



R STREET MEMORANDUM: POLICY SOLUTIONS TO REDUCE RACIAL DISPARITIES IN POLICING

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Executive Summary

Following the death of George Floyd and nationwide protests, Iowa's FOCUS Committee on Criminal Justice Reform has rightfully turned their attention to developing legislation that would reduce racial disparities in policing. This memo seeks to aid this effort by providing an overview of key reform opportunities and relevant legislation: namely, (1) improving and expanding data collection; (2) banning race-based pretextual stops, (3) promoting government transparency and public outreach, (4) enhancing the use of crisis response strategies and alternatives to arrest, and (5) instituting effective law enforcement training. It is important to note that none of these policies will eliminate racial disparities in policing on their own; rather, policymakers would likely see the greatest improvements by implementing them in concert with one another. After providing a short conclusion around these priorities, the memo then concludes with an appendix providing an overview of recent policing bills enacted, currently active, or introduced in state legislatures across the nation.

Key Reform Opportunities

Improving and Expanding Data Collection--A first step in solving problems concerning biased policing practices is to have as much information as possible concerning the existing law enforcement environment. For over two decades [studies have shown](#) that collecting demographic data at various points in the criminal justice process is a necessary first step to identifying points of bias and measuring the impact of subsequent interventions.

Starting in 2010, Iowa has served as a role model for other states in the realm of criminal justice transparency thanks to the continued upkeep of the [EZAACD Database](#). However, Iowa's existing criminal justice reporting framework lacks any public data on initial stops made by law enforcement. In contrast, at least [21 states](#) currently require officers to collect demographic data during traffic stops, with [Ohio](#) considering similar legislation and [New York](#) looking at a bill to do the same once reportable charges are filed with a court. To build upon Iowa's competitive edge and leverage its existing information-technology assets, it would be in the best interests of all criminal justice stakeholders for any future data collection initiatives, such as the gathering of demographic data during initial stops, to be woven into the existing EZAACD framework.

Alongside basic demographic data, the aforementioned laws and proposals would require officers to note other features of a stop to provide a fuller picture of where disparities could be occurring. For example,

under [Nebraska's Anti-Racial Profiling Statute](#), agencies must collect data on the total number of stops, the race/ethnicity of the driver as perceived by the officer, the nature of the law violation that lead to a vehicle stop, how the officer responded (arrest, search, warning or citation), and any other information that the law enforcement entity deems appropriate. Ohio's [proposal](#) would have law enforcement agencies record a host of factors, including but not limited to: the description of the car or bicycle, any license plate, the race, ethnicity, age, and gender (as perceived by the officer) of the operator, pedestrian or bicyclist stopped as well as any passengers, the estimated length of the stop, delay or questioning, the legal basis and reason for the stop, search, inventory, etc. and any charges filed as a result of these actions. Finally, [Iowa Senate Study Bill 1038](#) would have law enforcement agencies record the time, date, location and reason for the stop, whether the person's driver's license was run, if a warning/citation was issued, any actions taken by the officer during the stop, and the ethnicity/race/age from the person's identification via a standardized form used by all law enforcement.

The Iowa proposal's use of a standardized form and racial/ethnic identification via personal identification rather than officer perception is a noted improvement from other statutes/proposals: [Reporting](#) around Texas's anti-racial profiling statute found that officers often misidentified individuals' race and ethnicity; this can mask the reality of racial disparities. Likewise, the Ohio proposal's tracking of any resulting charges filed from an interaction would help policymakers understand the broader impact of their stops and how this differs by race.

That said, traffic stops are just one place where bias can be shown. Law enforcement officers retain significant discretion when choosing whether to arrest or deflect someone (meaning divert them away from the formal criminal justice process whether through a warning, civil citation, or pre-arrest diversion program), what to charge an individual with, etc. Thus, data around these points should be collected as well and broken down by race, ethnicity, gender, and age. In order to show fidelity and identify areas for improvement, agencies or providers offering formal deflection opportunities should also be required to track and report the recidivism rate for program participants. [Florida's Civil Citation & Other Alternatives to Arrest Dashboard](#) under the Florida Department of Juvenile Justice presents an excellent model of this. Members of the public and policymakers alike can easily track what percentage of youth eligible for an alternative to arrest received one and can break this information down further by race/ethnicity, gender, county, and law enforcement agency. Counties report broader utilization rates of alternatives to arrest, and [programs](#) report how many young people complete their program and the coinciding recidivism rates. Iowa should consider collecting and publicly reporting similar data and metrics in the [EZAACD Database](#) as well.

