

Duty to Intervene in Cases of Improper or Excessive Use of Force



Introduction

Campaign Zero's 8 Can't Wait initiative recommends that police departments "[r]equire officers to intervene and stop excessive force used by other officers and report these incidents immediately to a supervisor."⁶⁴ A duty-to-intervene policy creates an affirmative obligation on the part of police officers to stop other officers from engaging in certain conduct prohibited by law or department policy.⁶⁵

Recently, this issue was brought to the forefront of public discourse as a result of the killing of George Floyd by an officer in the Minneapolis Police Department who knelt on his neck for nearly nine minutes while other officers on scene did not intervene.⁶⁶ This incident reinforced the dire need for police departments to require that officers hold each other accountable and stop the use of excessive force when they see it.

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Policy review findings

Terms used are vague or not defined

Some terms within the General Orders have specific meanings that may not be commonly understood. As a result, it is crucial to define these terms so that both officers and the public can clearly understand what APD requires of its officers.

“Intercede”

APD’s current policy creates a duty to intercede rather than intervene.⁶⁷ OPO recommends replacing the term “intercede” with the term “intervene.” While these words may appear to be interchangeable, they are not the same. The common meaning of the word “intervene” more precisely communicates an expectation that officers verbally or physically intervene when necessary to stop another officer from engaging in prohibited conduct.⁶⁸ Once adopted as the appropriate term, “intervene” should be defined within the General Orders to ensure that readers understand how it is applied to APD officer conduct.

“Promptly”

APD policy should define the term “promptly” as it relates to the reporting requirements of the duty to intervene. In the alternative, APD should replace “promptly” with language that precisely outlines the time frame within which officers must report their observations. As it stands, the term “promptly” is vague and does not provide officers with any actual guidance about what is required of them.⁶⁹

“Objectively Reasonable”

The definition of “objectively reasonable” should be improved for clarity and conciseness. APD’s current definition of “objectively reasonable” paraphrases the description of “reasonableness” from the United States Supreme Court case *Graham v. Connor*, but it does not actually define the meaning of the phrase “objectively reasonable.”⁷⁰

First, the definition should explicitly state that it is a legal standard. Second, the definition of “objectively reasonable” should not contain the word “objective.” In other words, the word being defined should not be used in the definition. Third, the addition of the language “without the benefit of 20/20 hindsight” is redundant because the legal standard (and APD’s definition) already makes clear that one must consider the totality of the circumstances presented at the time of the incident

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The means of intervention is not specified

APD's current policy lacks clarity because it does not specify how officers are required to intervene (e.g. verbally, physically, or both).⁷¹ Clear policies allow officers to know exactly what is required of them.⁷² Additionally, clear policies help to ensure appropriate enforcement by allowing decisionmakers to hold officers accountable in a consistent and predictable manner.⁷³ APD's current policy requires additional clarification about how officers should intervene when they observe conduct that would create a duty for them to do so.

The policy's scope is too narrow

APD's current policy only creates a duty in use-of-force situations and when "the officer knows that the force being used is not objectively reasonable" and "has a reasonable opportunity to prevent the harm."⁷⁵ APD's policy would be improved by broadening the parameters to create a duty in situations beyond those involving use of force. In particular, the General Orders should contain a centralized policy that sets forth a requirement for officers to intervene when they witness any conduct by another officer that would constitute a violation of state law, federal law, or APD policy.

Broadening APD's duty to intervene policy in this way would still create a duty to intervene in use-of-force situations, but it would also create a duty to intervene in cases involving dishonesty, bias-based profiling, harassment, and use of racial slurs or epithets, just to name a few. Ensuring that APD officers follow use-of-force policies is extremely important, and it is equally important for officers to follow all other APD policies as well. Adopting a policy that encourages officers to hold each other accountable in this way would benefit both APD and the community.⁷⁵

The scope of duty is unclear

While APD's current policy says officers "shall intercede to prevent further harm," it does not clearly outline when that duty ends.⁷⁶ In particular, APD's policy should clearly articulate that, regardless of their original role on a call, every on-scene officer who witnesses a violation of state law, federal law, or APD policy has a duty to intervene unless and until the conduct in question has been stopped.

