

CITY COUNCIL WORK SESSION MEETING

City of Davenport, Iowa

Monday, September 21, 2020; 5:30 PM

City Hall | 226 W 4th St | Council Chambers

JOINT WORK SESSION WITH THE DAVENPORT CIVIL RIGHTS COMMISSION

I. Topics for Discussion

1. Call to Order
2. Opening Remarks from Mayor Matson and Janelle Swanberg, Chair of the Davenport Civil Rights Commission
3. Recommendations of the Davenport Civil Rights Commission to the Davenport City Council concerning policing reforms

City of Davenport

Agenda Group:
Department: Administration
Contact Info:
Wards:

Action / Date
9/21/2020

Subject:
Recommendations of the Davenport Civil Rights Commission to the Davenport City Council
concerning policing reforms

ATTACHMENTS:

Type	Description
Backup Material	Recommendations

REVIEWERS:

Department	Reviewer	Action	Date
Administration	Admin, Default	Approved	9/16/2020 - 3:53 PM

**RECOMMENDATIONS OF THE DAVENPORT CIVIL
RIGHTS COMMISSION TO THE DAVENPORT CITY
COUNCIL & THE DAVENPORT POLICE
DEPARTMENT CONCERNING POLICING
REFORMS**

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RECOMMENDATIONS OF THE DAVENPORT CIVIL RIGHTS COMMISSION TO THE DAVENPORT CITY COUNCIL & THE DAVENPORT POLICE DEPARTMENT CONCERNING POLICING REFORMS

RECOMMENDATION FOR A RESPONSIVE AND SAFE SYSTEM FOR THE FILING OF COMPLAINTS

One of the recurring themes found in the feedback we have received from people in the community, both through the listening sessions conducted by Director Lacey and the special meetings held by the Commission, involves the system of filing and processing of complaints with the Police Department. These concerns fall into two categories:

- a) Complaints that are filed and at least appear not to be followed up on.
This issue may simply be a matter of poor communication, which can easily be remedied, or it may be the result of a lack of follow through on the part of the Police Department, which constitutes a more serious problem needing to be addressed.
- b) The reluctance of people to file complaints for fear of retaliation by the Police Department or by individual officers.

Therefore, the Davenport Civil Rights Commission recommends that:

1. Communications between the Police Department & Complainants be improved. Complainants should receive written confirmations of the receipt of their complaints, with a description of the process by which their complaints will be address. After a complaint has been addressed, the complainant should be notified, with as much information as the law or personnel policies allow.
2. While there are those who may argue whether the fear of police retaliation is a legitimately founded fear, the very fact that the fear exists and is shared by so many members of the minority communities is indisputable. Therefore, it indicates that there is a need for a revision of the system of filing and addressing complaints to further assure the public that those who file complaints can do so with the assurance that they will be safe from any form of police retaliation. Such an assurance should include provisions for disciplinary actions, as set forth in an established departmental policy, should an officer attempt to retaliate against a complainant.
3. If our recommendation entitled "Recommendation for the Decentralizing of Decision Making" is implemented, the Citizen/Civilian Review Board should be included, when appropriate, in the process of reviewing the complaints and determining what suitable disciplinary actions should be taken.

RECOMMENDATION FOR THE REALLOCATION OF POLICE & CITY FUNDING

Ever since the shooting of George Floyd, included among the policing reforms promoted by the advocates for racial justice has been the call for “defunding the police.” While on its face, the term “defund the police” sounds like a call to “abolish” the police, that is not its intention, nor is it the intention of the Davenport Civil Rights Commission. The police department plays a vital role in our community. Our officers courageously stand on the front lines, protecting the residents of Davenport from those who would do us harm. Most of our officers, on a daily basis, demonstrate themselves to be the model of true public service. We would never advocate the abolishment of the police department.

So, what does “defunding the police” mean? The movement to “defund” the police actually seeks to see a reallocation of a portion of police funds away from the police department and toward other agencies and programs that could contribute to public safety in non-law enforcement ways, and may offer some benefits that could help to reduce conflict between minority communities and the police. According to an article in Brookings, “Data show that 9 out of 10 calls for service are for nonviolent encounters. Now, this does not mean that an incident will not turn violent, but police at times contribute to the escalation of violent force. Police officers’ skillset and training are often out of sync with the social interactions that they have.”^{vi} Shifting some police funding to other service providers, and having the police utilize their services more regularly, could produce positive benefits for all concerned. We recognize that the Police Department alone should not be expected to fund all these programs but that it should be a funding partnership between the Davenport Police Department and the City of Davenport.

Therefore, the Davenport Civil Rights Commission recommends that

1. there be a reallocation of a portion of police & city funding to:
 - a. Social service agencies to increase the availability of social workers, harm reductionists, and counselors to relieve officers who find themselves on calls that require intervention and counseling rather than law enforcement.
 - b. Mental health, addiction, & homeless programs so that they can provide more readily accessible services to those individuals in need of them, and who the police encounter in the line of duty.
 - c. Restorative Justice programs and programs which seek to address the School to Prison Pipeline.
 - d. The creation of a Juvenile Assessment program or center which would: 1) assess what causes contributed to the juvenile’s behavior, and 2) matching the juvenile and his/her family to the resources available in the community that might help prevent a recurrence of the undesirable behavior.
 - e. Various programs in minority communities that are working to positively address the conditions in their communities which contribute to the unrest and inequities which drive some of their residents to crime.
 - f. The Davenport Civil Rights Commission, to increase its capacity to provide more hearings for civil rights complaints and by so doing, lessen the racial tensions in the community.

RECOMMENDATION CONCERNING SCHOOL RESOURCE OFFICERS

In reviewing Director Latrice Lacey's report on the listening sessions with members of minority communities, concerning issues of police – minorities relations, which the Davenport Civil Rights Commission called upon her to conduct, the Commission did not receive any feedback in it about the role and conduct of School Resource Officers. We had some idea that this is a matter of concern in other communities and that there are organizations in our community, such as Quad Cities Interfaith, which are exploring this issue.

It was not until our first Special ZOOM Meeting on Police Reforms (August 1, 2020) that the question of whether or not the School Resource Officer program should be cancelled was raised. During our second Special ZOOM meeting, we received more comments, mostly critical, of this program. Among those was the claim that studies have shown that it actually contributes to the School to Prison Pipeline for minority children, that children of color are unfairly disciplined by School Resource Officers, that these officers do not give Black children the benefit of the doubt, and that having these officers as the first person Black children see upon entering the school building is distressing to them. That last claim does relate to reports out of the listening sessions concerning the fear of police which are experienced by Black children.

Yet, in the second special meeting, we also heard positive comments about the School Resource Officers. Subsequent to that meeting, we also learned that there is a good deal of support among schoolteachers and many parents for retaining the program.

It appears to us that there is a significant division of opinion as to whether to retain or terminate this program, Though we cannot definitively document it, it also appears that the division may be primarily along racial lines, If so, that very fact stands as a strong indictment of the program; one that must be addressed.

Not feeling that we are sufficiently informed on the issues concerning School Resource Officers, and recognizing that the City Council has established a task force to address these questions, the Davenport Civil Rights Commission recommends that:

1. That task force, in partnership with the School District, should conduct a series of fact-finding meetings with parents and community stakeholders. At least one of these meetings should each be exclusively with the supporters of the program and at least one of these meetings should be exclusively with its opponents.
2. Based on the information gathered at these meetings, a team should be established with representatives of both groups, the school district, and the Police Department, to explore recommendations for the future of the program. Since it seems that there are obvious problems in the manner in which some of these officers treat Students of Color unequally, compared to their treatment of White students, if it is decided that the program is to be retained, it should undergo significant changes so that the Students of Color are treated equally, fairly, with respect, and that the revised program encourages inter-racial harmony rather than feeds the School to Prison Pipeline.

RECOMMENDATION FOR REFORMING PRE-TRIAL RELEASE PROGRAMS

“Bail reform is happening. Across the country, jurisdictions are beginning to recognize that contemporary pretrial systems rooted in money bail are discriminatory, ineffective, and (by and large) unconstitutional.”ⁱⁱ

The system of bail release is fundamentally discriminatory against the defendants from the lower income strata of the community. Those who can afford to post bail, regardless of the gravity of the charges against them, are released, while those who cannot afford to post bail, even if the charges against them are not nearly as grave, either remain incarcerated until trial or they and their families are burdened with an insurmountable debt; a debt of which they cannot be relieved even by a declaration of bankruptcy even if they are not convicted of any crime. The effect of such a system not only challenges the principle of equal treatment under the law but also contributes to the serious issue of mass incarceration. It generates profound trauma for the accused and the accused’s family, and promotes an atmosphere of distrust of the police and the criminal justice system, not only on the part of the accused and the accused’s family but also on the part of minority and low income communities. “Under this pretrial system, it is better to be guilty, dangerous, and rich than to be innocent, harmless, and poor.”ⁱⁱⁱ

Therefore, the Davenport Civil Rights Commission recommends:

1. The option of releasing defendants on their own recognizance should be maximized by the courts.
2. Statutes should be enacted requiring judges, utilizing appropriate risk assessment tools, to impose the “least restrictive conditions,” determined to insure the defendant’s appearance at trial as well as to protect the public safety, with “release on their own recognizance” being the default ruling.
3. Pretrial services agencies should be refocused more on providing the defendant with support than supervision. Rather than simply reporting a defendant’s violation of the conditions of release, which would result in the defendant’s re-arrest, detention, and prosecution for contempt of court, regardless of the nature of the violation, the pretrial services agencies should seek to address the violation administratively, reserving the right to invoke revocation proceeding only for violations that actually interfere with the court’s functions or that present a risk to public safety.
4. Defendants should not be responsible for the payment of any fees related to pretrial expenses. The criminal justice system serves the public good, from which the entire community benefits. Like so many other systems and agencies which serve the general public good, the all of its costs should be funded by the entire community, through taxpayer dollars. To charge defendants for “user fees,” such as court mandated drug testing or rental fees for electronic monitoring devices, is discriminatory against low income defendants.

RECOMMENDATION FOR DECRIMINALIZATION OF LOW-LEVEL OFFENSES

“Most Americans experience criminal justice via the petty offense process; the ten million misdemeanor cases filed annually comprise around eighty percent of state dockets. Moreover, the petty offense process drives some large and troubling dynamics. The misdemeanor machinery is a major source of overcriminalization; it produces much of the racial skew of the U.S. criminal population.”^{iv}

From the listening sessions conducted by our Director and the comments made by the public in our two special meetings on policing reform, the Davenport Civil Rights Commission received a good deal of testimony concerning the targeting of People of Color for low-level offenses, and using such offenses as a pretext for harassment or arrest. For example, according to one testimony, Blacks are 8 times more likely to get arrested for marijuana possession than Whites, though statistically, marijuana usage is about equal between Whites and Blacks. There also was a testimony that Black and Brown men who are suffering or recovering from drug addiction are discouraged from carrying Narcan Kits, which can help them recover from a drug overdose, because, while the kits are legal, they still are required by some officers to explain why they have these kits in their possession. Such stops may also include the officers involved exploring whether they have a past criminal record. In that same testimony, Women of Color have been harassed by police for carrying 3 or more condoms, with the condoms being confiscated and the women being accused of being sex workers.

Considering the evidence that People of Color tend to receive more punitive treatment than do Whites for the commission of low-level offenses, and that such unequal treatment is a major contributor to the problem of mass incarceration, the Davenport Civil Rights Commission recommends that:

1. Low-level offenses no longer be considered arrestable offenses but rather be re-categorized as fineable-only offenses.
2. The fines for these offenses should not be exorbitant but rather reasonable and affordable for all members of the community.
3. If the defendant cannot afford to pay the fine, that an affordable payment program be set up for the defendant.
4. No defendant should be charged and incarcerated for civil contempt, solely for failure to fully pay the fine.
5. Convictions for these low-level offenses should not be classified as criminal offenses and should not be included in any criminal data base, thereby not jeopardizing the defendant's future employment opportunities.

RECOMMENDATION FOR DECENTRALIZING DECISION MAKING

With the death of George Floyd, national attention has been drawn to the policies and practices of police departments around the country. Many shortcomings were revealed, and several of them have been and are being addressed both on state and local levels, including in Iowa and in Davenport. In the information gathered from the listening sessions conducted by our director and testimonies offered at our two special meetings on policing reform, the Davenport Civil Rights Commission received a significant number of accounts of several shortcomings being evident in some of the actions of some of our own police officers. These inappropriate behaviors ran the gamut from speaking disrespectfully to residents, to harassing and threatening behaviors, to the inappropriate use of force. There were accounts of police officers engaging in racial profiling, pretextual stops, ignoring complaints about violence committed against People of Color, failing to wear face masks when confronting residents while we are in the midst of a dangerous pandemic, acts of physical violence against People of Color, use of knee-on-neck and choke hold restraints, and even an account of an officer witnessing an assault on one girl by a group of girls, not intervening, and only approaching the victim afterwards to take a report, while the attackers looked on.

At least to the community, it appears that those officers who commit such offenses often do not face any consequences for their behavior. Whether or not that is an accurate assessment, one thing is clear. There is a failure of communication and involvement between the Police Department and the community, particularly the minority communities. This failure has greatly contributed to an environment of distrust of the Police Department by many in the minority communities. That trust can only be established if the City and the Police Department seek to actively engage members of the community, particularly members of the minority communities, in monitoring, reviewing, and revising police policies and practices.

Therefore, the Davenport Civil Rights Commission recommends that:

1. The City Council and the Police Department institute the recommendations submitted to the Des Moines City Council by the Iowa-Nebraska State NAACP Area Conference of Branches.^v Those recommendations include the establishment of:
 - a. A Community Policing Practices & Review Committee
 - i. The purposes of this body would be to
 1. 1) provide the community with a direct and ongoing voice on how they are policed, and the authority to review unbiased policing policies, practices and procedures, strategies, operations, resource deployment, and public safety in general.
 2. 2) to provide advice and make recommendations to the Police Department and the City Council on policy and practice matters.
 - b. A Citizen/Civilian Review Board
 - i. The purpose of this body would be to hold officers accountable through a structured mechanism that ensures individual complaints of police misconduct are scrutinized and decided by a body independent of the police.

**RECOMMENDATION CONCERNING MODELING AN UNBIAS
POLICING ORDINANCE AFTER THE UNBIAS POLICING ORDINANCE
OF DES MOINES, IOWA**

ORDINANCE NO. 15,906

AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, by adding Article III, Sections 86-42, 86-43, 86-44, 86-45, 86-46, and 86-47, regarding unbiased policing.

Be It Ordained by the City Council of the City of Des Moines, Iowa:

Section 1. That the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, is hereby amended by adding Article III, Sections 86-42, 86-43, 86-44, 86-45, 86-46, and 86-47, regarding unbiased policing, as follows:

Article III. Unbiased Policing

86-42. Policy Statement.

86-43. Definitions.

86-44. Prohibitions and Procedures.

86-45. Complaints and Compliance.

86-46. Training.

86-47. Annual Review.

ARTICLE III. UNBIASED POLICING

Sec. 86-42. Policy Statement.

The City of Des Moines and the Des Moines Police Department shall be committed to the unbiased, equitable treatment of all. Department employees shall treat all in a fair, impartial and objective manner, in accordance with law, and without consideration of their individual demographics as defined in this Article.

Sec. 86-43. Definitions.

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Article, except where the context clearly indicates a different meaning:

Biased Policing means differential treatment in the performance of law enforcement duties or delivery of police services towards a person or classes of persons when one or more individual demographics was a motivating factor in the action taken. If a person's individual demographics played a motivating factor in the city employee's decision, then that personal characteristic was a motivating factor of the action taken.

Fair and Impartial Treatment means persons, irrespective of individual demographics, are treated in the same manner under the same or similar circumstances. Reasonable concessions and accommodations may be made, when dealing with individuals with physical, developmental or mental disabilities, injury, illness, deafness, blindness, substance abuse disorders or similar conditions, individuals whose primary language is a language other than English, individuals of various cultural backgrounds, and individuals of youthful age, or when information about a person legally necessitates different treatment.

Individual Demographics means personal characteristics to include, but not limited to: race, creed, color, ethnicity, national origin, ancestry, religion, age, gender, sex, gender identity/ expression, sexual orientation, socioeconomic status, disability, immigration status, familial status, housing status, occupation, language fluency, cultural group, political status, or source of income, or any other identifiable characteristics.

Police Services means actions and activities that contribute to the overall well-being and safety of the public. These tasks include but are not limited to: crime prevention and investigation, preventive patrol, traffic control, traffic accidents, medical emergencies and lifesaving services, assistance at fire scenes, public information and education.

Racial Profiling means that form of biased policing where a motivating factor of the action taken is based on an individual's race, color, ethnicity, religion or national origin rather than on the individual's behavior or on information of the type and kind customarily and reasonably relied upon in identifying the individual as having engaged in prohibited activity. Racial profiling includes but is not limited to vehicle, pedestrian, and bicycle stops where race, color, ethnicity, religion or national origin was a motivating factor for the stop or enforcement action taken during the stop.

Specific subject description-based identification means a reasonably detailed physical description of the personal identifying characteristics of a potential suspect or victim, including but not limited to age, sex, ethnicity, race, or English language proficiency.

Sec. 86-44. Prohibitions and Procedures.

(a) *Fair & Impartial Treatment.*

- (1) Biased policing is prohibited both in enforcement of the law and the delivery of police services by any employee.
- (2) Racial Profiling is prohibited both in enforcement of the law and the delivery of police services by any employee. Discriminatory pretextual stops are prohibited under state and federal law and are also prohibited by this ordinance.
- (3) Employees shall exercise their authority and act to accord fair and impartial treatment to all persons.

(4) Employees shall not consider individual demographics when performing law enforcement duties or delivering police services except when such characteristics are part of a specific subject description-based identification.

(5) Employees shall not use any terms, language or remarks that are derogatory, tend to belittle, show contempt for or defame any individual demographic, except when necessary to include such terms, language or remarks used by another for the preparation of official reports or testimony.

(6) Employees must be able to articulate reasonable suspicion or probable cause supporting any police action.

(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.

(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.

Sec. 86-45. Complaints and Compliance.

(a) 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.

(b) Any employee who opposes any practice occurring in violation of this Article shall not be discriminated against in any manner for opposing such practice, testifying, assisting or participating in any investigation, proceeding or hearing arising out of this Article.

(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.

(d) Any person claiming to be aggrieved or to have witnessed biased policing or racial profiling may file a complaint. No person shall be discouraged, intimidated, or coerced from filing such a complaint, nor shall any person be discriminated or retaliated against because he or she has filed a complaint of this nature.

