

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Lance Kinzer at 3:30 p.m. on March 16, 2011, in Room 346-S of the Capitol.

All members were present except:  
Representative Suellentrop  
Representative Bruchman

Committee staff present:  
Jill Wolters, Office of the Revisor of Statutes  
Matt Sterling, Office of the Revisor of Statutes  
Tamera Lawrence, Office of the Revisor of Statutes  
Lauren Douglass, Kansas Legislative Research Department  
Robert Allison-Gallimore, Kansas Legislative Research Department  
Sue VonFeldt, Committee Assistant

Conferees appearing before the Committee:  
Helen Pedigo, Special Counsel to Chief Justice, Supreme Court of Kansas  
Mike Watson, Governors Task Force on Racial Profiling (GTFORP)  
Ed Klumpp, Kansas Association of Chiefs of Police, Kansas Sheriff's Association, Kansas  
Peace Officers Association  
Joseph P. Mastrosimone, Legal Counsel, Kansas Human Rights Commission  
Senator Haley, District 4, on behalf of Kansas Black Legislature Caucus  
Sheila Officer, Racial Profiling Citizens Advisory Board for the City of Wichita

Others attending:  
See attached list.

The Hearing on **SB 83 - Employment of retired judges and justices; deleting requirement that they enter into an agreement within five years of retirement; or if they didn't sign up prior to retirement, they enter an agreement within 30 days prior to their anniversary date of retirement** was opened.

Helen Pedigo, Special Counsel to Chief Justice, Supreme Court of Kansas, addressed the committee in support of this bill. She explained the Senior Judge Program was established by the Legislature in 1995 and allows the Supreme Court to enter into contracts with retired judges who agree to perform assigned judicial duties for 40 percent of each year, or 104 days a year. They are compensated at the rate of 25 percent of the current monthly salary of judges serving in the same position held by the retirant at the time of retirement. She stated this program is a cost effective way of providing judges to hear cases when there are conflicts, in the event of illness, or when there are increased filings or complex cases that cannot be handled with existing judicial staffing. This bill would amend the criteria for judges who wish to serve as senior judges but did not enter into a senior judge contract within five years after retirement and within 30 days prior to any anniversary date of retirement. This amendment would provide the Supreme Court greater flexibility in managing the Senior Judge Program. (Attachment 1)

There were no opponents.

The hearing on **SB 83** was closed.

The Hearing on **SB 93 - Law enforcement; racial profiling and biased policing** was opened.

Chairman Kinzer welcomed and introduced Representative Melody McCray Miller, as she replaced Representative Ponca We-Victors on the Committee for the day.

Jill Wolters, Senior Staff Revisor, provided the committee with an overview of the bill. (Attachment 2)

Mike Watson, Governors Task Force on Racial Profiling (GTFORP), addressed the committee as a proponent of the bill. He testified on behalf of himself and Curtis Whitten, who are co-chairs of the Governor's Task Force on Racial Profiling. He also provided each committee member with a copy of the GTFORP final report and recommendations that was submitted December 10, 2010, to the Governor's Office and stated this bill represents the final recommendations of the task force with modifications by

## CONTINUATION SHEET

Minutes of the House Judiciary Committee at 3:30 p.m. on March 16, 2011 in Room 346-S.

the Senate Federal and State Affairs Committee and the Senate Committee of the Whole. He stated the Senate left out the state entities and they believe they need to be added back in. He asked for support of this bill as well as appropriate attention to those items in the report the GTFORP was unable to come to consensus on: what agency should conduct investigations at the state level and what entity should be responsible for oversight and accountability. He also stated GTFORP sunsets in 2011, but perhaps some other body is needed to over look this issue. ([Attachment 3](#))

Ed Klumpp spoke in support of the bill on behalf of the Kansas Association of Chiefs of Police, Kansas Sheriff's Association and Kansas Peace Officers Association. He explained their participation in the various meetings and programs for training law enforcement personnel regarding racial profiling and as a result of those efforts, they introduced **HB 2163** and **SB 82**. He stated **SB 93** was drafted representing the recommendations of the Task Force as interpreted by the revisor and the committee chair. He pointed out several issues they would like amended as well as some technical amendments. ([Attachment 4](#))

Sandy Jacquot, League of Kansas Municipalities, provided written only testimony in support of the bill. ([Attachment 5](#))

Joseph P. Mastrosimone, Legal Counsel, Kansas Human Rights Commission, addressed the committee and stated as an unbiased investigative body, the Commission takes a neutral stance on many of the changes included in SB 93, the only exception being the transfer of investigatory authority to the Attorney General. He believed the Senate Committee amended the bill to remove the Kansas Human Rights Commission's jurisdiction to receive and investigate allegations of racial or other biased policing, and transferring that authority to the office of the attorney general was based on the flawed assumption that the Kansas Human Rights Commission was going to be merged with the attorney general's office through either an executive reorganization order or legislation. He stated recent events have proven that outcome is highly unlikely and requested the committee remove the provision of transferring that authority to the office of the Attorney General and further stated such transfer to the Attorney General would create conflict of interest and the appearance of impropriety. ([Attachment 6](#))

### **Opponents:**

Senator Haley, District Four, addressed the committee on behalf of Kansas Black Legislature Caucus, in opposition of the bill. He stated this bill is flawed and needs revision. He stated there were ambiguous definitions, no responsible reviewing authority for complaints, no criminal legal ramifications against the officer and/or the offending department, and is against the abolition of the Governor's Task Force on Racial Profiling. He also presented a copy of a balloon amendment from Representative Gail Finney. ([Attachment 7](#))

Sheila Officer, Racial Profiling Citizens Advisory Board for the City of Wichita, appeared before the committee in opposition of the bill stating without amendments it holds no accountability, enforceability, manageability, or responsibility for our law enforcement communities. She stated data collection is a necessity and that there would be no cost for the data collection. She also provided the names of other states with strong racial profiling statutes with data collection and stated Missouri has the best system. ([Attachment 8](#))

Lalo Munoz, Kansas Democratic Hispanic Caucus, Kansas Democratic Party, provided written only testimony in opposition of the bill. ([Attachment 9](#))

The hearing on **SB 93** was closed.

The next meeting is scheduled for March 17, 2011.

The meeting was adjourned at 5:25 p.m.

# JUDICIARY COMMITTEE GUEST LIST

DATE: 3-16-11

NAME	REPRESENTING
Sheila Officer	Racial Profiling C.A.B. for City of Wichita
Wanda Cole	" " " " " "
RON BROWN	FRATERNAL ORDER OF POLICE
Rick Fuschli	Ks Human Rights Com.
Joseph Mastromarino	KHRC
Ben Seft	Topeka Branch NAACP
Kyle Skipp	Prairie Village P.D.
Thomas Brangy	Shawnee Co. Sheriff's Office
Leslie Kaufman	Ks Co-op Council
Nicholas Brdson	Intern
John A. Donlen	KS Lusk Ass'n
Allie Devine	" " "
Pete Routhier	Hein Law Firm
DET. MILLER	CAPITOL STRATEGIES
Wilma Sanders	Racial Profiling Board Member
MIKE WATSON	GOVERNOR'S TASK FORCE ON RACIAL PROFILING
Lauren Turner	State Rep. 84th Dist. - Wichita



## SUPREME COURT OF KANSAS

KANSAS JUDICIAL CENTER  
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TOPEKA, KANSAS 66612-1507

HELEN PEDIGO  
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TO CHIEF JUSTICE

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### HOUSE JUDICIARY COMMITTEE

Honorable Representative Lance Kinzer, Chair

Testimony in Support of

SB 83 Senior Judge Program Amendments

March 16, 2011

Thank you for the opportunity to testify in support of SB 83, which would amend current law regarding the Senior Judge Program. The Senior Judge Program was established by the 1995 Legislature. Through the program, The Supreme Court may enter into contracts with retired judges who agree to perform assigned judicial duties for 40 percent of each year, or 104 days. They are compensated at the rate of 25 percent of the current monthly salary of judges serving in the same position held by the retirant at the time of retirement. The program is a cost-effective way of providing judges to hear cases when there are conflicts, in the event of illness, or when there are increased filings or complex cases that cannot be handled with existing judicial staffing.

The proposed amendment to K.S.A. 20-2622 applies to judges who wish to serve as senior judges but who did not enter into a senior judge contract prior to retirement. Under current law, those judges may enter into a contract within five years after retirement *and* within 30 days prior to any anniversary date of retirement. This limits the potential pool of senior judge candidates from which the Supreme Court may choose in determining which judges will receive senior judge contracts. The Court is precluded from entering into a senior judge contract with any judge who did not enter into a contract prior to retirement who has been retired for more than five years. Moreover, the time during which the Court may enter into a contract with judges who have not entered into a contract prior to retirement is limited to 30 days prior to any anniversary date of the judge's retirement. The Court normally contracts with senior judge at the beginning of each fiscal year for a full-year contract. The 30 day requirement means that, if the senior judge did not retire at or near the end of a fiscal year, the Court would have to enter into a contract with that judge at another time in the fiscal year that is 30 days prior to that judge's retirement anniversary date.

A recent situation illustrates the difficulty that can arise under the requirements of current law. Midway through the current contract year, a senior judge recently gave notice that he was unable to fulfill the terms of his contract. Because demand for the services of senior judges has been high and because that senior judge had been assigned to a number of ongoing cases, the

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Court sought to fill the unexpired term of his contract. The Court was limited in the number of retired judges from whom it could choose because it could select only from the pool of judges who had been retired for five years or less and who were within 30 days prior to their anniversary retirement date. Although the Court was fortunate in that several well qualified retired judges met both criteria, at other times during the year there would have been few, if any, retired judges who met both criteria who could quickly enter into a contract.

The bill has not been amended. The Senate passed the bill with a vote of 39 – 0. SB 83 would provide greater flexibility in managing the Senior Judge Program. Thank you again for the opportunity to testify in support of SB 83, and I would be happy to answer any questions you may have.

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MEMORANDUM

To: Chairman Kinzer and members of the House Judiciary Committee  
From: Jill Ann Wolters, Senior Assistant Revisor  
Date: March 16, 2011  
Subject: SB 93, racial or other biased-based policing

SB 93 amends statutes concerning racial profiling. The bill changes the statutes using the term "racial profiling" and replaces it with "racial or other biased-based policing" along with a new definition. The new term is defined as:

"the unreasonable use of race, ethnicity, national origin, socio-economic status, 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, socio-economic status, gender or religion is used in combination with other identifying factors as part of a specific individual description to initiate an enforcement action."

An enforcement action is defined as any law enforcement act during a nonconsensual search.

K.S.A. 22-4609 would make it unlawful to use racial or other biased-based policing in determining the existence of probable cause, in constituting a reasonable and articulate suspicion that an offense has been committed so as to justify the detention of an individual or in determining the existence of probable cause to conduct a search.

K.S.A. 22-4610, concerning policies adopted by law enforcement agencies, is amended to require the policies to include a detailed, written policy that prohibits racial or other biased-based policing and clearly defines acts constituting racial or other biased-based policing; include annual training relevant to racial or other biased-based policing, distance learning is allowed; allow, but not require, the creation of a community advisory board. Also, law enforcement agencies are required to file an annual report, and under the bill, the annual report shall also include whether the agency:

1. law enforcement officers had training;
2. has a policy prohibiting racial or other biased-based policing;
3. policy mandates specific discipline for sustained complaints of racial or other biased-based policing;
4. policy details the discipline to be administered for sustained complaints of racial or other biased-based policing;
5. has a community advisory board; and
6. has a racial or other biased-based policing comprehensive plan or if it collects traffic or pedestrian stop data.

Further, K.S.A. 22-4611 is amended to have aggrieved persons file complaints with the Office of the Attorney General, not the Kansas Human Rights Commission.

New section 5 provides that the governing body of a city or county may adopt a comprehensive plan in conjunction with the community advisory board (if applicable) or community leaders to prevent racial or other biased-based policing or may require the law enforcement agency to collect and make

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public traffic or pedestrian stop data.

The comprehensive plan, if adopted, shall include:

- (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) data collection as part of the comprehensive plan; and
- (7) other matters deemed appropriate.

