

SENATE BILL No. 359

By Committee on Judiciary

2-1

1 AN ACT concerning racial profiling; relating to data collection by law
2 enforcement; amending K.S.A. 2017 Supp. 22-4606, 22-4610, 22-4611
3 and 22-4611a and repealing the existing sections.
4

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

6 Section 1. K.S.A. 2017 Supp. 22-4606 is hereby amended to read as
7 follows: 22-4606. As used in this act:

8 (a) "Governmental unit" means the state, or any county, city or other
9 political subdivision thereof, or any department, division, board or other
10 agency of any of the foregoing, except governmental unit shall not include
11 the board of education of any school district employing school security
12 officers.

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

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

20 ~~(d) "Racial or other biased-based policing" means the unreasonable~~
21 ~~use of race, ethnicity, national origin, gender or religion by a law~~
22 ~~enforcement officer in deciding to initiate an enforcement action. It is not~~
23 ~~racial or other biased-based policing when race, ethnicity, national origin,~~
24 ~~gender or religion is used in combination with other identifying factors as~~
25 ~~part of a specific individual description to initiate an enforcement action~~

26 *"Profiling on the basis of ethnicity" means the practice of unlawfully*
27 *utilizing information regarding members of a cultural group with a shared*
28 *identity, ancestry or linguistic characteristics common to the members or*
29 *their affiliates. Ethnic groups may also have a common religious*
30 *association or history.*

31 (e) *"Racial profiling or other biased policing":*

32 (1) *Means the practice of a law enforcement officer or agency*
33 *selecting or subjecting an individual to routine investigatory activities, or*
34 *in deciding upon the scope and substance of law enforcement activity, in*
35 *whole or in part, based upon an individual's race, ethnicity, national*
36 *origin, socioeconomic status, religion, age or gender; and*

1 (2) *does not include a contact by a law enforcement officer of a*
 2 *person when the contact is only for the purpose of asking the person if*
 3 *they have information regarding the investigation of a complaint, crime or*
 4 *suspicious activity, checking a person's welfare or as part of community*
 5 *outreach or community policing.*

6 (f) *"Routine investigatory activities" means activities conducted by*
 7 *law enforcement officers and agencies in conjunction with traffic or*
 8 *pedestrian stops, including, but not limited to:*

9 (1) *Frisks and other body searches; and*

10 (2) *consensual or nonconsensual searches of persons or possessions,*
 11 *including, but not limited to, vehicles and domiciles.*

12 (⊖) (g) *"Enforcement action" means any law enforcement act, as*
 13 *described in K.S.A. 22-4609, and amendments thereto, during a*
 14 *nonconsensual contact with an individual or individuals.*

15 (⊕) (h) *"Collection of data" means that information collected by*
 16 *Kansas law enforcement officers*~~*after each traffic stop when a person is*~~
 17 *issued a citation as the result of a pedestrian or traffic stop.*

18 Sec. 2. K.S.A. 2017 Supp. 22-4610 is hereby amended to read as
 19 follows: 22-4610. (a) All law enforcement agencies in this state shall adopt
 20 a detailed, written policy to preempt racial-~~or other biased-based~~ *profiling*
 21 *or other biased* policing. Each agency's policy shall include the definition
 22 of racial-~~or other biased-based~~ *profiling or other biased* policing found in
 23 K.S.A. 22-4606, and amendments thereto.

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

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

30 (1) A detailed written policy that prohibits racial-~~or other biased-~~
 31 ~~based~~ *profiling or other biased* policing and that clearly defines acts
 32 constituting racial-~~or other biased-based~~ *profiling or other biased* policing
 33 using language that has been recommended by the attorney general.

34 (2) (A) The agency policies shall require annual racial-~~or other-~~
 35 ~~biased-based~~ *profiling or other biased* policing training which shall
 36 include, but not be limited to, training relevant to racial-~~or other biased-~~
 37 ~~based~~ *profiling or other biased* policing. Distance learning training
 38 technology shall be allowed for racial-~~or other biased-based~~ *profiling or*
 39 *other biased* policing training.