(1) While the Civil and Human Rights Commission will not have jurisdiction to investigate or adjudicate alleged violations of this ordinance, the commission staff shall educate the public about the complaint process and shall offer to assist, and shall assist individuals in preparing and filing a biased policing or racial profiling complaint with the Iowa Civil Rights Commission. The ICRC has

jurisdiction over racial profiling complaints against law enforcement as such complaints allege discrimination in public accommodations by a local government unit that offers services to the public based on the individual demographics prohibited by the Iowa Civil Rights Act, Iowa Code Sec. 216.7. See also, Iowa Code Sec. 216.2(13) as now adopted or hereinafter amended. The remedies afforded by the Iowa Civil Rights Act are not exclusive and do not foreclose a person from asserting any remedies he or she may have based on the Federal or Iowa Constitutions, Federal or Iowa Codes, or common law.

(2) All complaints of biased policing or racial profiling brought to the City shall be directed to the department's Office of Professional Standards (OPS) or the Des Moines Civil and Human Rights Commission, or to both. If directed to the Des Moines Civil and Human Rights Commission, the Commission shall perform an intake function and also notify OPS. If directed to OPS, OPS shall perform an intake function and notify the Des Moines Civil and Human Rights Commission of the filed complaint.

(3) OPS will conduct a thorough investigation, consistent with the established citizen complaint process, for review by supervisory staff and the Chief of Police. The completed investigation with findings and recommendations will be reviewed by a committee consisting of the City Manager, Civil and Human Rights Commission Director, and City Attorney. The committee will provide their insight and advice to the Chief of Police who is responsible for the disposition.

(4) If the complaint is substantiated, the department will take appropriate measures commensurate to the severity of the substantiated complaint.

(5) OPS shall maintain data relating specifically to complaints of biased policing and racial profiling. Information shall be provided to the Chief of Police or designated authority in a manner most suitable for administrative review, problem identification, and development of appropriate corrective actions to prevent biased policing and racial profiling.

Sec. 86-46. Training.

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, which training shall include de-escalation, cultural diversity, cultural competency, and implicit bias and may include, but is not limited to: training on subjects related to police ethics, police-citizen interaction, standards of conduct, conducting motor vehicle stops, and related topics suitable for preventing incidents of biased policing and racial profiling.

Sec. 86-47. Annual Review.

This topic and policy under this Article will be reviewed annually and the City Manager shall certify such review to the City Council no later than the first day of the fiscal year.

Section 2. Racial profiling and biased policing are violations of this Article. Any penalty for violation of this new Article III related to any employee not acting in conformity therewith shall be limited to that provided under state or federal law, which violation may include serving as cause for discipline up to and including termination from employment as consistent with federal and state law requirements including Iowa Code Chapters

400 and 20 as applicable. The limitation related to violations of this new Article III related to employee violations of Article III is not intended to expand or limit any other remedy or cause of action available under state or federal law, nor to expand or restrict the time for seeking such remedy or cause of action and shall not be construed as doing so, nor as conferring jurisdiction on the Des Moines Civil and Human Rights Commission but, pursuant to § 86-45(d) Commission staff shall assist individuals who desire to file any complaint with to the Iowa Civil Rights Commission for investigation and resolution. The declaration of the prohibitions set forth in this Article shall not create any new or separate legal rights or claims by or on behalf of any third party and shall not be construed as a waiver, modification, or alteration of any available defense or governmental immunity of the city under federal or state law.

Section 3. The city council hereby directs the city manager to create a Community Policing and Code Enforcement Policy and Practice Review Committee (“PPRC”) to aid the city manager in reviewing data and recommendations for policy and practice modifications to improve law enforcement policies and practices. The PPRC should include at least two members of the Des Moines Civil and Human Rights Commission, one member from the housing appeals board, one staff member from the community development department, and one sworn officer from the police department plus three members from the community who are residents of Des Moines who shall be appointed by the mayor and the at-large councilmembers, and one youth member recommended to the manager by the Des Moines Civil and Human Rights Commission. The PPRC should meet at least quarterly, or more frequently as PPRC determines, to review existing and planned policies and practices, and make recommendations to ensure elimination of existing or potential disparities in the enforcement of the law. In conducting such review, the PPRC shall at a minimum:

- 1) Review law enforcement and neighborhood code enforcement data for existing or potential disparities in practices;
- 2) Review law enforcement and neighborhood code enforcement practices and policies related to the delivery of unbiased policing and code enforcement;
- 3) Provide advice and recommendations to the city manager on policy and practice matters;

4) After substantial progress is made with the policy and practice matter review, the PPRC will research other committee structures to make recommendations to the Manager and Council concerning membership and scope of work of the PPRC for ongoing practice and process improvement.

The PPRC shall provide a detailed report to the city council no less than annually, and more frequently as circumstances warrant.

Section 4. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

FORM APPROVED:

Douglas P. Philiph, Assistant City Attorney

T. M. Franklin Cownie, Mayor

Attest: I, P. Kay Cmelik, City Clerk of the City of Des Moines, Iowa, hereby certify that the above and foregoing is a true copy of an ordinance (Roll Call No. 20-1061I), passed by the City Council of said City at a meeting held on June 22, 2020 signed by the Mayor on June 22, 2020 and published and provided by law in the Business Record on July 10, 2020. Authorized by Publication Order No. 11210.

P. Kay Cmelik, City Clerk

ENDNOTES

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- ⁱ Ray, Rashawn, “What Does ‘Defund the Police’ Mean and Does it Have Merit?,” June 19, 2020, <https://www.brookings.edu/blog/fixgov/2020/06/19/what-does-defund-the-police-mean-and-does-it-have-merit/#:~:text=Rashawn%20Ray,-David%20M.%20Rubenstein&text=%E2%80%9CDefund%20the%20police%E2%80%9D%20means%20reallocating,funded%20by%20the%20local%20municipality>.
- ⁱⁱ Brook Hopkins, Chiraag Bains, & Colin Doyle, “PRINCIPLES OF PRETRIAL RELEASE: REFORMING BAIL WITHOUT REPEATING ITS HARMS,” JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY, Fall, 2018, <https://scholarlycommons.law.northwestern.edu/jclc/vol108/iss4/2/>
- ⁱⁱⁱ Ibid.
- ^{iv} Alexandra Natapoff, “Misdemeanor Decriminalization,” VANDERBILT LAW REVIEW, 2019, <https://scholarship.law.vanderbilt.edu/cgi/viewcontent.cgi?article=1189&context=vlr>
- ^v Letter to the Des Moines City Council from the Iowa-Nebraska NAACP State Area Conference of Branches, June 15, 2020, [file:///C:/Users/Henry%20Karp/AppData/Local/Packages/microsoft.windowscommunicationsapps_8wekyb3d8bbwe/LocalState/Files/S0/10863/Attachments/71ib\[24030\].pdf](file:///C:/Users/Henry%20Karp/AppData/Local/Packages/microsoft.windowscommunicationsapps_8wekyb3d8bbwe/LocalState/Files/S0/10863/Attachments/71ib[24030].pdf)

APPENDIX

POLICE – MINORITY RACISM ISSUES

Latrice Lacey Listening Sessions Takeaway

The list of items discussed at the meeting are cited below and I've attached an article that highlights some of the ways policing trauma can manifest.

1. DPD uses knee to neck
 - * There was the issue a few years ago where a Hispanic community member died two days after a police officer knelt on the person's shoulder, compressing their chest cavity.
2. DPD uses chokeholds
 - * DPD officers frequently go up behind community and wrap both arms around their neck, strangling them.
3. There are concerns about racialized trauma and fear within the Black community. Black people are afraid to even walk to the store or around their neighborhoods alone.
4. The DPD continues to stop people and have been pulling people over for wearing masks to protect themselves from COVID-19. The officers stop them and want them to remove their masks and are not wearing a mask, increasing their likelihood of being exposed to a deadly disease. When people ask why they are being stopped, they are told that they fit the description.
5. Black people are told "We got a call, you fit the description" and this is used to engage in various stop and frisk encounters.
6. Black men are afraid to ride in a car with more than three black men, because they believe know that they will be pulled over.
7. Black men are being profiled by DPD for wearing cornrows, dreads, backwards baseball cap, or even certain clothing that they think are associated with criminal activity.
8. Black people are frequently stopped as they are just walking down the street and asked for ID and when you don't have ID, the police will search you and threaten to arrest you for not having an ID. This is incredibly unfair as some people cannot afford an ID or are lacking the documentation to obtain an ID.
 - * Kids are so afraid of being arrested that they are having to walk around with their student ID.
9. DPD frequently ignores complaints about violence committed against black people there are instances where people experience a refusal to file report or refusal to give a report number. In reviewing data in the FBI database, there does appear to be a disparity. Generally crime is intraracial, the data reflects a disparity between crimes committed and the victims of crime.
 - * Black people file complaints and never hear anything back and even when the community members follow up with DPD, they are ignored.
 - * When people follow up with DPD they are told that they don't know what to tell them, and told, "protect yourself, but you will be charged"
10. There is extensive over-policing and underpricing occurring in the area of 13/14-Ripley; 14th and Gaines (Washington to Grand).
 - * As an example of them profiling people - on 6/16 around 4-5 pm at 13th and Ripley DPD stopped a gray Chevy and after looking into the car they waived the driver away - the driver that they stopped was a woman who had dreads, the officer believed that she was a man, but when they saw it was a woman, they just let her go.

11. There are concerns with police interaction with community members where they are being treated in an inhuman and degrading manner.

- * Police are condescending and rude to community members.

- * Police officer told one woman to “shut up and get in your car and leave” when she arrived to check on her daughter and grandchildren who were the victims of a crime.

- * On 14th and Gaines, an Officer told a woman, “Be quiet bitch, you’re the reason this is going on” when she called for assistance.

12. DPD ignores complaints against certain community members, treating them as if they are above the law. Community members believe this is either because the people are informants, or as away of forcing people to take the issue into their own hands and effectively “Killing two birds with one stone” (Causing one person to be killed and the other to be arrested).

13. Within the last thirty days, there was an assault on a 16 y/o girl that was captured on Facebook. The girl was being beat by a group of girls, when a parent joined in and began beating her with crowbar - video is online. DPD pulled up and witnessed the assault, however did not take any action and waited until the group was done beating the girl before they even exited their vehicle. The group then stood across the street and watched as the victim gave her statement to the police.

14. DPD does not respond to certain people’s calls for assistance, when black people call the police there is a very long response time, however when white neighbors call the police, the response is very quick.

15. Community members have been listening to the scanner, they have heard police decline to go to certain calls - one officer was asked to respond to a domestic violence incident and he said “fuck her, she’s always calling”.

- * Another instance of scanner misconduct, an officer reported that a young woman died at Walmart over the scanner, and told emergency responders to take their time because she was already gone.

- * Another instance was accusing an individual of committing a crime over the scanner as a way to create confusion within the community about the individual’s involvement with a crime.

16. Community members report being “roughed up” by DPD, and when they ask for a badge number the officers refuse to give it to them.

17. DPD officers frequently turn off their body cameras when engaging in misconduct. Some officers even spread rumors about people’s involvement with the police and in criminal activity.

18. There is the data from DCAP that shows the racial disparities occurring year to year with traffic stops.

DAVENPORT CIVIL RIGHTS COMMISSION
Minutes of Special Meeting
August 1, 2020

The Davenport Civil Rights Commission (DCRC) met at 10 a.m., Saturday, August 1, 2020, through a zoom meeting. Commissioner Swanberg presided.

COMMISSIONERS PRESENT: Boyd, Gaston, Guster, Karp, Mateos, Pokora, Swanberg,

COMMISSIONERS ABSENT: None

OTHER PERSONS PRESENT:

Latrice Lacey, Members of the community

WELCOME

Commissioner Swanberg welcomed the members of the community and introduced the purpose of the meeting.

PUBLIC INPUT

Brian Wingert – Increased number of arrests in Davenport related to cannabis. Black people are 8 times more likely to be arrested than their white counterparts.

Jordan Schneider – Difference in policing among officers. There is a need for officer training to help them see people of color and understand how they react. There also needs to be a dialogue among officers to express frustration and deal with issues and perceptions.

Amber Bordolo – Suggested having a Citizen’s Review Board. Las Vegas has one and addressed disproportionality within the police force. There are numerous data on how this board works and how it minimizes racial bias. Also suggested removing School Resource Officers (SRO) within the schools. No data shows how this position helps and improves schools. There is much need for social workers and counselors. Scott County is the worst in the country; black girls are more likely to get arrested than white girls. Juveniles with early interaction with the police as a teenager are more likely to be charged as adults.

Jeff and Lisa Sampson – Conflict of interest at the DA’s office. Huge discrepancy between Rock Island and Scott County on investigations. Investigations should be removed from the duties of the County Attorney’s office because families and victims are not getting fair results.

Jay Wolin – Member of the Davenport Community Advisory Panel (DCAP) and encourages the continued study of racial profiling in the City of Davenport. In 2017, the police chief and the Mayor at the time wanted to stop studying racial profiling. After many discussions with DCAP, they agreed to do the study for 2017 and 2018, and reassess future years based on the results. To date, we have not seen the results of those studies publicly.

John Vans – Attended a City Council meeting and proposed the idea of having a Community Review Board. Has reached out to the Mayor and city council members, school board members regarding SROs and general police reforms.

Gary Thrapp – From Beyond the Baseline. Talks to kids about violence and police. Established Hoop’n for Change events. Have seen a better relationship between the community and the police. Have witnessed good relationships between students and SROs. Be very careful about how you make decisions without seeing how people work. We should work together and bring positive force and action with them.

Kim Brown – RN who runs a harm reduction facility in the QC and has worked with sex workers. Advocates for getting Naloxone in the community to save people from a drug overdose. Black and brown men are prohibited from carrying Narcan. Have seen disparities in arrests and have witnessed SROs body-slam students. Deborah Sperry – The police union has been defensive about this special meeting. Davenport has had issues with systemic racism. Understand the need to work with officers and the necessity of having officers in the community. The police union should step back and work with the community than being on the defensive. Jonie Dimmer – Has contacted the Mayor, police chief, and the sheriff on both sides of the river. Talked about the 8 Can't Wait campaign. The fundamental basis for 8 Can't Wait is a study of the relationship between cities' demographic characteristics, their use of force policies, and their level of police killings of civilians. Adopting these policies is statistically associated with a lower level of police killings, whether judged per person or per arrest.

Arthur Anderson – Sent a FOIA request under the Iowa Civil Rights Code. What legal jurisdiction does the Commission and if the Commission has a formal complaint against the police department.

Lupina Hodges - Has personally experienced systemic racism in jail. Went back to school and received a degree to change her life, but when she was pulled over, her history continues to haunt her. There needs to be reform.

Henry Hodges Jr – There is a need for officers who are not police. Police should realize that they are not above the law. They should lead by example, understand the problem that comes along in the black community. The problem is that we don't have officers who do not want to know the situation. Encourages everyone to be open-minded.

Frank Holly – Received hate mail and asked for a police report. Was told that they will note what happened. Felt marginalized quite often. Experienced racial discrimination. White people have different priorities than black people. We need black police who understands black people.

Van Shelton - From RI who owns several businesses – son was beaten by Davenport police. Was not able to speak to anyone and needs a resolution. There was no need for 9 police members to subdue a 150-lb guy.

Chester Schaffer – People participating in peaceful protest to bring awareness to injustices. Police needs more equipment and training.

Tine Hodges - Police are not empathetic to others when it comes to domestic violence issues. Filed a complaint and got arrested instead. Has filed 2 complaints with Internal Affairs.

Brenda Guzman - Listened to the Police Chief's statement which sounded like the police force do not need any improvement.

Andrew Devries – Talked about police reform policy, implicit bias, and officer matrix. Reforms are good on paper but have been scrutinized by research. We cannot let police police themselves. Redistribute police funds to another department.

Daniel Foley – Does not agree with expanding juvenile detention center, it costs too much. Resources are better used in feeding kids and providing other resources than expanding the detention center.

Brad Guerrero – Racism and racial profiling has been going on. Police are not open to receiving criticism.

Kimberly Dotson – Professor at Clear Lake, PhD in Criminal Justice, years of experience in criminal justice. SRO increases arrests of minority students, lgbs, and the disabled at schools. No clear understanding of what SROs duties are. Defund the police department and reallocate resources. Law enforcements are undertrained in dealing with mental health issues. Diversifying the police department will not solve the issue or change the dynamic of the force.

Darius – 17-yr old from North HS. Supports the police department even if he has feared the Davenport Police because of how they respond to him. There is a fear of retaliation. Advocates that States not to defund the police department but add a civilian review board that can help make police accountable.

COMMISSION DISCUSSION ON POLICING REFORMS REPORT

Commissioner Boyd – Believes in embodying statutes and ordinances. Surprised and disheartened by the QC Times' article and how the police union reacted to the special meeting. However, encouraged by what she has heard today.

Commissioner Guster – Appalled and troubled by personal attacks to the Commission’s Director and things he heard about today’s public hearing. When we try to solve problems before they become problems, we are criticized. Encourages the Mayor, Police Chief, and the Commission to continue the conversation of action.

Commissioner Swanberg – There is a DCAP group invitation from the Mayor and the Police Chief.

Commissioner Karp – There is no intention of creating division but make the community inclusive and welcoming, where people are respected and treated with dignity. Trust is an issue due to stereotyping. Bring people together – the police and the minorities – when people see face to face, you learn and understand each other. Make them feel comfortable with each other.

Commissioner Boyd – When we see something that is not right, we should do something about it.

Mayor Matson – Thanked the Commission and the City Council for allowing this event to happen and allow people to voice concerns. Work is ongoing with regards to improving policies in the police department and increases the recruiting and retention of officers in the minority community. Body cameras are available and are being used by 155 of 163 officers to make sure everything is recorded. State policy is being followed in the use of chokeholds, use of deadly force, etc.

Commissioner Guster – NAACP has worked to foster change. Will speak with NAACP president to discuss next steps. There are changes implemented in other places that can be taken into consideration and deserve to be discussed.

Commissioner Karp – Need to process the amount of information collected. Another special meeting to identify recommendations to the City Council, police department, with invitation to the Mayor, Police Chief, head of the police union, and other stakeholders.

Commissioner Mateos- There is no one blanket solution for everything. Things have been done in other communities, but will it work for our community? As a community, we all have to work together and find a compromise.

Commissioner Swanberg – Be ready for the next meeting and bring other solutions that people want to talk about.

On motion by Commissioner Guster, seconded by Commissioner Mateos, a special meeting on will be scheduled on August 15th @ 10am.