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Department hierarchical issues are not addressed

APD's current policy does not address potential issues that could arise if an officer witnessed someone of higher rank (e.g. a corporal, sergeant, lieutenant, etc.) engaging in conduct that created a duty to intervene.⁷⁷ The policy should clearly articulate that the duty to intervene creates an affirmative duty on the part of all officers of all ranks, and that the duty is created despite APD's policies related to insubordination (General Orders 110.4.3 and 110.4.4)." This is necessary to relieve the fear officers may have about contradicting their superiors.

Reporting requirements are not defined

APD's current policy provides scant details about what is required of officers in terms of reporting when they witness conduct creating a duty to intervene.⁷⁸ Through Resolution 95, City Council clearly articulated a desire for data gathered from comprehensive reporting of incidents involving use of force and the duty to intervene.⁷⁹ APD's policy should be revised to provide detailed reporting requirements that increase accountability and transparency, and that memorialize important data related to the incident (e.g. who was present, the extent to which those present were involved, what occurred, when it occurred, and how it occurred).



Current APD policies relevant to duty to intervene

The following APD policies are relevant to the duty to intervene:

- 200.1.2 Definitions; and
- 200.1.3 Duty to Intercede.⁸⁰

To view the full excerpts of these chapters, please turn to Appendix D.

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Recommended policy changes

Move the policy out of the Response to Resistance chapter (General Order 200) and into the General Conduct and Responsibilities Chapter (General Order 900):

This move is necessary to support the creation of a duty to intervene in situations beyond use of force.

Create a definitions section within General Order 900 that includes the following definition:

Intervene – To verbally or physically interact with another officer in order to prevent, stop, or modify a result or sequence of events.

Change the following definition in General Order 200.1.2 Definitions:

Objectively Reasonable – A legal standard applied to use-of-force situations that judges whether force was justified from the perspective of a reasonable officer on the scene and considering the totality of the circumstances confronting the officer at the time of the incident.

Replace the current policy language with the following:

200.1.3 DUTY TO INTERVENE

Any officer who observes another officer use or prepare to use force that is not objectively reasonable or engage in any conduct that would constitute a violation of state law, federal law, or APD policy shall make every effort to safely intervene and stop the other officer. Any officer who fails to intervene in accordance with this policy shall be subject to discipline of the same severity as if they themselves engaged in the conduct in question.

(a) This policy creates a duty in instances when, after an initial use of force, a continued application of force is no longer required.

(b) Intervening officers shall make every effort to safely intervene by verbal and physical means as the situation requires; if verbal intervention is not enough to stop the act(s), intervening officers shall make every effort to safely intervene through physical means.

Examples of physical intervention methods include, but are not limited to, the following:

1. Physically positioning oneself in between the officer(s) whose conduct is in question and the other involved individual(s);
2. Using physical force to remove an officer from a particular area; or
3. Using physical force to stop an officer's physical contact with an involved individual.

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(c) Upon witnessing an incident creating a duty to intervene, officers shall immediately activate their body-worn camera systems if they are not already activated, and shall radio to dispatch that they have observed an incident requiring them to intervene to stop the actions of another officer.

(d) Once intervention is no longer required, officers who witnessed or intervened in the incident must also immediately report their observations and involvement to a supervisor.

(e) In situations when an incident report would already be required, officers who witnessed or intervened in the incident must include a detailed description of their involvement and the events surrounding the incident. In situations that would not otherwise require an incident report, this section creates a requirement. A detailed description includes, but is not limited to, the following information:

1. Who was present (officers and civilians);
2. The extent to which those present were involved;
3. What occurred, when it occurred, and how it occurred.

(f) Notwithstanding General Orders 110.4.3 and 110.4.4, this policy creates an affirmative duty to intervene regardless of rank or whether the intervening officer is of higher or lower rank than the officer(s) whose conduct is in question.

(g) Regardless of their role during a call or original purpose for being in the vicinity, it is the duty of every on-scene witness officer to intervene unless and until the conduct in question has been stopped.

(h) Examples of scenarios creating a duty to intervene include, but are not limited to, the following:

1. Use of physical force that is not objectively reasonable;
2. Escalating an encounter without a lawful, necessary purpose;
3. Stops, searches, and arrests that are unconstitutional or violate APD policy;
4. Theft or fraud;
5. Use of racial slurs or epithets;
6. Racial or bias-based profiling;
7. Sexual assault;
8. Harassment or sexual harassment;
9. Misrepresentation or dishonesty; and
10. Document falsification.

