

SESSION OF 2009

**SUPPLEMENTAL NOTE ON SENATE BILL NO. 179**

As Amended by Senate Committee on  
Federal and State Affairs

**Brief\***

SB 179, as amended, would amend the definition of “racial profiling” to mean the practice of selecting or subjecting an individual to routine investigatory activities or deciding on the scope and substance of law enforcement activity based upon the individual’s race, ethnicity or gender except when the law enforcement officer:

- Does have reason to believe the person has committed a violation of traffic laws or ordinances;
- Has a reason to believe that a person has committed a violation of traffic laws;
- Has a reason to believe a person has committed, or is about to commit a crime;
- Does have probable cause to arrest the individual; or
- Is seeking to apprehend a suspect whose race, ethnicity or gender is part of the description of the suspect.

Under the bill, racial profiling could not be a factor used as a basis for probable cause or reasonable suspicion that an offense has been committed. Current law prohibits the race, ethnicity, national origin, gender or religious dress as the “sole factor” used as a basis for probable cause or reasonable suspicion that an offense has been committed. The bill also would prohibit law enforcement officers from using violations of traffic laws as a pretext for racial profiling.

“Racial profiling” would not include contact by a law enforcement officer for the purpose of seeking information from

---

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

a person, checking the person's welfare or performing community outreach.

### **Governor's Task Force on Racial Profiling**

The bill would include in the current membership of the 15 appointed members of the Governor's Task Force on Racial Profiling, a representative of the Kansas State Lodge of the Fraternal Order of Police.

The bill would extend the Task Force's purpose to include working in partnership with law enforcement and the public to design, develop, implement, and disseminate to the public data regarding traffic stops of motorists and passengers.

Under the bill, the Governor's Task Force would expire on July 1, 2011.

### **Law Enforcement Agencies**

The bill would require all law enforcement agencies with more than 10 full-time law enforcement officers to have a detailed written policy to preempt racial profiling and add participants who represent the racial and ethnic community to current citizen advisory boards. Current law requires these written policies for law enforcement agencies of cities of the first class.

The bill would require each law enforcement agency to compile and submit an annual report before August 1 to the Attorney General's Office regardless of whether the agency received any racial profiling complaints.

Under the bill, the annual report would have to include, in addition to current law, whether:

- All officers of an agency received the statutory required annual racial profiling training;

- The agency has written policy prohibiting racial profiling;
- The agency mandates discipline of officers who engaged in racial profiling;
- The policy details the discipline to be administered for racial profiling;
- The policy includes provisions outlining the individual's right to file a complaint with the agency or with the Kansas Human Rights Commission, or both, and specific procedures for individuals to file complaints with the agency; and
- The agency has a citizen advisory board.

### **Kansas Human Rights Commission**

The bill would require the Kansas Human Rights Commission (KHRC), which has received a complaint, to inform the law enforcement officer or officers and their respective law enforcement agency that an investigation has been initiated. The Commission would have to provide:

- A copy of the signed complaint;
- A copy of all documentation and evidence supporting a claim of racial profiling; and
- The factors considered by the Commission specific to the incident which supports the necessity to investigate the claim of racial profiling.

Under the bill, the Commission would have to forward all findings of probable cause and supporting investigative reports to the Kansas Commission on Peace Officer Standards and Training (KCPOST). The Kansas Human Rights Commission would have to inform the complainant, the officer, and the law enforcement agency of the outcome of the disposition of the complaint in writing to the head of the law enforcement agency.

The bill would require the KCPOST to review the finding of KHRC and make a determination regarding the certification of the officer engaged in racial profiling.

## **Civil Law Suits**

Under the bill, the complaint process would not prevent an individual who feels such individual's right has been violated, to file a civil law suit against the law enforcement officer or agency. Upon the disposition of a complaint, the respondent may appeal the findings of KHRC to the district court and would have a civil cause of action against the complainant. Such respondent would be entitled to recover damages if it was determined by the courts that a complainant knowingly made a false complaint.

## **Background**

Proponents of the original bill included representatives of: the Governor's Task Force on Racial Profiling; Kansas African American Affairs Commission; Women in Action, Inc.; and Starbusters Crime Prevention.

Opponents to the original bill included representatives of: the Kansas Sheriffs Association; Kansas Association of the Chiefs of Police; Kansas Peace Officers' Association; Kansas State Lodge of the Fraternal Order of Police; League of Kansas Municipalities; Wichita Police Department Racial Profiling Citizen Advisory Board; Citizen Advisory Board for Racial Profiling; City of Wichita; and the Kansas State Trooper's Association.

