

Des Moines Unbiased Policing Ordinance
&
NAACP Anti-Racial Profiling Bill

Drake Law School Racial Justice Series

September 4, 2020

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National Association for the Advancement of Colored People: The NAACP

- **History**

- Founded Feb. 12. 1909, the NAACP is the nation's oldest, largest and most widely recognized grassroots-based civil rights organization.

- **Mission**

- To ensure the political, educational, social, and economic equality of rights of all persons and to eliminate race-based discrimination.

- **Presenters**

- Professors Russell Lovell and David Walker
- Co-chairs, Legal Redress Committees
- Des Moines NAACP & Iowa-Nebraska NAACP

NAACP Strategies

- Litigation—Examples
 - **Moore et al. v. City of Des Moines** (Class action Federal Court Consent Decree: integration of Des Moines Fire Department)
 - 5 Amicus Curiae Briefs in Iowa Supreme Court:
 - **Pippen v. State of Iowa** (Systemic Employment Discrimination)
 - **Rent-A-Center, Inc. v. Iowa Civil Rights Commission** (Arbitration)
 - **State v. Scottize Danyelle Brown** (Pretextual traffic stops)
 - **State v. Peter Veal** (Fair cross-section & Batson jury issues)
 - **ABI v. City of Waterloo** (Fair Chance in Employment Ordinance)
 - **State v. Lilly II** (Fair cross-section jury issues)(forthcoming)
 - **Public Comments** re proposed amendments to jury trial Rules of Criminal Procedure
- Legislative Activity—Examples of Affirmative Agenda
 - Anti-Racial and Ethnic Profiling, SSB 1038
 - Fair Chance in Employment (“Ban the Box”)
 - **Occupational Licensing Criminal Record Restrictions/Barriers Reform**
 - **Des Moines Unbiased Policing Ordinance**
 - **Executive Order No. 7 (Voting Rights/Persons w/felony convictions)**
 - **Juvenile records confidentiality**
 - University Heights Anti-Racial Profiling Ordinance

History of Extended NAACP Effort to Enact Anti-Racial Profiling Law in Iowa

- National NAACP: *Born Suspect* Report (2014)
- Des Moines NAACP & AMOS fact-finding effort
- Annual Justice & Disparities Summits since 2012
- Iowa-Nebraska NAACP 6-year effort: research, drafting, lobbying on SSB 1038 (Sen. Zaun)
- NAACP, CCI, ACLU alliance 2019-2020
- Tragic Murder of George Floyd, May 2020
- Protest to Politics
- NAACP lead role research, drafting, negotiation, January – June 22, 2020 enactment Des Moines Unbiased Policing Ordinance

Racial Profiling in the News: Not Just a Law Enforcement Issue

- James Connelly, Old Navy, Jordan Creek Mall (2018)
- Two Black men kicked out of Walmart wearing protective masks
- Former White House Staffer, an African American, Moving into his Apartment--911 Call for Armed Robbery;
- Yale graduate student, African American, who fell asleep in Residential College Commons—Campus Police Called;
- Two African-American businessmen waiting for a third person in a Starbucks—police called and men arrested for trespassing;
- African American family barbecuing in public park—police called;
- African American male baby-sitter, picking up and driving two white children—stalked and police called;
- Two Black men, one an 8-year member, the other with a guest pass, kicked out of fitness club in New Jersey
- “Shopping while Black”—Nordstrom’s Rack, Old Navy
- “Walking while Black”/what data show about “jaywalking” arrests

Disparities and Profiling: Driving While Black

- **Paul Butler**, former Federal prosecutor, **The Chokehold**
- Senator Brad Zaun, Sponsor SSB1038: Son on UI Hawkeye football team
- Racial Disparities—Iowa
 - African Americans constitute **3.5%** of Iowa's population and **25%** of Iowa's incarcerated population;
 - African Americans are **10 times** more likely to be arrested than persons of other races;
 - **Studies:** Black drivers pulled over nearly 3 times as often in Davenport and twice as often in Iowa City; Blacks are 15% of population but nearly 38% of traffic stops (Jan. 2015 – Nov. 2017)
 - African Americans in Iowa are
 - **7-8 times** more likely than whites to be arrested for possession of illicit drugs even though the two groups use illicit drugs at the same rate, and
 - **8 times** more likely to be arrested for possession of a small amount of marijuana.