Data collection, if required by the governing body, may consist of the following for every vehicle or pedestrian stop:

- (1) Originating agency identifier number;
- (2) time and date of the stop;
- (3) duration of the stop in ranges of 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;
- (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;
- (13) if a search was conducted, the rationale for the search;
- (14) if a search was conducted, the type of search; and
- (15) if a search was conducted, the type of contraband seized.

New Sec. 6. provides that the governing body of any city or county may, by ordinance or resolution, establish a community advisory board to work with the law enforcement agency of such city or county in accordance with the provisions of the statutes concerning racial or other biased-based policing.

Finally, the bill repeals K.S.A. 22-4604 and 22-4608. K.S.A. 22-4604 is the statute requesting the RFP for the system to collect data on law enforcement contact. The results of the study were to be presented to the legislature. The provisions of K.S.A. 22-4608 are amended into K.S.A. 22-4609.

**House Judiciary Committee  
Senate Bill 93, Racial Profiling  
Kansas State Capitol, Room 346-S  
March 16, 2011**

Chairman Kinzer, members of the committee, we are Curtis Whitten and Mike Watson, Co-chairs of the Governor's Task Force on Racial Profiling (GTFORP). We are here to testify in support of Senate bill 93 which represents the final recommendations of the task force with modifications by the Senate Federal and State Affairs Committee and the Senate as a whole. For detailed information and the GTFORP justification for the specific recommendations we would refer you to the GTFORP final report and recommendations which were submitted December 10, 2010 to the Governor's Office, the House and Senate. I have also provided a copy with my testimony to each committee member.

Let me begin by emphasizing that no one on the task force or anyone who has appeared before the task force has supported or justified the practice of biased policing or racial profiling. All law enforcement chief executives and officers appearing before the task force have condemned the practice. Any differences of opinion have been in the areas of how to preempt these discriminating practices, the extent to which it manifests itself in law enforcement practices, how mandates might significantly impede the lawful exercise of law enforcement practices, the expense of the unfunded mandate for local entities, and what remedies should be provided for those who believe they have experienced biased policing.

Over the last five years the Governor's Task Force on Racial Profiling has worked with law enforcement, state agencies, community groups, national and state experts and individual citizens to research and devise methods to preempt racial profiling and biased policing in the state of Kansas. Although some would like to completely replace the current legislation, the GTFORP believes that the past collaboration between law enforcement and citizens which resulted in the current K.S.A. 22-4606 through 22-4611 is a good foundation and SB 93 builds upon those successes. As a result of this collaboration and the efforts of all involved 435 law enforcement agencies in the state of



Kansas have developed and implemented policies prohibiting racial profiling, established discipline for racial profiling, established community outreach to inform the public of their right to file racial profiling complaints with the individual departments or with the Kansas Human Rights Commission (KHRC), investigated racial profiling complaints and provided tens of thousands of hours of racial profiling training to 8067 law enforcement officers throughout the state of Kansas. In accordance with statute Kansas law enforcement agencies have reported annually all complaints of racial profiling and the outcome of the respective investigations to the Kansas Attorney General's Office, the results of which can be found on the Attorney General's website. The amendments in this bill enhance these results and will help prohibit and preempt the practice of racial profiling and biased policing in the state of Kansas without unduly interfering and adversely affecting appropriate law enforcement activities.

The task force believes that training, collaboration, understanding, and trust between the community and the police are extremely important measures in preempting biased policing, however investigations, discipline and other legal remedies are also necessary in some cases. The individual task force members disagree concerning which state agency should be responsible for conducting the investigations of allegations of racial profiling and biased policing. The two state agencies generally suggested are, the Kansas Human Rights Commission that currently investigates allegations made to the state and the Kansas Commission on Police Officer Standards and Training that licenses and investigates other allegations of misconduct by Kansas law enforcement officers. Both entities have their advantages and disadvantages and the solution may be a combination of efforts regarding investigations and sanctions that result in fair and impartial investigations and due process for both the individuals who believe they were the victims of biased policing and the law enforcement officers. The Senate has seen fit to assign this responsibility to the Office of the Attorney General.

The GTFORP is scheduled to sunset on July 1, 2011 however it is the belief of the task force members that some entity should be appointed the responsibility and authority to

oversee the provisions of these statutes, K.S.A. 22-4606 through 22-4611 and insure that there is a reasonable measure of accountability.

The Senate version of SB 93 which has come to the House addressed city and county law enforcement agencies but left out state law enforcement agencies however the task force believes that the House should rectify this omission by including state law enforcement agencies in the legislation.

Although the Senate Federal and State Affairs Committee modifications to SB 93 made the Community Advisory Boards, Comprehensive Plans and Data Collection optional and the responsibility of the local governing bodies, the task force believes that these components are valuable to the strategies to preempt biased policing.

In conclusion, we request that the committee support Senate bill 93 and give appropriate attention to the recommendations the task force addressed in their Governor's Task Force on Racial Profiling Final Report and Recommendations as well as those items in the report it was unable to come to consensus on: what agency should conduct investigations at the state level and what entity should be responsible for oversight and accountability.

I thank you for your consideration of the recommendations of the Governor's Task Force on Racial Profiling regarding this legislation.



December 10, 2010

Governor Mark Parkinson  
Kansas Statehouse  
Topeka, Kansas

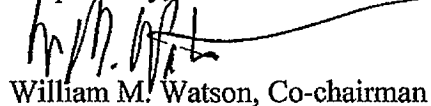
Dear Governor Parkinson,

The Governor's Task Force on Racial Profiling (GTFORP) has been working in partnership with local and state law enforcement agencies to develop recommendations for the full implementation of Kansas racial profiling statutes, K.S.A. 22-4606 through 22-4611, as directed. The GTFORP received information from local and state law enforcement, other state and local agencies, individuals and groups of Kansas residents, and national experts in regard to racial profiling and other biased policing. The GTFORP is scheduled to sunset on July 1, 2011 and therefore submit these recommendations and final report for the 2011 legislative session.

We will continue to work with the Governor's Office and the legislature to implement these recommendations and strategies, as requested. Additionally, the task force will provide communication and outreach to ensure that the residents of Kansas are knowledgeable of their right to fair and impartial law enforcement through the July 1, 2011 sunset date.

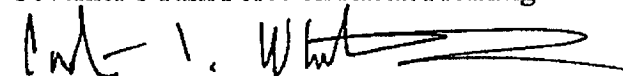
We wish to acknowledge the time and efforts of the numerous dedicated and caring individuals who worked as task force members or informational resources for the task force during our research and deliberations.

Respectfully,



William M. Watson, Co-chairman

Governor's Task Force on Racial Profiling



Curtis L. Whitten, Co-chairman

Governor's Task Force on Racial Profiling

## SUMMARY

The Governor's Task Force on Racial Profiling (GTFORP) was originally appointed in 2005 by Governor Kathleen Sebelius to work with Kansas law enforcement agencies to review current policies and to make recommendations for future policies and procedures statewide for the full implementation of the provisions of K.S.A. 22-4606 through 22-4611 (see attachments) and to develop a method to collect data on traffic stops by law enforcement. The task force was restructured and reappointed by Governor Mark Parkinson in 2009 to develop final recommendations to preempt racial profiling in the state of Kansas. The GTFORP is scheduled to sunset July 1, 2011 after submitting the final recommendations/report.

The GTFORP had been preceded by individual legislators, individuals and community groups in the late 1990s who worked to propose legislation to preempt and eliminate racial profiling. A study was contracted by the legislature to document the incidence and prevalence of racial profiling throughout the state of Kansas. The results indicated that in some areas of Kansas individuals of color were stopped for traffic violations at a disproportionate rate compared to their percentage in the general population. In 2004, law enforcement officials statewide joined other stakeholders to enact legislation which was passed in an effort to preempt racial profiling in the state of Kansas. The result was the passage of racial profiling legislation, K.S.A. 22-4606 through 22-4611, and the formation of the Governor's Task Force on Racial Profiling in 2005.

Kansas legislation, K.S.A. 22-4606 through 22-4611, provides that all law enforcement agencies must have:

- a) policies prohibiting racial profiling,
- b) policies requiring annual training for all officers to preempt racial profiling,
- c) policies for discipline of law enforcement officers who engage in racial profiling,
- d) policies that require appropriate discipline for racial profiling,
- e) policies requiring citizen advisory boards for all cities of the first class,
- f) policies requiring community outreach to inform the public of the right to file racial profiling complaints, and
- g) policies requiring procedures for filing racial profiling complaints.

In addition, all law enforcement agencies must file an annual report with the Attorney General's Office detailing complaints of racial profiling which must then be posted on the Attorney General's website for public review.

The GTFORP researched the issues regarding racial profiling including what was being done nationally. The task force recommended changes in the Kansas statutes and assisted in the implementation of those statutory changes in law enforcement training, departmental policies preempting racial profiling, disciplinary measures, filing complaints internally and externally, community outreach and the use of community advisory boards. The task force also developed and submitted for consideration an optically scanable "bubble" form which could be used to collect data on traffic stops (see attachments) as directed.

The task force collaborated with the Kansas Attorney General's Office, the Kansas Law Enforcement Training Center (KLETC), the Kansas Department of Transportation (KDOT), the Kansas Highway Patrol (KHP), the Kansas Commission on Peace Officer Standards and Training (KSCPOST), the Kansas Association of Chiefs of Police (KACP), the Kansas Sheriff's Association (KSA), the Kansas Peace Officer's Association (KPOA), the Kansas Human Rights Commission (KHRC), the Kansas Fraternal Order of Police (FOP), the Kansas African American Affairs Commission (KAAAC), the Kansas Hispanic Latino American Affairs Commission (KHLAAC), community organizations, individual interested citizens, individual law enforcement agencies, and others.

The GTFORP conducted six formal community meetings in Wichita, Pittsburg, Dodge City, Kansas City, Topeka and Salina. The community meetings concept included two meetings in each city: a meeting with area law enforcement agency leaders to hear and discuss their concerns, to explain facets of the racial profiling statutes and to take recommendations from the law enforcement perspective; and a meeting with citizens to explain facets of the racial profiling statutes, to hear concerns and recommendations of citizens and citizen groups regarding racial profiling issues, complaints and policy/legislative recommendations.

The task force conducted numerous public monthly meetings researching, reviewing, and deliberating regarding law enforcement training, policies and procedures, complaint investigations, legislation, data collection methods and instruments, benchmarking methods and theories, and other racial and biased policing topics. It was determined that some of the original strategies utilized across the nation worked in some areas and were ineffective in others. There appeared to be no "magic bullet" and a customized approach to each jurisdiction appeared to be most appropriate due to the community dynamics and resident involvement.

The task force, through the Kansas Department of Transportation, applied for and was awarded a grant of \$1.1 million from the National Highway Traffic and Safety Administration (NHTSA). The goal of the grant was to prevent racial profiling through training, statewide procedures and requirements on law enforcement agencies and data collection that would help prevent and eliminate racial profiling. Through this funding the following proposals have been approved and are currently being implemented: Tools for Tolerance training for the Wichita Police Department officers and a qualitative study conducted by Wichita State University professor of Community Affairs, Dr. Michael Birzer entitled "The Phenomenology of Racial Profiling in the State of Kansas". Quarterly reports are completed and submitted to document results of the task force and research projects, however, the vast majority of these funds remain to fund the recommendations made by the task force.

The GFORP brought Dr. Lorie Fridell, a national expert on racial profiling and biased policing, to Kansas twice (see attachments – complete powerpoint presentation and

information can be made available); once to meet and educate the 2005 task force members; and once to meet and educate the 2009 task force members on contemporary strategies to prevent biased actions on the part of law enforcement. She briefed the task forces, law enforcement leaders, and community leaders and activists. Dr. Fridell shared data on recent research on bias with implications to law enforcement relations with racial and other minorities.

The task force developed a website ([www.gtforp.ks.gov](http://www.gtforp.ks.gov)) to provide community outreach and to share task force information including meeting schedules and meeting minutes, task force member contact information, and other resources.