On motion by Commissioner Mateos, seconded by Commissioner Boyd, schedule meeting on August 15th to include the Commission, the Mayor, City Council, Davenport police chief, and the Davenport police union leader.

Amendment by Commissioner Guster, seconded by Commissioner Boyd, to add the Davenport School Superintendent to the group of invitees.

Commissioner Pokora - Sorting through suggestions, prioritize finding solutions and then getting with the group of invitees on how to implement those things. Would like to have everything on paper for reference.

Commissioner Karp – Engage other parties in dialogue before deciding on recommendations.

Commissioner Guster – Put information on paper so we can use them as reference.

Commissioner Karp calls the question. Motions stands. All Commissioners voted in the affirmative.

PUBLIC COMMENT

Amber Bordollo – Iowa has worked towards progression, but Davenport is still quite far behind. Supports the removal of SROs from the schools.

Mayor Matson – Continuance of SRO contracts, and not increasing the number of SROs, are to be discussed at the next council meeting.

Daniel Teague – Nobody has said anything about the attack on the Director of the Commission. Same conversation has been in discussion for 5 or 10 years ago and it does not make any sense, when is change going to happen?

Dr. Anderson – Requests that the Chair reserve the council chamber for the next meeting to accommodate people and provide transparency. Provided reports from National Institute of Justice – some information are not referenced, in academia, it is considered plagiarism. Laws in place require police officers to use other types of force before shooting. No legal jurisdiction to supervise the police.

Lupina Hodges – Consider cultural diversity in the police force.

Henry Hodges, Jr – Agreed with the list of people invited to the next meeting and suggests that public should also be allowed to speak.

Kelly Cruz – Resident of RI but come to Davenport often. Make sure that minority voices are also heard.

At 12:23 p.m., a motion was made by Commissioner Guster, seconded by Commissioner Boyd to adjourn the meeting. All Commissioners voted in the affirmative.

Next special meeting: August 15, 2020

Submitted by Ruby Mateos, Secretary

NOTES FROM THE SPECIAL MEETING ON AUGUST 24, 2020

Reallocation of Funding

HK - Investment in social workers; some calls require counseling instead of a gun.

JS - How many social workers are currently working with the DPD?

PS - Don't have any social workers working at DPD - work with DHS and Family Resources.

JS - What areas do we think that social workers would be helpful for DPD?

DV/MH crisis

MG - When money is spent proactively to help kids/families, it is money that is better spent than that spent reactively - racial disparities - reallocate to Family Resources, to alleviate funds spent down range. (Ex. Incarceration/foster care) What are the best ways to serve the full community? People speak favorably about SROs - but when children of color interact with SROs the outcomes are not always good and can lead to s2pp. Should also look at restorative justice programs.

RM - Have to be careful of attempting to reallocate to family resources, we already have a shortage of mental health professionals - will this overload them?

Safe Housing

Addressing housing insecurity and the ripple effects?

JS - eviction - job loss/school transfer - should CC increase funding for safe housing programs

MG - FR is currently looking at methods to reorganize their services - could perhaps identify ways to effectively address housing insecurity within city.

HK - need to protect neighborhoods - (Ex. Gentrification)

RP - City is considering selling low-income housing, could go to for-profit entity which could be a disaster. Maintenance and management needs to be clearly explained - could be bought and sold without recourse to residents. Profit overrides maintenance - most important cr issue that should be being considered.

RM - Good to talk about, good to hear, but where would the money be coming from?

JS - Encourage city to go after more funding.

RM - Capstone project to address housing - lead - maybe outside money is good. RP- Good management and good maintenance are pertinent - needs to be local non-profit - participates with Ecumenical Housing

HK - Where the money is spent shows where the priorities are; the priorities of a community should be the well-being of community members

MG - Agree with HK - have to find the money to eliminate the problems with disproportionate access to jobs/healthcare, etc. to address long term solutions

Removal of Police from Schools

RH - Studies have shown that this is key to addressing the school to prison pipeline

EB - Comments from 8/1 meeting support RH point about s2pp MG - Studies have shown SROs directly contribute to S2pp - SROs should only be brought in where there are life/death situations. Roles need to be clearly defined, cannot be the first person that a black child sees, because black children will not get the benefit of the doubt, shown by statistics. COC are more vulnerable to off-ramps out of school due to unfair discipline/SRO/criminal justice system- o tolerance policies need to be evaluated as well as it doesn't work.

Reform Pre-Trial Release Programs

Cash bail system -

JS - charged for stay in jail - court deb becomes devastating to people who are lower income - not dischargeable in bankruptcy -

HK - sat through hearings for undocumented people; clear that pretrial release system is stacked against people of color - someone selling drugs was released on their own recognizance but undocumented POC are held and not even allowed to interact with their families.

Invest in Care, Not Control

Drug use - (Des Moines/Cedar Rapids) -

HK - black people are 8x more likely to be arrested for marijuana than whites in Davenport - this is a policing issue.

MG - in looking at racial disparities - unless there is something showing that usage rates are different, there is something wrong with the picture. This can come up in traffic stops, etc., discretion to decide how to enforce leads to disparities.

Insufficient mental health treatment programs

EB- 8/1 comment - police are asked to be everything to everyone - not realistic

Decriminalize Survival

Drugs/social/moral crimes (Des Moines/Cedar Rapids)

Disparity in arrests for drugs -

EB - Getting Narcon kits into the community - JS -

Drugs/human trafficking/sex work?

HK - People are stopped for having kits, despite explaining why they have it, the encounter would not stop there. Suspicion/past, etc.

UMG - Needles are not considered possession unless used for illegal purpose

DP - Needles are used as excuse to arrest

EB- Having 3+ condoms, confiscated - fear of being perceived as engaging in sex work

Demilitarize the Police

Review and update use of force policies(WDM/CR/Iowa City)

- Ban choke holds, knee-to-neck maneuvers and strengthen use of force standards. (Iowa City/Cedar Rapids)

MG - CPS speak on state law on chokehold/body cams

CPS - HF 2647(?) - will probably get back to us on additional information

Review and revise body camera policies (Cedar Rapids/SC/Iowa City/Urbandale)

Decentralize Decision-making

- Independent Civilian Review Board - (Cedar Rapids/Iowa City/WDM/Dubuque)

RH - Absolutely necessary to give confidence to community in LE

LGBTQ DV not taken seriously, no charges, no follow thru, taking the side of someone against a trans person. DCAP captured by people with vested interest in maintaining status quo.

EB - DCAP participant at 8/1 meeting also supported monitoring data

JS - Heard earlier that DCAP didn't seem to fit the bill for this purpose

HK - lots of comments on 8/1 regarding independent review board - happening in lots of communities within the state

- Invest in neighborhood councils who can participate in municipal decision making (Cedar Rapids)

HK - Lack of outside interaction - humanize one another - interpersonal interactions could help police and entire city

EB - Agree with RK - when she taught, there was officer friendly - good relationship
- Abolition of qualified immunity (Cedar Rapids)

MG - Would like to hear from PD/Union on why they need immunity - Law enforcement and municipal government negotiations public (Cedar Rapids) **Public Comment:**

MR - QC Pride - HRC ratings for Davenport - numbers dropped because of failure to report hate crimes properly - score drop jeopardizes funding for these issues.

DS - Panelist says there's only so much money, but you either pay now or pay later. Need to take a longer term view.

MH - Does not believe that having a conversation with oppressors conveys the oppression.... An important way for the community to interact with the police would be for them to be here listening to citizens making comments to the city.

DT - Having the same conversation over and over again, this is offensive to have to continue to ask to be treated like normal human beings.

AD - Police are listening but aren't speaking. Haven't volunteered to offer any changes. This was shown as the statement issued shows a failure to make any effort to make changes or hold themselves accountable. There was a white supremacist rally in Davenport - one organizer has swastika on his chest - DGP found out that the organizer was a Nazi - QC Times article says Ald. Ambrose attended "back the blue" rally - until there are new people on council, there will be no changes.

BW - Started decriminalize Davenport - white and black people smoke at the same rate, yet black people are 8x more likely to be arrested for marijuana use. Has given stats to Mayor Matson and he hasn't cared to get them from BW.

JW - SRO - teachers are against having them removed - invite committee to approach with different way of going. Need male role models - kids need adult male figures; In touch with CWD children in family with disabilities - has biracial grandchildren - can find positives for any negatives about SROs. Going to be hard to get them out of the district - maybe find a way to get it to work for smaller number by finding role models.

AD - Boyfriend is black, black friends - why does she have to fear for his safety everywhere that they go? We know the history of how police treat people who don't read social cues well? We know the data, something needs to change. Police and city need to be held accountable.

LR - Would like to know if JW is in contact with parents of CWD? DWD has been working on disparities in the way that black/brown children are being treated; seclusion room usage disparity; gross inequality happening - 90% may want SROs, but 90% of Davenport is white - someone spoke about 9/10 kids want SROs, but what about the 1? S2PP; who would train mentors? BBBS are understaffed - and people who participate may not be who people want around their children, very privileged - need real strategies, not idealistic, feel good initiatives.

AM - MH professional - supports the 8 reforms on the list - wants to offer training to city council and the commission in terms of becoming more trauma informed community. TIC - housing; SROs; S2PP; MH/crisis work in tandem with PD; transitions has a role in MH court, significant amount of experience and expertise with criminal justice system.

CC - What can be done now? Not everything needs change in state law/budget - what can the city commit to doing now?

DP - Comments about an expectation for the community to produce more unpaid volunteers are unrealistic - people have to work 40+ hours to keep their household functioning. The community needs to reprioritize commitment to community members.

TM - Troubled children are struggling with complex circumstances - there is a need to develop complex solutions that will not condemn their lives. We cannot task law enforcement to deal with these situations because it will exacerbate the S2PP.

DS - Council found money to fund 2 p/t SROs for Davenport schools - if they have money for that, why can't they fund social workers? Even if it was on a trial basis. There is money, the issue is the discretion being used to decide where it's going. What would be the chances of a forum with them answering the questions that the public has for them?

RB - Does the civil rights commission oppose white racism?

BW - There is no such thing as racism against white people.

ERNEST RODRIGUEZ SOCIAL MEDIA STATEMENT FOLLOWING THE FIRST SPECIAL MEETING

August 1 •

I am appalled at the controversy that has been created by Mike Greenleaf, head of the Davenport Union of Professional Police (DUPP), who says the members of the Davenport Civil Rights Commission (DCRC) cannot be unbiased in a face to face meeting with members of the police force, because the Director of the DCRC is involved in a criminal proceeding pending in the courts. Before I proceed let me say (I'm 92 yrs old), and I can recall as a young man that myself and my friends were told by the police to get off the streets and go home because of crimes being committed by young minority men at the time or we ourselves would face jail time. Tired of this kind of treatment I helped found Council 10 of the League of United Latin American Citizens (LULAC) and subsequently in 1959 and through our council's involvement in civil rights I was appointed to the DCRC at that time called the Human Relations Commission (HRC). I remember that the mayor at that time, John Jebens, had appointed some members who I would characterize as racists since they were against any progressive action taken by the Commission and obviously were appointed because of their opposition to civil rights. This was in the early 60's when the civil rights movement was at its apex. At that time realtors were still red lining properties you wouldn't want your dog living in to be sold to minority members only, Mexicans and Blacks. There were many discriminatory practices, some of which were carried out by members of the police force. That was the culture that was prevalent at that time. Police/Community relations became so estranged that the Director (Bill Cribbs) of the HRC had his place of business (land-scaping) shot up late at night by what was alleged as police officers. As a result the HRC became involved and I was appointed to bring minority community leaders and members of the police and sheriff's department together to resolve their differences. The meetings were held at community centers in the minority neighborhoods and no member of the press was allowed to participate to avoid undue criticism and add fuel to the flames. This action was promoted by the sheriff of Scott County at the time, Blackie Strout. After several weeks of the confrontation training some minority community leaders and members of the police force and sheriff's department were on a first name basis and became good friends, and most of the problems were resolved. Subsequently, we decided to have members of the Community Relations Service (CRS), a branch of the Department of Justice (DOJ), come in and serve as intermediaries when ever problems occurred. Airing differences on FB and in the media does nothing but to aggravate those differences. I mention all of this history in hopes that some of the methods can be instituted to bring about good workable relations between our law enforcement members and minority community leaders to minimize cultural differences. Subsequently, we decided to have members of the Community Relation Service (CRS), a branch of the Department of Justice (DOJ), come in and serve as intermediaries when ever problems occurred.

JEFF/LISA SIMPSON REPORT OF DAVENPORT POLICE FATALITIES

My name is Jeff (Lisa) Simpson and I am currently enrolled as a Seminary student at Chicago Theological Seminary. My question does not involve me personally however it is a question inspired by a former Davenport resident named Alvin Jennings. In 2014, Alvin was a 61 year old man living in Davenport. Alvin was a stroke victim who lived alone, was disabled after the stroke left him unable to walk without a walker and had no immediate family. On 8/13/14, police were called to Alvin's residence when a neighbor reported Alvin was causing some sort of commotion. According to news report, when police arrived at Alvin's apartment, he became agitated, rose from his recliner to steady himself on his walker, and wielded a kitchen knife toward the officers. He was fatally shot by officers. After a very brief investigation by the Scott County DA, the fatal shooting was deemed justified. I do not know all the details of this incident and in no way do I imply any wrongdoing by police or the DA, but I just found it difficult to believe Alvin posed such a threat to the officers that required him to lose his life. In the absence of family or friends, I felt inspired to do some work on behalf of Alvin, a man I never met.

In 2017, I participated in a course at my Seminary that concentrated on social justice issues affecting several neighborhoods in Chicago's south side. Part of the project involved the examining the investigations surrounding the many police involved fatalities during 2016 and the outcomes of those investigations. Those investigations were conducted by local district attorneys and in some cases, by the city's department. The results of the work demonstrated the bias and conflicts of interest that feeds into those investigations that seldom led to "real" investigations. Rarely was any justice brought forth for the victims. In our work, we also discovered that many cities throughout our nation had developed a process where police involved shootings were only to be investigated by task force made up of individuals outside the department and outside the DA's office to prevent such injustice. That work inspired me to examine the counties in my own hometown area regarding the processes as I once again reelected upon Alvin's misfortune.

The papers I have given you reveal my findings. I examined the incidents from 1969-2016 where a person was fatally shot by law enforcement officers in Rock Island and Scott Counties. What I discovered was to say the least, shocking. I want to highlight briefly a couple of those numbers. I direct you to page 2 of the the document you were handed. In Scott County, there were 11 fatal shootings by officers between 1969-2016. In 8 of those, the victims were not armed with firearms. The incidents were investigated by the respective departments and the Scott County DA, There were no officers charged or fired as a result. In my opinion, 8 of those 11 rose my suspicion as to justification for the fatal shooting and in at least 2 of those, a civil court awarded the victims' families a settlement paid for by taxpayers.

In contrast, Rock Island County had 8 fatal shootings by officers, only 3 of the victims were not fire-armed, 1 officer was fired and criminally charged. No payouts were made. While I found 2 of those incidents suspicious, those 2 incidents both occurred prior to 2006. In 2006 RI County developed a task force made up of representatives from other jurisdictions to handle all police related shootings, removing the investigatory discretion of the DA citing the reason for such, as so many other cities have stated, was the need to remove any conflict of interests that may bias justice. [1] [SEP]

Tonight my question to you stems from those numbers. It is obvious that justice is better served when the investigations of these incidents is removed from those who may have a working relationship with the officers and I would add that there seems to be a reluctance to use deadly force on a potential target when the possibility of outside investigators exists. Are you willing to commit to developing a process, following the lead of so many other cities across this nation, where investigations of Davenport Police initiated shootings would no longer rely upon the county Attorney's office, but rather utilize a system like our neighbors across the river to insure that investigations are handled more justly?

Quad City Officer Shooting Fatality by Event

	Date	Victim Name	Firearmed	Victim Race	Officer Race	Dept Invstigation	Investigated by County *	Officer Charged	Conviction	Suspicious	Notes
▼ Illinois								1	0	2	
▼ Rock Island								1	0	2	
▼ Rock Island								0	0	0	
	1/3/1980	Thaddeus Johnson	yes	Black	White	yes					
	4/2/2015	Darrin Langford	unknown	Black	White		yes				Civil suit still underway
▼ East Moline								0	0	0	
	5/25/1969	Daniel Hougas	yes	White	White						
	4/16/2008	Kelton Trice	yes	Black	White		yes				
▼ Moline								1	0	1	
	11/20/199	John caldwell	no	White	White	yes	yes			yes	Victim was reaching for cigarettes
	7/13/1994	Otha Moore	no	Black	White	yes	Yes	yes			Officer was fired/jury acquitted
▼ Taylor Ridge								0	0	1	
	8/3/2009	Jack Roos	no	White	White		yes			yes	
▼ Barstow								0	0	0	
	9/10/2011	Gregory Ohnen	yes	White	White		yes				
▼ Whiteside								0	0	0	
▼ Rock Falls								0	0	0	
	11/22/201	Shane Cataline	no	White	White		yes				Victim used car to try to injure officers
▼ Iowa								0	0	8	
▼ Scott								0	0	8	
▼ Bettendorf								0	0	2	
	5/2/1977	Joseph Monday	unknown	White	White	yes				yes	
	10/1/1977	Wayne OLson	yes	White	White	yes					
	11/25/198	Richard Gapinski	no	White	White		yes			yes	Family won civil suit
▼ Davenport								0	0	6	
	12/31/197	Wilbert Dreter	yes	White	White						
	5/9/1995	Abraham Clinton	no	Black	White	yes	yes			yes	Family won civil suit
	7/31/2009	Steven Mallory	no	Black	White		yes			yes	
	12/12/200	Julian Dekeuninck	no	White	White		yes			yes	Victim armed with table knives
	9/8/2011	Victor Medina	no	Hispanic	White		yes			yes	Victim armed with road flare
	8/13/2014	Alvin Jennings	no	White	Hispanic		yes			yes	61 yr old man who used a walker
	9/22/2014	James Cave	yes	White	White		yes				
	10/23/201	Bobby Mitcchell	no	White	White		yes			yes	Shot vy SC Deputy

**Data is from 1969-2018 and includes only officer related deaths induced by gunfire. Does not include officer-related fatalities due to excessive force by means of vehicle, beating, choke holds, etc. Some events may be missing to incomplete databases.

