

SENATE BILL No. 428

By Committee on Judiciary

2-13

1 AN ACT concerning law enforcement; relating to racial profiling or other
2 biased policing; data collection and reporting requirements; amending
3 K.S.A. 2019 Supp. 22-4606, 22-4610, 22-4611 and 22-4611a and
4 repealing the existing sections.

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

7 Section 1. K.S.A. 2019 Supp. 22-4606 is hereby amended to read as
8 follows: 22-4606. As used in this act:

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

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

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

21 ~~(d) "Racial or other biased-based policing" means the unreasonable~~
22 ~~use of race, ethnicity, national origin, gender or religion by a law~~
23 ~~enforcement officer in deciding to initiate an enforcement action. It is not~~
24 ~~racial or other biased-based policing when race, ethnicity, national origin,~~
25 ~~gender or religion is used in combination with other identifying factors as~~
26 ~~part of a specific individual description to initiate an enforcement action.~~
27 *"Profiling on the basis of ethnicity" means the practice of unlawfully*
28 *utilizing information regarding members of a cultural group with a shared*
29 *identity, ancestry or linguistic characteristics common to the members or*
30 *their affiliates. Ethnic groups may also have a common religious*
31 *association or history.*

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

33 (1) *Means the practice of a law enforcement officer or agency*
34 *selecting or subjecting an individual to routine investigatory activities, or*
35 *in deciding upon the scope and substance of law enforcement activity, in*
36 *whole or in part, based upon: (A) An individual's race, ethnicity, national*

1 *origin, socioeconomic status, religion, age or gender; or (B) the city,*
 2 *county or state indicated on such person's license plate, driver's license or*
 3 *identification card;*

4 (2) *includes profiling on the basis of ethnicity; and*

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

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

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

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

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

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

22 Sec. 2. K.S.A. 2019 Supp. 22-4610 is hereby amended to read as
 23 follows: 22-4610. (a) All law enforcement agencies in this state shall adopt
 24 a detailed, written policy to preempt racial ~~or other biased-based~~ *profiling*
 25 *or other biased* policing. Each agency's policy shall include the definition
 26 of racial ~~or other biased-based~~ *profiling or other biased* policing found in
 27 K.S.A. 22-4606, and amendments thereto.

28 (b) Policies adopted pursuant to this section shall be implemented by
 29 all Kansas law enforcement agencies ~~within one year after the effective~~
 30 ~~date of this act~~ *on or before July 1, 2021*. The policies and data collection
 31 procedures shall be available for public inspection during normal business
 32 hours.

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

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

39 (2) (A) The agency policies shall require annual racial ~~or other~~
 40 ~~biased-based~~ *profiling or other biased* policing training ~~which that~~ shall
 41 include, but not be limited to, training relevant to racial ~~or other~~
 42 ~~biased-based~~ *profiling or other biased* policing. Distance learning training
 43 technology shall be allowed for racial ~~or other~~ *biased-based* *profiling or*

1 *other biased* policing training.

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

6 (3) (A) For law enforcement agencies of cities or counties that have
7 exercised the option to establish community advisory boards pursuant to
8 K.S.A. 2019 Supp. 22-4611b, and amendments thereto, use of such
9 community advisory boards which include participants who reflect the
10 racial and ethnic community, to advise and assist in policy development,
11 education and community outreach and communications related to racial
12 ~~or other biased-based~~ *profiling or other biased* policing by law
13 enforcement officers and agencies.

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

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

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

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

32 (7) Procedures for individuals to file complaints of racial ~~or other~~
33 ~~biased-based~~ *profiling or other biased* policing with the agency, ~~which~~
34 *that*, if appropriate, may provide for use of current procedures for
35 addressing such complaints.

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

41 (2) The annual report shall include:

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

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

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

5 (D) the disposition of each racial ~~or other biased-based~~ *profiling or*
6 *other biased* policing complaint;

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

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

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

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

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

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

22 Sec. 3. K.S.A. 2019 Supp. 22-4611 is hereby amended to read as
23 follows: 22-4611. (a) Any person who believes such person has been
24 subjected to racial ~~or other biased-based~~ *profiling or other biased* policing
25 by a law enforcement officer or agency may file a complaint with the law
26 enforcement agency. The complainant may also file a complaint with the
27 office of the attorney general. The office of the attorney general shall
28 review and, if necessary, investigate the complaint and may find there is
29 insufficient evidence of racial ~~or other biased-based~~ *profiling or other*
30 *biased* policing or may forward the complaint for further review and
31 possible action to the Kansas commission on peace officers' standards and
32 training. The commission shall review and, if necessary, further investigate
33 the complaint. The commission may take action on the officer's
34 certification or other corrective action as allowed by its governing statutes
35 and rules and regulations. The commission shall consult with the head of
36 the law enforcement agency before taking final action regarding discipline
37 of any law enforcement officer or other disposition of the complaint.

