

[As Amended by Senate Committee of the Whole]

As Amended by Senate Committee

Session of 2011

SENATE BILL No. 93

By Committee on Federal and State Affairs

2-3

1 AN ACT concerning law enforcement ~~fracial or other biased-based~~
2 ***policing***; amending K.S.A.22-4606, ~~22-4608~~ **22-4609**, 22-4610 and
3 22-4611, and repealing the existing sections; ***also repealing K.S.A.***
4 ***22-4604 and 22-4608.***

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 22-4606 is hereby amended to read as follows:
8 22-4606. As used in this act:

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

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

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

16 (d) ~~"Racial profiling" means the practice of a law enforcement~~
17 ~~officer or agency relying, as the sole factor, on race, ethnicity, national~~
18 ~~origin, gender or religious dress in selecting which individuals to~~
19 ~~subject to routine investigatory activities, or in deciding upon the scope~~
20 ~~and substance of law enforcement activity following the initial routine~~
21 ~~investigatory activity. Racial profiling does not include reliance on such~~
22 ~~criteria in combination with other identifying factors when the law~~
23 ~~enforcement officer or agency is seeking to apprehend a specific~~
24 ~~suspect whose race, ethnicity, national origin, gender or religious dress~~
25 ~~is part of the description of the suspect. "Biased **Racial or other**~~
26 ***biased-based policing***" means the unreasonable use of race, ethnicity,
27 national origin, socio-economic status, gender or religion by a law
28 enforcement officer in deciding to initiate an enforcement action. It is
29 not ~~biased~~ ***racial or other biased-based policing*** when race, ethnicity,
30 national origin, socio-economic status, gender or religion is used in
31 combination with other identifying factors as part of a specific

1 *individual description to initiate an enforcement action.*

2 (e) ~~"Routine investigatory activities" includes, but is not limited~~
3 ~~to, the following activities conducted by law enforcement officers and~~
4 ~~agencies in conjunction with traffic stops: (1) Frisks and other types of~~
5 ~~body searches,; and (2) consensual or nonconsensual searches of~~
6 ~~persons or possessions, including vehicles, dormitory rooms, school~~
7 ~~lockers, homes and apartments. ***["Enforcement action" means any***~~
8 ~~***law enforcement act, as described in K.S.A. 22-4609, and***~~
9 ~~***amendments thereto, during a nonconsensual contact with an***~~
10 ~~***individual or individuals.]***~~

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

13 Sec. 2. ~~K.S.A. 22-4608 is hereby amended to read as follows: 22-~~
14 ~~4608. It shall be unlawful for any law enforcement officer or any law~~
15 ~~enforcement agency to engage in racial profiling, biased policing.~~

16 ***Sec. 2. K.S.A. 22-4609 is hereby amended to read as follows: 22-***
17 ***4609. The race, ethnicity, national origin, gender or religious dress of***
18 ***an individual or group shall not be the sole factor in It is unlawful to***
19 ***use racial or other biased-based policing in:***

20 (a) ***Determining the existence of probable cause to take into***
21 ***custody or to arrest an individual or in ;***

22 (b) ***constituting a reasonable and articulable suspicion that an***
23 ***offense has been or is being committed so as to justify the detention***
24 ***of an individual or the investigatory stop of a vehicle; or***

25 (c) ***determining the existence of probable cause to conduct a***
26 ***search of an individual or a conveyance.***

27 Sec. 3. K.S.A. 22-4610 is hereby amended to read as follows: 22-
28 4610. (a) All law enforcement agencies in this state shall adopt a
29 detailed, written policy to preempt ~~racial profiling~~ ***biased racial or***
30 ***other biased-based policing***. Each agency's policy shall include the
31 definition of ~~racial profiling~~ ***biased racial or other biased-based***
32 ***policing*** found in K.S.A. 22-4606, and amendments thereto.

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

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

39 (1) ~~A prohibition of racial profiling.~~ ***A detailed written policy that***

1 ~~prohibits biased~~ **racial or other biased-based** policing and that clearly
2 defines acts constituting ~~biased~~ **racial or other biased-based** policing
3 using language that has been recommended by the attorney general.

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

9 (2) (A) The agency policies shall require annual racial ~~and or~~
10 other ~~biased~~ **biased-based** policing training which shall include but not
11 be limited to training relevant to racial ~~and or other biased~~ **biased-**
12 **based** policing. Distance learning training technology shall be allowed
13 for racial ~~and or other biased~~ **biased-based** policing training.

14 (B) Law enforcement agencies ~~shall~~ **may** appoint an advisory body
15 of not less than five persons composed of representatives of law
16 enforcement, community leaders and educational leaders to
17 recommend and review appropriate training curricula.