Data obtained the Dispatch-Argus, Washington Post, The Guardian

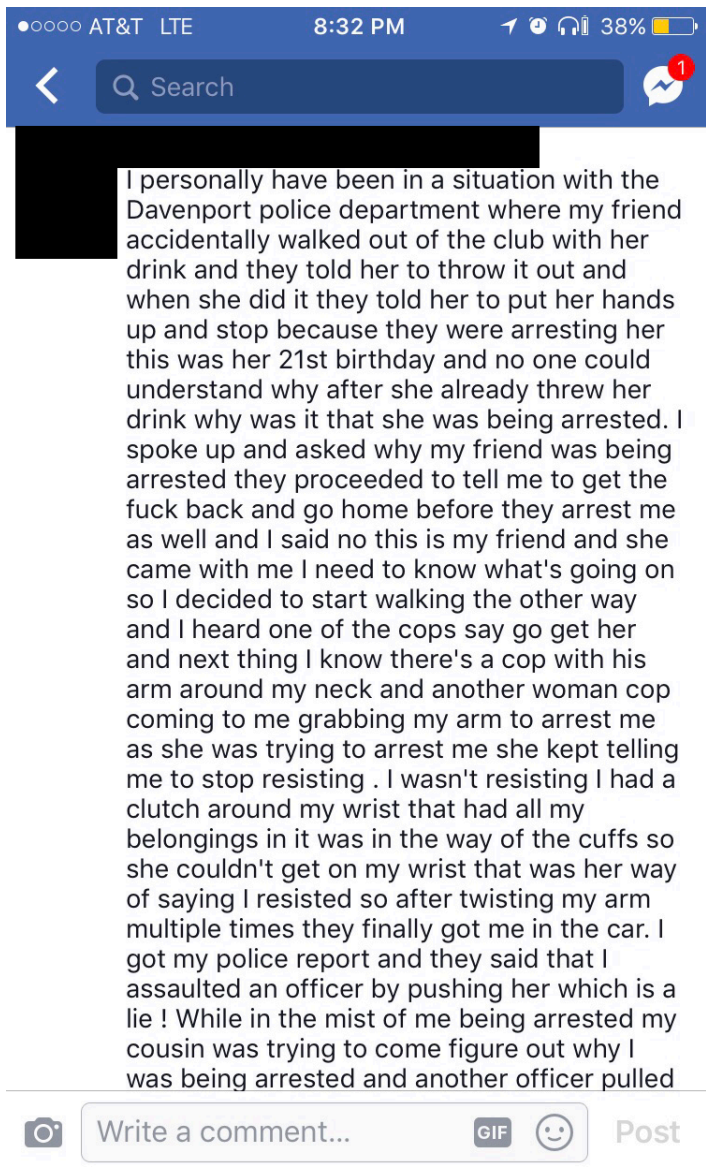
Quad City Officer Fatal Shootings by City

		Total Fatal Shootings by Police	Investigated by Dept	Investigated by County/DA *	Officers Charged	Officers Convicted	Officers Terminated	Suspect Not Firearmed	Suspicious	Civil Payout
▼	Illinois	9	3	4	1	0	1	4	2	0
▼	Rock Island	8	3	4	1	0	1	3	2	0
	Rock Island	2	1	1	0	0	0	0	0	0
	Moline	2	2	2	0	0	0	2	1	0
	Taylor Ridge	1	0	0	0	0	0	1	1	0
	Barstow	1	0	0	0	0	0	0	0	0
	East Moline	2	0	1	1	0	1	0	0	0
▼	Whiteside	1	0	0	0	0	0	1	0	0
	Rock Falls	1	0	0	0	0	0	1	0	0
▼	Iowa	11	3	8	0	0	0	8	8	2
▼	Scott	11	3	8	0	0	0	8	8	2
	Bettendorf	3	2	1	0	0	0	2	2	1
	Davenport	8	1	7	0	0	0	6	6	1

*Officer Shootings in Rock Island County are investigated by The RI County Integrity Task Force as of April 2008. The task force involves members from Rock Island County Sheriff's Department, Rock Island Police Department, Moline Police Department, East Moline Police Department, Milan Police Department, Silvis Police Department and the Illinois State Police entered into an intergovernmental agreement in April 2008 to investigate matters of integrity among law enforcement officers when requested by a member agency.

**Data is from 1969-2018 and includes only officer related deaths induced by gunfire. Does not include officer-related fatalities due to excessive force by means of vehicle, beating, choke holds, etc. Some events may be missing to incomplete databases.

Data obtained the Dispatch-Argus, Washington Post, The Guardian



Michael Matson, Mayor

Latrice Lacey, Davenport Civil Rights Director

Michael Greenleaf, Davenport Union of Professional Police

News Director, WQAD Television

I am a lifelong resident of Davenport. My family has lived here for generations. To my knowledge, no member of my family has ever taken the time to express gratitude to the Davenport police department. Under normal circumstances, I suppose, the public's positive attitude toward, and gratitude for, the police could be assumed. But these are not normal times and, therefore, I would like to express my thanks for your efforts at keeping the community safe. Thank you.

I know that four officers have been killed in the line of duty here in Davenport and that many more attempts have been made on the lives of other officers. Significant physical assaults are not uncommon. Yet, the most significant assault on the police (and on the community) may be in the form of the current demands for "police reform." Such demands run the gamut, from exempting preferred groups of criminals from scrutiny to defunding the police. All such demands pose a serious threat to the peace and security of all members of the community, whether black or white, protestant or Jew, Hispanic or Italian.

The current anti-police climate is primarily driven by a false narrative and by those who employ that false narrative to profit from the incapacitation of the police and empowerment of criminals. It is beyond dispute that a white man in similar circumstances (violently resisting arrest) is more likely to be killed by a police officer than is a black man and that a black police officer is more likely to shoot an offender than a white police officer (see, inter alia, analyses by African American Harvard professor, Roland Fryer). Hysterical cries for "reform," though, are based upon a complete inversion of this truth. The reforms themselves, too often promoted by those who are ignorant of, or hostile toward, proper policing methods, endanger not only police officers, but all citizens of all races.

In normal times, in a reasonable world, someone who had physically assaulted another with a lethal weapon and who had who had lodged a blatantly false accusation against a respected public official would, deservedly, experience difficulty finding any form of employment. But this is not a reasonable world and, as a result, such an individual is head of the Davenport Civil Rights Commission. Not surprisingly, as a criminal, she uses that position to incite hatred of the police and sow division within the community. A "public forum" where criminals and their relatives are given center stage to lodge false charges against the police and to demand "reforms" that would only strengthen the position of criminals, to the detriment of law-abiding citizens, is something one might expect from a hammer-wielding criminal steeped in the radical racism of "critical race theory."

In response to this attack on public order, the local media shamelessly feature the complaints of a man whose sons stomped a man nearly to death and who should have been convicted of attempted murder. The media gave him a forum without providing any context whatever. One of his sons, with a gun in his car, led police on a high-speed inter-state chase that endangered many lives, then repeatedly and violently resisted arrest and was injured during his violent struggles. Sometimes a father is blind to the misdeeds of his sons. Sometimes children, despite parents' best efforts, simply turn bad. I don't know whether that is the case here. In a reasonable world, though, the media wouldn't give full vent to his anger

without providing some context, and reasonable “journalists” wouldn’t contour public policy to favor criminals over decent citizens.

No one should be surprised that, in an era of widespread criminality and expanding gunplay, very few people would be willing to openly express their support for the police and opposition to “reforms” promulgated by the power-mad criminal at the head of the Civil Rights Commission.

For now, though, reasonable people, good citizens of all races and creeds, enjoy the right to express their opinions at the ballot box. Ceding control of the police department to the craven criminals on the Civil Rights Commission would endanger all members of the community, and such abdication by any elected official would, and should, be met with a rebuke at election time.

My thanks, once again, to the police. Naturally, to avoid assault by a “reformer,” I must remain anonymous.

QUAD CITIES IL P&DF
IL 612 1 T
04 AUG 2020 PM



HJ

Davenport, IA 52803

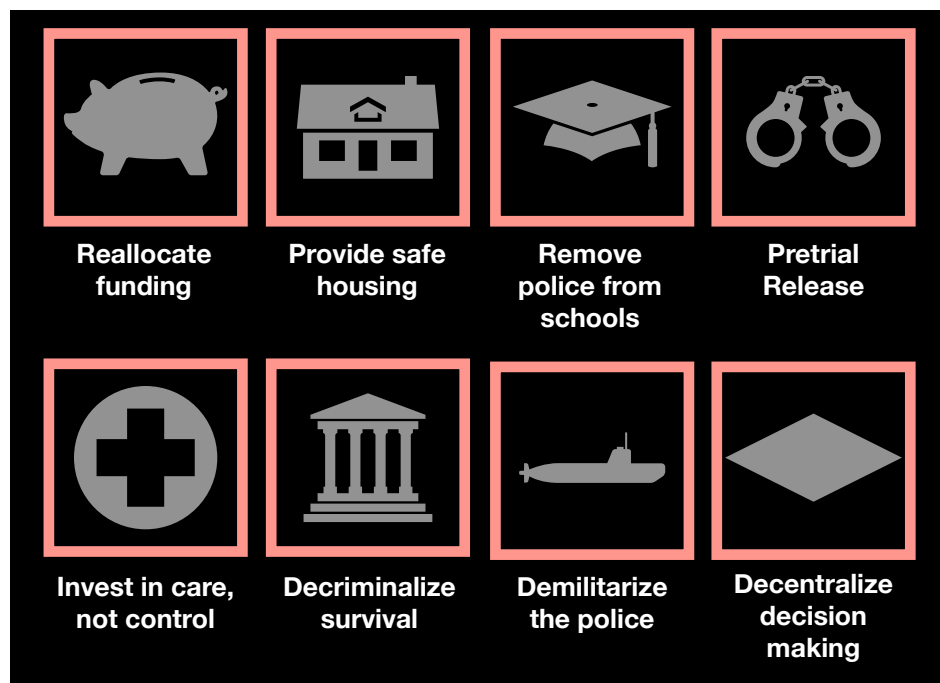
Latrice Lacey
C/O City Hall
227 West 4th Street
Davenport, IA 52801

52801\$1307 C030



Policing Reforms

Policing Reforms Throughout the State



Use of Force Policies

Ban choke holds, knee-to-neck maneuvers and strengthen use of force standards.

Body Cameras and Associated Policies

Purchase additional body cameras. Review and revise bod camera policies relating to retention and the imposition of strict body camera provisions (i.e., when they are required to be on, etc.).

Civilian Review Board

Form an independent citizen's review board.

Decriminalization

Decriminalize minor marijuana crimes and other low-level offenses.

Why Does This Matter?

Our community directs vast resources into law enforcement instead of affordable housing, equity initiatives and accessible health care and this has caused significant harm to our community.

1

BANG FOR YOUR BUCK

Most of the work that police do, focuses on minor crimes or crimes of poverty that shouldn't be criminalized in the first place.

2

REFORM FOCUSES ON HARM REDUCTION

The focus should be on rethinking the overall role of police in our society, rather than calculating acceptable levels of harm.

3

POLICING CULTURE IS ROOTED IN OPPRESSION

Modern policing structures are derivatives of the slave patrols in the South and strike breakers in the North.

The modern American policing structure was formalized as a way to control “social disorder”. Social Disorder is a very fluid term, where the definition is generally limited only by the person or entity defining the term. At the time that these systems were developed, the terms were defined by the capitalist interests of those whose taxes and political interests supported the development of policing institutions.



Capitalistic interests were much more concerned with social control, than they were crime control. They needed an orderly and stable workforce to prop up their business interests.

The Importance of Calls for Policing Reform

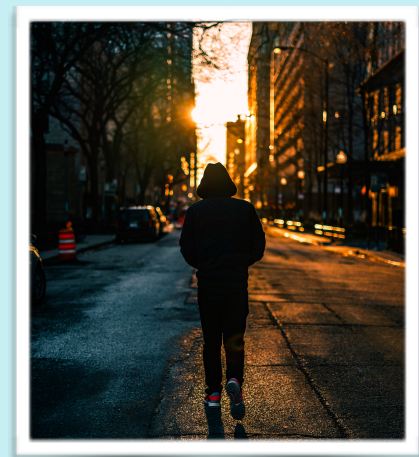
Black, brown and lower income communities have lived through militarized policing practices for decades, causing lasting harms similar to those caused by Post Traumatic Stress Disorder.

The threat and experience of police brutality, racial profiling and discrimination can be experienced individually or vicariously, and the traumatic symptoms as a result of these experiences can have wide ranging effects on individuals within our community. Children are especially susceptible to incurring the psychological and physical impact of police brutality and/or the threat thereof during their developmental stages.

Police brutality is not limited to physical attacks, often when we hear the term, we think

CHANGES THAT WILL CREATE LASTING EFFECTS

1. Demilitarize the police.
2. Remove police from schools.
3. Release people held pre-trial and those held on parole violations.
4. Repeal local ordinances that criminalize survival.
5. Invest in neighborhood councils who can participate in municipal decision making.
6. Provide safe housing for all community members.
7. Invest in care, not control.



of excessive physical force, however the definition also extends to false arrests, verbal abuse, unnecessary intimidation, and racial profiling. Whereas examples of physical police brutality can include, but aren't limited to, pepper spray, batons, tasers, hitting, choking, throwing, and sexual abuse.

A U.S. Department of Justice study (2000) on attitudes and reports of police officers regarding police brutality showed that 84% reported witnessing a fellow officer use more force than necessary; 61% indicated that police do not always report the abuse of fellow officers, even when it is a serious criminal violation. 67.4% reported that police officers who reported fellow officers were likely to receive a "cold shoulder" treatment. Finally, "a majority (52.4 percent) agreed or strongly agreed that it is not unusual for police officers to "turn a blind eye" to other officers' improper conduct".

Racism is a form of emotional abuse, and can therefore be experienced as a traumatic event. People experience traumatic reactions from racial profiling and police brutality, negatively impacting both their physical and psychological well-being.

Trauma reactions typically fall into three main categories: intrusion, arousal, and numbing/avoidance. With intrusion, thoughts or images intrude on their daily life, and they continue to experience the event. With arousal, after a traumatic event there is sleeplessness, hyperactivity, and a difficulty concentrating on things. With avoidance or numbing, there is avoidance of the people or places that remind them of the event, or there may be memory loss concerning certain features of their experience.

Both racism and discrimination have been shown to be a major contributing factor in the

findings of health and mental health disparities. Discrimination has been positively linked to, "increased allostatic load, inflammation, shorter telomere length, coronary artery calcification, dysregulation in cortisol, and greater oxidative stress". This study also found that discrimination has positive associations with adverse cardiovascular outcomes, BMI and obesity, hypertension and blood pressure, engagement in risky behaviors, alcohol misuse, and poor sleep.

Metzger, Leah, "Don't Shoot: Race-Based Trauma and Police Brutality" (2019). *Orphans and Vulnerable Children Student Scholarship*. 7. <https://pillars.taylor.edu/ovc-student/7>.

Changes Occurring Across the State

Cedar Rapids

City Council moved forward on four of the seven items requested by Cedar Rapids Advocates for Social Justice.

There are seven requests from the group, which the commission says it supports:

- 1. Form an independent citizen's review board.**
- 2. Make significant investments in diversity, equity, and inclusion.**
- 3. Ban choke holds, knee-to-neck maneuvers and strengthen use of force standards.**
4. Decriminalize minor marijuana crimes and other low-level offenses.
- 5. Impose strict body camera provisions.**
6. Make negotiations between law enforcement and municipal representatives public.
7. Abolish qualified immunity.

Dubuque

Developing a citizens review board in collaboration with the NAACP

Sioux City

The Sioux City City Council is considering the purchase of body cameras.

West Des Moines

The City of West Des Moines' Mayor signed the Mayor's Pledge:

1. REVIEW your police use of force policies.
2. ENGAGE your communities by including a diverse range of input, experiences, and stories in your review.
3. REPORT the findings of your review to your community and seek feedback.
4. REFORM your community's police use of force policies.

The department's first step since the signing of this pledge was to create a community member taskforce (8). The job of the taskforce is to review the policies and practices of the police and in the end provide a presentation of their findings. They are currently meeting weekly for a 2-3 hrs at a time with the goal of late August to present findings.

West Des Moines is also in the research phase of developing a community review board for the police.

Des Moines

Passed an ordinance that prohibits racial bias in traffic stops and other police actions, bans pretextual stops based on race and requires training on implicit bias and de-escalation techniques. Passed a resolution expressing its support of the decriminalization of marijuana and establishing a task force to minimize the enforcement for possession of marijuana for personal use.

Iowa City

Strengthened its existing Independent review board.

Passed a 17 point resolution addressing disparities.

The 17 points addressed by the resolution are:

By Dec. 15, 2020, have a preliminary plan to restructure the Iowa City Police Department towards community policing.

Allocate \$1,000,000 in City funds to promote racial equity and social justice.

Expanding efforts to increase the number of minorities employed by the City.

Receive a report by Aug. 1, 2020, from the City Manager's office on the ICPD's involvement in the use of gas and flash-bang devices during the protest in Iowa City on June 3, 2020.

Create an ad hoc Truth and Reconciliation Commission to carry out restorative justice on racial injustice in the City by Oct. 1, 2020.

Change 2021 City Council's legislative priorities to advocate for more criminal justice reform and enhance the authority of the Community Police Review Board.

Expand use of City's racial equity toolkit to City Council and local business partners.

By Jan. 1, 2021, receive a report and recommendations on changes to the Community Police Review Board.

Provide a detailed expenditure summary of the police budget on the City's website.

Support divestment of Johnson County Sheriff Office's MRAP vehicle and obtain a report on military grade equipment owned by ICPD.

Direct City Manager to ban any use of chokeholds by police.

Direct City Manager to ensure officers working in Iowa City have not committed serious misconduct.

Review and revise ICPD's Body Worn Cameras and In-Car Recorder systems.

Revise ICPD's general orders to require officers to intervene and stop excessive force.

Work with Public Art Advisory Committee and Black artists to provide opportunities for artistic expression by the Black Lives Matter movement and communities of color.

Prohibit the use of tear gas, rubber bullets, and flash bangs against peaceful protesters.

Beginning in 2021, Juneteenth, June 19, shall be a City holiday.

Urbandale

The City of Urbandale is expediting the purchase of additional police body cameras to cover its investigative division. The City already has body cameras for its patrol division.

Fall 2018

Principles of Pretrial Release: Reforming Bail Without Repeating its Harms

Brook Hopkins

Chiraag Bains

Colin Doyle

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PRINCIPLES OF PRETRIAL RELEASE: REFORMING BAIL WITHOUT REPEATING ITS HARMS

BROOK HOPKINS
CHIRAAG BAINS
COLIN DOYLE*

Bail reform is happening. Across the country, jurisdictions are beginning to recognize that contemporary pretrial systems rooted in money bail are discriminatory, ineffective, and (by and large) unconstitutional. A common and substantial component of contemporary reforms is an increased reliance on conditional release as an alternative to pretrial incarceration. In many ways, conditional release represents an improvement over money bail, but the practice of conditional release has its own pitfalls.