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

43 (c) ~~Upon disposition of a complaint as provided for in subsection (a)~~

1 ~~the complainant shall have a civil cause of action in the district court~~
2 ~~against the law enforcement officer or law enforcement agency, or both,~~
3 ~~and shall be entitled to recover damages if it is determined by the court~~
4 ~~that such officer or agency engaged in racial or other biased-based~~
5 ~~policing. The complaint process described in this section shall not prohibit~~
6 ~~a person who believes such person's rights have been violated to file a~~
7 ~~civil lawsuit in the district court against the law enforcement officer or~~
8 ~~law enforcement agency, or both, and recover damages if the court~~
9 ~~determines that such officer or agency engaged in racial profiling or other~~
10 ~~biased policing. The court may allow the prevailing party reasonable~~
11 ~~attorney fees and court costs.~~

12 Sec. 4. K.S.A. 2019 Supp. 22-4611a is hereby amended to read as
13 follows: 22-4611a. (a) The governing body of a city or the sheriff of the
14 county ~~may shall~~ develop a comprehensive plan in conjunction with a
15 community advisory board, if one exists, or with community leaders to
16 prevent racial or other biased-based *profiling or other biased* policing or
17 ~~may require the law enforcement agency of such city or county to collect~~
18 ~~traffic or pedestrian stop data and make such data available to the public.~~

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

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

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

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

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

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

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

34 (7) other matters deemed appropriate.

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

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

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

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

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

- 1 ~~(5) primary reason for the officer's investigation, and specifically,~~
2 ~~whether the stop was call related or self initiated;~~
- 3 ~~(6) primary reason for the stop, and specifically, whether the stop was~~
4 ~~based on a moving violation, an equipment violation, reasonable suspicion~~
5 ~~of a criminal offense, other violation, to render service or assistance,~~
6 ~~suspicious circumstances, pre-existing knowledge or special detail;~~
- 7 ~~(7) if a vehicle stop, the county code of vehicle registration, if~~
8 ~~registered in Kansas, and state code, if registered outside Kansas;~~
- 9 ~~(8) age, race, gender and ethnicity of the primary person stopped by~~
10 ~~the officer;~~
- 11 ~~(9) source of the information required by paragraph (8), and~~
12 ~~specifically, whether it was obtained from officer perception or~~
13 ~~investigation;~~
- 14 ~~(10) whether the officer was aware of the information required by~~
15 ~~paragraph (8) prior to the stop;~~
- 16 ~~(11) if a vehicle stop, the number of occupants in the stopped vehicle,~~
17 ~~including the driver;~~
- 18 ~~(12) type of action taken, including citation, warning, search, arrest,~~
19 ~~assistance provided or no action. If the action taken is an arrest, the data~~
20 ~~collection shall also include the type of arrest, including warrant, resisting~~
21 ~~arrest, property crime, persons crime, drug crime, traffic crime, DUI or~~
22 ~~other type of arrest;~~
- 23 ~~(13) if a search was conducted, the rationale for the search, including~~
24 ~~vehicle indicators, verbal indicators, physical or visual indicators,~~
25 ~~document indicators (DOT), incident to arrest or other rationale;~~
- 26 ~~(14) if a search was conducted, the type of search, including consent~~
27 ~~search, consent requested but consent denied, inventory, stop and frisk,~~
28 ~~search warrant, incident to arrest, plain view or probable cause; or~~
- 29 ~~(15) if a search was conducted, the type of contraband seized, if any,~~
30 ~~including currency, firearms, other weapons, drugs, drug paraphernalia,~~
31 ~~alcohol products, tobacco products, stolen property or other contraband.~~
- 32 ~~(d) Nothing in this section shall require a governmental entity to~~
33 ~~collect data concerning pedestrian stops.~~
- 34 New Sec. 5. (a) On and after July 1, 2020, data collected on each
35 citation issued by a Kansas law enforcement officer shall be sent to the
36 Kansas bureau of investigation on a form and in a format approved by the
37 attorney general.
- 38 (b) The data collected on each citation shall include:
39 (1) The officer identification number;
40 (2) the law enforcement agency code;
41 (3) the time and date of the stop;
42 (4) the name of the person stopped;
43 (5) whether the person was a motorist or pedestrian;

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

1 least once every three months. The results of each three-month statistical
2 analysis shall be posted on the official website of the attorney general
3 within two weeks after each analysis is completed.

4 (f) Law enforcement agencies or individual officers who need to
5 correct their racial profiling or other biased policing behavior shall be
6 contacted by the attorney general's office within two weeks after a pattern
7 of racial profiling or other biased policing is identified as one standard
8 deviation above the mean for all racial or other groups of motorists and
9 pedestrians stopped in a five-block radius in a town or city or a 10-mile
10 section of road or highway.

11 (g) An annual report summarizing the types of citizen contacts and
12 identifying law enforcement agencies that need to end their racial profiling
13 or other biased policing shall be prepared by the attorney general and
14 submitted to the legislature, governor and Kansas law enforcement
15 agencies on or before January 10 of each year. Each annual report shall be
16 posted on the official website of the attorney general by January 15 of each
17 year.

18 (h) Any law enforcement officer shall provide, without being asked,
19 such officer's business card to any person whom the law enforcement
20 officer has detained in a traffic or pedestrian stop. The business card shall
21 include identifying information about the law enforcement officer,
22 including, but not limited to, the law enforcement officer's name, division,
23 precinct and badge or other identification number and a telephone number
24 that may be used, if necessary, to report any comments, positive or
25 negative, regarding the stop.

26 (i) Nothing in this section shall be construed to require the collection
27 and maintenance of information in connection with roadblocks, vehicle
28 checks or checkpoints, except when such traffic stops result in a warning,
29 search, seizure or arrest.

30 Sec. 6. K.S.A. 2019 Supp. 22-4606, 22-4610, 22-4611 and 22-4611a
31 are hereby repealed.

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