our experience any training repeated every year becomes counterproductive and that training based on community needs and addressing individual agency concerns produces the best results. In addition, there is a multitude of training necessary in keeping officers proficient, knowledgeable, and skilled. Nowhere else are we mandated by statute to complete training on a specific topic annually. We believe this is as it should be. If we start down this path the amount of required annual training will skyrocket as groups with specific interests will come to the legislature pushing for annual law enforcement training. The result will be an additional burden, especially on small agencies, to meet this demand. Law enforcement is already required to complete 40 hours of training every year. This training can be on any relevant topic. Law enforcement management must identify training needs and assure the appropriate training for their agency is met. Additionally, the Task Force recommends utilizing the remainder of the grant money to fund this training or development of the training. This is not in this bill but should be addressed in some manner by the legislature.

The Task Force recommends a training oversight group be formed to review each agencies training program. We did not include this because it is too high a burden on the law enforcement agency to have two boards to work on this issue. This is especially true of small agencies who may not have the mandated specialized resources. If this were done at the state level it will need to be funded. This would be quite a task to approve each agencies training plan. We recommend using the grant money to have KLETC develop distance learning tools on the subject. But even this training will need updating and future funding from the state.

Finally, this brings us to the issue of complaint investigations. This is found in section 4 of SB82 starting on page 6, line 24. This is an area where the Task Force did not agree to a recommendation. See the Task Force Report pages 12-14. One of the concerns we have had with the KHRC investigations is the lack of due process for the accused officers. A probable cause finding against an officer will have a negative impact on their careers and their ability to change agencies. But the officer nor the agency has any legal recourse under current law once a probable cause finding is levied against them. We proposed this process be transferred to the Kansas Commission on Police Officer Standards and Training. This is the professional commission certifying law enforcement officers in Kansas. This places us with the same process every other profession in Kansas is provided when state processes are mandated. It also provides us with due process for the officers. In addition, it puts the case on the table of the certifying agency for any appropriate action within their authority. In our proposal we have included additional provisions not included in the Task Force recommendations or current statute. SB82 sets standards for the handling of complaints by the agency (page 6, lines 35-43) and by KS-CPOST (page 7, lines 1-19. SB82 also retains the provisions for a civil cause of action.

We respectfully request a positive consideration for our proposals as provided in SB82. We feel they are more thorough, are more inclusive, and better balanced than those in SB93.

Ed Klumpp  
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TO: Senate Federal and State Affairs Committee

FROM: Sandy Jacquot, Director of Law/General Counsel

DATE: February9, 2011

RE: Written Testimony only on SB 82

Thank you for allowing the League of Kansas Municipalities to submit written testimony in support of SB 82. While the League believes the current law has worked well, other parties interested in this issue, including the Racial Profiling Task Force, have advocated for more changes. LKM continues to encourage the Legislature to adopt an approach that strikes a balance between onerous requirements on law enforcement and, on the other side, takes a proactive approach to eliminating racial profiling. After reviewing both SB 82 and SB 93, LKM agrees with the law enforcement community that SB 82 is the most effective means of achieving any needed improvement in the law.

LKM has been involved in the discussions of racial profiling for several years now and has opposed mandatory data collection. The approach in SB 82 is a reasonable one, requiring a city to either have a comprehensive plan or to collect data on traffic stops. The same alternative approach is taken with the advisory committee, except that it would continue to be required for cities of the first class. While LKM believes the better approach is to allocate our limited resources in the area of training and education which has been shown to be the most effective way to address racial profiling, the compromise in requiring a comprehensive plan is one cities can endorse. In addition, the change of reference from "racial profiling" to "biased based policing" more accurately describes the activity this bill seeks to eliminate.

Without belaboring the smaller details of each bill, LKM supports the testimony of the Kansas Association of Chiefs of Police, the Kansas Peace Officers Association and the Kansas Sheriffs Association. Therefore, LKM supports this committee reporting SB 82 favorably for passage.

