

(Corrected)
As Amended by House Committee

[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~~ *[racial 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. 22-*
4 *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: 22-
8 4606. As used in this act:

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, **except governmental unit shall not**
12 **include the board of education of any school district employing school**
13 **security officers.**

14 (b) "Law enforcement agency" means the governmental unit
15 employing the law enforcement officer.

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

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

1 *deciding to initiate an enforcement action. It is not ~~biased~~ **racial or other***
2 ***biased-based** policing when race, ethnicity, national origin, ~~socio-~~*
3 *~~economic status,~~ gender or religion is used in combination with other*
4 *identifying factors as part of a specific individual description to initiate an*
5 *enforcement action.*

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

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

17 ~~Sec. 2. K.S.A. 22-4608 is hereby amended to read as follows: 22-~~
18 ~~4608. It shall be unlawful for any law enforcement officer or any law~~
19 ~~enforcement agency to engage in racial profiling, biased policing.~~

20 *Sec. 2. K.S.A. 22-4609 is hereby amended to read as follows: 22-*
21 *4609. The race, ethnicity, national origin, gender or religious dress of an*
22 *individual or group shall not be the sole factor in *It is unlawful to use**
23 *racial or other biased-based policing in:*

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

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

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

31 Sec. 3. K.S.A. 22-4610 is hereby amended to read as follows: 22-
32 4610. (a) All law enforcement agencies in this state shall adopt a detailed,
33 written policy to preempt ~~racial profiling~~ **racial or other biased-**
34 **based** policing. Each agency's policy shall include the definition of ~~racial~~
35 ~~profiling~~ **racial or other biased-based** policing found in K.S.A. 22-
36 4606, and amendments thereto.

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

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

43 (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 preempt~~
8 ~~racial profiling prior to stopping a citizen.~~

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

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

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

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

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

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

40 (6) Provisions for community outreach and communications efforts to
41 inform the public of the individual's right to file with the law enforcement
42 agency or the ~~Kansas human rights commission~~ **[attorney general]**
43 complaints regarding ~~racial profiling~~ **biased racial or other biased-based**

1 *policing*, which outreach and communications to the community shall
 2 include ongoing efforts to notify the public of the law enforcement
 3 agency's complaint process.

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

8 (d) (1) Each law enforcement agency shall compile an annual report
 9 ~~of including all complaints of racial profiling biased~~ **racial or other biased-**
 10 **biased policing received for the period of July 1 to June 30** and shall
 11 submit the report on or before ~~January~~ *July* 31 to the office of the attorney
 12 general for review. ~~The annual report shall include: (1) The date the~~
 13 ~~complaint is filed; (2)(B) action taken in response to the complaint; (3)(C)~~
 14 ~~the decision upon disposition of the complaint; and (4)(D) the date the~~
 15 ~~complaint is closed.~~ Annual reports filed pursuant to this subsection shall
 16 be open public records and shall be posted on the official website of the
 17 attorney general.

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

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

21 (B) *The date each racial and biased or other biased-based policing*
 22 *complaint is filed;*

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

25 ~~(C)~~ (D) *the disposition of each racial and biased or other biased-*
 26 *biased policing complaint;*

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

29 ~~(E)~~ (F) *whether or not all agency law enforcement officers not*
 30 *exempted by Kansas commission on peace officer standards and training;*

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

33 ~~(G)~~ (H) *whether the agency policy mandates specific discipline for*
 34 *sustained complaints of racial and or other biased biased-based policing;*

35 ~~(H) whether the agency policy details the discipline to be~~
 36 ~~administered for sustained complaints of racial and or other biased~~ **biased-**
 37 **biased policing;**

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

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

42 Sec. 4. K.S.A. 22-4611 is hereby amended to read as follows: 22-
 43 4611. (a) Any person who believes such person has been subjected to

1 ~~racial profiling~~ biased *racial or other biased-based policing* by a law
 2 enforcement officer or agency may file a complaint with the law
 3 enforcement agency. The complainant may also file a complaint with the
 4 ~~Kansas human rights commission~~ ~~the office of the attorney general~~. The
 5 ~~commission~~ ~~attorney general~~ **the Kansas human rights commission**.
 6 **The commission** shall review and, if necessary, investigate the complaint.
 7 The ~~commission's designee~~ ~~attorney general~~ **commission's designee** shall
 8 consult with the head of the law enforcement agency before making final
 9 recommendations regarding discipline of any law enforcement officer or
 10 other disposition of the complaint. **The commission shall make a final**
 11 **recommendation regarding the complaint and forward such**
 12 **recommendation to the Kansas commission of peace officers'**
 13 **standards and training.**

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

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

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

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

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

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

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

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

42 (6) ~~include~~ data collection as part of the comprehensive plan; and

43 (7) other matters deemed appropriate.

1 (c) *Data collection, if required by the governing body, may consist*
2 *of, but shall not be limited to, one or more of the following for every*
3 *vehicle [or pedestrian] stop:*

4 (1) *Originating agency identifier number;*

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

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

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

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

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

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

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

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

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

26 (11) *[if a vehicle stop, the] number of occupants in the stopped*
27 *vehicle, including the driver;*

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

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

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

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

1 *other contraband.*

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

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

9 Sec. ~~6~~ 7. K.S.A. ~~22-4604~~, 22-4606, 22-4608, ~~22-4609~~, 22-4610 and
10 22-4611 are hereby repealed.

11 Sec. ~~7~~ 8. This act shall take effect and be in force from and after its
12 publication in the Kansas register.