

SENATE BILL No. 93

AN ACT concerning racial or other biased-based policing; amending K.S.A. 22-4606, 22-4609, 22-4610 and 22-4611 and repealing the existing sections; also repealing K.S.A. 22-4604 and 22-4608.

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

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

(a) “Governmental unit” means the state, or any county, city or other political subdivision thereof, or any department, division, board or other agency of any of the foregoing, *except governmental unit shall not include the board of education of any school district employing school security officers.*

(b) “Law enforcement agency” means the governmental unit employing the law enforcement officer.

(c) “Law enforcement officer” has the meaning ascribed thereto in K.S.A. 74-5602, and amendments thereto, *except law enforcement officer shall not include school security officers designated as school law enforcement officers pursuant to K.S.A. 72-8222, and amendments thereto.*

(d) ~~“Racial profiling” means the practice of a law enforcement officer or agency relying, as the sole factor, on race, ethnicity, national origin, gender or religious dress in selecting which individuals to subject to routine investigatory activities, or in deciding upon the scope and substance of law enforcement activity following the initial routine investigatory activity. Racial profiling does not include reliance on such criteria in combination with other identifying factors when the law enforcement officer or agency is seeking to apprehend a specific suspect whose race, ethnicity, national origin, gender or religious dress is part of the description of the suspect.~~ *“Racial or other biased-based policing” means the unreasonable use of race, ethnicity, national origin, gender or religion by a law enforcement officer in deciding to initiate an enforcement action. It is not racial or other biased-based policing when race, ethnicity, national origin, gender or religion is used in combination with other identifying factors as part of a specific individual description to initiate an enforcement action.*

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

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

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

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

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

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

Sec. 3. K.S.A. 22-4610 is hereby amended to read as follows: 22-4610.

(a) All law enforcement agencies in this state shall adopt a detailed, written policy to preempt racial ~~profiling~~ *or other biased-based policing*. Each agency’s policy shall include the definition of racial ~~profiling~~ *or other biased-based policing* found in K.S.A. 22-4606, and amendments thereto.

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

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

(1) ~~A prohibition of racial profiling.~~ *A detailed written policy that prohibits racial or other biased-based policing and that clearly defines acts*

constituting racial or other biased-based policing using language that has been recommended by the attorney general.

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

(2) (A) The agency policies shall require annual racial or other biased-based policing training which shall include, but not be limited to, training relevant to racial or other biased-based policing. Distance learning training technology shall be allowed for racial or other biased-based policing training.

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

~~(3) (A) For law enforcement agencies of cities of the first class, establishment or use of current independent citizen of cities or counties that have exercised the option to establish community advisory boards pursuant to section 6, and amendments thereto, use of such community advisory boards which include participants who reflect the racial and ethnic community, to advise and assist in policy development, education and community outreach and communications related to racial profiling or other biased-based policing by law enforcement officers and agencies.~~

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

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

~~(5) A provision that, if the investigation of a complaint of racial profiling or other biased-based policing reveals the officer was in direct violation of the law enforcement agency's written policies regarding racial profiling or other biased-based policing, the employing law enforcement agency shall take appropriate action consistent with applicable laws, rules and regulations, resolutions, ordinances or policies, including demerits, suspension or removal of the officer from the agency.~~

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

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

~~(d) (1) Each law enforcement agency shall compile an annual report of all complaints of racial profiling received for the period of July 1 to June 30 and shall submit the report on or before January July 31 to the office of the attorney general for review. The annual report shall include: (1) The date the complaint is filed; (2) action taken in response to the complaint; (3) the decision upon disposition of the complaint; and (4) the date the complaint is closed. Annual reports filed pursuant to this subsection shall be open public records and shall be posted on the official website of the attorney general.~~

(2) The annual report shall include:

(A) The number of racial or other biased-based policing complaints received;

(B) the date each racial or other biased-based policing complaint is filed;

(C) action taken in response to each racial or other biased-based policing complaint;

(D) the disposition of each racial or other biased-based policing complaint;

(E) the date each racial or other biased-based policing complaint is closed;

(F) whether or not all agency law enforcement officers not exempted by Kansas commission on peace officers' standards and training received the training required in subsection (c)(2)(A);

(G) whether the agency has a policy prohibiting racial or other biased-based policing;

(H) whether the agency policy mandates specific discipline for sustained complaints of racial or other biased-based policing;

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

(J) whether the agency has a racial or other biased-based policing comprehensive plan or if it collects traffic or pedestrian stop data.