Although some law enforcement leaders were defensive and skeptical of the reports by some individuals and groups of perceived blatant and/or rampant racism within the ranks of Kansas law enforcement, the majority of law enforcement leaders were concerned and receptive of Dr. Fridell's research data and strategies. The research primarily focused on implicit, unconscious bias of individuals of color by all members of our society including other individuals of color whether law enforcement officers or not.

Dr. Fridell proposed a customized comprehensive plan for law enforcement agencies to deal with bias that includes training, meaningful policies, outreach to diverse communities, leadership, supervision, appropriate recruitment and hiring, assessment and accountability to include an option of data collection. As a result, the research and responsibilities of the task force were divided into five (5) working committees: 1) Data Collection, 2) Definitions/Citizen Advisory Board, 3) Investigations/AG Report/Due Process for Officers, 4) Training and 5) Grant.

The GTFORP has utilized the information from law enforcement, community groups, individuals, and recognized experts to develop recommendations to be utilized in the preemption and elimination of racial and other biased policing in Kansas.

The Kansas Commission on Police Officer Standards and Training reported to the task force that there are currently 435 active law enforcement agencies in Kansas with a total of 8067 active law enforcement officers.

Currently, racial profiling complaints may be filed with the individual law enforcement agencies or with the Kansas Human Rights Commission (KHRC) or both. A review of the latest available racial profiling complaint statistics indicates that in 2009 there were 64 complaints filed with individual agencies and 23 complaints filed with the KHRC. Some of those complaints may be duplicates as some individuals file the same complaint with both agencies.

The website of the Kansas Attorney General's Office shows that 399 Kansas law enforcement agencies reported a total of 64 racial profiling complaints received in 2009. Of the 64 complaints, 5 are still pending, 3 were resolved with the complainant, and 56 were unfounded/closed. There were no findings of sustained racial profiling complaints.

Three hundred seventy-nine (379) Kansas law enforcement agencies received no complaints while 20 received at least one complaint. The Wichita Police Department received the most complaints with 13. The Wichita Police Department also has an officer initiated complaint policy which resulted in 22 additional complaints. Those complaints are initiated by officers who reported that the motorist said they were stopped as a result of bias on the part of the officer even if there was no complaint filed by the motorist.

The KHRC has reported "probable cause" in six (6) of 87 total racial profiling complaints that were filed with the KHRC in the past five and a half years:

FY 2006	12 complaints
FY 2007	15 complaints
FY 2008	18 complaints
FY 2009	23 complaints
FY 2010	13 complaints
<u>FY 2011</u>	<u>6 complaints (first five months of FY 2011)</u>
TOTAL	87 COMPLAINTS

The GTFORP believes that the current statutes are a good foundation for dealing with racial and other biased policing but particular areas need modification or additional measures. Most recommendations are not unanimous decisions but are majority opinions and we have included minority opinions where an individual or small number of members feel strongly regarding a particular point of view not adopted as an official recommendation. Although the task force is scheduled to sunset, it was generally agreed that some current or new entity should continue to review contemporary strategies and make recommendations to ensure accountability and maintain progress. The fact that racial and other biased policing is unacceptable and must be preempted is a unanimous sentiment of the task force, law enforcement leaders, community groups and literally every resource consulted by the task force.

The following pages include a listing of those recommendations approved or significant to the dialogue at the task force level.

## GTFORP RECOMMENDATIONS:

### **RECOMMENDATION # 1:**

Research and discussion by the task force regarding the definition of racial profiling led to two matters of concern. The first concern was that the current definition of racial profiling was inappropriate especially the terminology "...the sole factor...". This terminology clearly defined racial profiling in a manner that allowed biased policing if any other reason was utilized in conjunction with inappropriate biased motivation. The second concern was that racial profiling was narrowly defining or misdefining what should be addressed, specifically biased policing. It was the view of the taskforce that all persons should be treated equally and should not be singled out because of any personal characteristic.

**The GTFORP recommends that the definition of racial profiling as referred to in 22-4606 (d) be changed to biased policing and defined as follows:**

**"Biased policing is the unreasonable use of race, ethnicity, national origin, socio-economic status, gender, and/or religion by a law enforcement officer in deciding to initiate an enforcement action. It is not biased policing when race, ethnicity, national origin, socio-economic status, gender and/or religion is used in combination with other identifying factors as part of a specific individual description to initiate an enforcement action."**

### **RECOMMENDATION # 2:**

In accordance with recommendation #1 the task force believes that all law enforcement agencies should have policies prohibiting biased policing and that acts of biased policing should be defined for officers. The task force recommends that the Attorney General's Office assist in the defining of such acts in the same way the Attorney General's Office formulated model racial profiling policies in the past that law enforcement agencies could include in their policies.

**The GTFORP recommends that the required law enforcement policies prohibiting racial profiling as referred to in 22-4610 (c) (1) be changed as follows:**

**"The agencies shall adopt a detailed written policy that (a) prohibits biased policing and (b) clearly defines acts constituting biased policing using language that has been recommended by the Attorney General."**



### **RECOMMENDATION # 3:**

Law enforcement agencies reasoned that the same racial profiling training required on an annual basis would become repetitive and non-effective. They also believed that the specific requirements of the current statutes limited the ability to modify the training to keep it fresh and interesting and meaningful to law enforcement officers. They believed that training should be conducted every other year or the specific requirements as to topics be altered to allow agencies to address issues with different minority populations and cultural traditions. Other members of the task force believed it was important that training take place annually but many agreed that the training might be limited by the current language in statute.

**The GTFORP recommends that racial profiling training specifics as referred to in 22-4610 (c) (2) be changed as follows:**

**"The agency policies shall require annual racial and other biased policing training which shall include but not be limited to training relevant to racial and other biased policing."**

### **RECOMMENDATION # 4:**

Law enforcement professionals, both chiefs, sheriffs and professional trainers, explained that over half of the law enforcement agencies in Kansas have five (5) or fewer officers. Due to the time requirements for officers to be pulled from their duties and on many occasions drive great distances to attend training, alternatives were discussed. The training time, especially logistical time in attending training, is debilitating in the effort to serve and protect their communities. It was reasoned that distance learning technologies could reduce the time involved in training and should be allowed with the understanding that accountability must be included in the training procedures.

**The GTFORP recommends that distance learning training technology should be allowed for the racial and other biased policing training.**

### **RECOMMENDATION # 5:**

In order to insure accountability and an appropriate training curriculum it was decided that an oversight group of law enforcement, community members and professional academia members should approve the racial and other biased policing curriculum.

A minority view was that professional law enforcement trainers including personnel from the Kansas Law Enforcement Training Center (KLETC) could assist law enforcement agencies in appropriate racial and biased policing training. The logistics and expense of "approving" the training curriculum of each law enforcement agency in the state seems

unrealistic. If such a group existed for each agency or for the state in general, the time constraints for approving such annual training would be overwhelming.

**The GTFORP recommends that a consortium composed of law enforcement, the community, and academia should approve the racial and other biased based policing training curriculum.**

#### **RECOMMENDATION # 6:**

One of the issues which has confronted the task force and many law enforcement agencies statewide in regard to racial profiling training has been the expenses involved in the development and conducting of such training. KLETC, the GTFORP, the KHP, Wichita State University and several local law enforcement agencies have contributed personnel and financial resources to the formulation and delivery of racial profiling training in the past few years. Frankly, those agencies are unable to continue to contribute those resources.

The GTFORP has used funding from the racial profiling grant to assist agencies in train the trainer programs and direct racial profiling training for agencies. As budgets are negatively affected in the future, funding for training will become a critical issue. When the GTFORP grant is depleted the quantity and quality of the training may be affected. Because the training is a state requirement, most members felt the state should allocate funding for this state mandated training.

**The current racial profiling grant (KDOT/NHTSA) funds should be the funding source for the training until the grant funds are depleted and thereafter the Governor and legislature should allocate funding for the training.**

#### **RECOMMENDATION # 7:**

It was brought to the attention of the task force that there are numerous individuals living legally in the state of Kansas who are not citizens and, due to their race, national origin, ethnicity, religion or other personal characteristics, they would be good resources and/or members of the citizen advisory boards. Therefore the task force agreed that a more appropriate title for the boards would be "community advisory boards".

**The GTFORP recommends that the citizen advisory boards as referred to in 22-4610 (c) (3) be renamed "community advisory boards".**

#### **RECOMMENDATION # 8:**

During the research and deliberations of the task force several community members and task force members expressed the opinion that rather than only cities of the first class

being required to have a citizen advisory board whose members reflect the racial and ethnic community, that all law enforcement agencies should have advisory boards. It was acknowledged that no county law enforcement agencies i.e. sheriff's departments are required to have advisory boards despite some sheriff's agencies being far larger with more officers than many city agencies. After significant discussion regarding the resources of small law enforcement agencies and the fact that very small agencies represent jurisdictions with so little population, that they already receive significant participation of their communities and therefore may not need advisory boards. The task force concluded that law enforcement agencies with ten (10) or more full-time officers are large enough and represent those jurisdictions with diverse populations that they could benefit from input from community advisory boards.

**The GTFORP recommends that the requirement for citizen advisory boards as referred to in 22-4610 (c) (3) be changed to require law enforcement agencies with ten (10) or more full-time, certified law enforcement officers to establish or use current independent 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 preempting racial and other biased policing by law enforcement officers and agencies.**

#### **RECOMMENDATION # 9:**

Racial and other biased policing is a very serious issue involving the protection the civil rights of individuals. It can elicit emotional responses from both individuals who perceive their very basic civil rights to have been violated and from law enforcement officers who are accused of being racists or at least violating someone's rights through bias. These are extremely serious charges that can lead to decertification and termination of employment for an officer. It can also destroy the reputation of a law enforcement agency. Because community advisory boards are expected to objectively apply their knowledge of the effect of bias policing on a law enforcement agency and the community to assist in policy development, education and community outreach and communications related to racial and other biased policing, it was believed that the board members should have an opportunity to receive proper training.

The task force felt that the racial profiling grant funds could be used to sponsor training workshops in several areas throughout the state to offer training about fair and impartial policing utilizing contemporary research and broader perspectives such as elements of a comprehensive plan for law enforcement agencies.

**The GTFORP recommends that members of community advisory boards should receive training on fair and impartial policing and broader perspectives such as elements of a comprehensive plan for law enforcement agencies.**

#### **RECOMMENDATION # 10:**

Law enforcement agencies are required to submit a report to the Kansas Attorney General's Office annually of all racial profiling complaints received. This requirement did not reference whether a report was required if an agency did not receive any racial profiling complaints. This ambiguity led to confusion as to whether some agencies were complying with the statute if they did not receive any complaints and did not submit a report and speculation as to whether some agencies were receiving complaints but not reporting them. The task force believes, and most Kansas law enforcement associations including Kansas Association of Chiefs of Police, Kansas Sheriff's Association, and Kansas Peace Officer's Association have encouraged all agencies to submit a report whether they received complaints or not. The vast majority of law enforcement agencies have complied but not all.

**The GTFORP recommends that all law enforcement agencies be required to report annually to the Attorney General's Office whether they received any racial or biased policing complaints rather than only those agencies who received complaints as required in 22-4610 (d).**

#### **RECOMMENDATION # 11:**

The current statute requires the annual racial profiling report by law enforcement agencies to be sent to the Kansas Attorney General's Office by January 31 which gives agencies one month to compile the data and submit it for each calendar year. Law enforcement agencies are also required to submit data on training requirements annually to the Kansas Commission on Police Officer Standards and Training (KSCPOST). In order to standardize the reporting requirement deadlines, especially in lieu of the recommendations in Recommendation # 12 of this report, it would be beneficial to change the reporting requirement to one month after the end of the Kansas law enforcement training year which would be July 31.