This Article identifies unforeseen and unplanned harms that can result from a system of conditional release and proposes five principles that jurisdictions can follow to eliminate or mitigate these harms. As the options for pretrial conditions continue to expand, judges may impose more conditions than are necessary, including conditions that are burdensome and ineffective. Because pretrial monitoring is inexpensive—especially when subsidized by user fees for pretrial monitoring—there is a risk that courts will impose monitoring and other conditions on people who would previously have been released without conditions. Taken together, these harms can prolong people’s involvement in the criminal justice system, restrict their liberty in profound ways, set them up for pretrial incarceration through technical violations, and saddle them with unaffordable debts.

To responsibly use conditional release without replicating the harms of money bail, jurisdictions should adopt the following five principles. One,

* Brook Hopkins is the Executive Director of the Criminal Justice Policy Program at Harvard Law School. Chiraag Bains is the Director of Legal Strategies at Demos and a former Visiting Senior Fellow at the Criminal Justice Policy Program at Harvard Law School. Colin Doyle is a staff attorney at the Criminal Justice Policy Program at Harvard Law School.

release on recognizance should be the norm and conditional release the exception. Two, the principle of parsimony should guide decisions over what conditions of release to impose—meaning that burdens placed on defendants and restrictions of their liberty should not exceed the legitimate interests of the government. Three, conditions should be minimal, related to the charged conduct, and proportionate to the risk of flight and pretrial criminal activity. Four, jurisdictions should not charge fees for conditional release, pretrial services, or pretrial monitoring. Five, restrictions on pretrial liberty should be evidence-based.

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INTRODUCTION

In most jurisdictions in the United States, someone accused of a crime and awaiting trial is either released from jail or detained indefinitely because they cannot afford to pay money bail. Those who can afford to post bail—however dangerous they are, however high their risk of flight—get released. Those who cannot afford to post bail—even if they pose no danger to the community and are a sure bet to return for court—remain detained.¹ Under this pretrial system, it is better to be guilty, dangerous, and rich than to be innocent, harmless, and poor. America's discriminatory pretrial practices contribute to mass incarceration at great expense. Pretrial detention costs the United States approximately \$14 billion each year,² and

¹ See generally HARVARD LAW SCH. CRIMINAL JUSTICE POLICY PROGRAM, MOVING BEYOND MONEY: A PRIMER ON BAIL REFORM (2016), available at <http://cjpp.law.harvard.edu/assets/FINAL-Primer-on-Bail-Reform.pdf> [https://perma.cc/E247-U6GM] [hereinafter CJPP BAIL REFORM PRIMER] (presenting findings that money bail has been shown to unfairly disadvantage people who cannot afford it).

² PRETRIAL JUSTICE INST., PRETRIAL JUSTICE: HOW MUCH DOES IT COST?, at 2 (2017), available at <https://university.pretrial.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=4c666992-0b1b-632a-13cb-b4ddc66fadcd> [https://perma.cc/U983-GP GW].

the increase in pretrial detention over the last few decades accounts for all of the net jail growth in the United States during that time.³ On any given day, around half a million people are incarcerated having only been accused—not convicted—of a crime.⁴ Empirical research has also found that “[H]ispanic and black defendants are more likely to be detained [pretrial] than similarly situated white defendants.”⁵

Justice system actors and Americans at large are coming to view the money bail system as unfair and unwise.⁶ To lower jail populations and provide equal treatment under the law, advocates are pushing a variety of reforms: procedural protections for preventive detention, cite-and-release standards, risk assessment tools, and the expansion of pretrial services, to name a few. Jurisdictions are increasingly looking to pretrial monitoring as an alternative to pretrial incarceration. As states and counties expand pretrial services, and as technologies such as GPS tracking and remote alcohol monitoring become more common, many courts now have a broader range of pretrial conditions at their disposal than the familiar options of detention, release on recognizance, or release on money bail.

On ethical, constitutional, and policy grounds, a system of conditional release is better than a system of jailing people on unaffordable bail without due process of law. But the expansion of pretrial release conditions carries its own pitfalls. One danger is that courts will impose conditions not only upon people whom the court would otherwise have detained, but also upon people whom the court would have otherwise released on recognizance. Another danger is that courts will underuse simple, effective conditions like phone call reminders for court dates, while overusing burdensome conditions such as drug testing, drug monitoring, in-person reporting, and

³ Peter Wagner & Wendy Sawyer, *Prison Policy Initiative, Mass Incarceration: The Whole Pie 2018*, at 6 (2018), available at <https://www.prisonpolicy.org/reports/pie2018.html> [<https://perma.cc/56LY-SNZG>].

⁴ *Id.* at 2.

⁵ Stephen Demuth & Darrell Steffensmeier, *The Impact of Gender and Race-Ethnicity in the Pretrial Release Process*, 51 SOC. PROBS. 222, 222 (2004).

⁶ See, e.g., Editorial Board, *Fixing the Unfair Bail System is Worth the Costs*, WASH. POST (Sept. 9, 2017), https://www.washingtonpost.com/opinions/fixing-the-unfair-bail-system-is-worth-the-costs/2017/09/09/ff3c5c4c-73eb-11e7-8f39-eeb7d3a2d304_story.html?utm_term=.a158e99985d7 [<https://perma.cc/CLH6-ZRKW>]; Editorial Board, *Cash Bail's Lonely Defender*, N.Y. TIMES (Aug. 25, 2017), https://www.nytimes.com/2017/08/25/opinion/cash-bails-lonely-defender.html?_r=0 [<https://perma.cc/6DE3-P4AU>]; Times Editorial Board, *How the Poor Get Locked Up and the Rich Go Free*, L.A. TIMES (Aug. 16, 2017), <http://www.latimes.com/opinion/editorials/la-ed-bail-reform-20170816-story.amp.html> [<https://perma.cc/XSK6-7RKJ>].

GPS bracelets.⁷ Jurisdictions may also seek to pass on the costs of pretrial monitoring to defendants by imposing fees to pay for drug testing, alcohol monitoring, and geolocation tracking. The overuse of conditions of release and the charging of fees can restrict people's liberty, prolong their involvement with the criminal justice system, and lead to technical violations of pretrial release, which in turn can result in revocation of release and imposition of jail time. In short, unnecessary release conditions and fees can set people up to fail and can replicate some of the harms of money bail.

This Article suggests a framework of five principles that jurisdictions should adopt to fairly and responsibly administer pretrial conditional release. First, consistent with the Supreme Court's admonition that "liberty is the norm" pretrial,⁸ judges should maximize the use of release on one's own recognizance, imposing conditions only when truly necessary to prevent or deter flight and criminal activity. Second, the decision of what release conditions to impose should be governed by the principle of parsimony, which holds that punishment and deprivation of liberty should not exceed the legitimate interest of the state. Third, conditions should be the least restrictive possible, related to the charged conduct, and proportionate to the risk of flight and pretrial criminal activity. Conditions of release should be aimed at supporting, rather than supervising, the accused. Very few defendants willfully abscond pretrial; more often, they fail to appear because they lose track of their court date, lack transportation, or have competing work, family, and childcare obligations.⁹ Pretrial services should be centered on positive interventions—such as phone or text reminders of court dates and transportation to court—rather than punitive deterrents—such as unnecessary drug testing and revocation. Fourth, jurisdictions should avoid charging fees for pretrial services, as these can create untenable pressure on poor defendants and their families, result in unnecessary incarceration when they are unable to pay, and exacerbate wealth and racial disparities. Pretrial justice is a public good that should be funded collectively by taxpayers. Fifth, dovetailing with the

⁷ See generally CHICAGO CMTY. BOND FUND, PUNISHMENT IS NOT A "SERVICE": THE INJUSTICE OF PRETRIAL CONDITIONS IN COOK COUNTY (2017), available at <https://chicagobond.org/docs/pretrialreport.pdf> [<https://perma.cc/BRN8-HGZ7>] (arguing that pretrial release conditions in Cook County have become increasingly punitive as more people are being diverted from jail).

⁸ *United States v. Salerno*, 481 U.S. 739, 755 (1987).

⁹ See, e.g., CTY. OF SANTA CLARA BAIL & RELEASE WORK GRP., FINAL CONSENSUS REPORT ON OPTIMAL PRETRIAL JUSTICE, at 2 (2016), available at <https://www.sccgov.org/sites/ceo/Documents/final-consensus-report-on-optimal-pretrial-justice.pdf> [<https://perma.cc/U7PQ-NE8Y>].

principle of parsimony, any restrictions on pretrial liberty should be evidence-based. Too often, jurisdictions routinely impose conditions without studying whether those conditions actually improve pretrial outcomes.¹⁰

I. PRINCIPLE 1: MAXIMIZE RELEASE ON RECOGNIZANCE

In a functioning pretrial system that obeys the constitutional requirement that “liberty is the norm” pretrial,¹¹ judges should maximize the use of release on one’s own recognizance. The default rule should be to release pretrial defendants on recognizance. As jurisdictions move away from money bail, they are likely to adopt risk assessment tools and additional forms of conditional release, including drug testing, electronic monitoring, mental health treatment, and more. Conditional release should be understood as a restriction on pretrial liberty and should only be imposed when the prosecution has proved by clear and convincing evidence that it is necessary to prevent flight and secure public safety. Risk assessment tools should be calibrated to recommend release on recognizance as the default pretrial outcome.

Most jurisdictions have statutes or court rules that require judges to impose “the least restrictive condition[s]” determined to reasonably assure the defendant’s appearance at trial and public safety.¹² This least restrictive condition is usually release on recognizance, which requires that someone accused of a crime promise to return to court and not commit a crime while on release. That is enough of a condition for most people, as the evidence bears out. In jurisdictions that have implemented reforms that result in releasing most people on recognizance, the overwhelming majority of those people have shown up for court dates and have not committed crimes on release.¹³ To impose conditions that restrict liberty beyond release on

¹⁰ Kristin Bechtel et al., *A Meta-Analytic Review of Pretrial Research: Risk Assessment, Bond Type, and Interventions*, 42 AM. J. CRIM. JUST. 443, 461 (2017) (noting general lack of quantitative data regarding interventions from pretrial services).

¹¹ *Salerno*, 481 U.S. at 755.

¹² E.g., N.J. STAT. ANN. § 2a:162-16.

¹³ For example, in Santa Clara County, which has taken steps to rely less on money bail and release more people pretrial, more than 95% of defendants reappear in court. See CTY. OF SANTA CLARA BAIL AND RELEASE WORK GRP., *supra* note 9, at 46. Washington, D.C. releases 94% of defendants pretrial, PRETRIAL SERVS. AGENCY FOR D.C., RELEASE RATES FOR PRETRIAL DEFENDANTS WITHIN WASHINGTON, DC (2017), <https://www.psa.gov/sites/default/files/2016%20Release%20Rates%20for%20DC%20Pretrial%20Defendants.pdf> [<https://perma.cc/6STE-TNYQ>], and 90% of them make their court dates, COURT SERVS. & OFFENDER SUPERVISION AGENCY FOR D.C., FY 2016 AGENCY FINANCIAL REPORT 27 (2016), available at <https://www.csosa.gov/about/financial/afr/FY2016-CSOSA-AFR.pdf>

recognizance, the government should have the burden of proving by clear and convincing evidence that a restriction on liberty is necessary.

Jurisdictions should calibrate pretrial processes to accelerate the release of people who are unlikely to flee or harm others. Some jurisdictions have introduced procedures that allow such people to be released from jail on their recognizance without a hearing before a judge.¹⁴ Commonly in these jurisdictions, a pretrial services agency has been granted the authority to identify people who are low-risk and to release them.¹⁵ Other jurisdictions have adopted policies that encourage the police to issue a summons rather than arrest someone who is likely to be released on recognizance.¹⁶

As jurisdictions continue to expand pretrial services as an alternative to jailing people, more conditions of release will become available. Because many conditions of release are relatively inexpensive for the government, there is a risk that judges will impose conditions of release on people whom the judges previously would have released on personal recognizance. On a per-defendant basis, operating pretrial services is much cheaper for local governments than operating jails, especially when jurisdictions require defendants to pay the cost of electronic monitoring or drug testing (a problematic arrangement, as we explain below with respect to Principle 4). To use one example, it costs Los Angeles County less than \$26 per day to monitor someone pretrial, but \$177 per day to incarcerate that person.¹⁷ Thus, if the available budget for incarcerating and monitoring people pretrial were to remain constant, Los Angeles County could afford to monitor up to seven times as many people as the county could afford to incarcerate.

Release on recognizance should remain the default pretrial disposition, even as more release options become available and even if monitoring more

[<https://perma.cc/MJK6-4R4V>]. Data from 2012 through 2016 show that each year between 88% and 90% of people released while awaiting trial remained arrest-free. *Id.* Each year, between 98% and 99% of released defendants were not arrested for violent crimes. *Id.*

¹⁴ See, e.g., B. Scott West, *The Next Step in Pretrial Release Is Here: The Administrative Release Program*, THE ADVOCATE, at 1 (Jan. 2017), [https://dpa.ky.gov/Public_Defender_Resources/The%20Advocate/Advocate%20Newsletter%20Jan%202017%20\(COLOR%20%20FINAL\).pdf](https://dpa.ky.gov/Public_Defender_Resources/The%20Advocate/Advocate%20Newsletter%20Jan%202017%20(COLOR%20%20FINAL).pdf) [<https://perma.cc/R2QF-MNU2>] (discussing the Non-Financial Uniform Schedule of Bail Administrative Release Program in Kentucky).

¹⁵ See *id.*

¹⁶ See, e.g., N.J. JUDICIARY, CRIMINAL JUSTICE REFORM: REPORT TO THE GOVERNOR AND LEGISLATURE 7–8 (2016), <http://www.njcourts.gov/courts/assets/criminal/2016cjrannual.pdf> [<https://perma.cc/WG7H-BFWC>].

¹⁷ SHEILA KUHLE & HILDA SOLIS, MOTION BY SUPERVISORS SHEILA KUEHL AND HILDA SOLIS ON BAIL REFORM at 3 (Mar. 8, 2017), <http://file.lacounty.gov/SDSInter/bos/supdocs/112060.pdf> [<https://perma.cc/5XHC-VC3G>].

people is not burdensome for the government. The Constitution requires liberty to be the norm pending trial.¹⁸ Conditional release should be understood as a restriction of this pretrial liberty. Pretrial conditions—especially when multiple conditions are imposed—can unnecessarily burden a defendant’s ability to work, care for children, and meet financial obligations. Most pretrial interventions restrict a defendant’s freedom. Electronic monitoring and house arrest are the more obvious examples, but even less restrictive requirements such as weekly in-person check-ins with pretrial services can be difficult for people to meet given their other commitments and resource limitations. Pretrial services are typically located within or adjacent to downtown courthouses, sometimes far from residential neighborhoods.¹⁹ After juggling a job, or multiple jobs, and caring for children and family, a bus trip and meeting every week can strain one’s time and finances. These restrictions on liberty should be imposed only when necessary and when the restrictions have been proven to work. As explored in Principle Five, many pretrial conditions are imposed without any idea of their effectiveness or any plans for measuring their worth.

If pretrial service agencies use tools or assessments to develop release recommendations for judges, these tools should reflect a presumption of unconditional release. Across the country, algorithmic risk assessment tools are becoming a more common feature of pretrial service agencies.²⁰ These tools often provide release recommendations to judges and pretrial staff, encouraging them to detain, release, or impose conditions on a particular person based on his or her level of risk as calculated by the tool.²¹ These recommendations should reflect the presumption in favor of releasing defendants on their own recognizance. Although risk assessment algorithms use historical data to predict someone’s likelihood of missing court dates or being arrested pretrial, these predictions by themselves do not (and cannot) determine whether someone should be released, released conditionally, or detained. Release decisions can be informed by

¹⁸ Salerno, 481 U.S. at 755.

¹⁹ For example, Washington D.C.’s Pretrial Services Agency is located near a courthouse on the National Mall. *Location Directory*, PRETRIAL SERVS. AGENCY FOR D.C., https://www.psa.gov/?q=contact/location_directory [https://perma.cc/R3K2-NKZF].

²⁰ PRETRIAL JUSTICE INST., *THE STATE OF PRETRIAL JUSTICE IN AMERICA* at 5–8 (2017), <https://university.pretrial.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=f9d452f6-ac5a-b8e7-5d68-0969abd2cc82&forceDialog=0> [https://perma.cc/M76Z-HCRK].

²¹ See, e.g., GLENN A. GRANT, *CRIMINAL JUSTICE REFORM REPORT TO THE GOVERNOR AND THE LEGISLATURE FOR CALENDAR YEAR 2017* 11–13, <https://www.njcourts.gov/courts/assets/criminal/2017cjrannual.pdf> [https://perma.cc/3H6L-DSVT] (describing Decision Making Framework (DMF) in New Jersey).

quantitative data, but the decision to release or detain someone is a values-based decision. In jurisdictions with risk assessment tools, these values-based decisions are made by policymakers who calibrate how the risk assessment tools translate risk levels into release recommendations. If risk assessment tools are calibrated to tolerate only a low-level of risk, then pretrial services will end up recommending pretrial incarceration or onerous conditions of release for nearly all defendants. Instead, policymakers should calibrate these tools such that they recommend release on recognizance for the overwhelming majority of defendants.

II. PRINCIPLE 2: FOLLOW THE PRINCIPLE OF PARSIMONY

A useful starting point for thinking about the appropriate level of supervision is the principle of parsimony. Parsimony is the idea that penalties should be no more severe than necessary to serve the state's legitimate interests.²² In the sentencing context, the state's legitimate interests are retribution, deterrence, rehabilitation, and incapacitation.²³ Sanctions that exceed these purposes are gratuitous.

The parsimony principle emerges from a recognition that punishment involves harm, whether by the restraint on a person's liberty or the infliction of pain. The utilitarian Jeremy Bentham saw punishment as "itself evil," and therefore defensible only "in as far as it promises to exclude some greater evil."²⁴ Enlightenment philosopher and criminologist Cesare Beccaria insisted that punishment be "the minimum possible in the given circumstances,"²⁵ and William Blackstone likewise argued that "[t]he method however of inflicting punishment ought always to be proportioned to the particular purpose it is meant to serve, and by no means exceed it."²⁶

The value of parsimony is reflected throughout the law of American punishment. Law professor Norval Morris articulated parsimony as a "utilitarian and humanitarian" constraint on sentencing, and those limits on punishment can be observed at work in state sentencing guidelines.²⁷ In the Sentencing Reform Act of 1984, Congress codified the parsimony principle in the requirement that federal courts "impose a sentence sufficient, but not

²² Richard S. Frase, *Sentencing Principles in Theory and Practice*, 22 CRIME & JUST. 363, 364 (1997).

