

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Pete Brungardt at 10:40 a.m. on Thursday, February 3, 2005, in Room 231-N of the Capitol.

All members were present.

Committee staff present:

Athena Andaya, Kansas Legislative Research Department  
Dennis Hodgins, Kansas Legislative Research Department  
Mary Ann Torrence, Revisor of Statutes Office  
Dee Woodson, Committee Secretary

Conferees appearing before the committee:

Senator Donald Betts  
Senator David Haley  
Jihad Muqtasid, Wichita (read by Rev. Dilce Polite)  
Danielle Dempsey-Swopes, J.D., Kansas African American Affairs Commission  
Elias Garcia, Executive Director, Kansas Hispanic-Latin American Affairs Commission  
Dick Kurtenbach, American Civil Liberties Union of Kansas and Western Missouri  
Kevin Myles, Vice President, Kansas State Conference of National Association for the Advancement of Colored People  
Chuck Grover, Kansas Association of Chiefs of Police  
Randy Rogers, President, Kansas Sheriff's Association  
William Richards, Sr., Legislative Liaison, NAACP, Topeka Branch  
Dr. Walt Chappell, Citizens for Equal Law Enforcement, Wichita  
Rev. Andrew McHenry, Maple Hill, Ks.  
Mona Brown and Shirley Wishom, Women in Action, Topeka  
Sheila Officer, Park City, Ks.  
Ralondo Henry Carr, Wichita (written only)  
William Minner, Executive Director, Kansas Human Rights Commission (written only)  
Bomani Chekandino, Prisoner of Conscious Committee, Wichita (written only)  
Kyle Smith, Kansas Peace Officers Association  
Kevin Graham, Attorney General's Office  
Col. William Seck, Superintendent, Kansas Highway Patrol  
Sandy Jacquot, League of Kansas Municipalities  
Lt. Col. Steve Smith, City of Overland Park Police Department

Others attending:

See attached list.

Chairman Brungardt called for bill introductions. The Chairman directed the Committee's attention to a requested bill by Senator Janis Lee regarding Kansas Emergency Medical Services, and a proposed amendment to K.S.A. 65-6102. Senator Hensley made a motion to introduce the proposed bill, seconded by Senator Barnett, and the motion carried.

Whitney Damron requested a bill introduction, on behalf of the City of Topeka, that would effectively remove statutory roadblocks to city and county consolidation. Senator Barnett moved to have the proposed bill introduced, seconded by Senator Brownlee, and the motion carried.

Chairman Brungardt extended a warm welcome to former Wichita Senator, Rip Gooch, who was in attendance today.

**SB 77 - Racial profiling; creating a misdemeanor violation, civil cause of action, requirements of law enforcement agencies**

Senator Brungardt opened the hearing on **SB 77**. He explained how the hearing would proceed and the time limits established due to the number of conferees signed up to testify before the Committee. Senator Donald Betts, co-sponsor of the bill, testified as to how the current version of **SB 77** came about

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regarding racial profiling. He stated that a remarkable coalition of people and groups came together to work on a bill that sets the policy for the State of Kansas regarding racial profiling, and which affects every law enforcement agency in the state. (Attachments 1 and 2)

Senator Betts said that the coalition or Task Force, brought together representatives of all the major areas—individuals, law enforcement, community groups like the NAACP and Citizens for Equal Law Enforcement, and government agencies such as the Kansas African American Affairs Commission, and the Kansas Hispanic/Latino American Affairs Commission. Senator Betts stated that one year from this week in February, the Task Force is mandated to come back to the legislature with practical recommendations for collecting data and making it available for analysis. He expressed his appreciation for all the efforts of the citizens, community, law enforcement, and all who collaborated in order to begin the first stages of a policy that will eventually bridge the gap between law enforcement and the public.

