

SENATE BILL No. 363

By Committee on Federal and State Affairs

2-1

1 AN ACT concerning racial or other biased-based policing; amending
2 K.S.A. 2011 Supp. 22-4606, 22-4609, 22-4610, 22-4611, 22-4611a and
3 22-4611b and repealing the existing sections.
4

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

6 New Section 1. (a) Beginning July 1, 2012, data collected on each
7 citation issued by a Kansas law enforcement officer shall be mailed, faxed,
8 optically scanned or sent electronically by such officer's law enforcement
9 agency to the office of the Kansas division of motor vehicles on the first
10 and 15th of each month. The division of motor vehicles shall compile such
11 information into a statewide database.

12 (b) On the first of each month, the Kansas division of motor vehicles
13 shall send the compiled data to the Kansas attorney general. The attorney
14 general shall make such data available to the public and all state law
15 enforcement agencies.

16 (c) The Kansas attorney general or a person designated by the attorney
17 general shall statistically analyze the data for patterns of racial profiling or
18 other biased-based policing at least once every three months. The results
19 of each three-month analysis shall be posted on the Kansas attorney
20 general's official website.

21 (d) The Kansas attorney general or a person designated by the attorney
22 general shall notify any law enforcement agency or individual law
23 enforcement officer within two weeks if a pattern of racial profiling or
24 other biased-based policing is identified for such agency or officer. A
25 "pattern of racial profiling or other biased-based policing" means one
26 standard deviation above the mean for all racial or other groups of
27 motorists or pedestrians stopped in a five-block radius in a town or a 10-
28 mile section of road or highway.

29 (e) The Kansas attorney general's office shall submit an annual report
30 detailing the types of stops and which law enforcement agencies
31 demonstrated a pattern of racial profiling or other biased-based policing as
32 defined in subsection (d), to the governor, the legislature and each Kansas
33 law enforcement agency on or before December 31 of each year. Each
34 annual report shall be posted on the attorney general's official website.

35 Sec. 2. K.S.A. 2011 Supp. 22-4606 is hereby amended to read as
36 follows: 22-4606. As used in this act:

1 (a) "Governmental unit" means the state, or any county, city or other
2 political subdivision thereof, or any department, division, board or other
3 agency of any of the foregoing; ~~except governmental unit shall not include~~
4 ~~the board of education of any school district employing school security~~
5 ~~officers.~~

6 (b) "Law enforcement agency" means the governmental unit
7 employing the law enforcement officer.

8 (c) "Law enforcement officer" has the meaning ascribed thereto in
9 K.S.A. 74-5602, and amendments thereto; ~~except law enforcement officer~~
10 ~~shall not include school security officers designated as school law~~
11 ~~enforcement officers pursuant to K.S.A. 72-8222, and amendments~~
12 ~~thereto.~~

13 (d) "Racial or other biased-based policing" means the ~~unreasonable~~
14 use of race, ethnicity, national origin, gender, *age, socio-economic status*
15 or religion by a law enforcement officer, *in whole or in part*, in deciding to
16 initiate an enforcement action. It is not racial or other biased-based
17 policing when race, ethnicity, national origin, gender, *age, socio-economic*
18 *status* or religion is used in combination with other identifying factors as
19 part of a specific individual description:

20 (1) to initiate an enforcement action;

21 (2) *to investigate a complaint, crime or suspicious activity;*

22 (3) *to check a person's welfare; or*

23 (4) *as part of community outreach or community policing.*

24 (e) "Enforcement action" means any law enforcement act, as
25 described in K.S.A. 22-4609, and amendments thereto, during a
26 nonconsensual contact with an individual or individuals.

27 (f) "Collection of data" means that information collected by Kansas
28 law enforcement officers ~~after each traffic~~ *when a person is issued a*
29 *citation as a result of a traffic or pedestrian stop.*

30 (g) "Routine investigatory activity" includes, but is not limited to, the
31 following activities conducted by law enforcement agencies and officers in
32 conjunction with traffic or pedestrian stops:

33 (1) *Frisks and other types of body searches; and*

34 (2) *consensual and nonconsensual searches of domiciles, vehicles,*
35 *persons and possessions.*

36 Sec. 3. K.S.A. 2011 Supp. 22-4609 is hereby amended to read as
37 follows: 22-4609. (a) It is unlawful to use racial or other biased-based
38 policing in:

39 ~~(a)~~(1) Determining the existence of probable cause to take into
40 custody or to arrest an individual;

41 ~~(b)~~(2) constituting a reasonable and articulable suspicion that an
42 offense has been or is being committed so as to justify the detention of an
43 individual or the investigatory stop of a vehicle; or

1 (e)(3) determining the existence of probable cause to conduct a search
2 of an individual, *domicile* or a conveyance.

