

## HOUSE BILL No. 2163

By Committee on Judiciary

2-4

1 AN ACT concerning racial and other profiling; amending K.S.A. 22-  
2 4606, 22-4609, 22-4610 and 22-4611 and repealing the existing  
3 sections; also repealing K.S.A. 22-4604 and 22-4608.

4  
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 22-4606 is hereby amended to read as follows: 22-  
7 4606. As used in ~~this act~~ K.S.A. 22-4606, 22-4607 and 22-4609 through  
8 22-4611, and amendments thereto:

9 (a) "Governmental unit" means the state, or any county, city or other  
10 political subdivision thereof, or any department, division, board or other  
11 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"~~ *Biased policing* means the ~~practice of a law~~  
17 ~~enforcement officer or agency relying, as the sole factor, on race,~~  
18 ~~ethnicity, national origin, gender or religious dress in selecting which~~  
19 ~~individuals to subject to routine investigatory activities, or in deciding~~  
20 ~~upon the scope and substance of law enforcement activity following the~~  
21 ~~initial routine investigatory activity. Racial profiling does not include~~  
22 ~~reliance on such criteria in combination with other identifying factors~~  
23 ~~when the law enforcement officer or agency is seeking to apprehend a~~  
24 ~~specific suspect whose race, ethnicity, national origin, gender or religious~~  
25 ~~dress is part of the description of the suspect. *unreasonable use of race,*~~  
26 *ethnicity, national origin, gender or religion by a law enforcement officer*  
27 *in deciding to initiate an enforcement action. The term "biased policing"*  
28 *does not include the use of race, ethnicity, national origin, gender or*  
29 *religion in combination with other identifying factors as part of a specific*  
30 *individual description to initiate an enforcement action.*

31 (e) ~~"Routine investigatory activities" includes, but is not limited to,~~  
32 ~~the following activities conducted by law enforcement officers and~~  
33 ~~agencies in conjunction with traffic stops: (1) Frisks and other types of~~  
34 ~~body searches, and (2) consensual or nonconsensual searches of persons~~  
35 ~~or possessions, including vehicles, dormitory rooms, school lockers,~~  
36 ~~homes and apartments. "Enforcement action" means any law enforcement~~

1 *act, as described in K.S.A. 22-4609, and amendments thereto, during a*  
2 *nonconsensual contact with an individual or individuals.*

3 (f) "Collection of data" means that information collected, *as*  
4 *provided by K.S.A. 22-4610, and amendments thereto, by Kansas law*  
5 *enforcement officers after each traffic stop.*

6 Sec. 2. K.S.A. 22-4609 is hereby amended to read as follows: 22-  
7 4609. ~~The race, ethnicity, national origin, gender or religious dress of an~~  
8 ~~individual or group shall not be the sole factor in~~ *It is unlawful to use*  
9 *biased policing in:*

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

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

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

17 Sec. 3. K.S.A. 22-4610 is hereby amended to read as follows: 22-  
18 4610. ~~(a) All law enforcement agencies in this state shall adopt a detailed,~~  
19 ~~written policy to preempt racial profiling. Each agency's policy shall~~  
20 ~~include the definition of racial profiling found in K.S.A. 22-4606, and~~  
21 ~~amendments thereto.~~

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

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

28 (1) ~~A prohibition of racial profiling.~~

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

34 (3) ~~For law enforcement agencies of cities of the first class,~~  
35 ~~establishment or use of current independent citizen advisory boards~~  
36 ~~which include participants who reflect the racial and ethnic community,~~  
37 ~~to advise and assist in policy development, education and community~~  
38 ~~outreach and communications related to racial profiling by law~~  
39 ~~enforcement officers and agencies.~~

40 (4) ~~Policies for discipline of law enforcement officers and agencies~~  
41 ~~who engage in racial profiling.~~

42 (5) ~~A provision that, if the investigation of a complaint of racial~~  
43 ~~profiling reveals the officer was in direct violation of the law enforcement~~

1 agency's written policies regarding racial profiling, the employing law  
2 enforcement agency shall take appropriate action consistent with  
3 applicable laws, rules and regulations, resolutions, ordinances or policies,  
4 including demerits, suspension or removal of the officer from the agency.

