

SESSION OF 2005

**SUPPLEMENTAL NOTE ON SUBSTITUTE  
FOR SENATE BILL NO. 77**

As Amended by House Committee of the Whole

**Brief\***

Substitute for SB 77 would make racial and other profiling unlawful. Racial profiling would be defined as the practice of a law enforcement officer or agency relying, as the sole factor, on race, ethnicity, national origin, gender, or religious dress in selecting which individuals to subject to routine investigatory activities, or in deciding upon the scope and substance of law enforcement activity following the initial routine investigatory activity.

Included among the bill's major provisions are the following:

- The bill would require all law enforcement agencies to create and adopt a detailed, written policy preempting and prohibiting racial profiling by any law enforcement officer. The written policy would include annual educational training, discipline for a violation of the law enforcement agency's policy, and a provision to inform the public of the right to file a complaint with a law enforcement agency or the Kansas Attorney General;
- The bill would not create a misdemeanor crime; and
- The bill would create a civil cause of action in the district court upon the disposition of a complaint by the Kansas Human Rights Commission.

In addition, the bill would provide for the following:

- "Gender or religious dress" would be included in the definition of racial profiling;

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\*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>

- The definition of routine investigatory activity would be narrowed;
- A task force would be appointed by the Governor to study the need for, and, if necessary, design a method for uniform data collection. The Kansas Human Rights Commission would be added as members of the Task Force. The final report and recommendation of the task force to the Governor and the Legislature would be due no later than November 1, 2005;
- An independent citizen advisory board for cities of the first class would be created to advise and assist in policy development, education, and community outreach;
- Community outreach and communication would be required to inform the public of the right to file complaints regarding racial profiling with the law enforcement agency or the Kansas Attorney General;
- Law enforcement agencies would be required to create a grievance process to hear the complaints regarding racial profiling with an annual report given to the Kansas Attorney General;
- A complaint filed with the Kansas Human Rights Commission may be investigated by the Commission. Furthermore, the Kansas Human Rights Commission's designee would be required to consult with the head of the law enforcement agency before recommending discipline of the law enforcement officer, if appropriate; and
- A district court would be permitted to award reasonable attorney fees and court costs to the prevailing party in a civil action filed after the disposition of a complaint by the Kansas Human Rights Commission.

## **Background**

Senator Betts and Senator Haley, sponsors of the bill, appeared before the Committee in support of the bill. Additionally, representatives from the clergy, the legal profession, the Kansas African American Affairs Commission, the Kansas Hispanic-Latin American Affairs Commission, the American Civil Liberties Union of Kansas and Western

Missouri, the Kansas State Conference of the National Association for the Advancement of Colored People, the Kansas Association of Chiefs of Police, the Kansas Sheriffs' Association, the Kansas Branch of the National Association for the Advancement of Colored People, Citizens for Equal Law Enforcement, Women in Action, the Kansas Human Rights Commission, Prisoner of Conscious Committee, the Kansas Peace Officers Association, the Kansas Attorney General's office and other civilians testified in support of the bill.

A representative from the League of Kansas Municipalities testified in support of the bill, with a few exceptions.

A representative from the City of Overland Park Police Department testified in opposition of the bill.

The Senate Committee on Federal and State Affairs amended the bill by adopting the following amendments:

- Added language to include "gender or religious dress" in defining racial profiling;
- Narrowed the definition of routine investigatory activity;
- Deleted the provision requiring the Kansas Attorney General, along with others, to design an optically scannable uniform racial data collection form and instead would create a 15-member task force charged with the responsibility of designing a method for uniform data collection. The final report and recommendation of the task force to the Governor and the Legislature is due no later than November 1, 2005.
- Added language to require that all law enforcement agencies adopt a detailed, written policy preempting racial profiling which shall include the definition of racial profiling as found in the bill;
- Deleted the provision requiring initial training and continuing education and instead would require annual training only;
- Added language to create an independent citizen advisory board for cities of the first class to advise and assist in policy development, education, and community outreach;

- Added language to include community outreach and communication to inform the public of the right to file complaints regarding racial profiling with the law enforcement agency or the Kansas Attorney General;
- Added language to require law enforcement agencies to create a grievance process to hear the complaints regarding racial profiling with an annual report given to the Kansas Attorney General;
- Added language to include that a complaint filed with the Kansas Attorney General may be investigated by the Kansas Attorney General. Furthermore, the Kansas Attorney General may recommend discipline of the law enforcement officer, if appropriate;
- Added language to establish a civil cause of action in district court upon the disposition of a complaint by the Kansas Attorney General's office;
- Added language permitting the district court to award reasonable attorney fees and court costs to the prevailing party in a civil action filed after the disposition of a complaint by the Kansas Attorney General's office; and
- Added language restricting grants or other state moneys of a law enforcement agency if the Kansas Attorney General or the Kansas Attorney General's designee finds a law enforcement agency has engaged in racial profiling or has failed to discipline a law enforcement officer for engaging in racial profiling, in accordance with the recommendations of the Kansas Attorney General or the designee.

The Senate Committee of the Whole amended the bill by deleting the restriction on a law enforcement agency's ability to receive other moneys from the State upon a finding that the law enforcement agency engaged in racial profiling or failed to discipline a law enforcement officer in accordance with the Kansas Attorney General's recommendation.

The House Committee amended the bill to do the following:

- Add the language, "to study the need for and, if necessary, to design a method for the uniform collection of data."

- Add the Kansas Human Rights Commission to the membership of the Task Force created in the bill.
- Delete the provision whereby a law enforcement agency could not receive grants upon a finding that the agency has engaged in racial profiling or failed to discipline a law enforcement officer in accordance with recommendation of the Attorney General.
- Other amendments are clarifying in nature.

The House Committee of the Whole amended the bill to clarify that it is an act concerning other unlawful profiling in addition to racial profiling. The Committee also amended the bill to require the Kansas Human Rights Commission, rather than the Commission on Peace Officers' Standards and Training to accept, review, and if necessary, investigate racial profiling complaints.

It should be noted that the Division of the Budget's fiscal note was based upon a version of the bill that was not introduced. Nonetheless, the Division of the Budget's fiscal note indicates that the fiscal impact of the bill is difficult to estimate. However, the Kansas Attorney General opines that enactment of the bill would increase its State General Fund expenditure by \$854,028 for FY 2006 based upon 2.5 million routine investigatory stops. Any fiscal effect associated with SB 77 would be in addition to amounts in the *FY 2006 Governor's Budget Report*.