3 (b) *A violation of this section is a class A misdemeanor.*

4 Sec. 4. K.S.A. 2011 Supp. 22-4610 is hereby amended to read as
5 follows: 22-4610. (a) *The Kansas legislature finds and declares that racial*
6 *profiling and other biased-based policing presents a great danger to the*
7 *fundamental principles of the United States and cannot be tolerated.*
8 *Motorists and pedestrians who have been stopped by law enforcement*
9 *officers for no apparent reason other than race, ethnicity, age, socio-*
10 *economic status, religion, national origin or gender are the victims of*
11 *discrimination. Kansas law enforcement officers risk their lives every day*
12 *and the people of Kansas greatly appreciate such hard work and*
13 *dedication in protecting public safety. The good name of these law*
14 *enforcement officers should not be tarnished by the actions of those*
15 *officers who commit discriminatory practices. It is the intent of the*
16 *legislature in enacting this section to provide a means of identification of*
17 *law enforcement officers who engage in racial profiling, to underscore the*
18 *importance of accountability of law enforcement officers who commit*
19 *discriminatory practices and to provide training to all law enforcement*
20 *officers on how to stop and prevent racial profiling and other biased-*
21 *based policing.*

22 (b) All law enforcement agencies in this state shall adopt a detailed,
23 written policy to preempt racial or other biased-based policing. Each
24 agency's policy shall include the definition of racial or other biased-based
25 policing found in K.S.A. 22-4606, and amendments thereto.

26 (b)(c) Policies adopted pursuant to this section shall be implemented
27 by all Kansas law enforcement agencies within one year after the effective
28 date of this act. The policies ~~and data collection procedures~~ shall be
29 available for public inspection during normal business hours *and on the*
30 *agency's official website.*

31 (e)(d) The policies adopted pursuant to this section shall include, but
32 not be limited to, the following:

33 (1) A detailed written policy that prohibits racial or other biased-
34 based policing and that clearly defines acts constituting racial or other
35 biased-based policing using language that has been recommended by the
36 attorney general.

37 (2) (A) The agency policies shall require annual racial or other
38 biased-based policing training which shall include, but not be limited to,
39 training relevant to racial or other biased-based policing. *Such training*
40 *shall include an understanding of historical and cultural systems that*
41 *perpetuate racial profiling or other biased-based policing, assistance in*
42 *identifying racial profiling or other biased-based policing practices and*
43 *providing officers with self-evaluation strategies to preempt racial*

1 *profiling or other biased-based policing prior to stopping a person.*
2 Distance learning training technology shall be allowed for racial or other
3 biased-based policing training.

4 ~~(B) Law enforcement agencies may appoint an advisory body of not~~
5 ~~less than five persons composed of representatives of law enforcement,~~
6 ~~community leaders and educational leaders to recommend and review~~
7 ~~appropriate training curricula. For law enforcement agencies of cities or~~
8 ~~counties with 10 or more full-time law enforcement officers that have~~
9 ~~established community advisory boards pursuant to K.S.A. 2011 Supp. 22-~~
10 ~~4611b, and amendments thereto, the racial profiling and other biased-~~
11 ~~based policing training curriculum shall be reviewed by the agency's~~
12 ~~community advisory board and certified by the Kansas commission on~~
13 ~~peace officers' standards and training on or before September 1 of each~~
14 ~~year beginning in 2012.~~

15 (3) (A) ~~For law enforcement agencies of cities or counties that have~~
16 ~~exercised the option to establish community advisory boards pursuant to~~
17 ~~K.S.A. 2011 Supp. 22-4611b, and amendments thereto, use of such~~
18 ~~Community advisory boards which to law enforcement agencies with 10~~
19 ~~or more full-time law enforcement officers shall include at least seven~~
20 ~~participants who reflect the racial and ethnic community, to advise and~~
21 ~~assist in policy development, education selection of racial profiling~~
22 ~~prevention training curricula and community outreach and~~
23 ~~communications related to racial or other biased-based policing by law~~
24 ~~enforcement officers and agencies.~~

25 (B) Community advisory boards shall receive training on fair and
26 impartial policing ~~and comprehensive plans for law enforcement agencies~~
27 ~~used by the law enforcement agency to prevent racial and other biased-~~
28 ~~based policing.~~

29 (4) Policies for discipline of law enforcement officers who engage in
30 racial or other biased-based policing.