40 (B) Law enforcement agencies may appoint an advisory body of not
 41 less than five persons composed of representatives of law enforcement,
 42 community leaders and educational leaders to recommend and review
 43 appropriate training curricula.

1 (3) (A) For law enforcement agencies of cities or counties that have
2 exercised the option to establish community advisory boards pursuant to
3 K.S.A. 2017 Supp. 22-4611b, and amendments thereto, use of such
4 community advisory boards which include participants who reflect the
5 racial and ethnic community, to advise and assist in policy development,
6 education and community outreach and communications related to racial
7 ~~or other biased-based~~ *profiling or other biased* policing by law
8 enforcement officers and agencies.

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

11 (4) Policies for discipline of law enforcement officers who engage in
12 racial ~~or other biased-based~~ *profiling or other biased* policing.

13 (5) A provision that, if the investigation of a complaint of racial ~~or~~
14 ~~other biased-based~~ *profiling or other biased* policing reveals the officer
15 was in direct violation of the law enforcement agency's written policies
16 regarding racial ~~or other biased-based~~ *profiling or other biased* policing,
17 the employing law enforcement agency shall take appropriate action
18 consistent with applicable laws, rules and regulations, resolutions,
19 ordinances or policies, including demerits, suspension or removal of the
20 officer from the agency.

21 (6) Provisions for community outreach and communications efforts to
22 inform the public of the individual's right to file with the law enforcement
23 agency or the office of the attorney general complaints regarding racial ~~or~~
24 ~~other biased-based~~ *profiling or other biased* policing, which outreach and
25 communications to the community shall include ongoing efforts to notify
26 the public of the law enforcement agency's complaint process.

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

31 (d) (1) Each law enforcement agency shall compile an annual report
32 for the period of July 1 to June 30 and shall submit the report on or before
33 July 31 to the office of the attorney general for review. Annual reports filed
34 pursuant to this subsection shall be open public records and shall be posted
35 on the official website of the attorney general.

36 (2) The annual report shall include:

37 (A) The number of racial ~~or other biased-based~~ *profiling or other*
38 *biased* policing complaints received;

39 (B) the date each racial ~~or other biased-based~~ *profiling or other*
40 *biased* policing complaint is filed;

41 (C) action taken in response to each racial ~~or other biased-based~~
42 *profiling or other biased* policing complaint;

43 (D) the disposition of each racial ~~or other biased-based~~ *profiling or*

1 *other biased* policing complaint;

2 (E) the date each racial ~~or other biased-based~~ *profiling or other*
3 *biased* policing complaint is closed;

4 (F) whether or not all agency law enforcement officers not exempted
5 by Kansas commission on peace officers' standards and training received
6 the training required in subsection (c)(2)(A);

7 (G) whether the agency has a policy prohibiting racial ~~or other~~
8 ~~biased-based~~ *profiling or other biased* policing;

9 (H) whether the agency policy mandates specific discipline for
10 sustained complaints of racial ~~or other biased-based~~ *profiling or other*
11 *biased* policing; and

12 (I) whether the agency has a community advisory board, *and if such*
13 *board exists, the report shall include the chairperson's name, mailing*
14 *address, phone number and email address;* and

15 ~~(J) whether the agency has a racial or other biased-based policing~~
16 ~~comprehensive plan or if it collects traffic or pedestrian stop data.~~

17 Sec. 3. K.S.A. 2017 Supp. 22-4611 is hereby amended to read as
18 follows: 22-4611. (a) Any person who believes such person has been
19 subjected to racial ~~or other biased-based~~ *profiling or other biased* policing
20 by a law enforcement officer or agency may file a complaint with the law
21 enforcement agency. The complainant may also file a complaint with the
22 office of the attorney general. The office of the attorney general shall
23 review and, if necessary, investigate the complaint and may find there is
24 insufficient evidence of racial ~~or other biased-based~~ *profiling or other*
25 *biased* policing or may forward the complaint for further review and
26 possible action to the Kansas commission on peace officers' standards and
27 training. The commission shall review and, if necessary, further investigate
28 the complaint. The commission may take action on the officer's
29 certification or other corrective action as allowed by its governing statutes
30 and rules and regulations. The commission shall consult with the head of
31 the law enforcement agency before taking final action regarding discipline
32 of any law enforcement officer or other disposition of the complaint.