Senator David Haley, co-sponsor of **SB 77**, testified in support of the proposed legislation. He stated that racial profiling was a classic example of depriving a person of his/her civil rights under the color, or pretext of enforcing the law. **SB 77** defines racial profiling, and provides a mechanism for administrative remedy. (Attachment 3)

Jihad Muqtasid, a Wichita citizen, was unable to appear before the Committee due to his being hospitalized, and his testimony was read by Rev. Dilce Polite. Mr. Muqtasid's testimony related two incidents of racial profiling he had experienced during his life; the first as a young boy walking home from his part-time job, and the other at the age of 75 after attending a religious meeting at his church. He urged the Committee to make it clear to all police officers in Kansas that racial profiling is wrong, and that it will not be tolerated. (Attachment 4)

Danielle Dempsey-Swopes, Kansas African American Affairs Commission, spoke in favor of **SB 77**, which would provide the legal foundation for preempting the practice of racial profiling by law enforcement agencies in Kansas. She stated that community members understand that they must work in partnership with law enforcement officials to engage in effective community policing. Effective community policing requires that all the members of the diverse Kansas communities have significant trust in its law enforcement officials. She said that when law enforcement officials make erroneous assumptions, the officials become ineffective. Ms. Dempsey-Swopes added that racial profiling causes stigma, humiliation and a basic erosion of the trust that should exist between the community and those who protect and serve the community. No law enforcement agency can be successful without the trust of its community. (Attachment 5)

Ms. Dempsey-Swopes spoke about the 2002 study conducted on racial profiling in Kansas which was done with a contract between the State of Kansas with a Washington, D.C. organization called the Police Foundation Institute, a private, independent, and nonprofit organization. The study gave significant insight to the reality of the problem of racial profiling in Kansas communities. She concluded by stating that the implementation of this bill and effective community policing is likely to result in a reduction of crime in many communities and an increase in the number of real criminals caught with the help of the community.

Elis Garcia, Kansas Hispanic and Latino American Affairs Commission (KHLAAC), testified in favor of **SB 77**. He stated that by definition, racial profiling is a form of disparate treatment and thus racial discrimination. It is the KHLAAC's position that racial profiling must not be condoned or otherwise tolerated within the ranks of public service and most certainly not within the ranks of law enforcement officers who are charged with protecting and serving the public. Mr. Garcia gave two examples of how flawed first impressions or racial profiling can be. He referred to the 1995 bombing of the Alfred P. Murrah Building in Oklahoma City, and the 2002 sniper killings that terrorized residents in the Washington, D.C. area. He said that the group appearing before the Committee today in support of **SB 77** did so in unity and solidarity as Kansans to offer collective support to an initiative that will take us all one step closer to eradicating an issue that continues to this day in 2005 to haunt our "ethnic minority" communities, be it in practice or perception. (Attachment 6)

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Dick Kurtenbach, American Civil Liberties Union of Kansas and Western Missouri (ACLU), testified in support of **SB 77**. He told the Committee about studies the ACLU had done in Mission Hills, Leawood, and Prairie Village that proved racial profiling is definitely a reality. Mr. Kurtenbach shared one anecdotal example regarding racial profiling of black employees working for a private country club on the Kansas side of the state line in Kansas City. He stated that the problem is real, and **SB 77** is the start toward a meaningful response to do something about it. (Attachment 7)

Kevin Myles, Vice President of the Kansas State conference of NAACP Branches, talked about the numerous complaints he personally heard about during his capacity as NAACP President of the Wichita Branch. He said each of the cases began with the complainant being followed, then later pulled over for one of three reasons: (1) failure to signal 100 feet from a turn; (2) wide turn; or (3) wheels touching the center line. Mr. Myles explained that after the stop was initiated, the officers requested to search vehicles and usually the individuals did not know they could refuse and consent to the search. The fact that these "random" stops often take as long as a hour and a half, and the vehicles that are followed and subsequently stopped are selected on the basis of the drivers' appearance, amount to harassment. (Attachment 8)

Charles F. Grover, Chief of Police of Prairie Village and Mission Hills, Kansas, testified in favor of **SB 77** on behalf of the Kansas Association of Chiefs of Police. He told the Committee that on Monday, January 31, 2005, members of the law enforcement community within the State of Kansas were privileged to meet with Senator Betts, members of the Kansas African American Affairs Commission, and the Hispanic and Latino American Affairs Commission. The end product of the meeting produced the revised **SB 77**. His detailed handout from the Association contained some specific comments and suggestions relating to possible further revisions or changes. Mr. Grover stated that the Association believes the revised **SB 77**, as it was drafted on January 31, is a work in progress and will need further review by the revisor to ensure the intent of the document. (Attachment 9)

