

# There oughta be a law

Polk County Bar Association

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# Legislative Priorities of the Iowa NAACP

- Unbiased Policing/Anti-Racial & Ethnic Profiling Law and City Ordinances;
- Fair Chance for Employment (“Ban the Box”) Legislation Applicable to Public Employers (State, Counties, Cities, Public Commissions, etc.);
- “Impartial Jury”/Fair Cross-Section Legislation Authorizing Dep’t of Revenue to Share Name & Address Information with State Court Admin. to Improve Responses to Jury Summons (HF662/SF375);
- Restoration of Voting Rights for Persons Previously Convicted of a Felony—Constitutional Amendment;
- Amend IC 400.17 to Authorize Each City to Decide Wh/r Police Officers Should Be Required to Live in the City They Serve; and
- Reform of Iowa Civil Rights Commission Rules and Procedures.

# Governor Reynolds' FOCUS\* Committee on Criminal Justice Reform

\*(Fueling Ongoing Collaboration and Uncovering Solutions)

# Governor's FOCUS Committee on Criminal Justice Reform

- **Lieutenant Governor Adam Gregg, Chair**
- Department of Corrections Director Dr. Beth Skinner
- Board of Parole Chair Helen Miller
- Department of Public Safety Commissioner Stephan Bayens
- Iowa Law Enforcement Academy Director Judy Bradshaw
- State Public Defender Jeff Wright
- Department of Correctional Services, 6th Judicial District Director Bruce Vander Sanden
- Iowa-Nebraska NAACP President Betty Andrews
- Commission of Latino Affairs Member Rev. Alfonso Perez
- Right on Crime, National Director of Reentry Initiatives John Koufos
- Office of the AG, Crime Victims Assistance Division Director Janelle Melohn
- Marshall County Attorney Jennifer Miller
- Ankeny Police Chief Darius Potts
- Scott County Sheriff Tim Lane

## Nebraska's anti-racial profiling law has brought about progress but don't confuse it with the gold standard

- Nebraska's Anti-Racial Profiling Law, Revised Statutes Chapter 20 CIVIL RIGHTS, [Neb. R.S. 20-501 to 20-506 \(enacted in 2001\)](#), was referenced often in the FOCUS Committee's discussions
- In 2003, Nebraska was ranked worst of the 50 states in terms of racial disparity in Marijuana Arrests
- By 2010, Nebraska had cuts its racial disparity by 50%, and the prohibition on racial profiling and data collection likely to have contributed to this progress
- In 2018, Nebraska's racial disparity ratio on Marijuana Possession Arrests is 3:1, 33<sup>rd</sup> worst; while Iowa's racial disparity ratio is 7.6:1, 5<sup>th</sup> worst.
- Iowa ranks 3<sup>d</sup> worst in racial disproportional incarceration of African Americans (11:1 black/white)
- Nebraska's racial disproportionality incarceration of African Americans is tied for 16-22<sup>nd</sup> worst (8.3:1 black/white): better but certainly no gold standard

**FOCUS: “Adopt a statutory ban on disparate treatment in law enforcement activities and the delivery of police services”**

- The **state shall adopt a ban on disparate treatment** based on a person’s individual demographics, including **race, creed, color, national origin, ethnicity, religion, sex, gender identity/expression, sexual orientation, physical or mental disability, or any other identifiable characteristics.**
- State or local **public safety employees** performing **law enforcement activities or delivering police services** shall be **prohibited from engaging in disparate treatment.**
- **Disparate treatment** includes **any differential treatment** of a person on the basis of individual demographics (listed above).
- **Detaining an individual, conducting a stop, or any interactions thereafter shall not be based upon the disparate treatment of the individual.**

**FOCUS: Violation** of Unbiased Policing and/or Racial Profiling Prohibition **is basis for personnel action & civil remedy**

- A violation of these prohibited acts is the basis **for an administrative personnel action against a public safety employee** and **any civil damages remedies under state or federal law**.
- **Racially discriminatory pretextual stops are prohibited**
- **Race and other individual demographics simply should not be a factor in police action** outside of situations involving a description of a **specific suspect or data collection**, and Iowa law should reflect that principle.

FOCUS: “Require and automate data collection on race from traffic stops”

- DOT TraCS computerized system used by law enforcement throughout Iowa tracks data on traffic stops and has ability to accept information regarding an individual’s race but it is not required now.
- Like other demographic and descriptive information, an individual’s voluntarily-provided, self-identified race/ethnicity should be embedded in the driver's license data, allowing this information to automatically populate in TraCS when a license is scanned.
- Since license renewals occur only every 8 years for many, DOT will work with stakeholders to accelerate this change
- Precautions to ensure confidentiality of this data must be put in place



## FOCUS: Data Collection and Analysis (cont.)

- Law enforcement agencies shall collect and report the race/ethnicity of every individual whose identification is requested by officers.
- The data collected at a stop should include, at minimum: race/ethnicity, the nature of the alleged law violation that resulted in the stop and whether a warning or citation was issued, an arrest made, or a search conducted as a result of the stop.
- Analysis of the data will be done by Division of Criminal & Juvenile Justice Planning of the Department of Human Rights and the current Justice Advisory Board, renamed Justice & Community Policing Advisory Board (JCPAB) and reconstituted, will annually review analyze the traffic stop data and issue an annual report
- JCPAB will advise on collection, compilation, and reporting of stop data to ensure use of uniform reporting practices