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

38 (6) Provisions for community outreach and communications efforts to
39 inform the public of the individual's right to file with the law enforcement
40 agency or the office of the attorney general complaints regarding racial or
41 other biased-based policing, which outreach and communications to the
42 community shall include ongoing efforts to notify the public of the law
43 enforcement agency's complaint process.

1 (7) Procedures for individuals to file complaints of racial or other
 2 biased-based policing with the agency, which, if appropriate, may provide
 3 for use of current procedures for addressing such complaints.

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

9 (2) The annual report shall include:

10 (A) The number of racial or other biased-based policing complaints
 11 received;

12 (B) the date each racial or other biased-based policing complaint is
 13 filed;

14 (C) action taken in response to each racial or other biased-based
 15 policing complaint;

16 (D) the disposition of each racial or other biased-based policing
 17 complaint;

18 (E) the date each racial or other biased-based policing complaint is
 19 closed;

20 (F) whether or not all agency law enforcement officers ~~not exempted~~
 21 ~~by Kansas commission on peace officers' standards and training~~ received
 22 the training required in subsection ~~(e)~~ (d)(2)(A);

23 (G) whether the agency has a *written* policy prohibiting racial or
 24 other biased-based policing;

25 (H) whether the agency policy mandates specific discipline for
 26 sustained complaints of racial or other biased-based policing;

27 (I) *whether the agency policy outlines the procedures for an*
 28 *individual to file a complaint with the agency or the Kansas attorney*
 29 *general, or both;*

30 ~~(J)~~ (J) whether the agency has a community advisory board; and

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

33 Sec. 5. K.S.A. 2011 Supp. 22-4611 is hereby amended to read as
 34 follows: 22-4611. (a) Any person who believes such person has been
 35 subjected to racial or other biased-based policing by a law enforcement
 36 officer or agency may file a complaint with the law enforcement agency.
 37 The complainant may also file a complaint with the office of the attorney
 38 general. The office of the attorney general shall review and, ~~if necessary,~~
 39 investigate ~~the~~ *each* complaint and may find there is insufficient evidence
 40 of racial or other biased-based policing or may forward the complaint for
 41 further review and possible action to the Kansas commission on peace
 42 officers' standards and training. The commission shall ~~review and, if~~
 43 ~~necessary,~~ further investigate the complaint. The commission may take

1 action on the officer's certification or other corrective action as allowed by
2 its governing statutes and rules and regulations. The commission shall
3 consult with the head of the law enforcement agency before taking final
4 action regarding discipline of any law enforcement officer or other
5 disposition of the complaint.

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

11 (c) *Upon disposition of a complaint filed with the Kansas attorney*
12 *general as provided in subsection (a), the Kansas attorney general shall*
13 *provide written notification of the outcome of the complaint to the*
14 *complainant, to the accused officer and to the head of the accused officer's*
15 *law enforcement agency. Such notice shall include the rationale for the*
16 *findings and shall be made in accordance with K.S.A. 45-221, and*
17 *amendments thereto. Nothing in such outcome shall be deemed an*
18 *exception to the Kansas open records act.*

19 (d) *Nothing in this section shall prevent a complainant from filing a*
20 *civil suit in the district court against the law enforcement officer or law*
21 *enforcement agency, or both, and shall be entitled to recover damages if it*
22 *is determined by the court that such officer or agency engaged in racial or*
23 *other biased-based policing.*

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

31 Sec. 6. K.S.A. 2011 Supp. 22-4611a is hereby amended to read as
32 follows: 22-4611a. (a) The governing body of a city or the sheriff of the
33 county may develop a comprehensive plan in conjunction with a
34 community advisory board, if one exists, ~~or with community leaders~~ to
35 prevent racial or other biased-based policing ~~or may require the law~~
36 ~~enforcement agency of such city or county to collect traffic or pedestrian~~
37 ~~stop data and make such data available to the public.~~

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

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

42 (2) policies to promote the recruitment and hiring of a diverse
43 workforce to ensure the workforce is comprised of people who can police

1 in a race-neutral and nonbiased fashion;