18 (3) (A) For law enforcement agencies ~~of cities of the first~~
19 ~~class with 10 or more full-time officers shall, establishment establish or~~
20 ~~use of current independent citizen~~ **of cities or counties that have**
21 **exercised the option to establish** community advisory boards **pursuant**
22 **to section 6, and amendments thereto, use of such community**
23 **advisory boards** which include participants who reflect the racial and
24 ethnic community, to advise and assist in policy development,
25 education and community outreach and communications related to
26 ~~racial profiling~~ **biased racial or other biased-based** policing by law
27 enforcement officers and agencies.

28 (B) Community advisory boards shall receive training on fair and
29 impartial policing and comprehensive plans for law enforcement
30 agencies.

31 (4) Policies for discipline of law enforcement officers and
32 agencies who engage in ~~racial profiling~~ **biased racial or other biased-**
33 **based** policing.

34 (5) A provision that, if the investigation of a complaint of ~~racial~~
35 ~~profiling~~ **biased racial or other biased-based** policing reveals the
36 officer was in direct violation of the law enforcement agency's written
37 policies regarding ~~racial profiling~~ **biased racial or other biased-based**
38 **policing**, the employing law enforcement agency shall take appropriate
39 action consistent with applicable laws, rules and regulations,

1 resolutions, ordinances or policies, including demerits, suspension or
2 removal of the officer from the agency.

3 (6) Provisions for community outreach and communications
4 efforts to inform the public of the individual's right to file with the law
5 enforcement agency or the ~~Kansas human rights commission~~ **[attorney**
6 **general]** complaints regarding ~~racial profiling~~ **biased racial or other**
7 **biased-based policing**, which outreach and communications to the
8 community shall include ongoing efforts to notify the public of the law
9 enforcement agency's complaint process.

10 (7) Procedures for individuals to file complaints of ~~racial profiling~~
11 **biased racial or other biased-based policing** with the agency, which, if
12 appropriate, may provide for use of current procedures for addressing
13 such complaints.

14 (d) (1) Each law enforcement agency shall compile an annual
15 report ~~of~~ *including* all complaints of ~~racial profiling~~ **biased racial or**
16 **other biased-based policing** received and shall submit the report on or
17 before ~~January~~ July 31 to the office of the attorney general for review.
18 ~~The annual report shall include: (1) The date the complaint is filed; (2)~~
19 ~~(B) action taken in response to the complaint; (3)(C) the decision upon~~
20 ~~disposition of the complaint; and (4)(D) the date the complaint is~~
21 ~~closed.~~ Annual reports filed pursuant to this subsection shall be open
22 public records and shall be posted on the official website of the
23 attorney general.

24 (2) *The annual report shall include:*

25 (A) *The date each racial ~~and biased or other biased-based~~*
26 *policing complaint is filed;*

27 (B) *action taken in response to each racial ~~and biased or other~~*
28 *biased-based policing complaint;*

29 (C) *the disposition of each racial ~~and biased or other biased-~~*
30 *based policing complaint;*

31 (D) *the date each racial ~~and biased or other biased-based~~ policing*
32 *complaint is closed;*

33 (E) *whether or not all agency law enforcement officers not*
34 *exempted by Kansas commission on peace officer standards and*
35 *training;*

36 (F) *whether the agency has a policy prohibiting racial ~~profiling~~*
37 *~~and biased or other biased-based~~ policing;*

38 (G) *whether the agency policy mandates specific discipline for*
39 *sustained complaints of racial ~~and or other biased~~ biased-based*

1 *policing;*

2 (H) *whether the agency policy details the discipline to be*
3 *administered for sustained complaints of racial ~~and or other biased~~*
4 ***biased-based** policing;*

5 (I) *whether the agency has a community advisory board; and*

6 (J) *whether the agency has a racial ~~and biased or other biased-~~*
7 ***based** policing comprehensive plan or if it collects traffic ~~[or~~*
8 ***pedestrian]** stop data.*

9 Sec. 4. K.S.A. 22-4611 is hereby amended to read as follows: 22-
10 4611. (a) Any person who believes such person has been subjected to
11 ~~racial profiling~~ ***racial or other biased-based** policing* by a law
12 enforcement officer or agency may file a complaint with ~~the law~~
13 ~~enforcement agency. The complainant may also file a complaint with~~
14 ~~the Kansas human rights commission~~ ***the office of the attorney***
15 ***general.*** The ~~commission~~ ***attorney general*** shall review and, if
16 necessary, investigate the complaint. The ~~commission's designee~~
17 ***attorney general*** shall consult with the head of the law enforcement
18 agency before making final recommendations regarding discipline of
19 any law enforcement officer or other disposition of the complaint.