2018 DMPD Little-Clinton Stop & New Era of Public Safety Report & Other URL Links

- **Montray Little-Jared Clinton Traffic Stop near Union Park, Des Moines:** https://www.youtube.com/watch?time_continue+15&v=qpdiY1E1S
- **Drake Law School Racial Injustice in USA:** <https://libguides.law.drake.edu/racialJustice>
- **Leadership Conference on Civil Rights: New Era on Public Safety Report: A Guide to Fair, Safe, and Effective Community Policing,** https://policing.civilrights.org/report/Policing_Full_Report.pdf.
- **NAACP Born Suspect: Stop-and-Frisk Abuses & The Continued Fight to End Racial Profiling in America,** <https://www.naacp.org/criminal-justice-issues/racialprofiling/>
- **Iowa City traffic study:** <https://www.icgov.org/city-government/departments-and-divisions/police-department/disproportionate-minority-contact-study>
- **Just Voices:** <https://www.facebook.com/justvoiceslowa/>

Justice Sotomayor's Dissent in *Utah v. Strieff*, 136 S.Ct. 2056, 2069-71 (2016)

- “[U]nlawful “stops” have severe consequences much greater than the inconvenience suggested by the name.
- “This Court has given officers an array of instruments to probe and examine you.
- “When we condone officers' use of these devices without adequate cause, we give them reason to target pedestrians in an arbitrary manner.
- “We also risk treating members of our communities as second-class citizens.

Justice Sotomayor Dissent in *Strieff*

- “Although many Americans have been stopped for speeding or jaywalking, few may realize how degrading a stop can be when the officer is looking for more.
- “This Court has allowed an officer to stop you for whatever reason he wants—so long as he can point to a **pretextual justification** after the fact. **Whren** (1996).
- “That justification must provide specific reasons why the officer suspected you were breaking the law, Terry but it may factor in your ethnicity, where you live, what you were wearing, and how you behaved.
- “The officer does not even need to know which law you might have broken so long as he can later point to any possible infraction—even one that is minor, unrelated, or ambiguous.

Justice Sotomayor Dissent:

Compare to DMPD Stop of Montray Little-Jerad Clinton Stop near Union Park

- “The **indignity** of the stop is not limited to an officer telling you that you look like a criminal.
- The officer may next **ask for your “consent”** to inspect your bag or purse **without telling you that you can decline.**
Bostick, (1991).
- Regardless of your answer, **he may order you to stand “helpless,** perhaps facing a wall with [your] hands raised.”
- **If the officer thinks you might be dangerous, he may then “frisk” you for weapons. This involves more than just a pat down. As onlookers pass by, the officer may “feel with sensitive fingers every portion of [your] body.**
- **A thorough search [may] be made of [your] arms and armpits, waistline and back, the groin and area about the testicles, and entire surface of the legs down to the feet.’ ”**
Terry.

Consequences of Racial Profiling and Pretextual Traffic Stops

- Humiliation and Degradation
- Fear of police—Black youth and “the talk”
- Police fear
- Intimidation, Order to Leave the Vehicle, Handcuffing
- “Request” to Consent to Search
- Frisks and Searches
- Actual Physical Harm.
- Discriminatory Effects. Exhaustion. High blood pressure. Mental health. Bitterness. Pent-up anger.
- Arrest
- Jail
- Prosecution. Prison. Mass incarceration.
- Warning

St. Ambrose Professor Chris Barnum's Traffic Stop Studies: Davenport, Iowa City

- Relies on accuracy of each Departments' Stop Data
- Compares racial breakdown of Police Department's Stop data to racial % of drivers on specific City streets.
- Barnum's data collection involves monitoring actual traffic flow on specific streets to determine the racial percentage of drivers, providing reliable bases upon which to determine whether racial disparities exist.
- Stop & Outcome Data. Barnum's research focus not only on the "Stops" but also the "Outcomes"-- discretionary actions taken by officers following the stop—like having the driver get out of the vehicle, frisking the driver, handcuffing, asking to search and searching the vehicle—is very important.