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

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

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

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

10 ~~(7) (6) other matters deemed appropriate.~~

11 *(c) Beginning July 1, 2012, law enforcement agencies shall collect*
12 *traffic and pedestrian stop data on each citation issued. Such data shall*
13 *be sent to the Kansas division of motor vehicles pursuant to section 1, and*
14 *amendments thereto.*

15 ~~(d) Data collection, if required, may consist of, but shall not be~~
16 ~~limited to, one or more collected on each citation shall consist of the~~
17 following for every vehicle or pedestrian stop:

18 (1) Originating agency and officer identifier number;

19 (2) time and date of the stop;

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

22 (4) beat, district, territory or response area, *including the street*
23 *address or highway mile marker*, where the traffic stop is conducted;

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

26 ~~(6) primary reason for the stop, and specifically, whether the stop was~~
27 ~~based on: (A) a violation of the criminal code, a county resolution or a~~
28 ~~city ordinance;~~

29 ~~(B) a call for service;~~

30 ~~(C) preexisting knowledge or information;~~

31 ~~(D) suspect or vehicle description;~~

32 ~~(E) citizens' assist or welfare; or~~

33 ~~(F) a traffic violation, including a moving violation; or an equipment~~
34 ~~violation, reasonable suspicion of a criminal offense, other violation, to~~
35 ~~render service or assistance, suspicious circumstances, pre-existing~~
36 ~~knowledge or special detail failure or license plate violation. If a moving~~
37 ~~violation, the officer shall indicate the specific violation;~~

38 ~~(7) (6) if a vehicle stop, the license plate number, the county code of~~
39 ~~vehicle registration, if registered in Kansas, and state code, if registered~~
40 ~~outside Kansas;~~

41 ~~(8) (7) age, race, gender and ethnicity and gender of the primary~~
42 ~~person stopped by the officer;~~

43 ~~(9) source of the information required by paragraph (8), and~~

1 specifically, whether it was obtained from officer perception or
 2 investigation;

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

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

7 ~~(12) (8) race of person stopped: African American, Arab, Asian,~~
 8 ~~Caucasian, Hispanic, Native American or other as stated by the person~~
 9 ~~stopped or as observed by the officer;~~

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

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

18 ~~(14) (10) if a search was conducted, the type of search, including~~
 19 ~~consent search, consent requested but consent denied, inventory, stop and~~
 20 ~~frisk, search warrant, incident to arrest, plain view or , probable cause, tow~~
 21 ~~inventory or dog alert; or~~

22 ~~(15) (11) if a search was conducted, the type of contraband seized, if~~
 23 ~~any, including currency, firearms, other weapons, drugs, drug~~
 24 ~~paraphernalia, alcohol products, tobacco products, stolen property or other~~
 25 ~~contraband; and~~

26 (12) *the signature of the law enforcement officer making the stop.*

27 ~~(d) (e) Nothing in this section shall require a governmental entity to~~
 28 ~~collect data concerning pedestrian stops. If a citation is issued, the law~~
 29 ~~enforcement officer shall give a copy of the completed citation to the~~
 30 ~~pedestrian or motorist who was stopped.~~

31 (f) *The law enforcement officer's business card shall be given to the*
 32 *motorist or pedestrian who was stopped, regardless of whether a citation*
 33 *was issued. Such business card shall include the officer's name, division,*
 34 *precinct, badge or other identification number and a telephone number*
 35 *that may be used to report any comments, positive or negative, regarding*
 36 *the stop.*

37 (g) *Nothing in this section shall be construed to require the collection*
 38 *and maintenance of such information for roadblocks, vehicle checks or*
 39 *checkpoints, except when such traffic stops result in a citation, warning,*
 40 *search, seizure or arrest.*

41 Sec. 7. K.S.A. 2011 Supp. 22-4611b is hereby amended to read as
 42 follows: 22-4611b. The governing body of any city-, by ordinance or the
 43 sheriff of any county ~~may~~, *with 10 or more full-time law enforcement*

1 *officers shall* establish a community advisory board to work with the law
2 enforcement agency of such city or county in accordance with the
3 provisions of K.S.A. 22-4606 *et seq.*, and amendments thereto.

4 Sec. 8. K.S.A. 2011 Supp. 22-4606, 22-4609, 22-4610, 22-4611, 22-
5 4611a and 22-4611b are hereby repealed.

6 Sec. 9. This act shall take effect and be in force from and after its
7 publication in the statute book.