

SENATE BILL No. 610

By Committee on Federal and State Affairs

2-13

9 AN ACT concerning racial profiling; prescribing duties for the attorney
10 general; requiring training for law enforcement agencies and person-
11 nel; amending K.S.A. 22-4606, 22-4607, 22-4609, 22-4610 and 22-4611
12 and K.S.A. 2007 Supp. 74-9501 and repealing the existing sections.
13

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

15 Section 1. K.S.A. 22-4606 is hereby amended to read as follows: 22-
16 4606. As used in this act:

17 (a) “Governmental unit” means the state, or any county, city or other
18 political subdivision thereof, or any department, division, board or other
19 agency of any of the foregoing.

20 (b) “Law enforcement agency” means the governmental unit em-
21 ploying the law enforcement officer.

22 (c) “Law enforcement officer” has the meaning ascribed thereto in
23 K.S.A. 74-5602, and amendments thereto.

24 (d) “Racial profiling” means the practice of a law enforcement officer
25 or agency relying, as ~~the sole~~ a factor, on race, ethnicity, ~~national origin,~~
26 gender or religious dress in selecting which individuals to subject to rou-
27 tine investigatory activities, or in deciding upon the scope and substance
28 of law enforcement activity following the initial routine investigatory ac-
29 tivity. Racial profiling does not include reliance on such criteria in com-
30 bination with other identifying factors when the law enforcement officer
31 or agency is seeking to apprehend a specific suspect whose race, ethnicity,
32 national origin, gender or religious dress is part of the description of the
33 suspect.

34 (e) “Routine investigatory activities” includes, but is not limited to,
35 the following activities conducted by law enforcement officers and agen-
36 ~~cies in conjunction with traffic stops:~~ (1) Frisks and other types of body
37 searches, and (2) consensual or nonconsensual searches of persons or
38 possessions, including vehicles, ~~dormitory rooms, school lockers, homes~~
39 ~~and apartments~~ *and domiciles.*

40 (f) “Collection of data” means that information collected by Kansas
41 law enforcement officers after each traffic *and pedestrian stop.*

42 (g) “Profiling on the basis of ethnicity” means the practice of unlaw-
43 fully utilizing information regarding members of a cultural group with a

1 *shared identity, ancestry or linguistic characteristics common to the mem-*
 2 *bers or their affiliates. Ethnic groups may also have a common religious*
 3 *association or history.*

4 Sec. 2. K.S.A. 22-4607 is hereby amended to read as follows: 22-
 5 4607. (a) A 15-member task force on racial profiling shall be appointed
 6 by the governor. The task force shall include representatives of the Kansas
 7 attorney general's office, the Kansas highway patrol, city and county law
 8 enforcement agencies, the Hispanic and Latino American affairs com-
 9 mission, the advisory commission on ~~African-American~~ African American
 10 affairs, the department of revenue, Kansas human rights commission,
 11 Kansas district courts, Kansas civil rights advocates and others who can
 12 assist in the performance of the functions of the task force.

13 (b) The governor's task force on racial profiling shall work in part-
 14 nership with ~~local and state~~ law enforcement agencies ~~to~~ and the general
 15 public to design methods for the collection, analysis and public dissemi-
 16 nation of data regarding traffic stops and pedestrian stops utilizing the
 17 uniform traffic citation. The methods for the collection, analysis and pub-
 18 lic dissemination of data required by this subsection shall be designed no
 19 later than January 1, 2009, and fully implemented no later than January
 20 1, 2010.

21 (c) The task force shall review current policies and make recommen-
 22 dations for *training programs*, future policies and procedures statewide
 23 for the full implementation of the provisions of K.S.A. 22-4606 through
 24 22-4611, and amendments thereto. The task force shall hold public hear-
 25 ings and meetings as needed to involve and inform the public on issues
 26 related to racial profiling.

27 ~~(d)~~ (d) Members of the task force serving on the effective date of this
 28 act shall continue to serve terms until July 1, 2007. Thereafter, members
 29 shall be appointed for terms of two years. Vacancies shall be filled by
 30 appointment for the unexpired term. Upon expiration of a member's
 31 term, the member shall serve until a successor is appointed and qualifies.
 32 ~~No member shall serve more than two consecutive full terms.~~

33 ~~(e)~~ (e) The chairperson of the task force shall be designated by the
 34 governor. The task force shall meet at the call of the chairperson at least
 35 quarterly or as often as necessary to carry out the functions of the task
 36 force.

37 ~~(f)~~ (f) The executive director of the Kansas advisory commission on
 38 African American affairs and the executive director of the Hispanic/Latino
 39 American affairs committee shall serve as ex officio members of the task
 40 force. The staff of the Kansas advisory commission on ~~African-American~~
 41 African American affairs and the Kansas Hispanic/Latino American affairs
 42 commission shall provide administrative support to the task force and its
 43 chairperson.