20 (b) Upon disposition of a complaint as provided for in subsection
21 (a) the complainant shall have a civil cause of action in the district
22 court against the law enforcement officer or law enforcement agency,
23 or both, and shall be entitled to recover damages if it is determined by
24 the court that such persons or agency engaged in ~~racial profiling~~ ***biased***
25 ***racial or other biased-based** policing.* The court may allow the
26 prevailing party reasonable attorney fees and court costs.

27 New Sec. 5. (a) ~~Each law enforcement agency shall~~ ***The***
28 ***governing body of a city or county may*** develop a comprehensive plan
29 in conjunction with a community advisory board, if one exists, or with
30 community leaders, ~~by January 1, 2012,~~ to prevent racial ~~profiling and~~
31 ~~biased or other biased-based~~ ***biased** policing or **may require the law***
32 ***enforcement agency of such city or county*** to collect traffic ~~[or~~
33 ***pedestrian]*** stop data ~~beginning July 1, 2011,~~ and make such data
34 available to the public.

35 (b) ~~The~~ ***Any*** comprehensive plan ***adopted pursuant to this section***
36 shall include the following:

37 (1) Policies prohibiting racial ~~and or~~ other biased-based policing
38 to guide well-meaning officers and address racist officers;

39 (2) policies to promote the recruitment and hiring of a diverse

- 1 workforce to ensure the workforce is comprised of people who can
2 police in a race-neutral and nonbiased fashion;
- 3 (3) training to promote employees' controlled responses to
4 override racial and other biases;
- 5 (4) ongoing training of supervisors to enable them to detect and
6 respond effectively to biased behavior;
- 7 (5) implement a style of policing that promotes positive
8 interactions between police officers and all communities;
- 9 (6) ~~include~~ data collection as part of the comprehensive plan; and
10 (7) other matters deemed appropriate.
- 11 ***(c) Data collection, if required by the governing body, may***
12 ***consist of, but shall not be limited to, one or more of the following for***
13 ***every vehicle [or pedestrian] stop:***
- 14 ***(1) Originating agency identifier number;***
15 ***(2) time and date of the stop;***
16 ***(3) duration of the stop in ranges of one to 15 minutes, 16 to 30***
17 ***minutes or more than 30 minutes;***
18 ***(4) beat, district, territory or response area where the traffic stop***
19 ***is conducted;***
20 ***(5) primary reason for the officer's investigation, and***
21 ***specifically, whether the stop was call related or self initiated;***
22 ***(6) primary reason for the stop, and specifically, whether the***
23 ***stop was based on a moving violation, an equipment violation,***
24 ***reasonable suspicion of a criminal offense, other violation, to render***
25 ***service or assistance, suspicious circumstances, pre-existing***
26 ***knowledge or special detail;***
27 ***(7) [if a vehicle stop, the] county code of vehicle registration, if***
28 ***registered in Kansas, and state code, if registered outside Kansas;***
29 ***(8) age, race, gender and ethnicity of the primary person stopped***
30 ***by the officer;***
31 ***(9) source of the information required by paragraph (8), and***
32 ***specifically, whether it was obtained from officer perception or***
33 ***investigation;***
34 ***(10) whether the officer was aware of the information required***
35 ***by paragraph (8) prior to the stop;***
36 ***(11) [if a vehicle stop, the] number of occupants in the stopped***
37 ***vehicle, including the driver;***
38 ***(12) type of action taken, including citation, warning, search,***
39 ***arrest, assistance provided or no action. If the action taken is an***

1 *arrest, the data collection shall also include the type of arrest,*
2 *including warrant, resisting arrest, property crime, persons crime,*
3 *drug crime, traffic crime, DUI or other type of arrest;*

4 *(13) if a search was conducted, the rationale for the search,*
5 *including vehicle indicators, verbal indicators, physical or visual*
6 *indicators, document indicators (DOT), incident to arrest or other*
7 *rationale;*

8 *(14) if a search was conducted, the type of search, including*
9 *consent search, consent requested but consent denied, inventory, stop*
10 *and frisk, search warrant, incident to arrest, plain view or probable*
11 *cause; or*

12 *(15) if a search was conducted, the type of contraband seized, if*
13 *any, including currency, firearms, other weapons, drugs, drug*
14 *paraphernalia, alcohol products, tobacco products, stolen property or*
15 *other contraband.*

16 *New Sec. 6. The governing body of any city or county may, by*
17 *ordinance or resolution, establish a community advisory board to*
18 *work with the law enforcement agency of such city or county in*
19 *accordance with the provisions of K.S.A. 22-4606 et seq., and*
20 *amendments thereto.*

21 *Sec. 6- 7. K.S.A. 22-4604, 22-4606, 22-4608, 22-4609, 22-4610*
22 *and 22-4611 are hereby repealed.*

23 *Sec.-7- 8. This act shall take effect and be in force from and after*
24 *its publication in the Kansas register.*