Sec. 4. K.S.A. 22-4611 is hereby amended to read as follows: 22-4611.

(a) Any person who believes such person has been subjected to racial ~~profiling~~ or other biased-based policing by a law enforcement officer or agency may file a complaint with the law enforcement agency. The complainant may also file a complaint with the ~~Kansas human rights commission~~ office of the attorney general. The ~~office of the attorney general~~ ~~commission~~ shall review and, if necessary, investigate the complaint and may find there is insufficient evidence of racial or other biased-based policing or may forward the complaint for further review and possible action to the Kansas commission on peace officers' standards and training. The commission shall review and, if necessary, further investigate the complaint. The commission may take action on the officer's certification or other corrective action as allowed by its governing statutes and rules and regulations. The ~~commission's designee~~ commission shall consult with the head of the law enforcement agency before ~~making~~ taking final ~~recommendations~~ action regarding discipline of any law enforcement officer or other disposition of the complaint.

(b) Within 10 days of receiving a complaint, the office of the attorney general shall provide notification that such complaint has been filed to the accused officer and to the head of the accused officer's law enforcement agency, including a copy of all complaint documentation submitted by the complainant.

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

New Sec. 5. (a) The governing body of a city or the sheriff of the county may develop a comprehensive plan in conjunction with a community advisory board, if one exists, or with community leaders to prevent racial or other biased-based policing or may require the law enforcement agency of such city or county to collect traffic or pedestrian stop data and make such data available to the public.

(b) Any comprehensive plan adopted pursuant to this section shall include the following:

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

(2) policies to promote the recruitment and hiring of a diverse workforce to ensure the workforce is comprised of people who can police in a race-neutral and nonbiased fashion;

(3) training to promote employees' controlled responses to override racial and other biases;

(4) ongoing training of supervisors to enable them to detect and respond effectively to biased behavior;

(5) implement a style of policing that promotes positive interactions between police officers and all communities;

(6) whether or not the governing body or sheriff has included data collection as part of the comprehensive plan; and

(7) other matters deemed appropriate.

(c) Data collection, if required, may consist of, but shall not be limited to, one or more of the following for every vehicle or pedestrian stop:

(1) Originating agency and officer identifier number;

(2) time and date of the stop;

(3) duration of the stop in ranges of one to 15 minutes, 16 to 30 minutes or more than 30 minutes;

(4) beat, district, territory or response area where the traffic stop is conducted;

(5) primary reason for the officer's investigation, and specifically, whether the stop was call related or self initiated;

(6) primary reason for the stop, and specifically, whether the stop was based on a moving violation, an equipment violation, reasonable suspicion of a criminal offense, other violation, to render service or assistance, suspicious circumstances, pre-existing knowledge or special detail;

(7) if a vehicle stop, the county code of vehicle registration, if registered in Kansas, and state code, if registered outside Kansas;

(8) age, race, gender and ethnicity of the primary person stopped by the officer;

(9) source of the information required by paragraph (8), and specifically, whether it was obtained from officer perception or investigation;

(10) whether the officer was aware of the information required by paragraph (8) prior to the stop;

(11) if a vehicle stop, the number of occupants in the stopped vehicle, including the driver;

(12) type of action taken, including citation, warning, search, arrest, assistance provided or no action. If the action taken is an arrest, the data collection shall also include the type of arrest, including warrant, resisting arrest, property crime, persons crime, drug crime, traffic crime, DUI or other type of arrest;

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

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

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

(d) Nothing in this section shall require a governmental entity to collect data concerning pedestrian stops.

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

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

Sec. 8. This act shall take effect and be in force from and after its publication in the Kansas register.

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.