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BETH MONTGOMERY  
OFFICE MANAGER

**TESTIMONY ON BEHALF OF  
THE KANSAS HUMAN RIGHTS COMMISSION  
REGARDING S.B. 82**

**PROVIDED BY CHIEF LEGAL COUNSEL JOSEPH P. MASTROSIMONE, EXECUTIVE  
DIRECTOR WILLIAM V. MINNER, ASSISTANT DIRECTOR RUTH GLOVER AND  
RACIAL/OTHER PROFILING ADMINISTRATOR RICK FISCHLI**

**BEFORE THE SENATE STATE AND FEDERAL AFFAIRS COMMITTEE**

**FEBRUARY 9, 2011**

S.B. 82 proposes to amend the Kansas racial and other profiling law, Kan. Stat. Ann. § 22-4606 *et seq.* (the "Act"). The Act currently makes it unlawful for law enforcement to engage in "racial profiling." S.B. 82 would replace "racial profiling" with the broader term "biased policing." "Biased policing" is defined as "the unreasonable use of race, ethnicity, national origin, gender, or religion by a law enforcement officer in deciding to initiate an enforcement action." However, the use of such factors in combination with other identifying factors as part of a specific individual description is not biased policing. S.B. 82 would also require law enforcement to collect and public certain data regarding its public contacts unless it "works in conjunction" with the local community to "develop a comprehensive plan to preempt biased policing" by addressing various subjects.

S.B. 82 defines an "enforcement action" as any law enforcement activity described in K.S.A. 22-4609 (determination of probable cause for an arrest or determination of a reasonable and articulable suspicion to justify detention of a person or the investigatory stop of a vehicle) that occurs during a nonconsensual contact with an individual or individuals. S.B. 82 would make it unlawful to use biased policing in three limited circumstances: (1) determining the existence of probable cause to justify the arrest or taking into custody of a person, (2) determining the existence of a reasonable and articulable suspicion to justify the detention of a person or the investigatory stop of a vehicle, and (3) determining the existence of probable cause to search a person or conveyance. Under current law, racial profiling is limited to the selection

of individuals to subject to "routine investigatory activities" and deciding on "the scope and substance" of law enforcement activity following the initial routine investigatory activity. Current law limits the scope of protection to situations involving "traffic stops."

S.B. 82 would both expand and contract the scope of the Act's protections. First, S.B. 82 would remove the reference to "traffic stops" in defining what constitutes "biased policing." The removal of this limitation would apply the Act's protections to initiation of any "enforcement action" – whether or not it arises from a traffic stop. Second, S.B. 82 would limit the Act's protections to only the decision to "initiate" the enumerated "enforcement actions" and appears to remove coverage regarding decisions made regarding the "scope and substance" of the law enforcement activity subsequent to the initial "enforcement action." Accordingly, a fair reading of S.B. 82 would result in the Act applying to an officer's decision to stop a citizen on the street or a vehicle on the road but would not extend to the officer's subsequent decision to employ the use of a police dog or other investigatory methods, other than a specific decision to search the individual or conveyance.

S.B. 82 would also alter the ability of individuals to bring civil actions for violations of the Act. Under current law, an individual is entitled to damages if a court determines that law enforcement engaged in racial profiling. S.B. 82 would add a new requirement that a civil complainant also prove that he or she "suffered a loss directly caused by the officer or agency engaged in biased policing." S.B. 82 fails to indicate whether that "loss" must be pecuniary.

S.B. 82 would also remove the Kansas Human Rights Commission's (the Commission") jurisdiction over racial profiling (or biased policing) complaints. Presently, the Commission is responsible, along with local law enforcement agencies, for investigating allegations of unlawful racial profiling. S.B. 82 would instead have biased policing complaints investigated by either the local law enforcement agency or the Kansas Commission on Police Officer Standards and Training ("KC-POST"). Additionally, S.B. 82 would require that findings of biased policing be supported by "clear and convincing evidence" – a burden of proof higher than applied in most civil matters (preponderance of the evidence) and higher than currently applied by the Commission.