**The GTFORP recommends that the date for annual law enforcement agency reporting to the Attorney General's Office as required in 22-4610 (d) be changed from "on or before January 31" to "on or before July 31".**

#### **RECOMMENDATION # 12:**

The effects of racial and other biased policing or even the perception of such activities are manifested in suspicion, fear and lack of confidence in the fair and impartial exercise of the laws by law enforcement officers and agencies. Some community members feel that the complaints of biased policing are kept from the public. They also believe that some law enforcement agencies do not comply with statutes designed to preempt biased policing. Although current statutes require law enforcement agencies to report racial

profiling complaints to the Kansas Attorney General's Office annually, it is the position of the task force that the reporting should be expanded to include all agencies and all bias policing requirements in accordance with K.S.A. 22-4610 (d) which include whether or not all agency law enforcement officers not exempted by KSCPOST completed the annual racial and biased policing training; whether the agency has a policy prohibiting racial profiling; whether the agency policy mandates specific discipline for sustained complaints of racial and other biased policing; whether the agency policy details the discipline to be administered for sustained complaints of racial and other biased policing; whether the agency has a community advisory board and whether the agency has a racial and biased policing comprehensive plan or if it collects traffic stop data.

**The GTFORP recommends that the required annual law enforcement reporting to the Attorney General's Office as required in 22-4610 (d) be expanded to the following:**

**The annual report shall include:**

- (1) The date each racial and biased policing complaint is filed;**
- (2) action taken in response to each racial and biased policing complaint;**
- (3) the decision upon disposition of each racial and biased policing complaint;**
- (4) the date each racial and biased policing complaint is closed;**
- (5) whether or not all agency law enforcement officers not exempted by KSCPOST completed the annual racial and biased policing training;**
- (6) whether the agency has a policy prohibiting racial profiling;**
- (7) whether the agency policy mandates specific discipline for sustained complaints of racial and other biased policing;**
- (8) whether the agency policy details the discipline to be administered for sustained complaints of racial and other biased policing;**
- (9) whether the agency has a community advisory board; and**
- (10) whether the agency has a racial and biased policing comprehensive plan or if it collects traffic stop data.**

### **RECOMMENDATION # 13:**

The data from the annual racial profiling complaint reports submitted to the Kansas Attorney General's Office by all law enforcement agencies on or before January 31 is posted on the official website of the attorney general. The taskforce has recommended that those reports be expanded to include six additional items. It is the view of the task force that this additional data should also be reported on the official website of the attorney general.

**The GTFORP recommends that all required annual law enforcement reporting to the Attorney General's Office as required in 22-4610 (d) be posted on the Attorney General's website.**

### **RECOMMENDATION # 14:**

The GTFORP has researched and deliberated on the logistics, research value, costs and, ramifications of requiring all law enforcement agencies in the state of Kansas to collect data on traffic stops and even further on possibly all traffic and pedestrian stops and contacts. The taskforce developed an optically scannable form to collect data as required by statute although a significant number of task force members were not convinced that the collection of traffic stop data was a cost effective tool in combating racial profiling.

The vast majority of task force members and resources consulted believe that data collection statewide will indicate that racial and ethnic minorities are stopped disproportionately to their percentage of the population. It was also believed that although this could be a tool to use in formulating strategies, that it was not proof of racial profiling or biased policing.

The task force was unable to identify appropriate benchmarks to utilize the traffic stop data. This is an issue nationwide. Do you compare the number of individuals in a particular racial or ethnic group stopped to their percentage of the population, their percentage of the population driving in the area of the traffic stop, their percentage of the driving public in general, their percentage of individuals responsible for traffic accidents (which might indicate driving violations/errors), or the age and/or gender of the drivers of their particular groups? Does the time of day, type of vehicle, street location and configuration, or other factors have anything to do with the disproportionality of traffic stops? Is this data appropriately used for comparison purposes or must you compare the data from all officers to determine whether an officer is stopping individuals in numbers disproportionate to his/her fellow officers. The options are numerous and there is no consensus locally or nationally as to how to benchmark data collection.

Even if we have consensus in how to benchmark data collection in a particular city or county or sub-area of a jurisdiction, that does not mean that it is appropriate to another jurisdiction. The task force agreed that the appropriate manner in which to deal with the

data collection question, and the racial and biased policing issue in general, is that jurisdictions must decide themselves the strategies to address the issue in their community although there are several areas that are critical everywhere to success in regard to combating biased policing.

All law enforcement agencies should have meaningful policies to prohibit and preempt biased policing. They should recruit and hire officers representing the diversity in their community and those who can police in a non-biased manner. They should train their personnel to control and override any biases. They should employ supervisors who will detect and react to biased behavior. They should promote positive interactions with all individuals and groups in their communities. They should determine whether data collection or other tools and strategies are appropriate and cost effective in the preemption and elimination of racial and other biased policing.

In order to apply this customized approach all law enforcement agencies should develop a comprehensive plan detailing the strategies they will use and the manner in which they will hold the law enforcement agency and officials accountable to the community.

Some communities may decide that they do not have significant issues with racial and other biased policing, do not need a comprehensive plan, and data collection will show, to that degree possible, that the law enforcement agency does not police with bias. The task force decided that those agencies that do not want to institute a comprehensive plan may instead collect data on traffic stops and make it available to the public for inspection.

Some members of the task force still expressed the view that data collection should be implemented statewide and we should continue to attempt to find appropriate benchmarking and methods to analyze the data.

Some members of the task force expressed that a Comprehensive Plan creates and fosters expectations of those in law enforcement communities. In order for all to know, that indeed the comprehensive plan is effecting changes in the behaviors that lead to racial and other biased based profiling/policing there has to be an evaluative tool in place to both track and assess the progress. This process can be encapsulated in the individual training programs or hiring procedures and there should be legislation that an oversight committee be formed to review and assess the effectiveness of the plan. In order for lasting changes to result from the comprehensive plan, monitors or checks must be in place. With these checks in place the community and law enforcement can ensure sustainability and a long term commitment to work together to monitor and maintain the changes.

**The GTFORP recommends that each law enforcement agency in the state of Kansas should be required to either develop a comprehensive plan in conjunction with a community advisory board (or other community partners in the absence of a formal community advisory board) by January 1, 2012 to preempt racial profiling and other biased policing or be required to collect traffic stop data beginning July 1,**

2011 and make it publicly available. The comprehensive plans should be developed to include but not be limited to items one through six below.

1. **Meaningful policies prohibiting racial and other biased based policing.**  
Guide well-meaning officers with policy.  
Address racist officers.
2. **Recruitment and hiring.**  
Promote to the recruitment and hiring of a diverse workforce.  
Ensure workforce is comprised of people who can police in a race-neutral and non-biased fashion.
3. **Training.**  
Use training to promote employees controlled responses to override racial and other biases.
4. **Leadership supervision and accountability.**  
Conduct ongoing training of supervisors to enable them to detect and respond effectively to biased behavior.
5. **Outreach to diverse communities.**  
Implement a style of policing that promotes positive interactions between police officers and all communities.
6. **Measurement.**  
Make an informed decision regarding whether to include or not include data collection as part of the comprehensive plan.

The state of Kansas through the Governor's Taskforce on Racial Profiling should hire a nationally recognized consultant to work with one or more beta test sites in the state of Kansas on a comprehensive plan to deal with racial and other biased policing. The plan would then be disseminated to agencies throughout the state of Kansas in accordance with the above noted deadlines to be used as a model for comprehensive plans.

Although the task force is scheduled to sunset, the GTFORP generally agrees that some entity should be formed to act as an oversight group to ensure accountability and maintain the progress associated with each of the required criteria included in the comprehensive plan.

**# 15 STATE RACIAL PROFILING INVESTIGATIONS:  
(NO RECOMMENDATION)**

K.S.A. 22-4611 (a) states that any person who believes they have been subjected to racial profiling by a law enforcement officer or agency may file a complaint with the law



enforcement agency or they may file a complaint with the Kansas Human Rights Commission (KHRC) or both. In accordance with 22-4611 (b) upon disposition of a complaint, 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 or agency engaged in racial profiling. The court may allow the prevailing party reasonable attorney fees and court costs.

The task force received complaints from community members and law enforcement officers and agencies that the finding of probable cause by the KHRC does not resolve the racial profiling complaint for the complainant nor for the law enforcement officer and/or agency. Even if probable cause were the finding, the complainant must then sue the agency and/or officer and, if there is not a lawsuit generated by the complainant to resolve the complaint, the officer has no due process to defend his/her name in regard to the complaint.

Although most members of the task force believed there should be a better resolution to complaints, there was no consensus. The following motions were made, discussed and voted upon by the taskforce but none of the motions received a majority vote of task force members. Therefore the task force has not made a formal recommendation but has offered the motions as options.

**Motion # 1: Designate the Kansas Commission on Police Officer Standards and Training (KSCPOST) as the agency to investigate racial and other biased policing complaints on the state level. KSCPOST is the certification agency for Kansas law enforcement officers and KSCPOST investigates and sanctions officers and agencies for inappropriate actions.**

Some members of the task force indicated that allowing KSCPOST to investigate complaints of racial profiling was having "cops policing cops" and was unacceptable. They did not believe that KSCPOST could credibly investigate and sanction officers and agencies when the investigation involved suspected racial profiling. Some members believed that, although they believed that KSCPOST could conduct and sanction officers for racial profiling, they believed that public perception of objectivity by KSCPOST was a concern. Some members took the position that KSCPOST sanctions officers routinely for violations from very serious violations of the law to less serious ethical violations without question and the only exception is racial profiling that statute designates investigations to be completed by the Kansas Human Rights Commission.

**Motion # 2: Continue to allow the Kansas Human Rights Commission (KHRC) to investigate complaints of racial/biased policing and make findings of "probable cause" or "no probable cause". Require KHRC to forward any findings of "probable cause" to the Kansas Commission on Police Officer Standards and Training (KSCPOST) for any necessary further investigation. KSCPOST as currently proscribed by statute would review the complaint and impose any necessary sanctions on the officer or agency or both as appropriate.**

The task force was informed that this option could be implemented without statutory changes if KSCPOST would make an official request to KHRC to forward any cases resulting in probable cause findings to KSCPOST. KSCPOST could then investigate as necessary and impose sanctions as they deem appropriate. Critics of this option indicate that having two state agencies investigate the same incident might result in conflicting results and could confuse and exacerbate the situation. Critics indicate that the conflict could be resolved by either a recommendation to further investigate by the KHRC to KSCPOST rather than a finding of probable cause being sent to KSCPOST which presupposes some level of wrongdoing.

**Motion # 3: Continue to allow the Kansas Human Rights Commission (KHRC) to investigate complaints of racial/biased policing. Require KHRC to forward investigations with a recommendation, rather than a finding, to KSCPOST. KSCPOST would review the KHRC investigation and recommendation. KSCPOST, as currently proscribed by statute, would review the complaint, investigate and impose any necessary sanctions on the officer or agency or both as appropriate.**

Motion # 3 is basically motion #2 with a "recommendation" from KHRC to KSCPOST rather than the "finding" of probable cause by KHRC referred to KSCPOST.

Although the task force could not come to a conclusion on how to investigate racial profiling investigations on the state level, most members wanted the task force to include KSCPOST for the ability to sanction officers and agencies and to provide due process for law enforcement officers and agencies as currently built into the system.

Another view of members was that the officers and agencies did not require any further level of due process because there was no finding of "guilty of racial profiling" but simply a finding of "probable cause" that was never proven and therefore not binding on the officer/agency.

## ATTACHMENTS:

### Current Statutes:

#### **22-4606**

**Chapter 22.--CRIMINAL PROCEDURE  
KANSAS CODE OF CRIMINAL PROCEDURE  
Article 46.--GENERAL PROVISIONS**

**22-4606. Racial and other profiling; definitions.** 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.

(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.

(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.

(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.

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

**History:** L. 2005, ch. 159, § 1; July 1.

#### **22-4607**

**Chapter 22.--CRIMINAL PROCEDURE  
KANSAS CODE OF CRIMINAL PROCEDURE  
Article 46.--GENERAL PROVISIONS**

**22-4607. Same; taskforce; review of and recommendations on policies and procedures.** (a) A 15-member taskforce on racial profiling shall be appointed by the governor. The taskforce shall include representatives of the Kansas attorney general's office, the Kansas highway patrol, city and county law enforcement agencies, the Hispanic and Latino American affairs commission, the advisory commission on African-American affairs, the department of revenue, Kansas human rights commission, Kansas district courts, Kansas civil rights advocates and others who can assist in the performance of the functions of the taskforce.