## More on **Data Collection**: What Data the NAACP Wants to Have Collected, and Why

- Time, date, location, and duration of the stop;
- Reason for the stop;
- Whether a driver's license or vehicle registration check was run;
- Whether oral or written warning was given or citation issued;
- The result of the stop, e.g., offense the person was arrested for, if applicable;
- Race, ethnicity, sex, and approximate age of the individual;
- **Actions taken by officer(s) during the stop, such as:**
- Whether the officer asked for consent to search and wh/r provided;
- Whether person, vehicle or property was searched, and basis for search;
- Whether property was seized, type of property, and justification; and
- Whether officer used physical force or physical force was used against the officer.

## Justice & Community Policing Advisory Board: Broadening Its Community Members

- Members should be added to better reflect relevant stakeholders and community members, including:
- NAACP representative
- Public member between the age of 16 and 24
- Iowa Coalition for Collective Change representative
- Iowa Law Enforcement Academy Director, or designee
- Commission on Latino Affairs member
- Commission of Asian and Pacific Islander Affairs member
- Commission on Native American Affairs member

A member from the Commission on the Status of African Americans Affairs will continue to serve as a member of the newly constituted Board.

## ILEA Training, State Matching Grants to Local Law Enforcement Agencies

- The JCPAB should share each annual report with Iowa Law Enforcement Academy, so ILEA can assess law enforcement training and determine if the requirements are effective for reducing disparate treatment of people of color.
- The state should provide matching grant funding to law enforcement agencies to conduct independent, agency-specific research on racial disparities in traffic stops to provide additional data and analysis for consideration by state and local policymakers.
- Any final reports should be made publicly available and provided to the Justice and Community Policing Advisory Board.

# Des Moines Unbiased Policing Ordinance: Ch. 86 (June 22, 2020)

## DSM Ordinance §86-42 to 86-47:

### Unbiased Policing/Anti-Racial Profiling Prohibited

- **Unbiased policing** defined as **differential treatment** in the performance of law enforcement duties or delivery of police service when on one or more Individual Demographics was a **motivating factor** in the action taken.
- **Racial profiling** defined as a **form of biased policing** and includes but is not limited to vehicle, pedestrian, and bicycle stops where one or more of these bases was a motivating factor for the stop or enforcement action taken during the stop.
- **Biased policing and racial profiling in law enforcement and delivery of police services** are **prohibited**.
- The **Iowa Civil Rights Commission** has **jurisdiction over racial profiling complaints against law enforcement** as **such complaints allege discrimination in public accommodations by a local or state governmental unit that offers services to the public** based on individual demographics prohibited by Iowa Code §216.7. (DSM) See, e.g., **Good v. DHS (Iowa S. Ct. 2020)**.

## DSM 86-45(a): Duty to Report, Officer's Duty to Intervene

- Employees who witness or who are aware of instances of biased policing or racial profiling shall report the incident to a supervisor and shall provide all information known to them before the end of the shift during which they make the observation or become aware of the incident or as soon thereafter as practicable under the circumstances.
- 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. Where appropriate, employees are encouraged to intervene at the time the biased policing or racial profiling incident occurs and in any event shall report such biased policing or racial profiling to a supervisor as soon as practicable under the circumstances.
- Active Bystandership for Law Enforcement (ABLE) training by Georgetown Law Center Innovative Policing Program. <https://www.law.georgetown.edu/innovative-policing-program/active-bystandership-for-law-enforcement/>.

## Law Enforcement Duty to Vet Biased Calls for Service

- **86-44(7)**: Employees shall not take any law-enforcement action based on information from members of the public or other employees that they know, or reasonably should know, under all circumstances present is the product of, or motivated by, bias based on individual demographics unless the circumstances indicate that harm is imminent or a crime has been committed.
- **New Jersey law** makes it a criminal offense for a person to knowingly place a racist or otherwise biased 911 call for service for the purpose of intimidation.



## DSM: Supervisors' Oversight Responsibility; Department Policies and Procedure Accessible on Internet Website

**§86-45 (c):** Supervisors shall ensure the working environment is free of bias and free of racial profiling. This oversight responsibility may include periodic inspections of body and in-car audio/video systems, traffic stop data, reports and field inspections during police/citizen interactions. Supervisors shall:

- (1) Take the appropriate action when a violation of this Article occurs.
- (2) Ensure that there is no retaliation for individuals reporting such violations.

**§86-44(b):** Department Policies and Procedures Accessible to the Public. Hard copies shall be available upon request in accordance with Iowa Code Chapter 22. Department's personnel policies and standard operating procedures shall be made available to the public through publication on the City's website as soon as practicable in accordance with Iowa Code Chapter 22.

## §86-45 Role of DSM Human Rights Commission: Public Education plus Assistance in Drafting and Filing Complaint with Iowa Civil Rights Comm'n & OPS

- §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 seek remedies under the ICRA or complain to OPS, 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 data for existing and potential disparities
- Review law 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.