However, as the existing [academic literature](#) notes, data collection alone is a passive response to biased policing and has no real impact unless the aggregated information is acted upon. In short, demographic data must be collected and then used to inform and assess the effectiveness of policy decisions. [Iowa Senate Study Bill 1038](#) thus smartly includes a mandate that state agencies use this data in strategic plans, and the Nebraska statute requires that all law enforcement entities turn in an annual report to the Commission detailing all the information collected under the statute. Similarly, the Ohio proposal would have law enforcement agencies develop strategic anti-bias policing plans.

Banning Race-Based Pretextual Stops--At this point, it is [well documented](#) that pretextual stops can serve as a cover for racial profiling. To combat this type of behavior, at least [16 states](#) have thus far banned pretextual stops based on fixed factors such as race. As far as recent legislative activity goes, both the aforementioned [Iowa Senate Study Bill 1038](#) and [Ohio](#) bill have language that would create a

ban on race-based pretextual stops. And [New York S 8495](#) would ban racial and ethnic profiling during law enforcement stops. It should be noted that these bans are not just simple byproducts of a renewed interest in policing equity, they are policy solutions forged from over 20 years of sustained legal [criticism](#) of pretextual stops from scholars on the [right](#) and [left](#).

While many attempts to reduce biased policing practices have produced dubious results, there does seem to be strong data behind the assertion that bans on race-reliant pretextual stops can have a real impact. A recent empirical study of [over 8 million](#) traffic stops has shown that the absence of regulations on pretextual stops results in statistically higher proportions of non-white drivers being stopped and eventually searched. By both tracking the reason for stops alongside individuals' race/ethnicity and explicitly banning pretextual stops based on race, departments may begin to see these disparities shrink.

Promoting Government Transparency and Public Outreach--Government transparency and public outreach are two of the most basic principles in a democratic society. When the public remains in the dark about department policies and their impact, then they are unable to hold law enforcement accountable. Likewise, when community members, particularly communities of color and those who routinely interact with police officers, are largely absent from policy conversations, policy-making fails into account the holistic needs of the community as well as larger societal costs and benefits of policing practices.

To correct the often opaque nature of policing, a few localities have moved toward publicly publishing their policing policies and establishing bodies tasked with shedding light on policing practices. Under [California's S.B. 978](#), signed into law in 2018, "the Commission on Peace Officer Standards and Training and each local law enforcement agency shall conspicuously post on their Internet Web sites all current standards, policies, practices, operating procedures, and education and training materials that would otherwise be available to the public if a request was made pursuant to the California Public Records Act" by January 1, 2020. Due to this law, public access to local law enforcement policy is now readily available. For its part, [Iowa Senate Study Bill 1038](#) would have policing entities publicly post their policy to address profiling.

As it relates to the latter issue, [Georgia](#), [Louisiana](#), [Massachusetts](#), [New Hampshire](#), [New York](#), and [Oregon](#) have all formed state commissions or advisory committees within the past few months to inspect their own policing policies in relation to racial disparities. [Vermont](#) has extended their Racial Equality Commission, and states like [Pennsylvania](#) and Iowa have introduced legislation to establish police or community review boards. In the case of Pennsylvania, the police review board in each municipality would have the power to hire a solicitor, investigate, call witnesses, and make recommendations to the executive of the municipality concerning policing issues. In the Iowa bill, the board, among other things, would help the state Department of Justice create guidelines for collecting police officer stop data, evaluate the collected data and then provide policy recommendations in a yearly report. They would also be tasked with conducting multiple annual public meetings to discuss profiling in the community.

Unfortunately, the research [literature](#) around the effectiveness of civilian oversight is somewhat limited; an oversight body's effectiveness may vary due to myriad factors, including the oversight body's composition, mandate, etc. More broadly, research into the [effectiveness of commissions](#) suggests that their true strengths often lie in gathering expertise, overcoming political complexity, and solving collective action problems. Civilian commissions and review boards may also provide an opportunity to increase

[law enforcement legitimacy](#) and community participation, potentially providing dividends to law enforcement even if law enforcement practice does not significantly improve.