(b) The governor's taskforce on racial profiling shall work in partnership with local and state law enforcement agencies to review current policies and make recommendations for future policies and procedures statewide for the full implementation of the provisions of K.S.A. 22-4606 through 22-4611, and amendments thereto. The taskforce shall hold public hearings and meetings as needed to involve and inform the public on issues related to racial profiling.

(c) On July 1, 2009, the governor shall appoint the membership of the taskforce. Any person serving as a member of the taskforce on June 30, 2009, may be reappointed. The terms of members appointed or reappointed to the taskforce shall expire on July 1, 2011. Vacancies occurring before the expiration of a term shall be filled in the same manner as the original appointment.

(d) The chairperson of the taskforce shall be designated by the governor. The taskforce shall meet at the call of the chairperson at least quarterly or as often as necessary to carry out the functions of the taskforce.

(e) The staff of the Kansas advisory commission on African-American affairs and the Kansas Hispanic/Latino American affairs commission shall provide administrative support to the taskforce and its chairperson.

(f) Members of the taskforce attending a meeting of the taskforce, or any subcommittee meeting authorized by the taskforce, shall receive amounts provided for in subsection (e) of K.S.A. 75-3223, and amendments thereto.

(g) The taskforce shall make a report of its activity to the public each calendar year.

(h) The provisions of this section shall expire on July 1, 2011.

**History:** L. 2005, ch. 159, § 2; L. 2006, ch. 179, § 1; L. 2009, ch. 126, § 1; July 1.

## **22-4608**

### **Chapter 22.--CRIMINAL PROCEDURE KANSAS CODE OF CRIMINAL PROCEDURE Article 46.--GENERAL PROVISIONS**

**22-4608. Same; unlawful for law enforcement to engage in.** It shall be unlawful for any law enforcement officer or any law enforcement agency to engage in racial profiling.

**History:** L. 2005, ch. 159, § 3; July 1.

## **22-4609**

### **Chapter 22.--CRIMINAL PROCEDURE KANSAS CODE OF CRIMINAL PROCEDURE Article 46.--GENERAL PROVISIONS**

**22-4609. Same; prohibited as sole basis for making stop or arrest.** The race, ethnicity, national origin, gender or religious dress of an individual or group shall not be the sole factor in determining the existence of probable cause to take into custody or to arrest an individual or in 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.

**History:** L. 2005, ch. 159, § 4; July 1.

## **22-4610**

### **Chapter 22.--CRIMINAL PROCEDURE KANSAS CODE OF CRIMINAL PROCEDURE Article 46.--GENERAL PROVISIONS**

**22-4610. Same; policies preempting profiling, requirements; annual reports of complaints.** (a) All law enforcement agencies in this state shall adopt a detailed, written policy to preempt racial profiling. Each agency's policy shall include the definition of racial profiling 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.

(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.

(3) For law enforcement agencies of cities of the first class, establishment or use of current independent citizen 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 by law enforcement officers and agencies.

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

(5) A provision that, if the investigation of a complaint of racial profiling reveals the officer was in direct violation of the law enforcement agency's written policies regarding racial profiling, 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 complaints regarding racial profiling, 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 with the agency, which, if appropriate, may provide for use of current procedures for addressing such complaints.

(d) Each law enforcement agency shall compile an annual report of all complaints of racial profiling received and shall submit the report on or before January 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.

**History:** L. 2005, ch. 159, § 5; July 1.

## **22-4611**

### **Chapter 22.--CRIMINAL PROCEDURE KANSAS CODE OF CRIMINAL PROCEDURE Article 46.--GENERAL PROVISIONS**

**22-4611. Same; complaints, procedure; civil action.** (a) Any person who believes such person has been subjected to racial profiling 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. The commission shall review and, if necessary, investigate the complaint. The commission's designee shall consult with the head of the law enforcement agency before making final recommendations regarding discipline of any law enforcement officer or other disposition of the complaint.

(b) 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 or agency engaged in racial profiling. The court may allow the prevailing party reasonable attorney fees and court costs.

**History:** L. 2005, ch. 159, § 6; July 1.

# KANSAS STATE LAW ENFORCEMENT DATA COLLECTION FORM

Form # 321-019

The following information should be obtained and documented for all vehicle stops.

## MARKING INSTRUCTIONS

- Use black or blue pen or a number 2 pencil.
- Do not use pens with ink that soaks through the paper.
- Make dark marks that fill the oval completely.
- Make no stray marks.

Employee Identification Number	Age, race, gender and ethnicity of the primary person contacted:			Agency ORI	County Code
	Age:	Race:	Gender:		
00000	00	<input type="radio"/> White	<input type="radio"/> Male	KS	
00001	01	<input type="radio"/> Black	<input type="radio"/> Female	0000000000	00
00002	02	<input type="radio"/> Native American	<input type="radio"/> Unknown	0000000000	01
00003	03	<input type="radio"/> Asian	Ethnicity:	0000000000	02
00004	04	<input type="radio"/> Other	<input type="radio"/> Hispanic/Latino	0000000000	03
00005	05	<input type="radio"/> More than one race	<input type="radio"/> Non-Hispanic	0000000000	04
00006	06			0000000000	05
00007	07			0000000000	06
00008	08			0000000000	07
00009	09			0000000000	08
00010	10			0000000000	09
00011	11			0000000000	10
00012	12			0000000000	11
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Primary reason for the stop:	Action taken:	Search Rationale: Mark all that apply	Type of Search: Mark all that apply	Contraband Seized: Mark all that apply
<input type="radio"/> Moving Violation <input type="radio"/> Equipment Violation <input type="radio"/> Criminal Offense/ Probable Cause <input type="radio"/> Other Violation <input type="radio"/> To render service <input type="radio"/> Suspicious circumstances <input type="radio"/> Pre-existing knowledge <input type="radio"/> Special detail	<input type="radio"/> Citation <input type="radio"/> Search <input type="radio"/> Warning <input type="radio"/> Arrest <input type="radio"/> Outstanding Warrant <input type="radio"/> Resisting Arrest <input type="radio"/> Property Crime <input type="radio"/> Offense Against Person <input type="radio"/> Drug Violation <input type="radio"/> Traffic Violation <input type="radio"/> DUI <input type="radio"/> Other <input type="radio"/> Assistance Provided <input type="radio"/> No Action	<input type="radio"/> Not Applicable <input type="radio"/> Vehicle Indicators <input type="radio"/> Verbal Indicators <input type="radio"/> Physical/Visual Indicators <input type="radio"/> Document Indicators (DOT) <input type="radio"/> Incident to Arrest <input type="radio"/> Other	<input type="radio"/> No Search Conducted <input type="radio"/> Consent Search Conducted <input type="radio"/> Inventory <input type="radio"/> Stop and Frisk <input type="radio"/> Search Warrant <input type="radio"/> No Search/Consent Denied <input type="radio"/> Search Incident to Arrest <input type="radio"/> Plain View <input type="radio"/> Probable Cause	<input type="radio"/> None <input type="radio"/> Currency <input type="radio"/> Firearms <input type="radio"/> Other Weapons <input type="radio"/> Drugs/Paraphernalia <input type="radio"/> Alcohol/Tobacco Products <input type="radio"/> Stolen Property <input type="radio"/> Other

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## Governor's Task Force on Racial Profiling

### Racially Biased Policing April 28, 2009

Law enforcement professionals, public policy makers, and other stakeholders are grappling with the national issue of racially biased policing. To assist us in developing strategies to promote fair and impartial policing in Kansas, the Governor's Task Force on Racial Profiling is hosting a day-long session with a national expert on this topic. In this session, Dr. Lorie Fridell will discuss the nature and history of the issue, the ways that racial bias might manifest in policing, and "best practices" for promoting fair and impartial policing. This author of *By the Numbers: A Guide for Analyzing Race Data from Vehicle Stops*, will present information on the potential and challenges of data collection and discuss key elements of data collection programs and methods for data analysis (or "benchmarking").

#### Who Should Attend? Law Enforcement Professionals, State/Community Leaders, Other Interested Stakeholders



**Dr. Lorie Fridell**, an Associate Professor of Criminology at the University of South Florida, is a national expert on racial profiling, or what she terms "racially biased policing." She has authored and co-authored a number of chapters and books on the topic. While at PERF she co-authored with colleagues *Racially Biased Policing: A Principled Response*, to guide law enforcement executives in their response to the issues of racially biased policing and the perceptions of its practice. Concerned about the very high expectations that stakeholders had developed for data collected on police stops, she wrote *By the Numbers: A Guide for Analyzing Race Data from Vehicle Stops*. Her most recent publication is "Racially Biased Policing: The Law Enforcement Response to the Implicit Black-Crime Association."

Dr. Fridell is a keynote speaker at conferences on this important topic and has been invited to speak with various chiefs/sheriffs associations around the country. She is working with the San Francisco Police Department and its Police-Community Advisory Board to implement a comprehensive program to facilitate fair and impartial policing. She has consulted with a number of other agencies/entities including the LAPD, Toronto Police Services, Austin PD, Massachusetts Chiefs Association, Institute on Race and Justice, and Rand Inc, to name a few. With funding from the US DOJ and with the assistance of national experts on law enforcement and the social psychology of bias, Dr. Fridell is developing model Fair and Impartial Policing curriculums for both academy recruits and first-line supervisors.

#### TOPICS TO BE COVERED

- The nature and history of the issue of racially biased policing
- How the public and police view "racial profiling"
- The social science of human bias and the implications for policing
- The elements of a comprehensive program to facilitate fair and impartial policing
- Collecting data on police stops: Issues and facts
- Developing change- and trust-producing partnerships

#### Location

Robert K. Weary Education Center  
719 SW Van Buren, Topeka

#### Time



## **GTFORP Members/Staff/Attendees/Resources:**

### **Current Task Force Co-Chairpersons**

Mr. Curtis L. Whitten, Co-chair, Kansas African American Affairs Commission, Wichita  
Mr. William M. Watson, Co-chair, Kansas Association of Chiefs of Police, Milford

### **Past Task Force Co-Chairpersons**

Mr. Jackie Williams, Co-chair, Wichita  
Reverend Allen Smith, Co-chair, Salina

### **Current Task Force Members**

Mr. Clyde Howard, Kansas Human Rights Commission, Manhattan  
Mr. Herman Jones, Kansas Highway Patrol, Topeka  
Mr. Michael Padilla, Kansas Department of Revenue, Topeka  
Sheriff Dean Bush, Kansas Sheriff's Association, Ford County  
Representative Melody McCray-Miller, Public Member, Wichita  
Representative Delia Garcia, Public Member, Wichita  
Representative Valdenia Winn, Public member, Kansas City  
Ms. M. Cecilia Ysaac-Balmores, KHLAAC Representative, Kansas City  
Mr. Brendon Fox, Public Member, Wichita  
Mr. Jabari Wamble, Kansas Attorney General's Office, Topeka, Kansas  
Ms. Wilma Sanders, Kansas District Courts, Wichita, Kansas

### **Past Task Force Members**

Pastor Virgil Horn, Coffeetown  
Ms. Paula Flores, Garden City  
Ms. Shala Perez, Wichita  
Sheriff Gary Steed, Wichita  
Director Mike Watson, Manhattan  
Sheriff Leroy Green, Kansas City  
Mr. Kevin Myles, Wichita  
Ms. Susana Valdovinos, Topeka  
Dr. Penny Armstrong, Pittsburg  
Mr. James Terrones, Olathe  
Ms. Janith Davis, Topeka  
Ms. Carrie Jones-Williams, Wichita  
Ms. Darla Farnsworth, Leavenworth

### **Current Task Force Staff Members**

Dr. Mildred Edwards, Director, Kansas African American Affairs Commission  
Tolla White, Kansas African American Affairs Commission, Executive Assistant

Norma Hinton, Kansas Hispanic Latino American Affairs Commission, Executive Assistant

**Former Task Force Staff Members**

Shala Perez, Director, Kansas Hispanic Latino American Affairs Commission  
Danielle Dempsey-Swopes, Director, Kansas African American Affairs Commission  
Steve Cisneros, Director, Kansas Hispanic Latino American Affairs Commission  
Michael Waters, Governors Taskforce on Racial Profiling, Administrative Assistant

**Other Task Force Meeting Attendees/Resources**

**2009**

**October**

Don Krone (Lenexa PD), and Bob Keller (Johnson County SO).