Significant Racial Disparities “Stop” Data & EXCEPTIONALLY High in “Outcomes” Data

- Barnum’s techniques are state-of-the-art and the disparities he finds reliable and accurate. Not just a comparison to racial makeup of City’s population.
- Barnum’s studies consistently find statistically significant racial disparities in (1) Stops AND (2) Outcomes, in Davenport and Iowa City
- Importantly, Barnum’s studies find significantly greater disparities in “Outcomes”: the treatment that African Americans experience AFTER the stop.
- In our judgment stronger, even more damning conclusions could be drawn from the Barnum Studies.

Huge Disparities—2.8 to 3.4 Times Greater—in Iowa City Police “Outcome Data” Analyses

- “Unlike the analyses for traffic stops, an investigation of stop outcomes is not dependent on population baseline characteristics. Outcome assessment simply compares two or more groups using the proportion of traffic stops as the comparison benchmark.”
- IC officers disproportionately arrested and asked for consent to search Black drivers across all years. On average the odds were 2.80 times greater that Black drivers would be arrested.
- The odds were roughly 3.45 times greater that ICPD officers would request a search from minority drivers compared to others.
- The search “hit rates” —finding drugs or contraband--were actually higher for non-Black drivers. Barnum: Officers only searched white drivers if they had probable cause.

Amendment to Des Moines Ch. 86 “Unbiased Policing” Ordinance

- The **Ch. 86-“Unbiased Policing Ordinance”** is an anti-racial profiling law but it is **so much more**.
- It is an **Unbiased Policing** law that mandates bias-free performance in every aspect of policing and service delivery by DMPD officers and civilian employees.
- It **bars discrimination** by **DMPD officers and employees**, not only on race and ethnicity but also **on every personal characteristic listed in the Human Rights Ordinance**, in **enforcement of the law AND in the delivery of police services—NOT just traffic stops, but everything the DMPD does**.

86-43 Definitions

- “Biased policing” is broadly defined as “differential treatment in the performance of law enforcement or delivery of police services towards a person” when race, color, ethnicity, religion, national origin, sexual orientation or any of the personal characteristics barred in the Des Moines Human Rights code “was a motivating factor in the action taken.”
- “Police Services” is broadly defined as “actions and activities that contribute to the overall well-being of the public . . . [and] include but are not limited to: crime prevention and investigation, preventive patrol, traffic control, traffic accidents [etc].”

86-43 Racial Profiling & 86-44 Biased Policing Prohibitions

- “Racial profiling” is a “form of biased policing where a motivating factor of the action taken is based on an individual’s race, color, ethnicity” in stops of vehicles, pedestrians, and bicycles
- Prohibits “biased policing” and “racial profiling” “in enforcement of the law and the delivery of police services by any employee.”
- Prohibits “discriminatory pretextual stops.”
- Mandates fair and impartial treatment for all.
- Prohibits derogatory, belittling, defamatory, or contemptuous language.

Important: Prohibition of “Discriminatory Pretextual Stops” Now CODIFIED into LAW

- *Whren v. U.S. & State v. Brown*: Racially discriminatory pretextual stops are unconstitutional, but their holdings have largely been ignored by police for 23 years.
- Codification by the Des Moines City Council of this constitutional principle in this Unbiased Policing Ordinance is a REALLY BIG DEAL as it makes “the law” operational “on the ground” for the DMPD.
- The constitutional principle of the 1954 *Brown v. Board* decision did NOT become operational on the ground for 10 years because Congress and the President did not embrace the *Brown* decision until passage of the 1964 Civil Rights Act. It was NOT until its codification in 1964 that *Brown v. Board* began to truly be implemented.