Enhancing the Use of Crisis Response Strategies and Alternatives to Arrest--- As it stands, Black youth and [adults](#) are significantly [more likely](#) to be arrested than their white peers, leading to the disproportionate creation of more criminal records and deeper criminal justice involvement. While the courts and justice agencies have traditionally tried to quell the number of people entering the justice system through later pre-trial or post-trial diversion opportunities, states can play an important role in reducing overcriminalization as well as racial disparities at the point of arrest and citation by enhancing the use of crisis response strategies and alternatives to arrest with equity in mind.

For one, policymakers divert more people from the criminal justice system by improving crisis response strategies. Specifically, states can improve emergency mental health holds and protective custody statutes by allowing medical first responders--and not just law enforcement--to initiate placement of individuals experiencing a mental health crisis or substance abuse episode into a temporary civil custody, by ensuring that people in civil custody are not allowed to be temporarily placed in a correctional facility, and by necessitating that they receive regular medical evaluations to determine the necessity of a continued hold. Fortunately, [Iowa's existing statutes](#) are already fairly close to this standard; the major change would include allowing medical first responders to initiate a protective custody or mental health hold rather than leaving it to the discretion of law enforcement.

Another way to reduce racial disparities at the point of arrest is to expand, and in some cases mandate, the use of civil citations and other forms of pre-arrest diversion. In Los Angeles County, the [Division of Youth Diversion and Development](#) has urged officers to consider diverting all youth legally eligible for diversion (which includes those with some felony offenses) when possible. And in California, officers are required to issue civil citations for all misdemeanors save for a handful of [circumstantial exceptions](#). And after several felony crimes were downgraded to misdemeanors in 2014, the state saw a [sustained narrowing of racial disparities](#) when it came to arrests and pre-trial detentions. In short, as the state corrected for overcriminalization and a larger portion of the population became eligible for civil citations, racial disparities within the criminal justice system decreased at several key points.

Florida's juvenile justice system has long been working under a statewide civil citation and diversion framework, an organizational structure that has supported the [implementation](#) of numerous pre-arrest programs throughout the state. From 2015 onward, the racial disparities in the juvenile justice system between African-American and White youth have been on a gradual decline. In addition, youth recidivism rates among those diverted pre-arrest have plummeted to [single digits](#) statewide. Yet even so, large disparities in the utilization rates of civil citation and other alternatives to arrest among various counties shows that Florida still has a long way to go toward ensuring every eligible youth receives access to such opportunities.

Even without the aid of a statewide framework, localities have taken an interest in a variety of pre-arrest diversion programs. The City of Pittsburgh has given its officers the discretion to refer individuals to a city-funded [social-rehabilitation](#) program instead of issuing citations or making an arrest. In Florida, Palm Beach, Miami-Dade, Pinellas, Leon, and Broward Counties all have some form of discretionary pre-arrest [diversion program](#) for certain non-violent misdemeanors, each involving community service, a rehabilitation program, or educational course, but no court record. Together, these locally-driven

diversion programs cover over [six million](#) people in Florida alone and have been estimated to have [saved taxpayers millions](#) of dollars.

Currently, Iowa employs limited use of civil citations, requiring them to be issued for all traffic-related infractions but giving officers discretion when it comes to [certain misdemeanors](#). And in the youth system, Iowa has a [patchwork of diversion programs](#); although the amount of [programs](#) appears extensive, the efficacy of these programs does not, in our findings, appear to be publicly measured or accounted for; if this is correct, this should change.

Expanding mandatory issuance of civil citations to certain misdemeanors and broadening the range of offenses to which they and other alternatives to arrest are applied [could help](#) to reduce the [racial disparities present](#) in the Iowa penal system. Indeed, when [Scott County, Iowa](#), located within Iowa's 7th Judicial District, initiated an automatic pre-arrest diversion program for young people alleged to have committed a first-time simple misdemeanor offense, they saw both recidivism rates and relative racial disparities at the point of charging and diversion shrink. Put simply, the removal of officer discretion from the equation both increased public safety and racial equity.