**November**

Don Krone (Lenexa PD), Bob Keller (JCSO), Terri Moses (Wichita PD), Ed Pavey (KLETC), John Green (KLETC), Rick Fischli (KHRC), Eric Williams (KSCPOST), Bob Sage (Rose Hill PD), Darren Beck (KLETC), and Dr. Michael Birzer (Wichita State University).

**December**

Chris Bortz (KDOT), Pete Bodyk (KDOT), Ed Pavey (KLETC), Darin Beck (KLETC), Rick Fischli (KHRC), Terry Moses (WPD), Steve Culp (KSCPOST), and Eric Williams, (KSCPOST).

**2010**

**January**

Ed Pavey (KLETC), Darin Beck (KLETC), Eric Williams (KSCPOST), Rick Fischli (KHRC), Kyle Smith (Topeka PD), Ed Klumpp (KACP), Don Krone (LPD), Jerry Kullumber (Lenexa PD), and Ron Brown (FOP).

**February**

Beatriz Ledezma - Racial Profiling Citizens Advisory Board for the City of Wichita (RPCAB-COW), Sheila Officer (RPCAB-COW), Rick Ojeda (RPCAB-COW), Ron Brown (FOP), Darin Beck (KLETC), Ed Pavey (KLETC), Terri Moses (WPD), Pete Bodyk (KDOT), Bob Keller (Johnson County SO), Don Krone (Lenexa PD), Rick Fischli (KHRC), Dennis Romero, Bob Hernandez, Eric Williams (KSCPOST), Walt Chappell (RPCAB-COW),

**March**

Terri Moses (WPD), Ron Brown (FOP), Pete Bodyk (KDOT), Don Krone (Lenexa PD), John Green (KLETC), Bob Keller (Johnson County SO), Rick Fischli (KHRC), Eric

Williams (KSCPOST), Steve Culp (KSCPOST), Lane Hemsley (KSDOA), Senator Oletha Faust-Goudeau.

#### **April**

Ron Brown (FOP), Darin Beck (KLETC), Ed Pavey (KLETC), Terri Moses (WPD), Pete Bodyk (KDOT), Bob Keller (Johnson County SO), Don Krone (Lenexa PD), Rick Fischli (KHRC), Steve Culp (KSCPOST), Eric Williams (KSCPOST), Dan Gibb (KS AG Office),

#### **May**

Terri Moses (WPD), Ron Brown (FOP), Don Krone (Lenexa PD), Bob Keller (Johnson County SO), Darin Beck (KLETC), Eric Williams (KSCPOST), Ed Klumpp (KACP, KSA), Gordon Lansford (KCJIS)

#### **June**

Bob Keller (Johnson County SO), Eric Williams (KSCPOST), Ed Pavey (KLETC), Darin Beck (KLETC), Steve Culp (KSCPOST), Rick Fischli (KHRC), Pete Bodyk (KDOT), Terri Moses (Wichita PD), John R. Williams (LEPP)

#### **August**

Bob Keller (Johnson County SO), Eric Williams (KSCPOST), Ed Pavey (KLETC), Darin Beck (KLETC), Steve Culp (KSCPOST), Rick Fischli (KHRC), Pete Bodyk (KDOT), Terri Moses (Wichita PD), John R. Williams (LEPP)

#### **September**

Darin Beck (KLETC), Rick Fischli (KHRC), Terri Moses (WPD), Pete Bodyk (KDOT).

#### **October 8**

Darin Beck (KLETC), Rick Fischli (KHRC), Terri Moses (WPD), Pete Bodyk (KDOT).

#### **October 29**

Terri Moses (WPD), Rick Fischli, (KHRC), Ron Brown (FOP), Ed Pavey (KLETC), Bob Keller (Johnson County Sheriff's Office), Darin Beck (KLETC), Eric Williams (KSCPOST), Steven Culp (KSCPOST), D. Krone (Lenexa PD), John Green (KLETC), Chris Bortz (KDOT)

#### **November**

Terri Moses (WPD), Rick Fischli, (KHRC), Ron Brown (FOP), Bob Keller (JCSO), Darin Beck (KLETC), Eric Williams (KSCPOST), Ed Pavey (KLETC), Pete Bodyk (KDOT), Ed Klumpp (KACP)



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**Kansas Sheriffs  
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**Kansas Peace Officers  
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**Testimony to the House Judiciary Committee  
In Support of SB93  
Amendments to Racial Profiling Statutes  
March 16, 2011**

As we offered to this Committee in our testimony on HB2163, over the past several years the Kansas Association of Chiefs of Police, the Kansas Sheriffs Association, and the Kansas Peace Officers Association have been active in attending the meetings of the Racial Profiling Task Force, attending Task Force community events, listening to the concerns of the people in Kansas regarding racial profiling, and participating in developing and carrying out training programs for law enforcement regarding racial profiling. In particular, during the last year and a half, we participated as much as possible in the dialog of the Task Force. We have attended National Seminars on the topic and engaged with national experts in the field. As a result of those efforts we have supported legislation this year in the form of HB2163 and in SB82. Our proposals have generally followed the recommendations of the Governor's Task Force on Racial Profiling with some of the gaps filled in where the Task Force was unable to reach a final recommendation.

The Senate Federal and State Affairs Committee had introduced SB93 as a bill representing the recommendations of the Task Force as interpreted by the revisor and the committee chair. When working the bill they considered both SB82 and SB93 along with other testimony that was provided to the committee.

We support SB93. Although we are not totally unhappy with existing statute, we recognize there are some gaps between current provisions and the continued concerns by some citizen groups. We recognize the importance of attempting to close those gaps. This bill supports the work completed by the Task Force while making some modifications determined by the Senate. It includes some Task Force recommendations we struggle with, but addresses them in a give and take approach.

Law enforcement absolutely agrees policing decisions based on personal biases are not only counterproductive to our communities, but destructive of the trust necessary between the community and law enforcement to effectively provide law enforcement services. It is not our desire to debate the existence of biased policing. Reality or perception, intentional or unintentional, a person contacted by law enforcement who believes a law enforcement decision was made due to a bias generates the same obstacles to trust. SB93 addresses those issues through training, awareness, and understanding. It provides for retraining, direction, and

correction when an officer's actions are unreasonable. It allows the application of discipline as provided by the state certifying agency, the city or county personnel standards and, where applicable labor contracts.

During the past 5-and-a-half years, there have been 87 complaints of racial profiling filed with the Kansas Human Rights Commission. (Through November 2010.) Six of those complaints resulted in a probable cause finding. So we are averaging about 1 probable cause finding a year. We are only aware of one of those probable cause findings ultimately ending up in court. In that case the court dismissed the allegation against the police. None of those probable cause findings have been sustained by a court of law to this point. This leaves the officers in the other five probable cause findings with a cloud hanging over them with no way to contest the finding. They are not allowed to challenge the finding in court. Only the complainant can do that. SB93 expresses the desire of the Senate to address this by moving the investigations to the Office of the Attorney General. While we recommended the investigation be completed by the Kansas Commission on Peace Officer Standards and Training (KS-CPOST), this was not the path the Senate Committee chose. We still believe KS-CPOST provides the due process and puts the investigation in the hands of the agency with disciplinary authority and certification authority over Kansas law enforcement officers. But either the AG or KS-CPOST will assure due process for the officers as well as assure fair investigations of the complaint. It is the due process concerns that have driven the move away from the Kansas Human Rights Commission. If this committee desires to pursue the KS-CPOST path, SB82 or HB2163 contain the provisions to do that.

SB93 proposes adopting the definition starting on page 1, line 25, as recommended by the Task Force. We do not believe "socio-economic status" is appropriate for this statute. This term is very broad and we are not aware of it being voiced as a concern by the public. It is not a normally observed or identifiable characteristic leading to a law enforcement decision. And it is not easily categorized. It is a topic to be included in training curricula but it is not a clearly definable term. Therefore we propose and request the committee to strike "socio-economic status" on page 1, lines 27 and 30 of the bill.

The definition has the term "unreasonable" on page 1, line 26 as part of the definition. This word is absolutely critical to the acceptance of this definition. The term is frequently found in statute and in court rulings, not to mention the key word in the Fourth Amendment. It is a term well defined by case law. It is this word that provides the law enforcement officer to take reasonable action based on the information they have available at the moment a decision is made. It is what a reasonable person would do given the same knowledge and in the same circumstances. It does not take away from the target of this bill, which is the unreasonable action of a police officer based on biases. This is a key word to assure the balance between an officer investigating suspicious or illegal activity and assuring biases are not interjected into the law enforcement decision process. It is important to note the Task Force included this in their recommended definition and it was a provision thoroughly discussed during that decision making process.

Additionally, the recommended definition of biased policing included the term "enforcement action" which the Task Force did not define. As a result the Senate adopted our recommendation to remove the definition of "routine investigatory activities" since that term is no longer used in the statutes and replace it with a definition of "enforcement action." This is found on page 2, line 2-10 of the bill.

SB93 recognizes the vast differences in the communities across Kansas and the Senate Committee determined that many of the decisions regarding this issue should be made at the local level. They inserted provisions that allow the decision of data collection, use of a community advisory board, or the development of a comprehensive plan to the local governing bodies. The Sheriffs respectfully request this provision be amended to allow the Sheriff to make these decisions. This is because the Sheriff is an elected official and should be allowed to address these issues within their agency. Ultimately the voters will decide if they responded appropriately. As for the Chiefs, they believe the Senate's concept is on target and are satisfied with the local governing body making those decisions. This change can be made by adding "the sheriff of the" after the word "or" on page 5, line 28; by striking "by the governing body" on page 6, line 11; striking the words "or county may" on page 7, line 16; and by adding "or the sheriff of any county may" after the word "resolution" on page 7, line 17.

Law enforcement has always held a legislated mandate for annual training on a single topic is ineffective and unprecedented. The topic of biased policing is already a required topic in all recruit training. Periodic training on the topic as determined by the agencies offers the best way to address training topics. We also recommend striking the word "annual" on page 3, line 9. In order to track how agencies address this training, we recommend a change in the annual reporting provisions to require reporting of how many officers receive training related to biased policing. That change can be accomplished by striking all of subsection (E) on page 4, lines 33-35 and replacing it with "The number of full time certified officers who received training as required in subsection (c)(2)(A) of this section during the reporting period."

If the Committee decides to not strike "annual" on page 3, line 9, subsection (E) still needs a technical amendment as the sentence was not completed in the current version of the bill. In that case, we recommend adding "received the training required in subsection (c)(2)(A) of this section" at the end of the sentence on page 4, line 35.

In regards to data collection the Task Force did not recommend including collection of "pedestrian" stop data. Nor did the Senate Committee. That was added by Senate floor amendment. Collection of pedestrian stop data adds an unnecessary burden to law enforcement and will require a great many more data collection forms to be completed. More importantly, there is no guidance as to what constitutes a "pedestrian stop." Some would construe that to mean any person we stop to talk to. Clearly to add such a requirement for everyone we stop would result in fewer casual contacts made by officers and be detrimental to community policing and even to the development of trust between law enforcement and communities we so desperately need to engage with to change bad perceptions. We recommend striking "or pedestrian" on page 5, line 7-8; page 5, lines 32-33; and page 6, line 13. At the very least we ask you to make this decision a local decision of whether pedestrian stops are a part of the data collection determined by the local governing body or sheriff. As worded we believe it is an all or nothing option.

In addition, we recommend the following technical amendments to SB93:

1. State more clearly every law enforcement agency must report annually to the Office of the Attorney General even if they did not receive any biased policing complaints. This is accomplished by striking "including all complaints of racial or other biased-based policing received" on page 4 lines 15-16 and inserting "for the period of July 1 to June 30" and inserting the stricken provision after page 4, line 24 "The number of racial or

other biased policing complaints received;" and renumbering the following subsections as required.