5 ~~(6) Provisions for community outreach and communications efforts~~  
6 ~~to inform the public of the individual's right to file with the law~~  
7 ~~enforcement agency or the Kansas human rights commission complaints~~  
8 ~~regarding racial profiling, which outreach and communications to the~~  
9 ~~community shall include ongoing efforts to notify the public of the law~~  
10 ~~enforcement agency's complaint process.~~

11 ~~(7) Procedures for individuals to file complaints of racial profiling~~  
12 ~~with the agency, which, if appropriate, may provide for use of current~~  
13 ~~procedures for addressing such complaints.~~

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

22 ~~(a) A law enforcement agency shall utilize a community advisory~~  
23 ~~board to advise the agency on policy, training and community outreach~~  
24 ~~related to biased policing if the agency:~~

25 ~~(1) Is of a city of the first class; or~~

26 ~~(2) employs 10 or more full-time law enforcement officers and does~~  
27 ~~not utilize a comprehensive plan as provided in subsection (b)(2).~~

28 ~~(b) All law enforcement agencies in this state shall:~~

29 ~~(1) Collect data, as provided in subsection (c), on all traffic stops~~  
30 ~~and utilize a community advisory board if the agency employs 10 or more~~  
31 ~~full-time law enforcement officers; or~~

32 ~~(2) work in conjunction with their community to develop a~~  
33 ~~comprehensive plan to preempt biased policing by addressing the~~  
34 ~~following:~~

35 ~~(A) Meaningful policies prohibiting racial and other biased policing~~  
36 ~~to:~~

37 ~~(i) Guide law enforcement officers in making fair and impartial~~  
38 ~~decisions when initiating an enforcement action;~~

39 ~~(ii) preempt biased policing; and~~

40 ~~(iii) preempt racism;~~

41 ~~(B) the promotion of recruitment and hiring of a diverse workforce~~  
42 ~~comprised of people who can police in a race-neutral and non-biased~~  
43 ~~fashion;~~

1       (C) *training to promote employee's controlled responses to preempt*  
2 *racial and other biases;*

3       (D) *leadership, supervision and accountability through training of*  
4 *supervisors to detect and respond effectively to biased behavior;*

5       (E) *outreach to the community by implementing a style of policing*  
6 *that promotes positive interactions between law enforcement officers and*  
7 *all communities;*

8       (F) *whether traffic stop data will be collected and, if so, in what*  
9 *manner; and*

10       (G) *whether the agency will utilize a community advisory board.*

11       (c) *Data collection, as described in subsection (b)(1), shall consist*  
12 *of, but not limited to, the following for every vehicle stop:*

13       (1) *Originating agency identifier number;*

14       (2) *time and date of the stop;*

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

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

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

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

26       (7) *county code of vehicle registration, if registered in Kansas, and*  
27 *state code, if registered outside Kansas;*

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

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

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

35       (11) *number of occupants in the stopped vehicle, including the*  
36 *driver;*

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

42       (13) *if a search was conducted, the rationale for the search,*  
43 *including vehicle indicators, verbal indicators, physical or visual*

1 indicators, document indicators (DOT), incident to arrest or other  
2 rationale;

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

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

9 (d) Each law enforcement agency in this state shall adopt a detailed  
10 written policy that:

11 (1) Prohibits biased policing;

12 (2) defines biased policing as that term is defined in K.S.A. 22-4606,  
13 and amendments thereto;

14 (3) clearly defines acts constituting biased policing, which may  
15 include recommendations from the attorney general;

16 (4) includes education and training related to biased policing. Such  
17 training may include distance-based technology;

18 (5) provides for the discipline of law enforcement officers who  
19 engage in biased policing;

20 (6) provides for community outreach and communications efforts,  
21 including:

22 (A) To inform the public of the individual's right to file complaints  
23 regarding biased policing with the law enforcement agency, the Kansas  
24 commission on police officer standards and training, or both; and

25 (B) establishing ongoing efforts to notify the public of the law  
26 enforcement agency's complaint process;

27 (7) includes procedures for individuals to file complaints of biased  
28 policing with the agency; and

29 (8) provides that the employing law enforcement agency shall take  
30 appropriate action if the investigation of a complaint of biased policing  
31 reveals the officer was in direct violation of the agency's written policies  
32 regarding biased policing.

33 (e) Policies adopted or amendments to existing policies made  
34 pursuant to this section, the data collection plan described by subsection  
35 (b)(1), or the comprehensive plan developed under the provisions of  
36 subsection (b)(2) shall be:

37 (1) Implemented by all Kansas law enforcement agencies within one  
38 year after the effective date of this act; and

39 (2) available for public inspection during normal business hours.