Effective Law Enforcement Training---Within the past few months, bills in [Michigan](#), [Minnesota](#), [New Jersey](#), and [New York](#) have all called for the addition of implicit bias training into their respective police academy curriculums, each with varying degrees of legislative success. A recent [CBS News survey](#) found that 69% of metropolitan police departments have implicit bias training programs, with over half adopting them within the last five years. While implicit bias training in police departments appears to be proliferating, it also seems that it is largely self-selecting in nature with [few states](#) legally requiring its implementation. There are also additional regimens such as cultural competency and procedural justice training that are used to reduce disparate impact on communities of color. We will address each in turn.

- **Implicit Bias Training:** Also known as anti-racial profiling training, this type of continuing police education centers on the subconscious biases that police officers may have and the ways in which officers can eliminate such prejudices. Also common in the [corporate world](#), this type of training has been shown to be [dubious at best](#) when untracked. In many cases, police departments who do implement implicit bias training [fail to collect](#) the necessary data to measure its effectiveness. There are certain standout cases as in Gainesville, Florida where a combination of mandatory use of force and implicit bias training has been followed by a [rapid shrinking](#) of racial disparities concerning drug-related arrests. For effective implicit bias training, [results must be monitored](#) throughout the year and graded against stop and arrest data from both before and after the training to determine if any progress has been made.
- **Cultural Competency Training:** Also recognized as human diversity training, this type of law enforcement education focuses on familiarizing officers with common cultural tropes, traditions, and meanings of the diverse communities that they police. It has been [argued](#) that such training in an increasingly multicultural society can result in higher officer and community safety, though rigorous studies are lacking. One study to watch for includes an evaluation of a new D.C. Metropolitan Police Department [training program](#) on the history and context of policing in D.C. By randomly assigning officers to complete the training at various points, researchers will be able to track outcomes including police use of force and citizen complaints, and measure shifts in officer attitudes. Other examples of this sort of training include [Massachusetts S 2820](#) which would

require law enforcement training to incorporate the history of slavery, lynching, and racist legal institutions in America.

- **Procedural Justice Training:** This form of police education centers around the concept that the inherent fairness in a well-maintained process can build trust with communities. In essence, if a policing process is predictable beginning with an initial interaction with law enforcement, then it becomes easy to build trust with members of the community. While it is [not widely practiced](#), select implementation of this type of training suggests it can [markedly reduce](#) community complaints concerning officers.

While each form of training discussed has been shown to have the potential to reduce biased policing practices, it is clear though the cited materials and other [corroborating studies](#) that the only way to truly have effective police training is to test it with scientific rigor. If the aim is to reduce bias policing, then the impacts of implemented training should be graded against pre-training or, even better, comparable randomized non-participant data. If training is found to be widely successful, it should then be mandated state-wide.

Conclusion

To be clear, there is no easy way to remove human prejudice with the promulgation of law alone. This memo should be seen as the beginning of a conversation, not an end-point. However, in this memo, we have identified and evaluated several key factors, popular proposals for beginning to tackle the problem of racial disparities in policing practice. The first action point is improving and expanding Iowa's existing data collection efforts. After all, in order to measure the true scale of a problem, you must first find the right ruler. With this data in mind, Iowa can restrain the use of the tools most often associated with biased policing practices (like pretextual stops) and develop new tools (like a statewide alternatives to arrest framework and mandatory/automatic diversion policies) to aid in the reduction of racial disparities found throughout policing. Additionally, Iowa can improve policing practice by implementing and subsequently evaluating through third parties various forms of law enforcement training, instituting civilian oversight, and embracing government transparency through public promulgation of collected data and local policies.

Appendix: Relevant State Policing Reform Examples (Enacted, Active or Introduced)¹:

Enacted

- [District of Columbia Bill 825](#)
 - Comprehensive reform package.
 - Bans the use of all neck constraining actions by members of law enforcement.
 - Creates the Police Reform Commission.
 - Creates the Use of Force Review Board.
 - Reconstitutes the Police Officer Training and Standards Board.
 - Expands police training programs.
 - Implements new restrictions concerning use of force.
 - Ban on hiring officers who were previously fired, found to have committed serious misconduct, or have previously resigned as the result of disciplinary action.
 - Places restrictions on purchase of military supplies by police departments.
 - Repeals the crime of failure to arrest.
 - Removes officer discipline policy from collective bargaining negotiations.
 - Narrows acceptable uses of less-lethal munitions and chemical agents.
- [Colorado S 217](#)
 - Comprehensive reform package.
 - All law enforcement officers, other than those on administrative or undercover duty, are required to wear body cameras by 2023. There are also requirements for the timely release of body camera footage in the event of a complaint as well as penalties for tampering with such footage.
 - Bans the use of chokehold and carotid-holds by members of law enforcement.
 - Implements new restrictions concerning use of force protocols and creates additional reporting requirements.
 - Requirement for officers to intervene and stop use of excessive force by other officers. If an officer fails to do so, it is prosecutable as a Class 1 Misdemeanour.
 - If an officer is found to have used excessive force or intentionally tampered with a body camera in the incident of a civilian death, then it will result in permanent revocation of their law enforcement certification.
 - Modification of qualified immunity defense that opens officers to limited civil and criminal liability.
 - The Attorney General may file civil or criminal actions against individual officers or law enforcement agencies in regards to patterns of police misconduct.
 - Limitations on use of less-lethal projectiles and chemical agents in a protest environment.
- [Connecticut Executive Order CT 55](#)
 - Bans the use of chokehold and carotid-holds by members of law enforcement.
 - Creates the position of “Community Trust Liaison” and requires each law enforcement troop to train one officer to serve as such. These officers are responsible for fostering connections with the communities in which they serve and instructing other officers on how to build similar bonds with community members.
 - Implements new restrictions concerning use of force protocols and creates additional reporting requirements.
- [Georgia SR 1007](#)

¹ This Appendix is intended to highlight pertinent samples of legislation and is not intended to be an exhaustive list.

- Creates a State Senate Study Committee to investigate and report on possible police reforms concerning use of force, training, oversight, data collection, and unbiased policing.
- [Iowa H 2647](#)
 - Implements new restrictions concerning use of force.
 - Provides for a process to suspend or revoke a law enforcement officer's certification.
- [Kansas HCR 5002a](#)
 - State House Resolution calling for the U.S. Department of Justice to investigate instances of bias, misconduct, and excessive force within police departments.
- [Louisiana SCR 7a](#)
 - Creates a Police Screening and De-Escalation Task Force composed of community stakeholders that shall provide recommendations to the legislature on how to address biased policing, law enforcement training, use of force protocols, police misconduct, and officer recruit screening practices.
- [Michigan Executive Order 121](#)
 - Adds the Director of Michigan's Office of Civil Rights and three appointed state residents, who are not law enforcement officers, to the Law Enforcement Standards Board of Michigan.
- [New Hampshire Executive Order 11](#)
 - Creates the Commission on Law Enforcement Accountability, Community, and Transparency. The primary function of the committee is to produce a report that details the current state of police training, how allegations of police misconduct are handled, and the condition of relationships between police departments and their respective communities.
- [New York Executive Order 50](#)
 - Orders all local government entities to review their policing practices and produce a plan that addresses both racial bias and the disproportionate policing of communities of color.
- [New York S 1830](#)
 - Requires the Chief Administrator of the Courts to collect demographic and procedural data on all misdemeanor charges and arrest-related deaths.
- [Oregon H 1401](#)
 - Establishes the Joint Committee on Policing Transparency and Use of Force Reform to study and provide recommendations on how to improve transparency and use of force policies in police departments.
- [Oregon H 4205](#)
 - Creates a requirement for officers to intervene and report misconduct of other officers; misconduct is defined as harassment, discrimination, criminal activity, or unethical behavior.
- [Pennsylvania H 1841](#)
 - Requires all law enforcement agencies in the state to consult a new database with information on disciplinary actions, performance evaluations, and attendance records during a background check on prospective officers.
- [Pennsylvania H 1910](#)
 - Creates a mental health evaluation framework for members of law enforcement.
 - Requires yearly training on proper use of deadly force, de-escalation, and harm reduction techniques.