1 ~~(f)~~ (g) Members of the task force attending a meeting of the task
 2 force, or any subcommittee meeting authorized by the task force, shall
 3 receive amounts provided for in subsection (e) of K.S.A. 75-3223, and
 4 amendments thereto.

5 ~~(g)~~ (h) The task force shall make a report of its activity to the public
 6 each calendar year.

7 ~~(h) The provisions of this section shall expire on July 1, 2009.~~

8 Sec. 3. K.S.A. 22-4609 is hereby amended to read as follows: 22-
 9 4609. The race, ethnicity, ~~national origin~~, gender or religious dress of an
 10 individual or group shall not be the sole factor in determining the exist-
 11 tence of probable cause to take into custody or to arrest an individual or
 12 in constituting a reasonable and articulable suspicion that an offense has
 13 been or is being committed so as to justify the detention of an individual
 14 or the investigatory stop of a vehicle *or pedestrian*.

15 Sec. 4. K.S.A. 22-4610 is hereby amended to read as follows: 22-
 16 4610. (a) All law enforcement agencies in this state shall adopt a detailed,
 17 written policy to preempt racial profiling. Each agency's policy shall in-
 18 clude the definition of racial profiling found in K.S.A. 22-4606, and
 19 amendments thereto.

20 (b) Policies adopted pursuant to this section shall be implemented by
 21 all Kansas law enforcement agencies within one year after the effective
 22 date of this act. The policies and data collection procedures shall be avail-
 23 able for public inspection during normal business hours.

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

26 (1) A prohibition of racial profiling.

27 (2) ~~Annual educational~~ *Each law enforcement agency shall provide a*
 28 *minimum of two hours of racial profiling training for law enforcement*
 29 *officers each fiscal year. The training which shall include, but not be*
 30 *limited to, an understanding of the historical and cultural systems that*
 31 *perpetuate racial profiling, assistance in identifying racial profiling prac-*
 32 *tices, and providing officers with self-evaluation strategies to preempt*
 33 *racial profiling prior to stopping a citizen.*

34 (3) ~~For law enforcement agencies of cities of the first class, establish-~~
 35 ~~ment or use of current independent~~ *with 10 or more officers certified*
 36 *pursuant to K.S.A. 74-5602, and amendments thereto, shall establish or*
 37 *use citizen advisory boards which include participants who reflect rep-*
 38 *resent the racial and ethnic community, to advise and assist in policy*
 39 *development, education and community outreach and communications*
 40 *related to racial profiling by law enforcement officers and agencies.*

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

43 (5) A provision that, if the *internal law enforcement agency investi-*

1 gation of a complaint of racial profiling reveals the officer was in direct
2 violation of the law enforcement agency's written policies regarding racial
3 profiling, the employing law enforcement agency shall take appropriate
4 *disciplinary* action consistent with applicable laws, rules and regulations,
5 ~~resolutions, ordinances or policies, including demerits, suspension or re-~~
6 ~~moval of the officer from the agency and ordinances.~~

7 (6) Provisions for community outreach and communications efforts
8 to inform the public of the individual's right to file with the law enforce-
9 ment agency or the Kansas human rights commission complaints regard-
10 ing racial profiling, which outreach and communications to the commu-
11 nity shall include ongoing efforts to notify the public of the law
12 enforcement agency's complaint process.

13 (7) Procedures for individuals to file complaints of racial profiling
14 with the agency, which, if appropriate, may provide for use of current
15 procedures for addressing such complaints.

16 (d) Each law enforcement agency shall compile an annual report of
17 all complaints of racial profiling received and shall submit the report on
18 or before ~~January 31~~ *August 1* to the office of the attorney general for
19 review. *Each law enforcement agency that did not receive any complaints*
20 *during year shall also file a report.* The annual report shall include: (1)
21 *The number of complaints and the date the complaint is was* filed; (2)
22 action taken in response to the complaint; (3) the decision upon dispo-
23 sition of the complaint; ~~and~~ (4) the date the complaint is closed; ; (5)
24 *whether all officers employed by the agency received the statutorily re-*
25 *quired annual racial profiling training for the prior training year July 1*
26 *to June 30;* (6) *whether the agency has a written policy that will prohibit*
27 *racial profiling;* (7) *whether the agency mandates specific discipline of*
28 *law enforcement officers who engage in racial profiling;* (8) *whether the*
29 *policy details the discipline to be administered for racial profiling;* (9)
30 *whether the policy includes provisions outlining the individual's right to*
31 *file complaints with the agency or with the Kansas attorney general, or*
32 *both, and the specific procedures for individuals to file complaints with*
33 *the agency; and (10) whether the agency has a citizen advisory board.*

34 (e) Annual reports filed pursuant to this subsection shall be open
35 public records and shall be posted on the official website of the attorney
36 general.