²³ *Id.*; *Graham v. Florida*, 560 U.S. 48, 71 (2010).

²⁴ JEREMY BENTHAM, *THE RATIONALE OF PUNISHMENT* 23 (1830).

²⁵ CESARE BECCARIA, *ON CRIMES AND PUNISHMENTS AND OTHER WRITINGS* 113 (Richard Bellamy ed., 1995).

²⁶ 4 WILLIAM BLACKSTONE, *COMMENTARIES ON THE LAWS OF ENGLAND* 13 (1769).

²⁷ Frase, *supra* note 22, at 373–74 (1997) (quoting NORVAL MORRIS, *THE FUTURE OF IMPRISONMENT* 61 (1974) and discussing Minnesota's sentencing guidelines).

greater than necessary,” to serve the purposes of punishment.²⁸ The same doctrine underlies the Supreme Court’s Eighth Amendment jurisprudence, under which disproportionate penalties, such as the death penalty for non-homicide crimes against persons²⁹ and life without parole for non-homicides crimes committed by juveniles,³⁰ have been deemed cruel and unusual. It is not surprising, then, that the seminal National Academies report, *The Growth of Incarceration in the United States*, identified parsimony as one of the core principles “that should inform the use of incarceration and the role of prison in U.S. society.”³¹

There is no reason parsimony should be limited to the context of punishment. Indeed, scholars have applied it to regulatory sanctions—sanctions imposed for legitimate state purposes other than punishment³²—such as preventive detention.³³ The application of parsimony to the pretrial context is straightforward. Restrictions on an accused individual’s liberty, whether by detention or release conditions, constitute harms that must be limited to that which is necessary to serve the legitimate pretrial goals of those restrictions: appearance in court and the safety of the community.³⁴

²⁸ 18 U.S.C. § 3553(a).

²⁹ *Kennedy v. Louisiana*, 554 U.S. 407, 446, 437 (2008) (death penalty “not a proportional punishment” for rape of child and “should not be expanded to instances where the victim’s life was not taken”); *Coker v. Georgia*, 433 U.S. 584, 584 (1977) (death penalty is “grossly disproportionate and excessive punishment” for rape of adult).

³⁰ *Graham v. Florida*, 560 U.S. 48, 71 (noting that “[a] sentence lacking any legitimate penological justification is by its nature disproportionate to the offense” and concluding that “[w]ith respect to life without parole for juvenile nonhomicide offenders, none of the goals of penal sanctions that have been recognized as legitimate . . . provides an adequate justification”).

³¹ NAT’L RESEARCH COUNCIL, *THE GROWTH OF INCARCERATION IN THE UNITED STATES: EXPLORING CAUSES AND CONSEQUENCES* 323 (Jeremy Travis, Bruce Western, & Steve Redburn eds., 2014), available at <https://doi.org/10.17226/18613> [<https://perma.cc/WNL3-63T5>] (“Punishments for crime, and especially lengths of prison sentences, should never be more severe than is necessary to achieve the retributive or preventive purposes for which they are imposed.”).

³² See *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168 (1963) (distinguishing punitive from regulatory sanctions). The Supreme Court has described pretrial detention under the Bail Reform Act aimed at “preventing danger to the community” to be regulatory in nature. *Salerno*, 481 U.S. at 747.

³³ See generally Carol Steiker, *Proportionality as a Limit on Preventive Justice: Promises and Pitfalls*, in *PREVENTION AND THE LIMITS OF THE CRIMINAL LAW* 194 (Andrew Ashworth et al. eds., 2013) (discussing proportionality as a constraint on the use of preventive detention).

³⁴ NAT’L INST. OF CORR., *A FRAMEWORK FOR PRETRIAL JUSTICE: ESSENTIAL ELEMENTS OF AN EFFECTIVE PRETRIAL SYSTEM AND AGENCY* 44 (2017), available at <https://nicic.gov/framework-pretrial-justice-essential-elements-effective-pretrial-system-and-agency> [<https://perma.cc/7TAE-LZDX>].

The federal Bail Reform Act explicitly required that judges release individuals “subject to the least restrictive further condition, or combination of conditions, that such judicial officer determines will reasonably assure the appearance of the person as required and the safety of any other person and the community.”³⁵ Many state statutes include similar language,³⁶ as does the American Bar Association’s standards for pretrial release.³⁷

However, in practice, across the country onerous pretrial conditions are imposed on defendants without sufficient regard to their individual circumstances or whether such conditions will actually serve the government’s legitimate pretrial goals. Many courts require in-person meetings with pretrial services officers, which are often time consuming and inconvenient, even though “no good evidence” exists to show that these meetings make a difference to appearance or rearrest rates.³⁸ The District of Columbia, which has virtually eliminated the use of money bail, routinely requires drug testing of defendants despite repeated research findings that drug testing does not reduce pretrial failure.³⁹ Increasingly, jurisdictions are also turning to electronic monitoring to surveil released defendants.⁴⁰ Such monitoring is expensive, can interfere with personal relationships and employment opportunities, and tends to make individuals feel “unfairly stigmatized.”⁴¹ And yet studies do not show that monitoring

³⁵ 18 U.S.C. § 3142(c)(1)(B).

³⁶ See Samuel R. Wiseman, *Pretrial Detention and the Right to Be Monitored*, 123 YALE L.J. 1344, 1395 n.229 (2014) (collecting state statutes).

³⁷ ABA STANDARDS FOR CRIMINAL JUSTICE: PRETRIAL RELEASE § 10-5.2 (3d ed. 2007) (“[T]he court should impose the least restrictive of release conditions necessary reasonably to ensure the defendant’s appearance in court, protect the safety of the community or any person, and to safeguard the integrity of the judicial process.”).

³⁸ Megan Stevenson & Sandra G. Mayson, *Bail Reform: New Directions for Pretrial Detention and Release*, 3 REFORMING CRIM. JUST. 42 (Erik Luna ed., 2017), http://academyforjustice.org/wp-content/uploads/2017/10/Reforming-Criminal-Justice_Vol_3.pdf [<https://perma.cc/PD4W-UK94>] (discussing studies).

³⁹ MARIE VANNOSTRAND ET AL., STATE OF THE SCIENCE OF PRETRIAL RELEASE RECOMMENDATIONS AND SUPERVISION 20–24 (2011), <http://www.ajc.state.ak.us/acjc/bail%20pretrial%20release/sciencepretrial.pdf> [<https://perma.cc/W8JL-UMAW>] (reviewing studies from the 1980s and 1990s in the District of Columbia, Arizona, Maryland, Oregon, and Wisconsin, and summarizing that none of them “found empirical evidence that could be used to demonstrate that when drug testing is applied to defendants as a condition of pretrial release it is effective at deterring or reducing pretrial failure, even when a system of sanctions is imposed”).

⁴⁰ See CJPP BAIL PRIMER, *supra* note 1, at 17 (noting that the use of electronic monitoring increased 32% between 2000 and 2014).

⁴¹ *Id.* (citing NAT’L INST. OF JUSTICE, ELECTRONIC MONITORING REDUCES RECIDIVISM 2 (2011), <https://www.ncjrs.gov/pdffiles1/nij/234460.pdf> [<https://perma.cc/XMR5-TTDF>]).

makes court appearance more likely or rearrest less likely.⁴² In addition to raising Fourth Amendment, Eighth Amendment, and due process concerns,⁴³ these intrusive conditions run afoul of the parsimony principle because they do not appear to serve the state's legitimate pretrial interests.

To be parsimonious, release conditions should be carefully targeted to serve legitimate pretrial interests. Where less restrictive measures are available and effective, they should be used. For example, at least for defendants accused of public-order and otherwise low-level offenses, clearer summons forms and court date reminders by text message can be an effective way of ensuring appearance.⁴⁴ Many people miss court dates not because they are scofflaws, but because they do not understand their summons, they forget about their court date, or they did not arrange for leave from work or childcare in advance.⁴⁵ For these defendants, the imposition of more severe restraints on liberty would be unnecessary and, being un-parsimonious, would constitute an abuse of government authority.

The use of unnecessary conditions can also have unforeseen harmful consequences. Research indicates that over-supervision can make pretrial failure *more likely*. For example, one study found that “lower-risk defendants who were required to participate” in drug testing and treatment “had higher failure rates than their lower-risk counterparts who were not.”⁴⁶ In addition, undue restrictions could cause the public to lose faith in the legal system. If people do not view the courts as fair, they may become less

⁴² See, e.g., VANNOSTRAND ET AL., *supra* note 39, at 24–27.

⁴³ See *United States v. Scott*, 450 F.3d 863, 871–72 (9th Cir. 2006) (holding that suspicionless drug testing of pretrial supervisees constituted an unreasonable search where the government failed to make either an individualized showing related to the defendant or empirical support for a pattern of drug use leading to nonappearance); *United States v. Karper*, 847 F. Supp. 2d 350, 363 (N.D.N.Y. 2011) (finding that mandatory imposition of curfew and electronic monitoring conditions on defendants accused of sex offenses violates Due Process and Excessive Bail clauses); *United States v. Polouizzi*, 697 F. Supp. 2d 381, 395 (E.D.N.Y. 2010) (same). *But see* *United States v. Stephens*, 594 F.3d 1033, 1041 (8th Cir. 2010) (holding that such conditions do not facially violate the Due Process Clause).

⁴⁴ See, e.g., BRICE COOKE ET AL., USING BEHAVIORAL SCIENCE TO IMPROVE CRIMINAL JUSTICE OUTCOMES 4 (Jan. 2018) (finding that redesigning New York City's summons form to make the most important information stand out reduced failure to appear by 13% and text message reminders reduced failure to appear by 26%), <https://www.courthousenews.com/wp-content/uploads/2018/01/crim-just-report.pdf> [<https://perma.cc/WFF9-VJFY>].

⁴⁵ *Id.* at 6.

⁴⁶ Kristin Bechtel et al., *supra* note 10, at 449 (citing Marie VanNostrand & Gena Keebler, *Pretrial Risk Assessment in the Federal Court*, 73 FED. ARBITRATION 3, 5-6 (2009)). See also COMMISSION TO REFORM MARYLAND'S PRETRIAL SYSTEM, FINAL REPORT 14 (2014) (“over-supervision of low risk defendants produces poorer outcomes and wastes resources”), <http://goccp.maryland.gov/pretrial/documents/2014-pretrial-commission-final-report.pdf> [<https://perma.cc/X94K-UZLX>].

likely to rely on the judicial system to seek redress or even less likely to obey the law.⁴⁷

Another benefit of the parsimony principle is that it can help prevent pretrial services from becoming an arbitrary system of social control. Through conditions of release, the government has the power to regulate a person's physical movement (travel restrictions and curfews), bodily consumption (prohibitions on drug and alcohol use), and employment activity (requirements to seek or maintain a job).⁴⁸ But just because the government can do these things, does not mean it should. Unless tailored to an assessment of an individual's risk of flight or danger to the community, such restrictions look like government acting opportunistically to manipulate the behavior of those who have come within the ambit of the justice system, in service of the government's general social policy goals. Meanwhile, people not charged with crimes will be free to make their own choices in these matters. Without parsimony, restrictions on pretrial liberty will be arbitrary on some level.

Where police activity is concentrated in communities of color or the criminal law is enforced disproportionately against racial minorities, the harms of over-supervision are even greater. Racial disparities in the justice system mean that pretrial supervision, if unnecessarily restrictive, may replicate elements of previous forms of racial subordination.⁴⁹ This has an effect at the community level. Many communities of color are subject to greater state involvement and reduced liberty because policing and

⁴⁷ See H.L.A. HART, *PUNISHMENT AND RESPONSIBILITY: ESSAYS IN THE PHILOSOPHY OF LAW* 25 (1968) (arguing that sentencing disproportionate to the offense creates "a risk of either confusing morality or flouting it and bringing the law to contempt"); Tom R. Tyler & Jonathan Jackson, *Popular Legitimacy and the Exercise of Legal Authority: Motivating Compliance, Cooperation and Engagement*, 20 *PSYCHOL., PUB. POL'Y & L.* 78, 86 (2014) ("People who viewed legal authorities as more legitimate were more likely to report crime and criminals They were also more likely to be willing to cooperate with the legal system in prosecuting criminals"); Tom R. Tyler & Justin Sevier, *How Do the Courts Create Popular Legitimacy?: The Role of Establishing the Truth, Punishing Justly, and/or Acting Through Just Procedures*, 77 *ALB. L. REV.* 1095, 1104–05 (2014) ("Studies indicate that people are both more likely to obey law and to accept decisions when they view the courts as legitimate. This includes ordinary citizens following the laws and accepting decisions related to rule breaking, disputes and misdemeanors, and criminals involved in felony behaviors.").

⁴⁸ See CJPP BAIL PRIMER, *supra* note 1, at 5–6 (2016) (explaining how conditions of release allow the government to control different aspects of an individual's life).

⁴⁹ See generally MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (2010) (arguing that the modern criminal justice system has replicated the harms of the era of Jim Crow segregation).

prosecution have been concentrated there. Constraining pretrial conditions with parsimony would prevent this effect from being even more severe.

III. PRINCIPLE 3: SUPPORT RATHER THAN SUPERVISE

Pretrial services agencies are tasked with helping defendants make their court appearances and promoting public safety.⁵⁰ A pretrial services agency that focuses solely on monitoring defendants and reporting them for failure to comply with their conditions of release will not be the most effective at accomplishing these goals. Instead, a pretrial services agency should use its various tools and interventions in a way that supports defendants.

One challenge to maintaining a supportive, rather than supervisory, approach is that around 40% of pretrial services agencies are located within probation departments, which have a different mission.⁵¹ Whereas pretrial services agencies work with individuals who are presumptively innocent, probation departments work with adjudicated individuals who have fewer rights and protections.⁵² And while pretrial services agencies have a limited mission of assuring court appearance and protecting public safety, probation departments engage in criminal sanction and offender rehabilitation.⁵³ To avoid conflating the different functions, it is crucial for pretrial services agencies to maintain their independence, even if they work under the umbrella of a probation department.⁵⁴ The best practice is to house pretrial services separately from probation.

Pretrial services agencies should avoid resorting to probationary tactics because they risk setting defendants up for failure. In the probation context, supervision has been shown to increase recidivism among individuals who have an otherwise low risk of reoffending.⁵⁵ This is in large part because “the sheer number of [probation] requirements imposes a nearly impossible burden on many offenders.”⁵⁶ A similar consequence can result in the pretrial context. When a defendant violates a condition of

⁵⁰ See Nat’l Inst. of Corr., *A Framework for Pretrial Justice: Essential Elements of an Effective Pretrial System and Agency* 44 (2017), <https://s3.amazonaws.com/static.nicic.gov/Library/032831.pdf> [<https://perma.cc/M3FS-BTAX>].

⁵¹ See *id.* at 33.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ Vincent Schiraldi, *The Pennsylvania Community Corrections Story*, COLUM. U. JUST. LAB 6 (Apr. 25, 2018), <http://justicelab.iserp.columbia.edu/img/PACommunityCorrections4.19.18finalv3.pdf>. [<https://perma.cc/4DEH-LZ2J>].

⁵⁶ Cecelia Klingele, *Rethinking the Use of Community Supervision*, 103 J. CRIM. L. & CRIMINOLOGY 1015, 1035 (2013).

release, he or she may be subject to rearrest, detention, and prosecution for contempt of court—even though, in most cases, the conduct would be legal absent the release condition.⁵⁷ To avoid triggering these consequences, pretrial services agencies should attempt to handle violations of conditions of release administratively and invoke revocation proceedings only when the conduct actually interfered with the court’s function or presented a risk to public safety.⁵⁸

One simple service that effectively increases court appearance without overburdening defendants is automated phone-call reminders about upcoming court dates. While automated or manual phone-call reminders are common in other industries that seek to promote appearance rates—like doctors’ and dentists’ offices—these reminders are only beginning to take hold in our courts, despite being a proven, helpful tool. As a pioneer in adopting phone-call reminders, Multnomah County, Oregon (which includes Portland) ran a pilot program nearly a decade ago that placed automatic calls to pretrial defendants to alert them of upcoming court dates.⁵⁹ The program lowered failure-to-appear rates by 37% percent and saved the county over one million dollars in the first eight months, leading Multnomah county to expand the program countywide.⁶⁰ In 2017, a pilot program in New York City found that text message reminders alone improved appearance rates by 26% percent.⁶¹ Two empirical studies have each found that court reminders increase appearance rates.⁶² These reminders can be a simple, cost-effective intervention to improve appearance rates without disrupting peoples’ lives.

The success of these court reminder programs belies the notion that missed court dates are primarily the result of defendants’ flight from justice or willful disobedience of the courts. Rather, a working group on pretrial reform from Santa Clara County, California found “many of those who miss a court appearance do so for mundane reasons such as lack of reliable transportation, illness, or inability to leave work or find childcare, rather

⁵⁷ See, e.g., D.C. Code Ann. § 23-1329(d-1)(1) (2016).

⁵⁸ See STANDARDS ON PRETRIAL RELEASE § 4.3, commentary (NAT’L ASS’N OF PRETRIAL SERVS. AGENCIES 2004), available at <https://perma.cc/TP6H-F98Q>.

⁵⁹ MATT O’KEEFE, COURT APPEARANCE NOTIFICATION SYSTEM: 2007 ANALYSIS HIGHLIGHTS 1–2 (2007), available at <https://multco.us/file/26891/download> [<https://perma.cc/PAH8-RUTL>].

⁶⁰ *Id.*

⁶¹ BRICE COOK ET AL., USING BEHAVIORAL SCIENCE TO IMPROVE CRIMINAL JUSTICE OUTCOMES, UNIV. OF CHICAGO CRIME LAB & IDEAS 42, 4 (2018), <https://www.courthouse.news.com/wp-content/uploads/2018/01/crim-just-report.pdf> [<https://perma.cc/B2RJ-L6AM>].

⁶² Kristin Bechtel et al., *supra* note 10, at 460.

than out of a desire to escape justice.”⁶³ Because defendants miss court for mundane reasons, mundane solutions might be the answer. Phone call reminders, access to public transportation, or public childcare in the courtroom are not only more humane than arrest warrants and jail time—they are also likely to be more effective.