Sheriff Randy Rogers, Coffey county, and President of the Kansas Sheriffs Association, spoke in favor of **SB 77** as revised. He stated that the proposed bill allows law enforcement the opportunity to provide education, accountability, and responsiveness in addressing concerns relating to racial profiling. He said the Association looks forward to working on a Governor's Task Force to find ways to ensure that there is accountability and responsibility to and for the citizens of Kansas. Sheriff Rogers concluded by stating that **SB 77** provides a foundation from which to build a partnership with all concerned with the racial profiling issue. (Attachment 10)

William Richards, Sr., Legislative Liaison, NAACP, Topeka Branch, urged the Committee to support the passage of **SB 77**. He stated that the enactment into law of the remedies outlined in **SB 77** would reassure the public that legislative intent is to mandate that Kansas laws be enforced in a color-blind way. (Attachment 11)

Dr. Walt Chappell, Coordinator, Citizens for Equal Law Enforcement, testified in favor of **SB 77**, and distributed extensive handouts of documentation on the subject of racial profiling and history of the 2000 law, K.S.A. 22-4604, which acknowledged racial profiling existed in Kansas. He explained that the original **SB 77**, which was introduced this session by Senator Betts, was drafted using legislation which is already law in Oklahoma, Missouri, Nebraska, Texas and Colorado. It also included language from legislation in the U.S. Congress, and advice from the U.S. Department of Justice, Civil Rights Division attorneys, and racial profiling researchers who reviewed the draft. He added that there are 38 states that already have racial profiling legislation passed into law, 20 of which also have data collection mandated to identify where racial profiling is happening and by which officers. (Attachment 12)

Dr. Chappell stated that during the last minute meetings held with Kansas law enforcement leaders in Topeka earlier this week, that any accountability for profiling behavior by Kansas officers or their supervisors was stripped from the bill in order to gain their support. He said the cut down version of **SB 77** calls again for the Governor to develop a plan to do what was passed into law five years ago under K.S.A. 22-4604. It lists a "15 member task force" which is not asked to report its "recommendations" until February 1, 2006, which will be too late to draft and pass a bill in the 2006 legislature. It will take

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until 2007 before a bill can be introduced to implement data collection or any specific procedures to actually end racial profiling in Kansas. Dr. Chappell requested that when the Committee works the revised **SB 77**, the due date for the Task Force recommendations be changed to November 1, 2005. He said this would allow time to draft implementing legislation and a realistic fiscal note to start gathering the data required to identify where, when and by whom racial profiling is occurring so we can put a stop to this terrible practice without losing two years.

Dr. Chappell also asked that Section 3(b) be reinserted regarding a violation of this section which would be a Class A misdemeanor, as well as reinserting Section 3(c) which would make the section a part of and supplemental to the Kansas Criminal Code. He also stressed the major financial hardship on black and Hispanic families, as well as the cost of their vehicle insurance premiums being raised making it harder to keep the premiums paid. He concluded by stating that without any penalties or accountability, the few law enforcement officers who are racially profiling will continue their criminal behavior.

Rev. Andrew McHenry, Maple Hill, and former Chaplain at the Topeka Correctional Facility and Juvenile Correctional Facility, testified in favor of **SB 77**. He stated that he had been troubled for several years about the disproportionate rates of incarceration for blacks, Hispanics and Native Americans. He had worked in prison and jail ministries both professionally and in a volunteer capacity. Rev. McHenry shared with the Committee that in 2003, *The Topeka Capital-Journal* reported Police foundation findings that black and Hispanic motorists were three times more likely than whites to be pulled over by authorities on Kansas' interstate highways. He pointed out that this had several detrimental impacts: (1) drives away potential visitors and as such hurts the economy; (2) fuels existing racial tensions, particularly those between minorities and law enforcement agencies; and (3) it is blatantly unfair. A crime is a crime whether you are white, black, Hispanic, or otherwise. (Attachment 13)

Chairman Brungardt recognized Senator Betts, who presented the Committee with petitions signed by over 2,000 citizens in support of **HB 2876** (2004 Session) which opposed the practice of racial profiling, and would have outlawed the practice in Kansas. (The petitions will be on file in the Chairman's office)