86-44 Biased Service Calls and DMPD Standard Operating Manual On Line

- Prohibits law enforcement action based on private citizen “calls for service” that DMPD employees “know or reasonably should know” are motivated by bias. Officers must not be instrument of bias. *E.g., Central Park* incident.
- Only One Exception to Bias-Free Mandate: “Employees shall not consider” any of the prohibited personal characteristics “except when such characteristics are part of a *specific subject description-based identification*.” Data collection will be second exception once it begins.
- Transparency. DMPD Standard Operating Procedure Manual is required be posted on line and made available to the public for review at the police station.

86-45 Obligation to Report/Intervene in Biased Policing & Protection against Retaliation

- "Where use of force occurs, officers have a **duty to intervene to prevent or stop the use of unreasonable force by another officer** when it is safe and a reasonable opportunity exists."
- Police officers observing another officer putting his knee and weight on **George Floyd** for 8 minutes and 46 seconds is a perfect example.
- **Employees who report biased policing** are **protected against discrimination or retaliation** for having reported or for "testifying, assisting or participating in any investigation, proceeding or hearing."

86-45 Supervisors' Oversight to Ensure Bias-Free Environment; Citizen Complaint Options with OPS & ICRC

- “Supervisors shall ensure the working environment is free of bias and free of racial profiling.”
- This “oversight responsibility . . . include[s] periodic inspection of body and in-car audio/video, traffic stop data,” taking action when biased policing has occurred, and ensuring no retaliation for reporting violations.
- Accountability is essential. Supervisors play key role.
- Individuals can file complaints of biased policing or racial profiling with either (1) the Iowa Civil Rights Commission (ICRC) or (2) the Police Department's Office of Professional Standards (OPS), or (3) both.

§86-45 Role of DSM Human Rights Commission: Public Education plus Assistance in Drafting and Filing Complaint with Iowa Civil Rights Commission

- §86-45 provides that the **Des Moines Human Rights Commission** “shall educate the public about the complaint process” available through the Iowa Civil Rights Commission and OPS
- **Iowa Civil Rights Act (ICRA)** provides remedies under its **Public Accommodations section**, including **damages and attorney’s fees**
- For those who wish to file a complaint with the Iowa Civil Rights Commission, the **DSM Human Rights Commission staff** will conduct intake and assist individuals in drafting and filing their complaints.
- **DMPD Employee Discipline**: “**Racial profiling and biased policing are violations of this Ordinance.**” Such violations by DMPD employees can “serv[e] as cause for **discipline up to and including termination from employment.**”
- **OPS**, within DMPD, continues as body to do internal investigation of allegations of police misconduct. **Accountability and discipline?**

Babb v. Wilkie (SCOTUS 2020)

- Age Act case construing the “free from any discrimination” standard for ADEA claims against Federal agencies
- SCOTUS distinguished between claims seeking monetary remedies or reinstatement where the “but-for” proof of causation is the governing standard—then a plaintiff must prove the decision would have been different (e.g. wouldn’t have been fired) if age had not been taken into account.
- But a “freedom from any discrimination” standard can govern “other remedies.” NAACP: internal discipline can be governed by a stricter discrimination standard: one that requires that conduct “not [be] tainted by differential treatment based on race.” Race cannot be a factor.
- SCOTUS: Age Act did indeed mandate that if age played any part in an employment decision that violated the law.

§2: Strict DMPD Employee Discipline and Continuation of Existing Liability Law

- The Ordinance embraces the *Babb v. Willkie* distinction by setting a strict standard of conduct for employee discipline while maintaining traditional but-for liability standard.
- 2 different discrimination standards can stand side-by-side.
- Individuals retain all state and federal constitutional and statutory rights to pursue claims for damages and injunctive relief through through the ICRC or, obtaining a right-to-sue letter, by direct action in state or federal court.
- The Ordinance does not make any change to the law governing the City's liability for biased policing and racial profiling. Such litigation will still be governed by existing state and federal law; the Ordinance preserves all defenses.