While the Commission believes that it can continue to enforce the Act, as the current unbiased investigatory agency, the Commission takes a neutral stance on the passage of S.B. 82. That neutral stance reflects the need for the Commission's determinations regarding racial profiling (or biased policing) complaints to be accepted and credible. Accordingly, the Commission's neutrality regarding this bill is necessary to avoid the appearance that it may favor one side or the other if S.B. 82 is adopted.

However, the Commission notes that S.B. 82 proposes to place significant investigatory duties on KC-POST. The Commission stands in firm opposition to any suggestion that any of its dwindling resources should be transferred to KC-POST in order for it to fulfill its new duties. While the Commission employs two individuals who specialize in the investigation of racial profiling complaints, those individuals spend upwards of 80% of their time investigating and conciliating non-racial profiling matters such as allegations of discrimination in employment, housing, and public accommodations. Accordingly, any transfer of positions and funds from the

Commission to KC-POST would further hamstring the Commission's ability to fulfill its statutory duty to investigate and remedy allegations of discrimination in employment, housing, and public accommodations.

We will be glad to answer any questions that Committee may have.

# Steve A.J. Bukaty, Chartered

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February 9, 2011

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

Re: Senate Bills 82 and 93

TO: Senate Committee on Federal and State Affairs

Chairman Brungart and Members of the Committee:

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

I am here today to address the proposed changes to the Racial Profiling Statute, as contained in Senate Bills No. 82 and No. 93.

The FOP and its members are unequivocally opposed to any form of racial profiling or biased policing. Race, as the sole factor in determining whether to stop or investigate a pedestrian or vehicle, is abhorrent to every officer's sense of justice and will never be condoned by the FOP. It is the overwhelming consensus of our members that the current Racial Profiling Statute, K.S.A. 22-4606 *et seq.*, more than adequately addresses any concerns that have been or could be raised concerning racial profiling. It is the FOP's position that the current Racial Profiling Statute does not need to be amended.

Given the fact that the current Statute more than adequately protects the citizens of Kansas, it must be said that maintaining the status quo does not constitute a vote in favor of racial profiling. Accordingly, the FOP urges the members of the Committee to recommend that the current Racial Profiling Statute remain intact, with no amendments.

If changes are made to the current Statute, the FOP requests that the Committee focus on the following points:

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Attachment 6

2-9-11



1. Amendments to K.S.A. 22-4610

The two Senate bills propose identical changes to this section of the Statute. There are two points of principal concern to the FOP regarding the amendments to this section.

A. Data Collection

Under both Senate Bills, any law enforcement agency which employs ten (10) or more full time law enforcement officers, and does not utilize a comprehensive plan to pre-empt biased based policing, developed in conjunction where their community, will be required to maintain and submit substantial amounts of data on every vehicle stop. The FOP is opposed to this proposal for two reasons:

1. The decision of whether to adopt a comprehensive plan should be left to the discretion of local officials to determine whether such a plan is necessary, and whether biased based policing or racial profiling are an issue in their community. The vast majority of Kansas law enforcement agencies have never received a complaint of racial profiling against any of their officers. Blanketly requiring these agencies, as a matter of law, to develop such plans, where no problem exists, is unnecessary and constitutes an unfunded mandate.

2. The data collection called for in the amendments to K.S.A. 4610, are onerous. They will have a tremendous financial impact on any department which has to collect and report such data. Yet, under the amendments as proposed, if a City determines that it does need a comprehensive plan, it will be required as a matter of State law to collect and report this data, at great expense. In the current economic climate, such a fiscal impact is totally unjustified, especially in view of the fact that there has never been a racial profiling complaint which has been sustained by the courts in the State of Kansas.

3. There is also real concern on behalf of our members that requiring such onerous data collection and reporting will have a deleterious effect on law enforcement activities. If officers are compelled to complete contact forms on every citizen they encounter, such additional burdens will lead to increased response times for serious incidents, and will increase black-out times for police departments, i.e., periods of time during which no officers are available to respond to calls. History has shown that an increase in response times and black-out times, leads to an increase in criminal activity.