Mona Brown and Shirley Wishom, Women in Action (WIA), appeared before the Committee in support of **SB 77**. Ms. Brown explained that Women In Action is a non-profit community organization taking action to improve the quality of life and ensure equal protection of the law for all citizens. She said that in the last two months, WIA has had 7-10 complaints regarding Topeka law officers relating to racial profiling. She described some of the victims and circumstances involved with the alleged profiling complaints. (Attachment 14, Part 1)

Shirley Wishom distributed copies of statistics regarding minorities being over-represented in prison populations, and the handout represents the youth in the Topeka community. The graph shows that 38% of the youth locked up in the City of Topeka are black; another 21% are of mixed race, including Hispanic and Asian Americans; which means 62% of Topeka youth in the prison population are black and of mixed race. The youth in Topeka represent less than 6% of the total population. Ms. Wishom asked how can the youth be getting so over represented in the prison population. She stated that racial profiling had to stop, because if something wasn't done, it would only escalate and then people would start retaliating or moving out of the area. She also confirmed that a Citizen Review Board was very necessary because the police should not be given authority to patrol themselves. Ms. Wishom urged the Committee to listen to what is being presented to the legislators, i.e. the stories, the complaints, and real problems that exist in relationship to racial profiling in our communities. (Attachment 14, Part 2)

Sheila Officer, Citizens for Equal Law Enforcement, Park City, Ks., testified in support of **SB 77**, and expressed some major concerns with the proposed bill. She said she had worked on last year's bill, **HB 2876**, and some of the contents of that bill was absent in the language of **SB 77**. She stated that she supported the content of the original profiling bill, but could not support revised **SB 77**. Racial profiling in reality has economical, financial, and emotional hardships for our communities. Ms. Officer talked about the level of accountability which was no longer a part of the revised **SB 77**, and asked if that was why law enforcement could support the revised version of **SB 77**. She pointed out that we as citizens hold our doctors, lawyers, and teachers accountable for their job performances and actions. She added that a

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Citizen's Review Board is definitely necessary. Ms. Officer stated that training is a component in life that allows us to get better at what we do, and education opens our mind and helps remove ignorance. She recommended training on a continuous basis, and not on an annual basis as contained in the revised bill. ([Attachment 15](#))

William Minner, Executive Director, Kansas Human Rights Commission, submitted written testimony in favor of **SB 77**. ([Attachment 16](#))

Bomani Chekandino, Prisoner of Conscious Committee, Wichita, furnished written testimony in support of **SB 77**. ([Attachment 17](#))

Ralondo Henry Carr, Wichita, presented written testimony endorsing **SB 77**. ([Attachment 18](#))

Chairman Brungardt called upon Kyle Smith, Kansas Peace Officers Association, to testify as a neutral conferee on **SB 77**. Mr. Smith stated he appeared today in support of the amended version of **SB 77**. He said that racial profiling, as defined in the bill, does happen as does racism. Mr. Smith talked about the quandary of what effective steps can be taken to address the problem in a meaningful way without unfairly tarnishing all law enforcement officers or creating unnecessary bureaucracy and problems for the criminal justice system. He emphasized that law enforcement had to have the trust and assistance of the public to be effective, and abusive racial profiling destroys that trust and respect.

Mr. Smith testified that he has been very pleased with the cooperation between the proponents of **SB 77** and the law enforcement community to work out the compromise. He said that by requiring every agency to develop a policy against racial profiling and mandating training, all involved parties can work together to minimize this problem that all should find abhorrent. ([Attachment 19](#))

Kevin Graham, Assistant Attorney General, testified as a neutral conferee on **SB 77**. He said that **SB 77** was intended to address concerns about racial profiling and proposes a variety of requirements and additions to Kansas law regarding contacts between Kansas law enforcement officers and members of the public. He stated that Attorney General Kline stands ardently opposed to the practice of racial profiling, and supports efforts to curtail and eliminate this clearly improper and counter-productive type of activity.

