

SESSION OF 2011

SUPPLEMENTAL NOTE ON SENATE BILL NO. 93

As Amended by House Committee of the Whole

Brief*

SB 93, as amended, would prohibit a law enforcement officer from using racial or other biased-based policing, allow community advisory boards to be established, and require written policies and annual reports, data collection, and procedures for the investigation and disposition of a racial or other biased-based policing complaint.

Racial or other biased-based policing would be defined as the unreasonable use of race, ethnicity, national origin, gender, or religion by a law enforcement officer in deciding to initiate an enforcement action. Enforcement action would be defined as making a probable cause or reasonable suspicion determination in certain situations involving nonconsensual contact with an individual or individuals. It would not be racial or other biased-based policing if used in combination with other identifying factors as part of a specific individual's description to initiate an enforcement action. In addition, it would be unlawful to use racial or other biased-based policing, among other things, in determining the existence of probable cause to conduct a search of an individual or a conveyance.

The bill would require law enforcement agencies to adopt a written policy to preempt racial or other biased-based policing and to clearly define acts constituting racial and other biased-based policing using language recommended by the Attorney General. The written policies would have to include training and distance learning training technology. The law

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

enforcement agency could appoint an advisory board of not less than five persons representing law enforcement as well as community and educational leaders to recommend and review appropriate training curricula.

Under the bill, a law enforcement agency of a governing body in any city or county that established a community advisory board would be required to use the board which would be composed of individuals to advise and assist in policy development, education and community outreach, and communications related to racial or other biased-based policing. Provisions for community outreach and communication efforts would be required to inform the public of an individual's right to file complaints. The community advisory boards would be required to receive training on fair and impartial policing by a law enforcement agency.

The governing body of a city or the sheriff of a county could develop a comprehensive plan in conjunction with a community advisory board, if one exists, that would prevent racial or other biased-based policing, or may require the law enforcement agency of such city or county to collect specific traffic stop data and make the data available to the public. Data collection would allow a law enforcement agency to select specific information dealing with every traffic stop.

A law enforcement agency would be required to submit by July 31 an annual report to the Attorney General's Office which would be posted on the Attorney General's website. The report would include, among other things, the number, action and disposition of complaints filed, and whether the agency has a comprehensive plan or compiles traffic or pedestrian stop data.

The bill would amend the procedure for complaints regarding racial or other biased-based policing by transferring from the Kansas Human Rights Commission to the Kansas Commission on Peace Officers' Standards and Training (CPOST) the responsibility for review, investigation, and recommendation for disposition of such complaints.

The bill would repeal KSA 22-4604 which established a system to collect and report statistics relating to race, ethnicity, gender, age, and residency of those individuals who come in contact with law enforcement activities.

The bill would become effective on publication in the *Kansas Register*.

Background

The Senate Committee on Federal and State Affairs combined certain provisions of racial or other biased-based policing from SB 82 into SB 93, including information required in data collection, filing a complaint with the Attorney General, and giving the option of cities and counties to establish community advisory boards.

SB 82 was introduced upon recommendation from the Kansas Association of Chiefs of Police, Kansas Sheriffs Association, and the Kansas Peace Officer's Association. SB 93 was introduced upon recommendation from the Governor's Task Force on Racial Profiling.

Proponents of the original SB 82 were representatives of the Kansas Association of Chiefs of Police, Kansas Sheriffs Association, and the Kansas Peace Officer's Associations; and the Kansas State Lodge Fraternal Order of Police.

Written testimony in support of the bill was provided by a representative of the League of Kansas Municipalities.

Neutral testimony, with suggested amendments, was submitted by Representative McCray-Miller and Senator Faust-Goudeau. Neutral testimony, without amendments, was provided by representatives of the Kansas Human Rights Commission.

Proponents of the original SB 93 were representatives of the Governor's Task Force on Racial Profiling.

Written testimony in opposition to SB 82 and SB 93 was submitted by representatives of the Wichita Fraternal Order of Police, Justice Keepers of Wichita, Citizens Advisory Board, Citizens for Equal Law Enforcement, NAACP, and an individual.

The Senate Committee of the Whole amended the bill to include a definition of “enforcement action,” inform individuals of their right to file a complaint with the Attorney General, and include in data collection and the annual report whether the law enforcement agency collects pedestrian stop data.

In the House Committee on Judiciary, representatives of the Governor's Task Force on Racial Profiling, Kansas Association of Chiefs of Police, Kansas Sheriff's Association, and Kansas Peace Officers Association testified in support of the bill. The League of Kansas Municipalities provided written testimony supporting the bill.

A representative of the Kansas Human Rights Commission testified as a neutral conferee.

Senator David Haley, on behalf of the Kansas Black Legislative Caucus, and a representative of the Racial Profiling Citizens Advisory Board for the City of Wichita testified in opposition to the bill. The Kansas Democratic Hispanic Caucus provided written testimony opposing the bill.

The House Committee amended the bill by excluding school police officers or boards of education employing such officers from its provisions; removing “socio-economic status” as a factor in defining “racial or other biased-based policing”; removing the Senate wording allowing complaints to be filed with the attorney general, rather than with the Human Rights Commission, and adding the requirement that the Human Rights Commission make a final recommendation to CPOST; giving community advisory board and comprehensive plan authority to the sheriff of a county, rather than the county governing body; making data collection concerning

pedestrian stops optional; and making non-substantive changes to improve clarity.

The House Committee of the Whole amended the bill by transferring from the Human Rights Commission to CPOST the responsibility for investigating complaints. The Committee of the Whole also made several technical amendments.

The fiscal note on the original SB 93 for FY 2012 was \$1,817 from the Kansas Highway Patrol. No fiscal note was available for the amended version of SB 93.