86-47 Annual Training

- The Ordinance requires training. CHECK Employees as well as Officers.
- “At least annually all sworn officers shall receive and participate in training and guidance in regard to unbiased policing and prohibited racial profiling while conducting law enforcement activities and police services.
- Training “shall include de-escalation, cultural diversity, cultural competency , and implicit bias.”
- Training “may include” other “topics suitable for preventing incidents of biased policing and racial profiling,” such as police-citizen interaction and conducting motor vehicle stops.

Community Policing Policy and Practices Review Committee (CPPPRC)

- 9-members, appointed by city council and mayor:
- 3 community members
- 1 youth member age 16 to 24
- 2 members of the Human Rights Commission, 1 police officer, and 1 member from the housing appeals board and 1 from community development.
- **The CPPPRC has a systemic policy and practices focus.**
- It does not investigate or adjudicate individual cases alleging officer misconduct. It is not a civilian review board.

CPPPRC Purposes & Responsibilities

- Review law enforcement and neighborhood code enforcement data for existing and potential disparities in practices
- Review law enforcement and code enforcement practices and policies related to the delivery of unbiased policing and code enforcement; and
- Make recommendations to the City Manager and the City Council “to ensure elimination of existing or potential disparities in the enforcement of the law”

Next Steps: Consultant's Role

- Resolution 40B approved hiring of a Consultant to Research Best Practices:
 - Data collection. Collection of traffic stops data and reporting, analysis, and public accessibility of the data collected.
 - Performance metrics for officers and staff.
 - Pretextual Stops. Research experience of other communities that have placed limitations on pretextual stops, including feasibility and anticipated effects of such limitations on police.

The NAACP Campaign for Enactment of a State-Wide Ban on Racial Profiling Continues with Goal of Enactment in 2021 Legislative Session

NAACP 2021 Unbiased Policing/Anti-Racial & Ethnic Profiling Bill: Overview of SSB1038

- Prohibits law enforcement (LE) biased policing on any of the bases in the Iowa Civil Rights Act AND racial profiling on the basis of actual or perceived race, color, creed, religion or national origin, including “while employed off-duty by a private employer and in uniform”
- Prohibits *discriminatory* pretextual stops
- Police justifications historically associated with racial discrimination or having a racially disparate impact are “presumptively invalid” and a basis for finding pretext.
- Defines key terms, including “pretextual stop,” “discriminatory pretextual stop,” and “racial profiling”

Governor's Criminal Justice Working Group FOCUS Committee

- Announced by **Gov. Kim Reynolds** in November 2019 at Iowa Summit on Justice & Disparities
- Chaired by **Lt. Governor Adam Gregg**
- Iowa-Nebraska NAACP President **Betty Andrews**
- Seeks to **bring stakeholders to the table** to find common ground on racial profiling and pretextual stops
- **Charged to research and make recommendations (1) to reduce recidivism through successful offender re-entry programs and (2) to achieve an unbiased Iowa criminal justice system**
- **Target: Propose an Anti-Racial Profiling Bill at Summit on Justice & Disparities in late October 2020**

Overview: Data Collection and Analysis; Duty to Report AND Intervene; Supervisor Oversight

- Dep't of Human Rights (HR) Division of Criminal & Juvenile Justice Planning (Division) oversees data collection by local LE agencies AND analyzes traffic stop data. CJP has good track record.
- “Stop” data AND “Outcome” data: frisks, searches, seizures, use of force, arrest, etc.
- Officers required to give persons stopped Notice of right to file complaint with Civil Rights Commission
- Requires officers to report biased policing by other officers AND to intervene when necessary
- Supervisor “oversight responsibility”
- Protections against retaliation

Overview of SSB 1038 (cont.)