37 Sec. 5. K.S.A. 22-4611 is hereby amended to read as follows: 22-
38 4611. (a) Any person who believes such person has been subjected to
39 racial profiling by a law enforcement officer or agency may file a com-
40 plaint with the law enforcement agency. The complainant may also file a
41 complaint with the Kansas human rights commission. The commission
42 shall review and, if necessary, investigate the complaint. ~~The commission's~~
43 ~~designee shall consult with the head of the law enforcement agency be-~~

1 ~~fore making final recommendations regarding discipline of any law en-~~
2 ~~forcement officer or other disposition of the complaint.~~

3 ~~—(b) Upon disposition of a complaint as provided for in subsection (a)~~
4 ~~the complainant shall have a civil cause of action in the district court~~
5 ~~against the law enforcement officer or law enforcement agency, or both,~~
6 ~~and shall be entitled to recover damages if it is determined by the court~~
7 ~~that such persons or agency engaged in racial profiling. The court may~~
8 ~~allow the prevailing party reasonable attorney fees and court costs.~~

9 *(b) The Kansas human rights commission (KHRC) shall forward all*
10 *findings of probable cause to the Kansas commission on peace officer*
11 *standards and training (KSCPOST).*

12 *(1) The KHRC shall notify the office of the attorney general of all*
13 *probable cause findings forwarded to KSCPOST for review.*

14 *(2) The KHRC shall inform the complainant of the outcome or dis-*
15 *position of the complaint in writing. Such writing shall be made in ac-*
16 *cordance with K.S.A. 45-221 and amendments thereto.*

17 *(c) KSCPOST shall review the findings of the KHRC or initiate fur-*
18 *ther investigation if necessary. Pursuant to K.S.A. 74-5616, and amend-*
19 *ments thereto, KSCPOST shall make a determination regarding discipline*
20 *of any law enforcement officer engaged in unlawful profiling.*

21 *(d) Where KSCPOST findings are not sufficient to sustain a KHRC*
22 *finding of probable cause, KSCPOST shall forward the complaint to the*
23 *Kansas attorney general for a final administrative determination. The at-*
24 *torney general, or the general's designee, shall review the complaint, or*
25 *conduct an investigation if necessary, to make a final determination and*
26 *disposition of the complaint.*

27 *(e) This complaint process shall not prevent a motorist or pedestrian*
28 *who feels that their civil rights or constitutional rights have been violated*
29 *to go directly to the appropriate district attorney to bring criminal charges*
30 *or to file a civil law suit against the law enforcement officer or agency to*
31 *seek justice.*

32 *(f) Any person who is subjected to racial profiling shall have a civil*
33 *cause of action against any law enforcement officer or agency, or both,*
34 *and shall be entitled to recover damages from any such officer, any person*
35 *with supervisory authority over such officer and agency if it is determined*
36 *by a jury that such persons or agency engaged in racial profiling. The*
37 *jury may allow the prevailing plaintiff reasonable attorney fees, expert*
38 *witness costs and other litigation costs reasonably incurred.*

39 *Sec. 6. K.S.A. 2007 Supp. 74-9501 is hereby amended to read as*
40 *follows: 74-9501. (a) There is hereby established the Kansas criminal jus-*
41 *tice coordinating council.*

42 *(b) The council shall consist of the governor or designee, the chief*
43 *justice of the supreme court or designee, the attorney general or designee,*

1 the secretary of corrections, the superintendent of the highway patrol,
2 the commissioner of juvenile justice and the director of the Kansas bureau
3 of investigation.

4 (c) The governor shall designate staff to the Kansas criminal justice
5 coordinating council. The staff shall attend all meetings of the council,
6 be responsible for keeping a record of council meetings, prepare reports
7 of the council and perform such other duties as directed by the council.

8 (d) The council shall elect a chairperson and vice-chairperson from
9 among the members of the council.

10 (e) The council shall:

11 (1) Appoint a standing local government advisory group to consult
12 and advise the council concerning local government criminal justice issues
13 and the impact of state criminal justice policy and decisions on local units
14 of government. The advisory group shall consist of a sheriff, chief of
15 police, county or district attorney, a member of a city governing body and
16 a county commissioner. Appointees to such advisory group shall serve
17 without compensation or reimbursement for travel and subsistence or any
18 other expenses;

19 (2) define and analyze issues and processes in the criminal justice
20 system, identify alternative solutions and make recommendations for
21 improvements;

22 (3) perform such criminal justice studies or tasks as requested by the
23 governor, the attorney general, the legislature or the chief justice, as
24 deemed appropriate or feasible by the council;