33 (b) Within 10 days of receiving a complaint, the office of the attorney
34 general shall provide notification that such complaint has been filed to the
35 accused officer and to the head of the accused officer's law enforcement
36 agency, including a copy of all complaint documentation submitted by the
37 complainant.

38 ~~(c) Upon disposition of a complaint as provided for in subsection (a)~~
39 ~~the complainant shall have a civil cause of action in the district court~~
40 ~~against the law enforcement officer or law enforcement agency, or both,~~
41 ~~and shall be entitled to recover damages if it is determined by the court~~
42 ~~that such officer or agency engaged in racial or other biased-based~~
43 ~~policing. This complaint process shall not prohibit a person who believes~~

1 *such person's rights have been violated to file a civil lawsuit in the district*
 2 *court against the law enforcement officer or law enforcement agency, or*
 3 *both, and recover damages if the court determines that such officer or*
 4 *agency engaged in racial profiling or other biased policing. The court may*
 5 *allow the prevailing party reasonable attorney fees and court costs.*

6 Sec. 4. K.S.A. 2017 Supp. 22-4611a is hereby amended to read as
 7 follows: 22-4611a. (a) The governing body of a city or the sheriff of the
 8 county ~~may~~ *shall* develop a comprehensive plan in conjunction with a
 9 community advisory board, if one exists, or with community leaders to
 10 prevent racial ~~or other biased-based~~ *profiling or other biased* policing ~~or~~
 11 ~~may require the law enforcement agency of such city or county to collect~~
 12 ~~traffic or pedestrian stop data and make such data available to the public.~~

13 (b) Any comprehensive plan adopted pursuant to this section shall
 14 include the following:

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

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

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

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

24 (5) implement a style of policing that promotes positive interactions
 25 between police officers and all communities; *and*

26 (6) ~~whether or not the governing body or sheriff has included data~~
 27 ~~collection as part of the comprehensive plan; and~~

28 (7) other matters deemed appropriate.

29 (c) ~~Data collection, if required, may consist of, but shall not be~~
 30 ~~limited to, one or more of the following for every vehicle or pedestrian~~
 31 ~~stop:~~

32 (1) ~~Originating agency and officer identifier number;~~

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

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

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

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

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

1 ~~(7) if a vehicle stop, the county code of vehicle registration, if~~
2 ~~registered in Kansas, and state code, if registered outside Kansas;~~

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

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

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

10 ~~(11) if a vehicle stop, the number of occupants in the stopped vehicle,~~
11 ~~including the driver;~~

12 ~~(12) type of action taken, including citation, warning, search, arrest,~~
13 ~~assistance provided or no action. If the action taken is an arrest, the data~~
14 ~~collection shall also include the type of arrest, including warrant, resisting~~
15 ~~arrest, property crime, persons crime, drug crime, traffic crime, DUI or~~
16 ~~other type of arrest;~~

17 ~~(13) if a search was conducted, the rationale for the search, including~~
18 ~~vehicle indicators, verbal indicators, physical or visual indicators,~~
19 ~~document indicators (DOT), incident to arrest or other rationale;~~

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

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

26 ~~(d) Nothing in this section shall require a governmental entity to~~
27 ~~collect data concerning pedestrian stops.~~

28 New Sec. 5. (a) On and after July 1, 2018, data collected on each
29 citation issued by a Kansas law enforcement officer shall be sent to the
30 Kansas bureau of investigation on a form and in a format approved by the
31 attorney general.