- Community Policing Advisory Board (CPAB) for review and analysis of data, discussion of best practices to prevent biased policing and racial profiling. (not a citizen review board)
- Requires annual law enforcement officer training on best practices to reduce and eliminate biased policing and racial profiling, de-escalation, implicit bias, and cultural competency
- Individual officer stop data will be produced for misconduct investigation AND Iowa Civil Rights investigations of charge of profiling and litigation; admissible in ICRC and court proceedings
- Provides for enforcement through Iowa Civil Rights Commission under ICRA Public Accommodations section providing for damages, injunctive, and attorney's fees
- Amend Iowa Code so cities over 50,000 have option to require officers to live in the city they serve and that employs them

80G.3 Profiling and Discriminatory Pretextual Stops Prohibited

- “Racial Profiling” is a “form of biased policing” when an officer, in deciding to initiate law enforcement activities, including the scope of action taken after a stop:
 - a. Considered or relied upon actual or perceived race, color, ethnicity, religion, or national origin as a motivating factor;
 - b. Demonstrated or engaged in disparate treatment;
 - c. Made or conducted a discriminatory pretextual stop.
- 80G.3 prohibits Discriminatory pretextual stops.
- Notably, the NAACP bill also articulates what does *not* constitute profiling, *e.g.*, an officer’s reliance upon personal identifying information or a specific subject description-based identification, or a person’s observed behavior linking that person to suspected unlawful activity

80 G.2 Pretextual Stops

- “Pretextual stop” means
 - a stop by an officer of a driver or a passenger, a bicyclist, or a pedestrian ostensibly for an alleged violation of traffic code,
 - When true motive is to allow the officer to question and probe for information that the person may have committed some *not* apparent or yet-to-be-identified law violation, *often* drugs, for which an officer lacks probable cause or reasonable suspicion.
- *Whren v. United States (1996)*, SCOTUS held that pretextual stops are *not* unconstitutional (4th Amendment), but it emphasized that *racially discriminatory pretextual stops do violate the Constitution (Equal Protection)*. *Brown v. State (2019)*, 4-3, reached the same decision under the Iowa Constitution.
- Whatever may be gained, pretextual stops greatly undermine trust in law enforcement and respect for the criminal justice system.
- **Remember: *the Constitution sets the minimum floor for police conduct. The Court is NOT affirming pretextual stops are good policy. Legislature can bar or limit pretextual stops.***

Racially Discriminatory Pretextual Stops Do Violate the Constitution

- In *Whren* Justice Scalia wrote, “We of course agree . . . that the Constitution prohibits selective enforcement of the law based on considerations such as race.
- “But the constitutional basis for objecting to intentionally discriminatory application of laws is the Equal Protection Clause, not the Fourth Amendment. Subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis.”
- Iowa Supreme Court in *Brown v. State* likewise held racially discriminatory pretext stops unconstitutional, but otherwise constitutionally permissible.
- NAACP: Codification of this principle of Constitutional law will ensure its effects officer conduct.

80G.2 Discriminatory Pretextual Stops

The Importance of Data Collection

Discriminatory pretextual stops are defined:

- involving **disparate treatment** by the officer *or*
- for which the person's race, color, ethnicity, religion, or national origin was **considered or relied upon or was a motivating factor in the officer's decision to make the stop or to take other action during a stop**, including a request to consent to a search.
- Evidence or proof are the heart of the matter: **proving discriminatory motivation is difficult.**
- **Data collection is vitally important** to exposing racial disparities in law enforcement and raising questions about racial intent.
- Experience demonstrates that **racial disparities in stop data decrease significantly once data is collected.**

Washington Supreme Court Rule 37

- **Batson v. Kentucky** held that the Equal Protection Clause barred racially discriminatory peremptory strikes by prosecutors (or defense counsel)
- The procedures to implement Batson have been modeled on proving discrimination in employment cases, by **proving employer's reasons were pretext**
- **National consensus Batson has been ineffective**
- Rule 37 bars not only intentional discrimination but also **implicit bias**
- Lawyers' "race neutral" **reasons with racially disparate impact and historically associated with racial discrimination are "presumptively invalid"**

§16 Adapts Rule 37 to Preclude Stereotypical Reasons Officers Can Use to Justify Pretext Stops

It is “presumptively invalid” to make a stop because the person stopped:

- (i) has had a prior negative experience with law enforcement officers;
- (ii) is traveling in a perceived high-crime neighborhood or lives in a perceived high-crime neighborhood;
- (iii) is in a neighborhood where few people of his color or ethnicity reside;
- (iv) was staring, or failing to make eye contact, exhibited a problematic attitude, body language, or demeanor, or provided unintelligent or confused answers;
- (v) is not a native English speaker;
- (vi) smelled of marijuana;
- (vii) has a close relationship with people who have been stopped, arrested, or convicted of a crime;
- (viii) was undocumented or unable to produce papers; or
- (ix) for an equipment violation that did not put the driver in imminent risk of injury or jeopardize public safety.