Community engagement and support is another untapped resource for pretrial service agencies. Santa Clara County is in the process of implementing a new pretrial program called Community Release.⁶⁴ In this program, defendants are released pretrial and choose a non-profit partner organization in the community, such as a church or community group.⁶⁵ This organization in turn promises to help support the person on release through methods such as providing transportation to court, reminding the person of upcoming court dates, and helping the person find a job or get the treatment and services they need.⁶⁶ Time will tell how the program fares, but it could lead to greater community engagement with the criminal justice system, improved pretrial outcomes, and improved community life and public safety.

IV. PRINCIPLE 4: DON’T CHARGE FEES

The criminal justice system is a public good. Like highways, public schools, and sanitation departments, its benefits redound to the entire community and therefore the entire community should pay for it. All aspects of the criminal justice system—police, prosecutors, public defenders, judges, courts, pretrial services, probation, prisons and jails—should be collectively funded through tax dollars. In many jurisdictions, however, criminal justice “user fees” charged to defendants, inmates and probationers have increased in number and size.⁶⁷ These “user fees” are common in the pretrial context.

⁶³ CTY. OF SANTA CLARA BAIL AND RELEASE WORK GRP., *supra* note 9, at 2, <http://sccgov.iqm2.com/Citizens/FileOpen.aspx?Type=4&ID=153959&MeetingID=7200>.

⁶⁴ *Silicon Valley De-Bug Leads the Charge on Criminal Justice Reform*, ROSENBERG FOUND.: NEWS (Feb. 17, 2018), <https://rosenbergfound.org/silicon-valley-de-bug-leads-the-charge-on-criminal-justice-reform/> [<https://perma.cc/95NK-ZU7B>]; CTY. OF SANTA CLARA BAIL AND RELEASE WORK GRP., *supra* note 9, at 63–64.

⁶⁵ CTY. OF SANTA CLARA BAIL AND RELEASE WORK GRP., *supra* note 9, at 64.

⁶⁶ *Silicon Valley De-Bug Leads the Charge on Criminal Justice Reform*, ROSENBERG FOUND.: NEWS (Feb. 17, 2018), <https://rosenbergfound.org/silicon-valley-de-bug-leads-the-charge-on-criminal-justice-reform/>; *see also* CTY. OF SANTA CLARA BAIL AND RELEASE WORK GRP., *supra* note 9, at 63.

⁶⁷ *See* ALICIA BANNON ET AL., BRENNAN CTR. FOR JUSTICE, CRIMINAL JUSTICE DEBT: A BARRIER TO REENTRY 7 (2010), <http://www.brennancenter.org/sites/default/files/legacy/Fees%20and%20Fines%20FINAL.pdf> [<https://perma.cc/S9HJ-FNJE>].

For example, judges in some jurisdictions condition pretrial release on the defendant's submission to regular drug testing.⁶⁸ Defendants in many jurisdictions are charged fees between \$15 and \$20 per test.⁶⁹ Some jurisdictions charge defendants a fee for pretrial supervision.⁷⁰ For example, in Indiana, a defendant may be charged an initial pretrial service fee of \$100, a monthly fee of \$30, and an additional administrative fee of \$100.⁷¹ Almost every state⁷² charges defendants fees for electronic monitoring, which can run as high as \$900 per month.⁷³

Some states permit or even require judges to consider a defendant's financial circumstances when setting conditions of release and to waive or reduce fees for indigent defendants.⁷⁴ But those provisions are rare.⁷⁵ If an individual fails to pay fees associated with pretrial conditions of release, that individual may be subject to rearrest and detention for violating her conditions of release.⁷⁶ Thus, just as with the money bail system,

⁶⁸ See, e.g., COURT SERVS. AND OFFENDER SUPERVISION AGENCY FOR D.C., FY 2016 AGENCY FINANCIAL REPORT 20 (2016).

⁶⁹ See, e.g., *Frequently Asked Questions*, TARRANT COUNTY, TEXAS, <https://www.tarrantcounty.com/en/pretrial-services/frequently-asked-questions.html> (last visited Oct. 2, 2018) [<https://perma.cc/ZR5Q-7MYE>] (\$16 fee for each pretrial drug test); *Pretrial Reform in Kentucky*, Admin. Office of the Courts, Kentucky Court of Justice at 6 (Jan. 2013) (source on file with author) (Kentucky imposes "costly" fees on defendants for pretrial drug testing); Santa Clara County Office of Pretrial Services, *Instructions for Random Drug Testing*, <https://www.sccgov.org/sites/pretrial/Services/Forms/Documents/Female%20Drug%20Test%20Instructions.pdf> [<https://perma.cc/2LL8-NAZG>] (\$15 fee for drug testing).

⁷⁰ E.g. Ind. Code § 35-33-8-3.3 (2018). See also Wash. Rev. Code Ann. § 10.01.160(2) (2018) (defendant may be charged supervision fees); Fla. Stat. § 948.09 (2018) (imposing fees for pretrial supervision). But see *Court Guidelines*, MASS.GOV (Nov. 2016), <http://www.mass.gov/courts/docs/trial-court/pre-trial-release-guidelines.pdf> [<https://perma.cc/N85S-V5JT>] (Massachusetts does not charge fees for supervision as a condition of pretrial release).

⁷¹ Ind. Code § 35-33-8-3.3.

⁷² *State-By-State Court Fees*, NPR (May 19, 2014), <https://www.npr.org/2014/05/19/312455680/state-by-state-court-fees> [<https://perma.cc/S5G3-K8B4>].

⁷³ Eric Markowitz, *Chain Gang 2.0: If You Can't Afford This GPS Ankle Bracelet, You Get Thrown in Jail*, INT'L BUS. TIMES (Sept. 21, 2015, 7:55 AM), <http://www.ibtimes.com/chain-gang-20-if-you-cant-afford-gps-ankle-bracelet-you-get-thrown-jail-2065283> [<https://perma.cc/2XCP-MUJN>]; Sukey Lewis, *Electronic Monitoring of Defendants is Increasing, But at What Price?*, KQED NEWS (Aug. 2, 2017), <https://www.kqed.org/news/2017/08/02/electronic-monitoring-of-defendants-is-increasing-but-at-what-price/> [<https://perma.cc/Z4KJ-R6KF>].

⁷⁴ See, e.g., W. Va. Code § 62-11C-7(a) (requiring judge to consider a defendant's ability to pay before setting a pretrial supervision fee).

⁷⁵ See generally CRIMINAL JUSTICE POLICY PROGRAM AT HARVARD LAW SCH., STATE CRIMINAL JUSTICE DEBT REFORM BUILDER, <https://cjdebtreform.org/> [<https://perma.cc/QBN4-Q28L>].

⁷⁶ Markowitz, *supra* note 73; see also, e.g., D.C. Code Ann. § 23-1329.

conditions of pretrial release can render an individual's pretrial liberty contingent on her financial circumstances.

The Supreme Court held in *Bearden v. Georgia* that the Fourteenth Amendment prohibits the revocation of probation for failure to pay a fine absent a showing that the failure was willful: "If the probationer could not pay despite sufficient bona fide efforts to acquire the resources to do so, the court must consider alternative measures of punishment other than imprisonment."⁷⁷ The Court acknowledged the government's "fundamental interest in appropriately punishing persons," but concluded that it would be "fundamentally unfair" to imprison a probationer who failed to pay a fine "through no fault of his own" and despite "all reasonable efforts."⁷⁸ This reasoning applies with even greater force in the pretrial context when the defendant's liberty interest is stronger because she has not yet been convicted of a crime and when the government's countervailing interest in punishment is therefore absent.⁷⁹

Fee-based conditions of confinement may also induce defendants to plead guilty to avoid continued financial obligations. Researchers have observed this phenomenon in the bail context, where defendants agree to plead guilty for time served to get out of jail⁸⁰—one study found that misdemeanor defendants who are detained pretrial are 25% more likely than similarly situated released defendants to plead guilty.⁸¹ Releasees who owe fees for pretrial services may feel inclined to plead guilty in order to stop the charges from accumulating.⁸² In some cases it may be cheaper and therefore preferable to be on probation after having pled guilty than on electronic monitoring.⁸³ Although this phenomenon has been noted anecdotally in the press,⁸⁴ more rigorous study is needed to fully understand the scope and magnitude of the problem.

⁷⁷ *Bearden v. Georgia*, 461 U.S. 660, 672 (1983).

⁷⁸ *Id.* at 668–69.

⁷⁹ *Salerno*, 481 U.S. at 755.

⁸⁰ Paul Heaton et al., *The Downstream Consequences of Misdemeanor Pretrial Detention* 69 STAN. L. REV. 711, 714–15 (2017).

⁸¹ *Id.*

⁸² Lewis, *supra* note 73; Derek Gilna, *Electronic Monitoring Becomes More Widespread, but Problems Persist*, PRISON LEGAL NEWS (Oct. 9, 2017), [https://www.prisonlegalnews.org/news/2017/oct/9/electronic-monitoring-becomes-more-widespread-problems-persist/\[https://perma.cc/MWR8-UA4S\]](https://www.prisonlegalnews.org/news/2017/oct/9/electronic-monitoring-becomes-more-widespread-problems-persist/[https://perma.cc/MWR8-UA4S])

⁸³ Markowitz, *supra* note 73.

⁸⁴ Eric Markowitz, *Electronic Monitoring Has Become the New Debtors Prison*, NEWSWEEK (Nov. 23, 2015), <http://www.newsweek.com/2015/12/04/electronic-monitoring-has-become-new-debtors-prison-397225.html> [<https://perma.cc/Q93J-RHNM>]; Gilna, *supra* note 82.

The practice of charging defendants to fulfill the conditions of their release may be distorting sound policy decision-making. By externalizing the expense of pretrial services onto defendants, system actors do not have to find money in their budget to impose burdensome pretrial conditions. Private companies that contract with jurisdictions to provide services such as electronic monitoring boast that their services come at no cost to the jurisdiction.⁸⁵ Because pretrial programs are funded through user fees rather than local budgets, policymakers are never forced to weigh the expense of pretrial conditions against the public safety benefits they provide, or to create policies that narrowly tailor the imposition of the most expensive and burdensome conditions. They have neither the incentive to evaluate the effectiveness of those services nor a fiscal reason to constrain their application. In some cases, governments may actually profit from charging fees for pretrial services.⁸⁶ This creates an impermissible conflict of interest and a perverse incentive to maximize both the number of defendants who receive fee-based conditions and the number of fee-based conditions a defendant receives.

It is not just governments that profit from pretrial services: across the country, jurisdictions contract with for-profit companies to provide electronic monitoring, drug testing, and other services. These companies make their money from charging fees to pretrial defendants, indeed many of them have defendant payment portals on their websites.⁸⁷ Private vendors have an incentive to expand the use of their services as broadly as possible,⁸⁸ and they have lobbying arms that protect and expand their

⁸⁵ See, e.g., OFFENDER MANAGEMENT SERVICES, *About Us*, OFFENDER MANAGEMENT SERVICES, <http://offender-management.com/about-us/> [<https://perma.cc/P8EW-QMH6>] (last visited Jul. 30, 2018).

⁸⁶ Markowitz, *supra* note 84.

⁸⁷ See, e.g., OFFENDER MANAGEMENT SERVICES, *About Us*, OFFENDER MANAGEMENT SERVICES, <http://offender-management.com/payments/> [<https://perma.cc/PQW5-TTSL>] (last visited Jul. 30, 2018); SCRAM NORTH CAROLINA, <http://www.scramnorthcarolina.com/gov-pay-net> [<https://perma.cc/E6WQ-XC55>] (last visited Jul. 30, 2018). The website of a prominent vendor of alcohol monitoring technology, Scram Systems, explains in its profile of one jurisdiction that the county charges user fees that must be paid in advance in cash to cover daily monitoring costs. “Offenders are required to pay 1 to 2 weeks in advance, in cash, and are not allowed to fall behind in their payments. Nonpayment is considered a violation of the offender’s release and managed accordingly.” SCRAM SYSTEMS, *Case Studies: Burleigh County Sheriff Uses Continuous Monitoring for an Effect 24/7 Sobriety Program*, SCRAM SYSTEMS, <https://www.scramsystems.com/case-studies/burleigh-county-sheriff-uses-continuous-alcohol-monitoring-for-an-effective/> [<https://perma.cc/BV8S-U8VS>] (last visited Jul. 30, 2018).

⁸⁸ See Avalana K. Eisenberg, *Mass Monitoring*, 124 S. CAL. L. REV. 123, 174 (2017).

business model.⁸⁹ The rising political influence of private pretrial services vendors calls to mind the powerful influence that bail bond industry lobbyists have on policymaking, which implicates money bail.⁹⁰ Indeed, as bail reform gains momentum, bail bond companies recognize that their business model may be short-lived, and some are turning to pretrial services as an alternative.⁹¹ Eliminating fees for pretrial services would remove some of the profit motive and could help mitigate the distortion in policymaking that it brings.

V. PRINCIPLE 5: CONDITIONS OF RELEASE AND RESTRICTIONS ON LIBERTY SHOULD BE EVIDENCE BASED

Policy reform should always be informed by data and research. This is especially true in the pretrial context, where public safety and the liberty of presumptively innocent individuals are at stake. Troublingly, many conditions of release and forms of pretrial supervision currently in use have not been proven to be effective, or, in some cases, subject to methodologically sound study.⁹² Policymakers should closely consider the research, or lack thereof, before implementing pretrial release conditions. And courts and pretrial services agencies should implement robust data collection protocols that will enable them to internally track the success of certain release conditions and that will enable independent researchers to analyze their effectiveness.

Pretrial drug testing has not been shown to increase appearance rates or decrease pretrial arrest.⁹³ Randomized control trials have shown that

⁸⁹ Eric Markowitz, *Electronic Monitoring Has Become the New Debtors Prison*, NEWSWEEK (Nov. 23, 2015), <http://www.newsweek.com/2015/12/04/electronic-monitoring-has-become-new-debtors-prison-397225.html> [<https://perma.cc/UJ9H-JNUB>].

⁹⁰ Gillian B. White, *Who Really Makes Money Off Bail Bonds?*, THE ATLANTIC (May 12, 2017), <https://www.theatlantic.com/business/archive/2017/05/bail-bonds/526542/> [<https://perma.cc/RSW5-H7PR>].

⁹¹ Dave Flessner, *Tennessee Recovery and Monitoring Offers Jail Alternative*, TIMES FREE PRESS (Sept. 24, 2017), <http://www.timesfreepress.com/news/business/aroundregion/story/2017/sep/24/jail-alternativecompany-monitors-pre-trial-or/450332/> [<https://perma.cc/52ZK-2KPR>]; Renee K. Gadoua, *Tennessee County Uses CPS Technology, But Skepticism Surrounds Effectiveness*, BIG MOUNTAIN DATA (Aug. 18, 2015), <http://www.bigmountaindata.com/tennessee-county-uses-gps-technology-but-skepticism-surrounds-effectiveness/> [<https://perma.cc/JZ3F-85CP>].

⁹² Kristin Bechtel, et al., *A Meta-Analytic Review of Pretrial Research: Risk Assessment, Bond Type, and Interventions*, 42 AM. CRIM. JUST. 443, 448–50, 460–61 (2017).

⁹³ See MARIE VANNOSTRAND, KENNETH R. ROSE & KIMBERLY WEIBRECHT, STATE OF THE SCIENCE OF PRETRIAL RELEASE RECOMMENDATIONS AND SUPERVISION 20–24 (2011).

pretrial drug testing made no difference in either metric.⁹⁴ Indeed, one study actually found that for high risk defendants, drug testing made no difference in pretrial success rates, but for lower risk defendants, pretrial drug testing actually *lowered* pretrial success.⁹⁵ Another study found drug testing to be effective in reducing reincarceration of people on *probation*,⁹⁶ but subsequent studies have not been able to replicate those findings.⁹⁷ In any event, research in the probation context does not address one of the primary indicators of success in the pretrial context: improvement in defendant appearance rates.

Pretrial supervision practices involving meetings with a pretrial officer vary widely across jurisdictions and there is a dearth of systematic research demonstrating the effectiveness of particular supervision models.⁹⁸ Two small experimental studies showed that pretrial supervision had no effect on appearance or rearrest rates.⁹⁹ Although one study found some improvement in pretrial appearance rates from pretrial supervision, that study covered multiple jurisdictions with different pretrial supervision practices and was correlational, which is much weaker than a randomized control trial.¹⁰⁰ There are some strong studies of supervision in the

⁹⁴ John S. Goldkamp & Peter R. Jones, *Pretrial Drug-Testing Experiments in Milwaukee and Prince George's County: The Context of Implementation*, 29 J. RES. CRIME DELINQ. 430, 457–59 (1992); Mary A. Toborg et al., *Assessment of Pretrial Urine Testing in the District of Columbia* 14 (1989), available at <https://www.ncjrs.gov/pdffiles1/Digitization/119968NCJRS.pdf> [<https://perma.cc/H4AU-D4ZD>]. See also Stefan Kapsch & Louis Sweeny, Multnomah County DMDA Project: Evaluation Final Report (1990).

⁹⁵ Marie VanNostrand & Gina Keebler, *Pretrial Risk Assessment in the Federal Court*, 31 Washington, Office of Federal Detention Trustee (2009).

⁹⁶ Angela Hawken & Mark Kleiman, *Managing Drug Involved Probationers with Swift and Certain Sanctions: Evaluating Hawaii's HOPE 4* (2009), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/229023.pdf> [<https://perma.cc/5SN5-XSS7>].

⁹⁷ Pamela K. Lattimore et al., *Outcome Findings from the HOPE Demonstration Field Experiment: Is Swift, Certain, and Fair an Effective Supervision Strategy?*, 15 CRIM. & PUB. POL'Y 1103, 1104 (2016); Daniel J. O'Connell et al., *Decide Your Time: A Randomized Trial of Drug Testing and Graduated Sanctions Program for Probationers*, 15 CRIM. & PUB. POL'Y 1–73, 1086 (2016).

⁹⁸ See Marie VanNostrand, Kenneth R. Rose & Kimberly Weibrecht, *State of the Science of Pretrial Release Recommendations and Supervision*, 32 (2011); Megan Stevenson & Sandra G. Mayson, *Pretrial Detention and Bail*, REFORMING CRIMINAL JUSTICE 42–44 (2017).

⁹⁹ James Austin, Barry Krisberg & Paul Litsky, *The Effectiveness of Supervised Pretrial Release*, 31 CRIME AND DELINQ. 519, 523–35 (1985); John S. Goldkamp & Michael D. White, *Restoring Accountability in Pretrial Release: The Philadelphia Pretrial Release Supervision Experiments*, 2 J. EXPERIMENTAL CRIMINOLOGY 143, 154 (2006).