Mr. Graham explained that the Attorney General could not support the original drafted language of **SB 77** because it had the potential to negatively impact the ability of Kansas law enforcement officers and agencies to detect and prevent crime as well as imposing a sizeable fiscal impact on the State and local law enforcement agencies. The compromise language that has been developed and intended to amend the original bill, addresses almost all of the major concerns of the law enforcement community. He pointed out that the proposed revision to the bill would still provide for the creation of a new civil cause of action allowing individuals to file civil law suits in Kansas courts seeking damages for alleged acts of racial profiling. He said that if this provision is passed into law the potential would be created for future fiscal impacts on the State of Kansas and local entities. The Attorney General recommends the Committee investigate the necessity of the creation of the new civil cause of action in light of federal law provisions that would appear to already address these types of cases. Mr. Graham concluded his testimony by noting that the remaining potential fiscal impacts, if the proposed amendments are adopted, would be greatly reduced from that of the original bill. ([Attachment 20](#))

Col. William Seck, Superintendent, Kansas Highway Patrol, submitted written testimony as a neutral conferee. ([Attachment 21](#))

Chairman Brungardt called upon Sandy Jacquot, League of Kansas Municipalities (LKM), as the first opponent to speak on **SB 77**. Ms. Jacquot stated that LKM had not seen the current revised draft of the bill that had been worked out between the law enforcement groups and Senator Betts. LKM does not condone racial profiling, and it should be prohibited. She testified that LKM would support increased training in the current training requirements for law enforcement officers. She said there should be continuing education required to keep the certification as a law enforcement officer, and that LKM would like to be involved with some of that additional training if agreed to by the Association of Chiefs of

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Police. She stated that the bill in its original form was not only a huge unfunded mandate on cities, but it creates criminal and civil liability that will deter law enforcement agencies and their officers from performing their jobs to keep Kansas communities safe. **SB 77** was inconsistent with K.S.A. 22-4604, enacted in 2000. Ms. Jacquot explained the mandates that fall primarily to local governments as outlined in her written testimony. (Attachment 22)

Chairman Brungardt asked if she and LKM would like to submit revised testimony after they had a chance to study the drafted compromised language, and Ms. Jacquot responded affirmatively and would submit revised testimony to the Committee.

Ms. Jacquot's revised written testimony is attached as part of this official record. LKM reviewed the compromise language with a few exceptions, but supported the new language. The main objection related to Subsection (c)(3), which would require law enforcement agencies to establish or utilize existing independent citizen advisory boards. Because of the number of cities that are too small to have such advisory boards, LKM continues to oppose this requirement. Explanation was given that many cities under 500 in population, or even under 1,000, have a difficult time getting citizens to even serve on the governing body. A citizen advisory board is a practical impossibility for many of the cities, and LKM would not want to see a requirement in law with which cities may not be able to comply. LKM is supportive of the creation of a Governor's Task Force to discuss the issue of data collection. (Attachment 23)

Lt. Col. Steve Smith, Overland Park Police Department, testified in opposition to **SB 77** as it is in its present form. He stated that the City of Overland Park and the Overland Park Police Department are absolutely in favor of a genuine and bonafide, workable solution to the issue of race-based policing, sometimes referred to as racial profiling. The Overland Park Police Department was one of the first in the state, and even the country, to recognize and initiate action designed to eliminate all forms of race-based policing. He told about their early, non-mandated, efforts in July of 2000 of collecting and analyzing statistical data on each of their car stops, which is analyzed and reviewed on a daily basis. Officer Smith said that five years of statistical analysis of the data has shown them that the issue is not a simple matter of bias or prejudice. Instead, Overland Park Police is dealing with misconceptions, often on the part of the officer, as to why a car stop should be made or what the impetus should be.

Officer Smith encouraged the Committee not to rush to judgment and enact legislation which would use the statistical tools mentioned in the proposed bill as it would be impractical, nearly impossible to implement, and potentially have catastrophic results. He strongly suggested that additional work, between those who advocate and support this proposed legislation and those who must implement it, be done in order to produce an effective bill. (Attachment 24)

Chairman Brungardt inquired if Officer Smith had the opportunity to look at or participate in discussions on the proposed revised draft of **SB 77**, and he said he had not. The Chair encouraged him to visit with Senator Betts, and participate in any discussions regarding the revisions of **SB 77**, and offer his input. Officer Smith said he would be glad to participate.

Chairman Brungardt expressed his appreciation to everyone who traveled to Topeka, prepared their comments, and participated in today's meeting.

Senator Hensley asked if there was an indication as to when the Committee would be working **SB 77**. The Chairman announced that it was tentatively scheduled for next Wednesday, February 9.

The meeting was adjourned at 12:15 p.m. The next meeting is scheduled for Tuesday, February 8, 2005, at 10:30 a.m.

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