§16 Minor Equipment Violations Should Not Be Basis for Traffic Stop, But Be Handled by Issuance of Citation

- Because minor equipment violations have historically been associated with racial profiling, an equipment violation is a **presumptively invalid** reason for a traffic stop **unless the officer can establish that the equipment's malfunctioning put the driver in imminent risk of injury or jeopardized public safety.**
- Equipment violations ordinarily should be resolved by officer advising dispatch of the violation with instructions that a warning or citation should be issued and sent through U.S. Mail to owner of vehicle.

Biased Policing and Racial Profiling Prohibited in Enforcement of the Law and Delivery of Police Services

- 80G.2, Section 5 prohibits biased policing and racial profiling (1) in enforcement of the law and (2) the delivery of police services by any employee.
- “Law enforcement activities” is broadly defined and includes traffic, bicyclist, or pedestrian stops by an officer; and actions during a stop, including asking questions, frisks, consensual and nonconsensual searches, seizing any property, removing occupants from a motor vehicle during a traffic stop, issuing a warning or citation, and making an arrest.”
- “Police Services” means actions and activities that contribute to the overall well-being and safety of the public, including crime prevention and investigation, preventive patrol, traffic control, traffic accidents, medical emergencies and lifesaving services, assistance at fire scenes, public information and education.

80G.4: Community Policing Advisory Bd.; 80G.6: ICRC Notice

- Governor appoints 14 voting members; racially diverse; gender balanced: 5 community members from civil rights groups; 2 community leaders with record of public service; Attorney General; DPS; Police; Sheriff; ICRC; Public Defender; ILEA. 4 Legislators Ex-Officio.
- Recognize and promote awareness of profiling; review data and analysis thereof; facilitate discussion of best practices to prevent profiling; advise DPS re data collection; publish annual report
- Develop notice for citizen complaint to ICRC
- Every person stopped must be given written notice of right to file complaint with ICRC.

Data Collection Is Key Component

- Although more than half the states ban either racial profiling, nearly 2/3 of the states do NOT require data collection on stops and searches
- Questions
 - Is it necessary? “People know there’s racial profiling. Let’s focus on what to do about it.”
 - How will data be used? Will it be used?
 - Will data on traffic and other stops be useful? Will it make a difference?
 - Where data has been collected, has it been effective in reducing racial profiling?
 - Is data collection too burdensome on law enforcement, of whom we have too few and there is already much to do?

80G.6 Data Collection Overview

- **Requires every LE Agency (LEA) to collect race, ethnicity data on (1) every “Stop”** based on “observation and perception of officer” (including stops that don’t produce written citation or warning) And on (2) **“Outcomes”** - the discretionary actions taken by the officer AFTER the stop:
 - (1) Search of Person or Property (w/ or without consent), and basis for search
 - (2) Seizure of Property, Description, and basis for seizure
 - (3) Use of force – by and/or against officer

“Stop” Data Required To Be Collected

- a. The time, date, location, and duration of the stop.
- b. The reason for the stop.
- c. Whether a driver’s license or vehicle registration check was run.
- d. Whether an oral or written warning was given or a citation issued.
- e. The offense the person was arrested for, if applicable.
- f. The following identifying characteristics of the person stopped, including **perceived race, ethnicity, English language proficiency**, sex, and approximate age. The identification of these characteristics shall **be based on the observation and perception of the officer** making the stop. The officer shall not be required to inquire about race, ethnicity, and English language proficiency of the person stopped. The identifying characteristics of a passenger in a motor vehicle shall also be reported if the stop involved both the passenger and a search reported under paragraph “g”.