40 (f) (1) On or before July 31 of each year, every Kansas law  
41 enforcement agency shall compile an annual report containing the  
42 information described in paragraph (2), and shall submit such report to  
43 the office of the attorney general for review. Annual reports filed

1 *pursuant to this subsection shall be open public records and shall be*  
2 *posted on the official website of the attorney general.*

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

4 *(A) A listing of the number of biased policing complaints received*  
5 *by the agency during the 12-month period ending on June 30*  
6 *immediately prior to the date the annual report is to be submitted to the*  
7 *attorney general pursuant to paragraph (1);*

8 *(B) the date each such complaint was filed;*

9 *(C) the action taken in response to each such complaint, if*  
10 *applicable;*

11 *(D) the disposition of each such complaint, if applicable;*

12 *(E) the date each such complaint was closed, if applicable;*

13 *(F) the number of law enforcement officers not exempted from*  
14 *training under the provisions of K.S.A. 74-5607a, and amendments*  
15 *thereto, from training related to biased policing required by subsection*  
16 *(d) or a comprehensive plan;*

17 *(G) whether the agency has a policy prohibiting biased policing;*

18 *(H) whether the agency has a community advisory board;*

19 *(I) whether the agency has a biased policing comprehensive plan;*

20 *(J) whether the agency collects traffic stop data; and*

21 *(K) if the agency collects traffic stop data as described in subsection*  
22 *(b)(1), a summary of the traffic stop data in a form required by the*  
23 *attorney general.*

24 *Sec. 4. K.S.A. 22-4611 is hereby amended to read as follows: 22-*  
25 *4611. (a) Any person who believes such person has been subjected to*  
26 *racial profiling biased policing by a law enforcement officer or agency*  
27 *may file a complaint with the law enforcement agency, the Kansas*  
28 *commission on police officer standards and training, or both. The*  
29 *complainant may also file a complaint with the Kansas human rights*  
30 *commission. The commission shall review and, if necessary, investigate*  
31 *the complaint. The commission's designee shall consult with the head of*  
32 *the law enforcement agency before making final recommendations*  
33 *regarding discipline of any law enforcement officer or other disposition*  
34 *of the complaint.*

35 *(b) A law enforcement agency receiving a complaint of biased*  
36 *policing shall:*

37 *(1) Review and, if necessary, investigate the complaint;*

38 *(2) at the conclusion of the review or investigation, make a finding*  
39 *as provided in their agency policy;*

40 *(3) upon a finding that biased policing occurred, initiate corrective*  
41 *action the agency finds appropriate and within its authority; and*

42 *(4) notify the accused officers and the complainant of their finding*  
43 *within 10 days of the completion of the review or investigation.*

1       (c) Upon receipt of a complaint, the Kansas commission on police  
2 officer standards and training:

3       (1) Shall provide notification and provide a copy of all complaint  
4 documentation submitted by the complainant to the head of the accused  
5 officer's law enforcement agency within 10 days of receiving the  
6 complaint;

7       (2) shall review and, if necessary, investigate the complaint;

8       (3) at the conclusion of the review or investigation, may:

9       (A) Find no further action by the Kansas commission on police  
10 officer standards and training is warranted; or

11       (B) find by clear and convincing evidence that biased policing  
12 occurred; and

13       (4) upon finding that biased policing occurred, the Kansas  
14 commission on police officer standards and training shall initiate any  
15 corrective action within its authority the commission finds appropriate.

16       (d) The Kansas commission on police officer standards and training  
17 shall notify the head of the law enforcement agency, the officers and the  
18 complainant of their finding within 10 days of disposition of the  
19 complaint.

20       ~~(b)~~ (e) Upon disposition of a complaint as provided for in subsection  
21 ~~(a)~~ (c)(3)(B), the complainant shall have a civil cause of action in the  
22 district court against the law enforcement officer or law enforcement  
23 agency, or both, and shall be entitled to recover damages if it is  
24 determined by the court that ~~such persons or agency engaged in racial~~  
25 ~~profiling~~ the complainant suffered a loss directly caused by the officer or  
26 agency engaged in biased policing. The court may allow the prevailing  
27 party reasonable attorney fees and court costs.

28       Sec. 5. K.S.A. 22-4604, 22-4606, 22-4608, 22-4609, 22-4610 and  
29 22-4611 are hereby repealed.

30       Sec. 6. This act shall take effect and be in force from and after its  
31 publication in the statute book.

32