B. Both Senate Bills require that this section of the Statute be further amended to require "each law enforcement agency in this State" to adopt a detailed written policy that, among other things, must provide "for the discipline of law enforcement officers who engaged in biased policing." It is the FOP's position that "requiring" discipline in all such cases is inappropriate. A further subsection of each Bill simply requires law enforcement agencies to "take appropriate action" if they find that an officer has acted in direct violation of the agency's written policies regarding biased policing.

Although the FOP believes that the proposed amendments to K.S.A. 22-4610 are unnecessary, if the Committee intends to adopt any of them, the FOP specifically requests that K.S.A. 22-4610 (d)(5) be amended to read as follows:

“Provide that the law enforcement agency shall take appropriate corrected action with regard to officers who are found to have engaged in biased policing.”

While the FOP is opposed to racial profiling and biased policing, it is inappropriate to require that, if an officer is found to have violated Department policy, he or she must be automatically disciplined. Given the complexities of police work, there are many situations where remedial training or counseling may be more appropriate, than discipline. Further, in some cases, the written policy may need to be clarified. There is no reason to tie a law enforcement agency's hands by requiring discipline in every case. Accordingly, the FOP requests that all references to “discipline” in the two Bills be deleted.

2. K.S.A. 22-4611 – Complaints

Currently the Statute gives the Kansas Human Rights Commission authority to investigate complaints of racial profiling. Any individual, who has exhausted that process, may file a civil action against the agency and officer involved.

Both Senate Bills propose to change this procedure to give jurisdiction for administrative investigation of such complaint to the local agency and to the Kansas Commission on Police Officer Standards and Trainings (CPOST).

The FOP believes it is appropriate for local law enforcement agencies to investigate any complaints against their officers; including complaints of racial profiling or biased policing. The FOP believes it is inappropriate for the CPOST to be involved in such proceedings. Like many state agencies, CPOST is currently undermanned, overworked and under funded. Transferring jurisdiction for all racial profiling and/or biased policing complaints to CPOST will enhance its workload, and will require the expenditure of additional funds by the State, which, as everyone knows, are quite scarce. Yet, there will be no real benefit to this.

All current police departments have internal affairs or professional standards units which are trained in the investigation of complaints against their officers. There is no reason to change that procedure.

The FOP is not opposed to having CPOST perform investigations as it deems necessary. However, the FOP is concerned that allowing CPOST to conduct such investigations, and conduct a hearing into the matter, may conflict with the due process rights of many of its members. Many of the members of the FOP in Kansas are protected by collective bargaining agreements and/or local ordinances, which provide them with evidentiary hearings, at which any allegations of wrongdoing and concomitant discipline are subject to the rigors of due process. The Kansas Supreme Court has held that such hearings are constitutionally protected due process

Senate Committee on Federal and State Affairs  
February 9, 2011

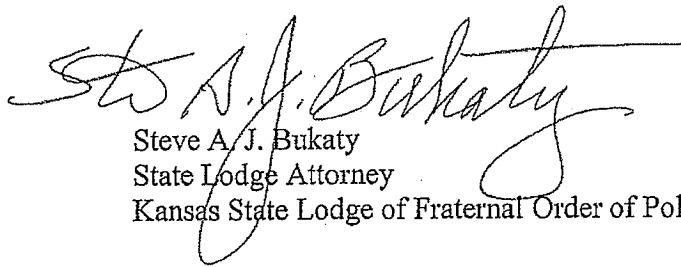
hearings which must be afforded to all "for cause" employees. *Gorham v. City of Kansas City, KS*, 590 P.2d 1051 (Kan. 1979). If CPOST is given jurisdiction over racial profiling or biased policing complaints, the FOP urges the Committee to recommend a provision which requires CPOST to defer to such local due process hearings, before it may conduct its investigation and any subsequent hearing.