“Outcomes” Data Required to Be Collected Based on Barnum’s Recommendations

The following actions taken by an officer during the stop:

- (1) Whether the driver was **asked to step out of the car**, and, if so, whether he or she did so.
- (2) Whether the driver was **subjected to a Terry frisk** or pat down of his or her person, and, if so, what was the basis for the frisk or pat down.
- (3) Whether the driver was **handcuffed**, and, if so, what was the basis for this restraint.
- (4) Whether the officer **asked if there were drugs, a weapon, or cash** in the vehicle.
- (5) Whether the officer **asked for consent to search** the person or vehicle, and, if so, whether consent was provided.
- (6) Whether the officer **searched the person or any property**, and if a search was performed, the basis for the search.
- (7) Whether the officer **seized any property**, and, if so, a description of the property seized and the basis for seizing the property.
- (8) Whether the officer **used physical force or physical force was used against the officer**.
 - i. The identifying characteristics of any passenger in a motor vehicle shall also be reported, including the applicability of information in paragraph “h” to each and every passenger in the vehicle.

80G.7 Annual LEA Data Collection and Data Analysis by CJP Division

- **Uniform reporting required annually** of each LEA on standard forms developed by Division of CJP
- **Each LEA's Report is publicly accessible** on LEA website
- **Division of Criminal & Juvenile Justice Planning of Dept. of Human Rights analyzes data** and submits report to DPS, HR, and ICRC. **CJP experienced in race data analysis, reputation for independence, and trusted.**
- CJP Report shall include disaggregated statistical data for each LE agency.
- **CJP Data Analysis Report is accessible on DPS, HR, and ICRC web pages**

80G.9 When Officer Stop Data Will Be Provided

- Division will produce stop data on individual officers for internal discipline, ICRC investigations, and for a complainant's use in litigating a charge of discrimination under the ICRA.
- Data and Division analysis of individual officers admissible in ICRC and Court proceedings.
- Requires each LEA and CJP maintain data for 15 years

80G.8 Training & 80G.9 Requires Reporting and Intervention; Anti-Retaliation; Supervisors

- Requires Training of every LE officer “at least annually” related to prevention of biased policing and profiling, data collection, de-escalation, cultural diversity and competency, implicit bias
- Requires that LE officers to promptly report instances of biased policing or racial profiling
- Requires LE officers to intervene to stop unreasonable use of force by another officer when safe to do so
- Retaliation for opposing profiling or for testifying or participating in an investigation or hearing is prohibited, and is basis for discipline, including termination
- Supervisors have key enforcement rule, with oversight responsibility to monitor officers’ work to “ensure working environment is free of bias and free of racial profiling”

80G.10 ICRC Enforcement & §17 DOT to Collect Drivers' License Race Data

- Enforcement through ICRC, but ICRA statutory remedies not exclusive. Profiling is a discriminatory practice under ICRA (§15)
- Double check: Race & Ethnicity Info – Dept. Of Transportation to request/explain as people apply for Driver's License or Non-Operator's ID Card (or renewal)– will digitally supplement TRACSs report of officer's perception of race of driver
- DOT will encrypt and maintain privacy of file data.

Every Police Department's Standard Operating Procedures Required Publicly Accessible

- § 17 Every law enforcement agency's standard operating procedures and policies shall be made available to the public through publication on each law enforcement agency's online Internet website no later than December 31, 2021
- Each law enforcement agency shall conspicuously post on its Internet Web site all current standards, policies, practices, operating procedures, and education and training materials that would otherwise be available to the public if a request was made pursuant to the Public Records Act.

Amend Iowa Code So Each City Can Decide Whether Police Officers Should Be Required to Live in the City They Serve

- Approximately 80% of DMPD officers and DMFD firefighters are NOT residents in the City they serve.
- **Community Policing begins by living in the city you serve—by being a stakeholder in its success, by not looking like an occupying force.** Leadership Conference on Civil Rights, New Era of Public Safety.
- Iowa Code 400.17 prohibits a City from requiring municipal residence as a condition of employment
- **This prohibition is REPEALED for cities of 50,000 or greater, so that these communities can discuss this policy option.**