25 (4) oversee development and management of a criminal justice da-
26 tabase. All criminal justice agencies as defined in subsection (c) of K.S.A.
27 22-4701 and amendments thereto and the juvenile justice authority shall
28 provide any data or information, including juvenile offender information
29 which is requested by the council, in a form and manner established by
30 the council, in order to facilitate the development and management of
31 the criminal justice council database;

32 (5) *oversee the development, implementation and management of a*
33 *uniform traffic citation for use by all Kansas law enforcement agencies to*
34 *collect data on traffic and pedestrian stops. The collection of data shall*
35 *include information necessary to conduct analysis of traffic and pedestrian*
36 *stops with regard to race, gender and ethnicity of drivers and pedestrians.*
37 *The uniform traffic citation shall be available for use by law enforcement*
38 *agencies not later than January 1, 2011.*

39 ~~(5)~~ (6) develop and oversee reporting of all criminal justice federal
40 funding available to the state or local units of government including as-
41 suming the designation and functions of administering the United States
42 bureau of justice assistance grants;

43 ~~(6)~~ (7) form such task groups as necessary and appoint individuals

1 who appropriately represent law enforcement, the judiciary, legal profes-
2 sion, state, local, or federal government, the public, or other professions
3 or groups as determined by the council, to represent the various aspects
4 of the issue being analyzed or studied, when analyzing criminal justice
5 issues and performing criminal justice studies. Members of the legislature
6 may be appointed ex officio members to such task groups. A member of
7 the council shall serve as the chairperson of each task group appointed
8 by the council. The council may appoint other members of the council
9 to any task group formed by the council;

10 ~~(7)~~ (8) review reports submitted by each task group named by the
11 council and shall submit the report with the council's recommendations
12 pertaining thereto to the governor, the attorney general, the chief justice
13 of the supreme court, the chief clerk of the house of representatives and
14 the secretary of the senate; and

15 ~~(8)~~ (9) (A) establish the sex offender policy board to consult and ad-
16 vise the council concerning issues and policies pertaining to the treat-
17 ment, sentencing, rehabilitation, reintegration and supervision of sex
18 offenders.

19 (B) The sex offender policy board shall consist of the secretary of
20 corrections, the commissioner of juvenile justice, the secretary of social
21 and rehabilitation services, the director of the Kansas bureau of investi-
22 gation and the chief justice of the supreme court or the chief justice's
23 designee and two persons appointed by the criminal justice coordinating
24 council. Of the persons appointed by the criminal justice coordinating
25 council, one shall be a mental health service provider and the other shall
26 be engaged in the provision of services involving child welfare or crime
27 victims.

28 (C) Each member of the board shall receive compensation, subsis-
29 tence allowances, mileage and other expenses as provided for in K.S.A.
30 75-3223, and amendments thereto, except that the public members of
31 the board shall receive compensation in the amount provided for legis-
32 lators pursuant to K.S.A. 75-3212, and amendments thereto, for each day
33 or part thereof actually spent on board activities. No per diem compen-
34 sation shall be paid under this subsection to salaried state, county or city
35 officers or employees.

36 (D) The sex offender policy board shall elect a chairperson from its
37 membership and shall meet upon the call of its chairperson as necessary
38 to carry out its duties.

39 (E) Each appointed member of the sex offender policy board shall
40 be appointed for a term of two years and shall continue to serve during
41 that time as long as the member occupies the position which made the
42 member eligible for the appointment. Each member shall continue in
43 office until a successor is appointed and qualifies. Members shall be eli-

1 gible for reappointment, and appointment may be made to fill an unex-
2 pired term.

3 (F) The board shall submit its reports to the criminal justice coordi-
4 nating council and to the governor, the attorney general, the chief justice
5 of the supreme court, the chief clerk of the house of representatives and
6 the secretary of the senate.

7 (i) The board shall submit a report regarding public notification per-
8 taining to sex offenders, restrictions on the residence of released sex of-
9 fenders, utilization of electronic monitoring, and the management of ju-
10 venile sex offenders by the first day of the 2007 legislative session.

11 (ii) The board shall submit a report regarding treatment and super-
12 vision standards for sex offenders, suitability of lifetime release supervi-
13 sion and safety education and prevention strategies for the public by the
14 first day of the 2008 legislative session.

15 (iii) The board shall submit reports regarding any other studies, issues
16 or policy recommendations as completed.

17 (G) The sex offender policy board established pursuant to subsection
18 (e)(8) of this section shall expire on June 30, 2008.

19 Sec. 7. K.S.A. 22-4606, 22-4607, 22-4609, 22-4610 and 22-4611 and
20 K.S.A. 2007 Supp. 74-9501 are hereby repealed.

21 Sec. 8. This act shall take effect and be in force from and after its
22 publication in the statute book.