Neutral testimony on the original bill was provided by a representative of the Kansas Highway Patrol and informative information on the bill was given by the Kansas Human Rights Commission.

The Senate Committee amended the bill by adopting the suggested amendments of the Governor's Task Force on Racial Profiling.

According to the fiscal note on the original bill, various provisions of the bill would affect several state agencies, as well as local law enforcement agencies.

According to the Human Rights Commission, enactment of SB 179 would have little fiscal effect on the agency. The agency has had five probable cause findings since the enactment of the original profiling law on July 1, 2005. For KHRC to forward all probable cause findings to the Commission on Peace Officer Standards and Training, a negligible amount of copying and postage would be required that could be absorbed within the agency's budget. Requiring the KHRC to notify parties involved, including the officer, would have a negligible effect as well. KHRC already notifies the law enforcement agency involved, as well as the complainant.

Similarly, the Commission on Peace Officer Standards and Training would not experience sizeable costs as a result of this bill's enactment. Assuming the small number of cases the agency would receive from the Human Rights Commission with probable cause remains low, the number of investigations and actions taken against officers should be negligible.

As a law enforcement agency, the Kansas Highway Patrol must comply with the bill's provisions on reporting. In 2007, out of 455,759 public contacts, ten complaints were filed. Similarly, in 2008, nine complaints were filed out of 473,761 contacts. The agency already complies with the bill's training requirements for its law enforcement officers, both for its Trooper Trainees, and as part of the in-service officer training. KHP also has an existing citizen advisory board and submits an annual report.

The most noticeable effect on KHP will come from the traffic citation data collection. KHP was designated as the lead agency on the Traffic Records Coordinating Committee to develop the new application, KLER (Kansas Law Enforcement Reporting system). KLER will provide KHP and all Kansas law enforcement agencies with the ability to efficiently complete all state-mandated forms and electronically send the data to the

Department of Revenue, Kansas Bureau of Investigation and the Department of Transportation, as well as federal databases. KHP will also develop the e-citation within this project to develop a statewide repository to gather and share data. As this system is developed, it could be modified to take the requirements of SB 179 into account, minimizing the costs of developing a new system.

KHP estimates, based on recent numbers for citations and warnings, that the cost for Troopers' time to collect and report profiling data, using a manual process, would be \$306,400 annually, or roughly the cost of 4.50 Trooper positions. This assumes one person per stop; if more people are involved in the stop, these costs would increase proportionally. The cost is attributable to time spent by Troopers on completing the necessary forms and leaving them unavailable for other duties. KHP notes that SB 179 does not place responsibility for the statewide collection, retention, and reporting of the racial profiling statistics with KHP. However, if the direction of the Traffic Records Coordinating Committee and the KHP would encompass racial profiling statistics, it is anticipated that 1.00 to 1.50 FTE positions would be required and additional operating expenditures would be needed to collect and store the data on behalf of all law enforcement agencies. These additional costs are estimated at \$327,029 for 1.00 FTE position, or an additional \$363,219 if there are 1.50 FTE positions added. This estimate assumes that KHP would take on these duties related to profiling data and that the agency would not enter or scan information from others who report on paper. According to the Patrol, there are 1.3 to 1.5 citations issued annually in the state, with stops estimated at five to seven million.

According to staff of the Kansas Criminal Justice Information System, the state is currently developing the system for statewide e-citation processing. There would be additional costs if additional information must be collected; however, it is not possible to estimate these costs until it is known what will be required to be collected.

The Governor's Task Force on Racial Profiling would likely experience additional operating costs for meetings and travel as the new citation requirements are developed. Any additional costs would be absorbed within the resources assigned to the Task Force. The Attorney General's Office indicates the bill would have no fiscal effect on agency operations.

For local law enforcement agencies, the League of Kansas Municipalities reported that the methodology for gathering the required information has not yet been formalized. The method to be adopted could result in additional law enforcement officer time to gather and process the information. More cities would be required to establish citizen advisory boards, as the bill expands which cities must have such boards. To satisfy the reporting requirements in the bill, all police departments would have to report annually to the Attorney General, also requiring additional staff time. The League believes all cities now use the standardized citation, but this is not known with certainty. If all cities do use the standardized form, as it is changed, they will be updated to the changes. If there are cities that do not use the standard form, additional costs may be incurred to bring them up to date. The Kansas Association of Counties was contacted to provide information on the fiscal effect of this bill on counties, but no information was provided at the time this fiscal note was prepared. Any fiscal effect resulting from enactment of SB 179 is not accounted for in *The FY 2010 Governor's Budget Report*.