2. Strike all of subsection (G) on page 4, line 38 through page 5, line 1. This subsection is redundant to subsection (H) on page 5, lines 2-4.
3. Strike "person" on page 5, line 24 and replace it with "officer".

If there are other areas of the bill you choose to amend, we urge you to review our recommendations on those sections as presented in SB82 or HB2163 along with our testimony to your committee on HB2163.

We respectfully request a positive consideration for SB93 with our technical corrections and with the other amendment recommendations we have included above. We also ask that you retain "unreasonable" in the definition and the Senate's local control provisions for data collection, advisory boards, and comprehensive plans as well as other topics we have discussed above.

Ed Klumpp

Kansas Association of Chiefs of Police, Legislative Committee Chair

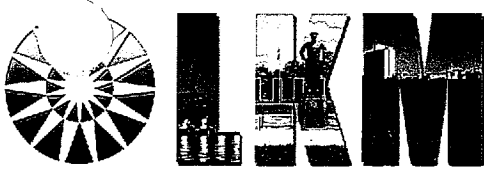
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TO: House Judiciary Committee

FROM: Sandy Jacquot, Director of Law/General Counsel

DATE: March 16, 2011

RE: Written Testimony only on SB 93

Thank you for allowing the League of Kansas Municipalities to submit written testimony in support of SB 93. While the League believes the current law has worked well, other parties interested in this issue, including the Racial Profiling Task Force, have advocated for more changes. LKM continues to encourage the Legislature to adopt an approach that strikes a balance between onerous requirements on law enforcement and, on the other side, takes a proactive approach to eliminating racial profiling, now biased policing. The Senate has chosen SB 93 to be the bill it supports that makes some of the changes advocated by law enforcement and the Task Force.

LKM believes SB 93 is a positive step in striking a good balance on this issue, but there are changes that could make this bill better and more workable. Therefore, LKM supports the testimony of the Kansas Association of Chiefs of Police, the Kansas Peace Officers Association and the Kansas Sheriffs Association and the amendments suggested by those organizations. Law enforcement is in the best position to suggest these changes, knowing the impact of the various provisions on their operations, while still keeping the spirit and intent of the bill. Therefore, LKM urges this committee to support the amendments requested by law enforcement and then recommend SB 93 favorably for passage.

House Judiciary  
Date 3-16-11  
Attachment # 5



LOU ANN THOMS, Chair  
TOPEKA  
TERRY CROWDER  
TOPEKA  
DAVID HANSON  
TOPEKA  
CLYDE HOWARD, Vice Chair  
MANHATTAN  
ANTHONY VILLEGAS, SR.  
KANSAS CITY  
JEROME WILLIAMS  
WICHITA



**K A N S A S**

**KANSAS HUMAN RIGHTS COMMISSION**

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ORIE KIRKSEY  
TOPEKA INVESTIGATIVE  
ADMINISTRATOR  
JANE L. NEAVE  
WICHITA INVESTIGATIVE  
ADMINISTRATOR  
RICK FISCHLI  
RACIAL AND OTHER PROFILING  
ADMINISTRATOR  
BETH MONTGOMERY  
OFFICE MANAGER

**TESTIMONY OF  
THE KANSAS HUMAN RIGHTS COMMISSION  
REGARDING S.B. 93**

**March 16, 2011**

Staff Attending Hearing: William V. Minner, Executive Director  
Joseph P. Mastrosimone, Chief Legal Counsel  
Ruth Glover, Assistant Director  
Rick Fischli, Racial/Other Profiling Adm

S.B. 93 proposes to amend the Kansas racial and other profiling law, Kan. Stat. Ann. § 22-4606 *et seq.* (the “Act”). The Act currently makes it unlawful for law enforcement to engage in “racial profiling.” S.B. 93 would replace “racial profiling” with the broader term “racial or other biased-based policing.” “Racial or other biased-based policing” is defined as “the unreasonable use of race, ethnicity, national origin, socio-economic status, gender, or religion by a law enforcement officer in deciding to initiate an enforcement action.” S.B. 93 defines an “enforcement action” as any law enforcement activity described in K.S.A. 22-4609 (determination of probable cause for an arrest or determination of a reasonable and articulable suspicion to justify detention of a person or the investigatory stop of a vehicle) that occurs during a nonconsensual contact with an individual or individuals. The bill also makes clear that the use of such factors in combination with other identifying factors as part of a specific individual description is not racial or other biased-based policing. S.B. 93 would also require a more robust annual reporting by the Attorney General regarding allegations of biased policing and their resolution.

The Kansas Human Rights Commission (the “Commission”) is responsible, along with local law enforcement agencies, for investigating allegations of unlawful racial profiling. Under current law, racial profiling is limited to the selection of individuals to subject to “routine investigatory activities” and deciding on “the scope and substance” of law enforcement activity

House Judiciary  
Date 3-16-11  
Attachment # 6

following the initial routine investigatory activity. Current law limits the scope of protection to situations involving "traffic stops."

S.B. 93 would both expand and contract the scope of the Act's protections.

First, S.B. 93 would remove the reference to "traffic stops" in defining what constitutes "routine investigatory activities." The removal of this limitation would apply the Act's protections to initiation of any "enforcement action" – whether or not it arises from a traffic stop. S.B. 93 would specifically outlaw the use of "racial or other biased-based policing in three circumstances: (1) determining the existence of probable cause to arrest or to take a person into custody, (2) constituting a reasonable and articulable suspicion that an offense has been or is being committed justifying the detention of a person or the stop of a vehicle, and (3) determining the existence of probable cause to conduct a search of a person or a conveyance.

Second, S.B. 93 would limit the Act's protections to only the decision to "initiate" an enforcement action and appears to remove coverage regarding decisions made regarding the "scope and substance" of the law enforcement activity subsequent to the initial "enforcement action." Accordingly, a fair reading of S.B. 93 would result in the Act applying to an officer's decision to stop a citizen on the street or a vehicle on the road but would not extend to the officer's subsequent decision to employ the use of a police dog or other investigatory methods other than a specific decision to search the individual or conveyance.

Finally, S.B. 93 would remove the Kansas Human Rights Commission's jurisdiction to receive and investigate allegations of "racial or other biased-based policing" and would instead transfer that authority to the office of the attorney general. The Kansas Human Rights Commission opposes this provision and recommends its removal.

First, we understand the S.B. 93 was amended in committee on the flawed assumption that the Kansas Human Rights Commission would be merged with the attorney general's office through either an executive reorganization order or legislation. Recent events have proven that to outcome to be highly unlikely.

Second, the transfer of authority to the attorney general raises significant conflicts of interest that would be avoided by keeping the investigation of such claims with the Commission. In addition to the conflict of interest that would arise from the attorney general's role as chief defense counsel for the state, the attorney general's role as chief law enforcement officer would also create conflict of interest concerns. In that role, the attorney general has an interest in prosecuting allegations of criminal violations – the proof of which often rely heavily on the testimony and evidence collected by the police. Those conflicting roles – investigator of police accused of unlawful profiling and prosecutor of criminal allegations investigated by the police – cannot be reconciled. The attorney general would be charged with vigorously investigating such allegations and at the same time would have an interest in bolstering the credibility of the main witnesses in many of its criminal prosecutions – the police. It is simply unfair to the office of the attorney general to place it in such a position. Moreover, the transfer of this function to the attorney general would create at least the appearance of impropriety. We understand that candidates for attorney general routinely seek the endorsement of various law enforcement

agencies and organizations. Such endorsements and contributions would call into question a citizen's belief that a full and fair investigation of his or her allegation would be conducted. Whatever agency is designated by the Legislature to investigate these allegations should be like the Kansas Human Rights Commission - unbiased, neutral, nonpartisan, and avoiding even the appearance of favoritism or conflict.

Because S.B. 93 appears to both expand and contract coverage, the Commission believes that it can continue to enforce the Act as amended by S.B. 93 without the need for additional resources. As an unbiased investigative body, the Commission takes a neutral stance on many of the changes included in S.B. 93 - the only exception being the transfer of investigatory authority to the attorney general. That largely neutral stance reflects the need for the Commission's determinations regarding racial profiling (or biased-based policing) complaints to be accepted and credible.

We will be glad to answer any questions that Committee may have.

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SENATE CHAMBER

**DAVID B. HALEY**  
SENATOR  
DISTRICT 4  
WYANDOTTE COUNTY

March 16, 2011

## TESTIMONY IN OPPOSITION TO SENATE BILL 93

**TO: CHARIMAN KINZER; VICE-CHAIR PATTON; RANKING MEMBER PAULS AND MEMBERS OF THE HOUSE JUDICIARY COMMITTEE:**

Thank you for hearing SB 93; on racial or other biased-based policing.

We, your colleagues, stand united in our opposition to SB 93 as currently presented.

Unless substantially amended, this bill will do little to abate the lawlessness sadly practiced by prejudicial law-enforcement in the harassment of motorists and pedestrians for no real probable cause.

This inequality is injustice on its' face.

We ask you to ask yourselves; is it right for an officer to pull over a vehicle or to detain and question someone standing or walking on a public street for no other reason but for race or ethnicity or gender or religious dress?

Ask yourself; how would you feel to be treated to some unnecessary overview by any authoritarian figure who has judged you only by your appearance as the basis for interrupting your day?

Further, issues making this bill deceptive and dangerous include, but are not limited to:

- ambiguous definitions;
- no responsible reviewing authority for complaints;
- no criminal legal ramifications against the officer and/or the offending department; as well as, abolition of the Governor's Task Force on Racial Profiling.

In short, SB 93, in its' current form, will do more harm than good.

We respectfully urge the Committee to responsibly amend SB 93 and to pass it, as amended, favorably.

Thank you again for your consideration. We are happy to stand for any questions you might have.

Senator Oletha Faust-Goudeau

Representative Barbara Ballard

Representative Gail Finney

Representative Broderick Henderson

Representative Melody McCray-Miller

Representative Louis Ruiz

Representative Ponka-We Victors

Representative Valdenia Winn

Senator David Haley, Chairman  
Kansas Black Legislative Caucus

Representative Gail Finney  
Proposed amendment  
March 11, 2011

*[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

profiling

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.~~  
4 ~~22-4604 and 22-4608;~~  
5

22-4608,

K.S.A. 2010 Supp. 22-4607

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:  
8 22-4606. As used in this act:

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

profiling

practice of a law enforcement officer or agency selecting or  
subjecting an individual to routine investigatory activities, or in  
deciding upon the scope and substance of law enforcement activity,  
in whole or in part, based upon the individual's age,

profiling

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. 22-4608 is hereby amended to read as follows: 22-4608. It shall be unlawful for any law enforcement officer or any law enforcement agency to engage in racial profiling, biased policing.

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 biased racial, or other biased-based policing. Each agency's policy shall include the definition of racial profiling biased racial, 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

does not include contact by a law enforcement officer of a person when the contact is only for the purpose of asking the person if such person has information regarding the investigation of a complaint, crime or suspicious activity, checking a person's welfare or as part of community outreach or community policing.

when a person is issued a citation as the result of a pedestrian or

(g) "Routine investigatory activities" includes, but is not limited to, the following activities conducted by law enforcement officers and agencies in conjunction with traffic or pedestrian stops: (1) Frisks and other types of body searches; and (2) consensual or nonconsensual searches of persons or possessions, including vehicles and domiciles.

(a) Racial profiling or other biased-based policing of an individual or group shall not be a factor used in determining the existence of probable cause to take into custody or to arrest an individual or in 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 pedestrian.