32 (b) The data collected on each citation shall include:

33 (1) The officer identification number;

34 (2) the law enforcement agency code;

35 (3) the time and date of stop;

36 (4) the name of person stopped;

37 (5) whether the person was a motorist or pedestrian;

38 (6) the gender of the person stopped;

39 (7) the age of the person stopped;

40 (8) the race of the person stopped: (A) African American; (B)
41 Hispanic; (C) American Indian; (D) Caucasian; (E) Asian; (F) person of
42 Middle-Eastern descent; or (G) other, as stated by the person stopped or by
43 officer observation;

- 1 (9) the reason for the stop: (A) Violation of the criminal code; (B)
2 violation of a county resolution or city ordinance; (C) calls for service; (D)
3 suspect or vehicle description or pre-existing knowledge or information,
4 such as a warrant; (E) citizens assist or welfare; (F) traffic violation, such
5 as a moving violation, equipment failure or license plate violation; or (G)
6 other. If a moving violation, the officer shall indicate the specific violation;
- 7 (10) the result of the stop: (A) Citation; (B) warning; (C) arrest; or
8 (D) other;
- 9 (11) if the person was arrested, what crime or violation was alleged;
- 10 (12) if applicable, the nature of the search conducted on the
11 pedestrian, driver or passenger, or of the vehicle or property;
- 12 (13) if applicable, the search authority: (A) By consent; (B) tow
13 inventory; (C) odor of drugs or alcohol; (D) plain view contraband; (E)
14 incidental to arrest; (F) dog alert; (G) search warrant; or (H) other;
- 15 (14) if applicable, the type of contraband discovered: (A) Illegal
16 drugs; (B) drug paraphernalia; (C) weapons; (D) alcohol; (E) currency or
17 stolen property; or (F) other;
- 18 (15) the stop location in agency boundaries, using the specific address
19 of each stop, including street address or highway mile marker, city and
20 county;
- 21 (16) the duration of the stop: (A) Under 5 minutes; (B) 5-9 minutes;
22 (C) 10-19 minutes; (D) 20-29 minutes; (E) 30-39 minutes; (F) 40-49
23 minutes; (G) 50-59 minutes; or (H) greater than 60 minutes;
- 24 (17) the vehicle license plate number; and
- 25 (18) the signature of law enforcement officer making the stop.
- 26 (c) A copy of the completed citation shall be given by the law
27 enforcement officer to the motorist or pedestrian who was stopped.
- 28 (d) Within 15 days after each citation is issued, the forms described in
29 subsection (a) shall be transmitted by each Kansas law enforcement
30 agency to the office of the Kansas bureau of investigation, where data
31 from such forms shall be compiled into a statewide citation database.
- 32 (e) At the beginning of each month, the Kansas attorney general shall
33 receive compiled statewide citation data from the Kansas bureau of
34 investigation and make such data available to the public and all law
35 enforcement agencies.
- 36 (f) The data shall be analyzed by statistical experts for patterns of
37 racial profiling or other biased policing at least once every three months.
38 The results of each three-month statistical analysis shall be posted on the
39 official website of the attorney general within two weeks after each
40 analysis is completed.
- 41 (g) Law enforcement agencies or individual officers who need to
42 correct their racial profiling or other biased policing behavior shall be
43 contacted by the attorney general's office within two weeks after a pattern

1 of biased-based policing is identified as one standard deviation above the
2 mean for all racial or other groups of motorists and pedestrians stopped in
3 a five-block radius in a town or city or a 10-mile section of road or
4 highway.

5 (h) An annual report summarizing the types of citizen contacts and
6 which law enforcement agencies need to end their racial profiling or other
7 biased policing shall be prepared by the attorney general and submitted to
8 the legislature, governor and Kansas law enforcement agencies on or
9 before January 10 of each year. Each annual report shall be posted on the
10 official website of the attorney general by January 15 of each year.

11 (i) Any law enforcement officer shall provide, without being asked,
12 such officer's business card to any person whom the law enforcement
13 officer has detained in a traffic or pedestrian stop. The business card shall
14 include identifying information about the law enforcement officer,
15 including, but not limited to, the law enforcement officer's name, division,
16 precinct and badge or other identification number and a telephone number
17 that may be used, if necessary, to report any comments, positive or
18 negative, regarding the stop.

19 (j) Nothing in this section shall be construed to require the collection
20 and maintenance of information in connection with roadblocks, vehicle
21 checks or checkpoints, except when such traffic stops result in a warning,
22 search, seizure or arrest.

23 Sec. 6. K.S.A. 2017 Supp. 22-4606, 22-4610, 22-4611 and 22-4611a
24 are hereby repealed.

25 Sec. 7. This act shall take effect and be in force from and after its
26 publication in the statute book.