- Requires biennial training on community and cultural awareness, implicit bias, procedural justice, and reconciliation techniques.
 - [Vermont H 963](#)
 - Extended the sunset date of Vermont's Racial Equality Commission.
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Active

- [Massachusetts S 2820²](#)
 - Comprehensive reform package.
 - Creates separate commissions on the status of African Americans and Latinos
 - Requires police training to include history of slavery, lynching, and racist legal institutions in the U.S.
 - Creates the Police Officer Accreditation and Standards Committee. A body responsible for creating standards, keeping certification records, and conducting police misconduct complaint investigations. The Committee also has power to grant, revoke, or modify police certifications.
 - Mandates police to obtain recertification every 3 years through 120 hours of in-service training
 - Prohibits discrimination by all government officials and gives the AG direct prosecutorial jurisdiction.
- [Michigan S 945](#)
 - Requires that the Michigan Commission on Law Enforcement Standards add implicit bias, mental health, procedural justice, and de-escalation training to the police academy curriculum.
- [Ohio S 338](#)
 - Comprehensive reform package.
 - Requires demographic data collection during all civilian stops.
 - Creates the Status-Based Profiling Advisory Board. A body made up of community stakeholders and law enforcement professionals that can issue recommendations to the legislature and law enforcement agencies.
 - Implements new training mandates on how to avoid biased and status-based policing practices for officers.
 - Requires law enforcement agencies to create strategic anti-bias policing plans.
- [Pennsylvania H 2691](#)
 - Establishes police review boards for each municipality. These bodies have the powers to hire a solicitor, investigate, call witnesses, and make recommendations to the executive of the municipality concerning policing issues.
- [Pennsylvania S 459](#)
 - Requires collection of use of force data for all law enforcement bodies.
 - Orders the State Police to report all use of force data to the Attorney General and Legislature on an annual basis.
- [Pennsylvania S 1205](#)
 - Reclassifies chokeholds as a use of deadly force for law enforcement purposes.
 - Requires all law enforcement bodies to develop and publicly post a use of force policy.

² This bill passed on an emergency basis since last checked in but it didn't pass with a Veto proof majority, pushing it into reconciliation, which is still ongoing.

Introduced

- [Illinois IL H 5808](#)
 - Requires annual reviews of all police departments with a focus on disparate racial impact and community interaction improvement
- [Illinois IL H 5810](#)
 - Requires all future police officers to have a Bachelor's degree or minor in social work before being extended full certification.
- [Minnesota H 1](#)
 - Comprehensive reform package.
 - Requires the membership of the Peace Officer Standards and Training Board to include at least one person of color, a member of a victim services organization, a community organizer, and someone who sits on a different law enforcement review board.
 - Establishes a Police Community Relations Council that makes training recommendations, reviews police conduct, and monitors complaints filed against police officers. The body itself have no enforcement power and refers all findings to the Peace Officer Standards and Training Board.
 - Mandates central collection of police complaint data.
 - Creates local citizen oversight councils to investigate allegations of police misconduct, collect evidence, and refer cases of misconduct to the Peace Officer Standards and Training Board.
- [New Jersey AJR 172](#)
 - Establishes a task force to study racial bias within policing.
- [New Jersey S 2589](#)
 - Requires psychological evaluations for police officers every 5 years with a directive to screen out implicit racial bias.
- [New Jersey S 2666](#)
 - Allows municipalities to require civil service examinations for police officers.
 - Increases law enforcement training reimbursement to 150% of the cost of training.
- [New Jersey S 2689](#)
 - Requires implicit bias and cultural diversity training for all law enforcement officers and personnel.
- [New York S 8495](#)
 - Prohibits racial or ethnic profiling by law enforcement officers when deciding to stop an individual.
 - Permits the Attorney General to seek damages or injunctive relief against law enforcement officers who are alleged to have engaged in racial profiling.
- [New York S 8612](#)
 - Requires officers to live in the municipality under which they are employed.
- [New York 8619](#)
 - Requires diversity training seminars from non-law enforcement implicit bias professionals to be made mandatory in law enforcement training curriculum.
- [Pennsylvania S 611](#)
 - Creates an additional statewide Special Prosecutor tasked with investigating use of force incidents.

- [Pennsylvania S 472](#)
 - Creates a grant program to incentivize the consolidation of smaller police departments.
 - [Pennsylvania S 482](#)
 - Establishes a framework for the recruitment and training of part-time municipal police officers.
 - [South Carolina S 1244 & 1240](#)
 - Requires the creation of South Carolina policing standards concerning the execution of warrants and methodology of searches.
 - Establishes a requirement to intervene on the part of officers if they observe other officers violating South Carolina policing standards.
-