(b) No law enforcement officer shall use violations of the traffic laws as a pretext for racial profiling or other biased policing.

insert subsection (a) on next page; reletter remaining subsections accordingly.

and posted on such agency's official website

profiling

~~prohibits biased racial or other biased-based policing and that clearly defines acts constituting biased 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 and or other biased biased-based policing training which shall include but not be limited to training relevant to racial and or other biased biased-based policing. Distance learning training technology shall be allowed for racial and or other biased biased-based policing training.~~

~~(B) Law enforcement agencies shall 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 with 10 or more full-time officers shall, establishment establish 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 biased racial 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 biased racial or other biased-based policing.~~

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

(a) (1) The Kansas legislature finds, determines and declares that:

(A) Racial profiling or other biased-based policing is a practice that presents a great danger to the fundamental principles of our constitutional republic and is abhorrent and cannot be tolerated;

(B) motorists and pedestrians who have been stopped by law enforcement officers for no reason other than the color of their skin or their apparent race, ethnicity, age, socio-economic status, religion, national origin or gender are the victims of discriminatory practices; and

(C) Kansas law enforcement officers risk their lives every day. The people of Kansas greatly appreciate the hard work and dedication of law enforcement officers in protecting public safety. The good name of these law enforcement officers should not be tarnished by the actions of those officers who commit discriminatory practices.

(2) It is the intent of the Kansas legislature in adopting this section to provide a means of identification of law enforcement officers who are engaging in profiling, to underscore the accountability of those law enforcement officers for their actions, and to provide training to those officers on how to stop racial profiling or other biased-based policing.

A prohibition of racial profiling or other biased-based policing.

(2) Annual educational training which shall include, but not be limited to, an understanding of the historical and cultural systems that perpetuate racial profiling or other biased-based policing, assistance in identifying racial profiling or other biased-based policing practices, and providing officers with self-evaluation strategies to preempt racial profiling or other biased-based policing prior to stopping a person. The racial profiling or other biased-based policing training curriculum for each law enforcement agency shall be reviewed by the agency's community advisory board and certified by the Kansas commission on peace officer standards and training annually on or before September 1, beginning in 2011.

with more than 10 full-time certified law enforcement officers, establishment or use of current independent

the agency's complaint process, the racial profiling or other biased-based policing prevention training curriculum and procedures, community

profiling

disciplinary



and

1 resolutions, ordinances or policies, including demerits, suspension or  
2 removal of the officer from the agency.

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

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

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

24 (2) The annual report shall include:

25 (A) The date each ~~racial, and biased or other biased-based~~  
26 ~~policing complaint is filed;~~

27 (B) ~~action taken in response to each racial, and biased or other~~  
28 ~~biased-based policing complaint;~~

29 (C) ~~the disposition of each racial and biased or other biased-~~  
30 ~~based policing complaint;~~

31 (D) ~~the date each racial, and biased or other biased-based policing~~  
32 ~~complaint is closed;~~

33 (E) ~~whether or not all agency law enforcement officers not~~  
34 ~~exempted by Kansas commission on peace officer standards and~~  
35 ~~training;~~

36 (F) ~~whether the agency has a policy prohibiting racial, profiling~~  
37 ~~and biased or other biased-based policing;~~

38 (G) ~~whether the agency policy mandates specific discipline for~~  
39 ~~sustained complaints of racial and or other biased biased-based~~

, regardless of whether the agency received any racial  
profiling or other biased-based policing complaints,

decision and

received the statutorily required annual racial profiling or other biased-  
based policing training for the previous year

written

law enforcement officers who engage in racial profiling

profiling

1 policing;

2 (H) whether the agency policy details the discipline to be  
3 administered for ~~sustained complaints of racial and or other biased~~  
4 ~~biased-based policing;~~

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

6 (J) whether the agency has ~~a racial and biased or other biased-~~  
7 ~~based policing comprehensive plan or if it collects traffic for~~  
8 ~~pedestrian] stop data;~~

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

10 4611. (a) Any person who believes such person has been subjected to  
11 racial profiling biased ~~racial or other biased-based policing~~ by a law  
12 enforcement officer or agency may file a complaint with the law  
13 enforcement agency. The complainant may also file a complaint with  
14 the Kansas human rights commission ~~the office of the attorney~~  
15 ~~general. The commission attorney general shall review and, if~~  
16 ~~necessary, investigate the complaint. The commission's designee~~  
17 ~~attorney general shall consult with the head of the law enforcement~~  
18 ~~agency before making final recommendations regarding discipline of~~  
19 ~~any law enforcement officer or other disposition of the complaint.~~

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

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

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

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

39 (2) ~~policies to promote the recruitment and hiring of a diverse~~

profiling

policy includes provisions outlining the individual's right to file complaints with the agency or with the attorney general, or both, and the specific procedures for individuals to file complaints with the agency

profiling

the law enforcement agency. The complainant may also file a complaint with the Kansas attorney general.

(b) The attorney general shall be responsible for timely notification of the law enforcement officer or officers and their respective law enforcement agency that an investigation has been initiated. The identity of the complainant shall remain confidential.

(c) The attorney general shall investigate each complaint. If the evidence shows that racial profiling or other biased-based policing was why the complainant was stopped or was subjected to discriminatory law enforcement activities, the attorney general shall make recommendations of disciplinary action to the officer or officers law enforcement agency or initiate criminal prosecution of the accused officer or officers, or make recommendations and initiate prosecution.

(d) The attorney general shall inform the complainant, officer or officers, as the case may be, and the law enforcement agency of the outcome or disposition of the complaint in writing to the head of the law enforcement agency. Such writing shall include a summary of the rationale for the finding. The summary, outcome and disposition shall be subject to the Kansas open records act.

(e) This complaint process shall not prevent a motorist or pedestrian who feels that their rights have been violated from filing a civil law suit against the law enforcement officer or officers or the law enforcement agency, or both, responsible for their employment and supervision. The complainant shall be entitled to recover damages if it is determined by the district court that such persons or agency engaged in racial profiling or other biased-based policing.

(f)

1 ~~workforce to ensure the workforce is comprised of people who can~~  
2 ~~police in a race-neutral and nonbiased fashion;~~

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

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

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

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

10 ~~(7) other matters deemed appropriate.~~

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

14 ~~(1) Originating agency identifier number;~~

15 ~~(2) time and date of the stop;~~

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

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

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

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

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

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

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

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

36 ~~(11) [if a vehicle stop, the] number of occupants in the stopped~~  
37 ~~vehicle, including the driver;~~

38 ~~(12) type of action taken, including citation, warning, search,~~  
39 ~~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.~~

New Sec. 6. ~~The governing body of any city or county may, by ordinance or resolution, 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. 6- 7. ~~K.S.A. 22-4604, 22-4606, 22-4608, 22-4609, 22-4610 and 22-4611~~ are hereby repealed.

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

Insert attached sections. Renumber remaining sections accordingly.

with more than 10 full-time certified law enforcement officers shall

and K.S.A. 2010 Supp. 22-4607

Sheila Officer  
Training Committee Chair  
Citizens Advisory Board  
6400 Scottsville  
Park City, KS 67219  
316-744-3467 (H)  
316-587-7643 (C)

Members of the committee, thank you for allowing me to submit testimony for this hearing.

Since 2000 our committee has been asking our legislatures to hold accountable our law enforcement communities for the deliberate color criminalization they practice in using race as an indicator and predictor of criminality.

In 2005 then SB77 became law. Now the bill exist as Kansas Law K.S.A. 22-4606 to 22-4611. Thanks in part to then Senator Donald Betts, Oletha Faust Goudeau and the late Representative Ruby Gilbert.

Now, fast forward, March 2011. We now have SB 93 presented by GTF; a proposed legislation **that without the amendments** holds no accountability, enforceability, manageability or responsibility for our law enforcement communities. However, with the suggested amendments proposed by CAB, the proposed legislation holds for the community;

- 1) An opportunity to restore trust and confidence of our LEO among all segments of our society;
- 2) An opportunity to bring Kansas in line with states around the country who have taken bold and necessary steps to address the persistent problem of racial and ethnic profiling.
- 3) A glimmer of hope that will help ensure that fairness, not fear, principle not power is still the currency of our system.

Racial profiling has caused many people of color to fear those same individuals who are duty bound to protect them; thus creating a doubt about the fairness and the ability of the criminal justice system to function fairly.

Now we do not want you to be confused about Racial Profiling and Criminal Profiling. We want the officers to combat crime and insist that they properly and equitably protect and serve. But there is a big difference between RP and CP. For years, Criminal Profiling has been utilized as a tool in the crime fighting efforts of law enforcement. Criminal profiling is legitimate profiling that focus on conduct and the method of operation of criminals rather than personal characteristic such as racial or ethnic heritage.

Racial Profiling is impermissible and illegal police conduct that builds race or ethnicity into the equation of suspiciousness. It is not good police work. It is sloppy police work that squanders police resources at taxpayers' expense. It is an ineffective tool as proven by Department of Justice.

If we are to address, assess and eliminate racial profiling a series of comprehensive efforts such as;

- a) Data collection and data analysis must be implemented;

March 16,  
2011

SHEILA OFFICER'S TESTIMONY IN SUPPORT OF SB93 BALLOON AMENDMENT

- b) Passing legislation at state and local level must be conducted;
- c) Proper training of our law enforcement in racial profiling must continue to be mandated;
- d) Increase cultural competency and language communication capabilities of LEO.
- e) Implement policies that set perimeters on Leo conduct and behavior while serving our communities.

The revisions offered by CAB to SB93 suggest and outline these integral pieces into this legislation.

SB93 **must contain** accountability, enforceability, and responsibility that could **assist** in restoring the communities' trust and confidence in our LEO and our Criminal Justice System and improve police and community relationships.

Equal treatment and equal protection under the law are our **constitutional guarantees**; and any reasoning and or actions behind limiting or eliminating our constitutional rights **must** be addressed, challenged and corrected.

We therefore urge you to pass SB93 Balloon Amendment.

Respectfully,

Sheila Officer  
CAB Training Committee Chair  
316-587-7643

## STATES WITH STRONG RACIAL PROFILING STATUTES W/DATA COLLECTION

STATE	STATUTE	DATE IMPLEMENTED/INTRODUCER	DATA COLLECTION	ACCOUNTABILITY PIECE
✓ OKLAHOMA	Title 22 CP Chapter 22-05 Section.34.3	2000 – Horner	Yes – 2002	Class A Misdemeanor
✓ MISSOURI	Section 590.650	2000 -	Yes	Removal of State funds –Individual Retraining – Counseling for LEO
TEXAS	Texas Statute Article 3.05	2001 – West	Yes	Disciplinary – Training – Counsel
✓ NEBRASKA	Chapter 20:501-506	2001 – Geise	Yes – 2002	Disciplinary
✓ NEW JERSEY	NJS 2C:30-2 7030-6	2001 – Payne	Yes – 2002	Felony w/Fine and/or Imprisonment
COLORADO	Article 4 Title 42-4-115 Section 1	2001 – Groff	Yes -	Disciplinary – Retraining – Counseling for LEO
KANSAS	KSA 22-4606-4611	2005 – Betts	No	None



**Lalo Muñoz**  
**Chair, Kansas Democratic Hispanic Caucus**

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March 16, 2011

House Judiciary Committee  
Chairman Lance Kinzer  
Capitol, 346-South  
10th and Jackson  
Topeka, Kansas 66612

RE: SB93

Dear Chairman Kinzer and Committee Members:

The Kansas Democratic Hispanic Caucus stands opposed to Senate Bill 93, an act concerning racial or other biased-based policing. Our organization had high hopes that legislation such as this, could be worked in a manner that would benefit and address the glaring problem of racial profiling that affects so many in our community.

Unfortunately, the inclusion of that phrase, "as the sole factor" makes the statute virtually unenforceable, because all any Officer has to do in order to contest a charge of profiling is to proffer *any* additional reason, thought, or consideration.

In fact, the only way, under existing statute, that you could clearly define a case of Racial Profiling would be if an Officer stopped you and when asked the reason for the stop, he or she would have to reply '*I stopped you because you're \_\_\_\_\_*'. Because the utterance of any other reasons or statements would technically clear them of the charge.

We strongly encourage the Committee to address the deficiency within this legislation so that communities across the state can have the necessary protections from the injustices that occur as a result of racial profiling.

Respectfully,

Lalo Muñoz  
Chair,  
Kansas Democratic Hispanic Caucus

House Judiciary  
Date 3-16-11  
Attachment # 9