Since the foregoing represents the only concerns that the FOP has with Senate Bills 82 and 93, the FOP may be viewed as a proponent who is supporting the Bills with reservations. While the FOP continues to believe that the current Racial Profiling Statute is adequate, it can support Senate Bills 82 and 93 if the above-described concerns are addressed.

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

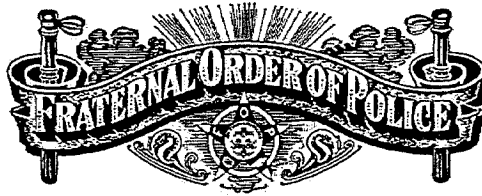
Thank you for your time and attention.

Respectfully submitted,



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

SAJB:dah



## WICHITA LODGE 5

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SECRETARY

CASEY SLAUGHTER  
TREASURER

February 9, 2011

RE: Senate Bills 82 and 93

TO: Senate Committee on Federal and State Affairs

Chairman Brungart and Members of the Committee,

Unfortunately, inclement weather has kept us from traveling to speak to you in person today. We would still like to take this opportunity to address the proposed changes to the Racial Profiling Statute in Senate Bills 82 and 93. The men and women of the Fraternal Order of Police Wichita, Kansas Lodge #5, who proudly serve the citizens of the City of Wichita, oppose any and all forms of racial profiling or biased policing. Furthermore, we believe the current statute, K.S.A 22-4606 *et seq.*, has and will continue to address the issue of racial profiling in an adequate manner.

It is our position that the Committee recommend the Racial Profiling Statute to remain in its current form, without amendment. If the Committee believes some of the amendments need to be adopted, we suggest that K.S.A 22-4610 (d)(5) be amended to read:

“Provide that the law enforcement agency shall take appropriate corrective action with regard to officers who are found to have engaged in biased policing.”

FOP Lodge #5 believes in correcting improper behavior of its members. The corrective action may take the form of discipline, training or coaching and mentoring. Sometimes an agency may have a policy that is a contributing factor, wherein the policy needs to be modified.

FOP Lodge #5 is the sole bargaining unit for the ranks of sergeant and below on the Wichita Police Department. Our Memorandum of Agreement with the City of Wichita contains negotiated agreements when it comes to discipline and contract disputes. Therefore, we cannot be in favor of amending the statute to give the Kansas Commission of Police Officer Standards and Training (CPOST) the power to investigate racial profiling complaints as it deems necessary. The internal affairs or professional standards sections of law enforcement agencies are best suited for handling these complaints.

To give the committee an idea as to the possible deleterious effect that subsequent changes could have on enforcement efforts, we would like to provide you with some anecdotal information regarding the one sustained racial profiling complaint against some of our members.

After the Kansas Human Rights Commission made their probable cause determination that officers had engaged in racial profiling, there was no definitive resolution to their ruling. The officers strongly disagreed with the finding. No mechanism was in place to allow the officers to appeal the determination of the finding. The city and the Fraternal Order of Police challenged this ruling in District Court but the Judge dismissed the challenge, accepting the State's position that the ruling is purely administrative. With no definitive resolution, this lead to officers perceiving a stigma associated with them. One of them told us that his initial response to protect himself from what he knew was a false allegation, was simply to no longer take any proactive initiative and only respond to citizens' 911 calls. Instead, his professionalism pushed him through and he continues to be a productive law enforcement officer for his community.

The citizen that initially filed the original complaint sued the officers and the department in District Court. The District Court Judge eventually found that there was a lack of probable cause that the officers had engaged in racial profiling and dismissed the lawsuit. While this perhaps gives the officers a sense of vindication, the community was left with the knowledge that a state agency had made this determination against their police department. We are also confident that the individual who filed the original complaint is now dissatisfied with the ultimate outcome.

We thank you for your time.

Respectfully submitted,

Hans Asmussen  
President

Chester Pinkston  
Immediate Past President



*Serving the men and women of the Wichita Police Department since 1973.*