¹⁰⁰ CHRISTOPHER T. LOWENKAMP & MARIE VANNOSTRAND, *EXPLORING THE IMPACT OF PRETRIAL SUPERVISION ON PRETRIAL OUTCOMES*, 15–16 (2013); see also Megan Stevenson & Sandra G. Mayson, *Pretrial Detention and Bail*, REFORMING CRIMINAL JUSTICE 43 (2017).

probation and parole context that show that required meetings have no effect on new criminal activity, but do tend to increase technical violations.¹⁰¹

There is a lack of sound research about the effectiveness of electronic monitoring in the pretrial context.¹⁰² The research that does exist has not found that electronic monitoring improves pretrial outcomes.¹⁰³ One jurisdiction found that defendants released pretrial with electronic monitoring had similar failure to appear and new arrest rates as those released without electronic monitoring, and those on electronic monitoring actually experienced more technical violations than those without electronic monitoring.¹⁰⁴ One problem with the existing research is that there have been no randomized control trials. Moreover, observational research suffers from the problem that individuals who are put on electronic monitoring are usually considered higher risk than those individuals who are released without electronic monitoring.¹⁰⁵

Notably, text message court reminders are the one pretrial intervention with a proven track record of success.¹⁰⁶ One study found through a randomized control trial that text message court reminders reduced failure to appear rates by 26%.¹⁰⁷ Hypothesizing that people did not make a deliberate decision to miss court dates, researchers decided to test a behavioral intervention (text message reminders) rather than an

¹⁰¹ See Geoffrey C. Barnes et al., *Low-Intensity Community Supervision for Low-Risk Offenders*, 6 J. EXPERIMENTAL CRIMINOLOGY 159, 181–82 (2010); Susan Turner et al., *Evaluating Intensive Supervision Probation/Parole (ISP) For Drug Offenders*, 38 CRIME AND DELINQ. 539 (1992).

¹⁰² Megan Stevenson & Sandra G. Mayson, *Pretrial Detention and Bail*, REFORMING CRIMINAL JUSTICE 45–46 (2017).

¹⁰³ Kristin Bechtel et al., *A Meta-Analytic Review of Pretrial Research: Risk Assessment, Bond Type, and Interventions*, 42 AM. J. CRIM. JUST. 443, 460 (2017); Marie VanNostrand & Gina Keebler, *Pretrial Risk Assessment in the Federal Court*, 27 Washington, Office of Federal Detention Trustee (2009).

¹⁰⁴ VanNostrand, *supra* note 103, at 25–26.

¹⁰⁵ *Id.* at 27. In the probation and parole context, electronic monitoring has been shown to reduce recidivism for gang members and sex offenders. Stephen V. Gies et al., *Monitoring High-Risk Sex Offenders with GPS Technology: An Evaluation of the California Supervision Program, Final Report* vii (Apr. 2012), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/238481.pdf> [<https://perma.cc/2TAZ-E49Y>]; Kathy G. Padgett et al., *Under Surveillance: An Empirical Test of the Effectiveness and Consequences of Electronic Monitoring*, 5 CRIMINOLOGY & PUB. POL'Y 61 (2006). It is unclear how those results translate to the larger population of pretrial defendants, and they do not speak to the pretrial concern of failure to appear rates, which are not relevant in the probation and parole context.

¹⁰⁶ Bechtel, *supra* note 103, at 460; Cook et al., *supra* note 44, at 4.

¹⁰⁷ Cook et al., *supra* note 44, at 4.

enforcement intervention (increasing the penalty for failing to appear).¹⁰⁸ The results of the study confirmed that simply reminding people of their court date can lead to significantly higher appearance rates.¹⁰⁹

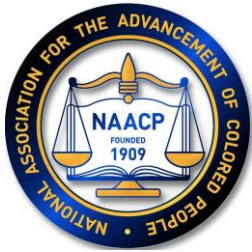
Courts and policymakers should prioritize conditions of release that have been proven effective through rigorous study. But they should also take steps to understand the effectiveness of their own policies. Jurisdictions should adopt thorough data collection practices that allow them to track and analyze case outcomes in which various conditions of release are imposed. They should also make this data available to independent researchers to improve our collective understanding of the effectiveness of release conditions.

CONCLUSION

The current momentum behind money bail reform holds much promise for a more just and effective pretrial system. But there is a risk that imposing excessive conditions of release will reproduce some of the harms of money bail. The five principles of pretrial release outlined above offer a roadmap to lasting pretrial reform that avoids replicating some of the injustices of money bail.

¹⁰⁸ *Id.* at 5–7.

¹⁰⁹ *Id.* Two other empirical studies have also found that court date reminders increase appearance rates. Bechtel, *supra* note 103, at 460–61.



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National Association for the Advancement of Colored People

1620 Pleasant Street, Suite 210, Des Moines, IA 50314

515.288.7171 | 515.729.2969 c | IowaNebraskaNAACP.org

Betty C. Andrews, President

MOVING POWERFULLY FORWARD! →

June 15, 2020

Frank Cownie, Mayor
Members of the City Council
Scott Sanders, City Manager
Jeff Lester, City Attorney
City of Des Moines
400 Robert D. Ray Drive
Des Moines, Iowa 50309

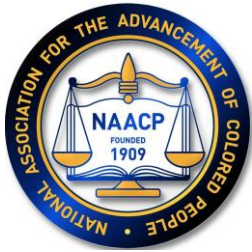
Dear Mayor Cownie, Members of the City Council, City Manager Sanders, and City Attorney Lester:

Dr. Martin Luther King, Jr., during his August 28, 1963 *I Have a Dream* speech at the Lincoln Memorial, declared, “Now is the time to rise from the dark and desolate valley of segregation to the sunlit path of racial justice. Now is the time to lift our nation from the quicksands of racial injustice to the solid rock of brotherhood. Now is the time to make justice a reality for all of God's children.” George Floyd’s murder put this country and this city face to face with the urgency of “Now.” We write today to ensure that justice is “a reality for all.”

Throughout the June 8, 2020 City Council meeting we were moved by the Mayor and several council members’ resounding remarks declaring their support of efforts to address racial injustice with emphasis on the need to listen to the communities impacted. This meeting was followed by a June 11 joint meeting of the Des Moines Civil and Human Rights Commission and the Council where we heard more of the same noble refrain. During the June 8 City Council Meeting yet a second Anti-Racial & Ethnic Profiling ordinance passed a first reading, though the final wording on the ordinance was only delivered to the community hours before its first reading. As reported to Council by the Community Alliance and other citizens, this timeframe made it impossible to properly vet such an important measure. In the end, we left the meeting with expectation for additional communication, because the second and third readings were not waived. This type of communication is critical because the “Now” should never outweigh the “justice.”

Now that we have had the time to review the proposed ordinance we are confident that we can get to a great final product and look forward to working with each of you to do so. We write to address the core issues remaining in the negotiation of an Anti-Racial & Ethnic Profiling Ordinance for the City of Des Moines: (1) a Community Policing Practices & Review Committee (CPPRC); (2) a Citizens or Civilian Review Board (CRB); and (3) Lower-level enforcement of Marijuana Possession.

The addition of the CPPRC, with its strong ongoing community voice and all stakeholders at the table, is a vital addition to the Ordinance that is essential to secure approval of the ordinance by the Alliance. The CRB and marijuana enforcement issues are also central to the goals of a robust and effective Anti-Racial & Ethnic Profiling Ordinance; however, we are prepared to allow resolution of those two issues to be moved to the future after careful but expeditious study by Council working groups created specifically for each of those issues. Let us begin with discussion of the necessity of the CPPRC.



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Throughout the negotiations the City Manager has insisted that no standing committee appointed by the Mayor and Council is acceptable. The Manager has dictated that the only option was a Policy and Practice Review Committee,¹ an advisory committee to the City Manager that he would appoint himself and be comprised solely of city employees and members of existing city committees. Such a committee has no independence as it is not included in the Ordinance and can be disbanded or disregarded at any time by the Manager. It lacks the stature of a Standing Committee. More seriously, without community representation it lacks credibility. Indeed, the PPRC does not purport to represent the voice of the community, and that failure is fatal. It also makes no provision for one critical stakeholder, the Chief of Police or his or his designee, who needs to be involved and to engage with the community on community policing issues. Further, the Manager's proposed committee does not provide for public meetings with notice that would enable members of the community to be heard on policing practices and policies. In sum, the fundamental flaws of the PPRC are the same as those of the DMPD's unbiased policing internal "policy." Both must be strengthened, AND both must be incorporated into "law," specifically, the Anti-Racial & Ethnic Profiling Ordinance. At this critical time in our history, mere policies and internal processes in the promulgation or shaping of which the City Council does not participate, that can be changed without review by the Council, and that provide no opportunity for community representation or input accomplish nothing.

The CPPRC Committee that the Alliance has proposed would be a Standing Committee, appointed by the Mayor and approved by the Council. It must be inclusive, and bring all the stakeholders to the table, including the Chief of Police. We propose a 9-member committee.² Like Sanders' proposal, it includes two members of the Human Rights Commission and one sworn police officer. In addition, the CPPRC would include the Chief of Police, three members from

¹ Policy and Practice Review Committee (PPRC)

PPRC is focused on reviewing data and recommendations for policy and practice modifications to improve code and law enforcement policies and practices.

Scope

PPRC meets at least quarterly, or more frequently as PPRC determines, to review existing and planned policies and practices, and makes recommendations to ensure elimination of existing or potential disparities.

Duties and Responsibilities

- Reviewing law enforcement and neighborhood code enforcement data for existing or potential disparities in practices
- Reviewing law enforcement and neighborhood code enforcement policies
- Providing advice and recommendations to the City Manager, Chief of Police and Community Development Director on policy and practice matters

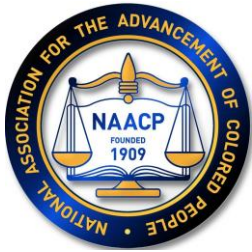
Membership

PPRC is comprised of three members of the Des Moines Civil & Human Rights Commission, one member from the Housing Appeals Board, one staff member from Community Development Department, and one sworn officer member from Des Moines Police Department. All members must be confirmed by City Manager.

Staff Support

Staffing support to the PPRC is provided by the CMO.

² The City Council shall appoint, effective February 14, 2021, a Community Policing Practices & Review Committee ("the Committee") comprised of two members from the Des Moines Civil and Human Rights Commission ("the Commission"), the Chief of Police or his or her designee, one sworn officer from the police department, three members from community groups that have been historically associated with efforts to eliminate racial discrimination or that work with victims of racial and ethnic profiling, and two members of the community who have a distinguished record of public service. One member of the Committee should be at least sixteen years of age and not more than twenty-four years of age at the time of appointment.



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community groups that have been historically associated with efforts to eliminate racial discrimination or that work with victims of racial and ethnic profiling, and two members of the community who have a distinguished record of public service. One member should be in the 16 to 24-age group, the group most frequently targeted for pretextual stops. Such an inclusive Community Committee is in the interest of the DMPD and the Council as well as the Community, and the appointment and composition of the CPPRC is one major difference from the PPRC that the Manager proposed. Clearly, having 1,300 interested citizens observing a City Council meeting via a Zoom conference is not an effective way to present, discuss, and resolve problems of the magnitude and intensity of policing practices and policies. The mission and functions of the CPPRC represent a second major difference.

The NAACP leadership—NAACP State Conference President Betty Andrews, Russell Lovell, and David Walker—attempted to explain the mission of the CPPRC at the June 8 Council meeting, but only in broad brush terms due to the very brief time allotted them. Let us clarify now. First, the CPPRC and a Civilian Review Board (CRB) serve two very important but distinct functions. The Alliance does not view this as a choice between the two—*both are vital to community policing*. The CPPRC has a systemic focus, rather than the review of individual complaints of misconduct that is the mission of a CRB. The purposes of the CPPRC are (1) “to provide the Community with a direct, ongoing voice on how they are policed and the authority to review unbiased policing policies, practices, and procedures, strategies, operations, resource deployment, and public safety generally and (2) [to] provide advice and make recommendations to the Department and the Council on policy and practice matters.”

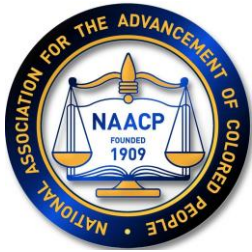
The purpose and mission of the CPPRC encompass the mission and responsibilities of the Policy and Practice Review Committee proposed by the City Manager, but they also make clear that the CPPRC will be an ongoing voice of the community on policing policies and practices. The PPRC as proposed by the Manager:

Duties and Responsibilities

- Reviewing law enforcement and neighborhood code enforcement data for existing or potential disparities in practices;
- Reviewing law enforcement and neighborhood code enforcement policies; and
- Providing advice and recommendations to the City Manager, Chief of Police and Community Development Director on policy and practice matters.

There is nothing in the CPPRC that is inconsistent with the PPRC’s duties and responsibilities.

Because of the immense public interest and demands for a Committee that will provide the Community with a strong, ongoing voice on community policing, it is necessary to clarify the CPPRC’s systemic purpose and responsibilities in implementing the anti-racial and ethnic profiling law. That requires additional detail to the brief description in the PPRC. The additional detail in the CPPRC description also distinguishes its role from the resolution of individual misconduct complaints, which is the role of a Civilian Review Board, and makes clear the CPPRC is not intended as a replacement of a CRB. Finally, it is essential to the Alliance that the CPPRC be directed to provide its advice directly to the Council as well as to the Department *and* that its meetings be public. There has to be a way for the community’s elected leaders to hear from the community other than through a City Council meeting with 1300 and more people trying to get in or the community having to make itself heard in the streets.



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The time is now for the CPPRC.³ The CPPRC is not a Citizens' Review Board with a focus on individual complaints, rather it has a systemic focus on patterns, practices, and policies, and, in the words of the Leadership Conference on Civil Rights *New Era Policing* Recommendation 1.6 (p. 19): "Gives [the] Communit[y] a Direct, Ongoing Say in Police Practices."

"The cornerstone of community policing is an authentic, cooperative relationship between police departments and the communities they serve. Many leaders reduce community policing to outreach efforts such as basketball games with community members or "coffee with a cop." While valuable, these efforts won't effect change on their own. [C]ommunity policing is not merely a series of programs or initiatives; it is an overarching philosophy that hinges on community involvement in departments' decision-making processes."

The CPPRC will "ensure that core departmental values reflect community values and communicate them to all department members." Recommendation 9.1 (p. 262).

To reiterate, the CPPRC and the CRB have distinctly different missions. While the CRB does not have the systemic focus of the CPPRC, its purpose is of equal importance, holding officers accountable through a structured mechanism that ensures individual complaints of police misconduct are scrutinized and decided by a body independent of the police. The CRB reform is one that we insist be explored through a Council working group over the next nine months. We ask for such a commitment today from the Council to create such a Working Group with Council, DMPD, and Community Alliance representation. The Alliance recognizes more research is necessary before codification of a CRB can be considered.

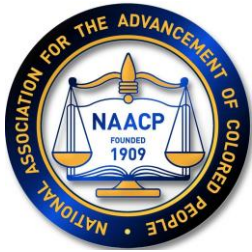
Similarly, we ask that the Council create a second Working Group to study and make recommendations regarding methods to make enforcement of the offense of possession of marijuana a low priority for the DMPD (and perhaps police departments within Polk County) and city and county prosecutors. The Johnson County diversion program for marijuana offenses has been in existence for over a decade and warrants careful study.

<https://jcjusticecenter.com/resources/marijuana-diversion-program-requirements/>. Rachel Zimmerman, the Assistant Johnson County Attorney who oversees the program, is willing to come to the Drake Legal Clinic to discuss the program in a public setting and to meet with other interested stakeholders, such as a working group we ask the Council to appoint, and the Polk County Attorney and Supervisors. Student legal services in Johnson County offers assistance to persons who need assistance understanding the diversion program option. <https://legal.studentlife.uiowa.edu/resources/johnson-county-marijuana-diversion-program-2/>.

Finally, the Alliance prepared a Memorandum of Understanding (MOU,) for the signature of City Manager Sanders, setting forth numerous commitments and assurances that the City Manager made to the Alliance in a letter to the Alliance dated March 3, 2020 and throughout the negotiations as well. On June 8th the

City Manager advised us "that he doesn't sign MOUs." His refusal to sign the MOU makes members of the Alliance question whether the commitments and assurances made in the March 3rd letter and during negotiations will be fulfilled.

³ Our draft defers the start date of the CPPRC until February 2021 to allow time for the consultant to complete his or her study and report and have data for the committee to review and analyze. We of course would prefer the committee commence its work earlier, as there are other responsibilities that it could undertake while it awaits the data.



IOWA-NEBRASKA NAACP STATE AREA CONFERENCE OF BRANCHES

National Association for the Advancement of Colored People

1620 Pleasant Street, Suite 210, Des Moines, IA 50314

515.288.7171 | 515.729.2969 c | IowaNebraskaNAACP.org

Betty C. Andrews, President

MOVING POWERFULLY FORWARD! →

So we have enclosed the unsigned Memorandum of Understanding setting forth our understanding of the input the Alliance is to have in the selection of the consultant, the scope of the consultant's mission, the opportunity to meet with the consultant, and the City Manager's commitment to engage in continuing dialogue after enactment of the Ordinance, on a range of issues, ranging from limitations on pretextual stops to a review of the roles of OPS and the Civil Service Commission.

Lastly, we believe that on June 22, during the City Council Meeting, we could all have a win. The City Council could present an ordinance that we are all able to stand behind. It is only a matter of taking the time to truly hear each other and work through the differences. To that end we would like to hold three sessions to explain our amendments and address questions or concerns that any Council member may have. We will host Zoom calls on Wednesday June 17 at 12 PM and 8 PM; and on Thursday June 18 at 7 PM. We understand the meeting limitations and would not include more than three Council members at a time. Please just let us know which session you would like to attend. Alternatively, if there is an opportunity for us to be on the agenda during an official work session, we would be happy to do that too, though we would prefer it not be the day of the June 22 meeting. We are also available if any of you would like to give us a call. Please let us know your thoughts. Thank you for your consideration as we all move forward towards ensuring justice for all.

Sincerely,

Betty C. Andrews, President, Iowa-Nebraska NAACP
Russell Lovell and David Walker, Co-Chairs, Legal Redress Committees
Des Moines and Iowa-Nebraska NAACP

Sharon Zanders Ackiss, CCI Special Projects Director
Members of the Racial Justice Committee

Daniel Zeno, Policy and Advocacy Director, ACLU of Iowa

Other Concerned Organizations and Citizens Rev. Fred Gaddy and Harvey Harrison

Encl. Alliance Amendments to proposed Anti-Racial and Ethnic Profiling Ordinance
Memorandum of Understanding (unsigned)

CC: Des Moines Mayor & Jeff Lester, City Attorney