



**GOVERNMENT OF THE DISTRICT OF COLUMBIA
POLICE COMPLAINTS BOARD
OFFICE OF POLICE COMPLAINTS**

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**PCB POLICY REPORT #19-3:
Duty to Intervene**

Summary of Issue:

The Metropolitan Police Department (MPD) clearly identifies a duty for officers to intervene in the Use of Force General Order.¹ This directive requires officers to “intervene in and subsequently report any use of force incident in which they observe another member utilizing excessive force or engaging in any type of misconduct.” Since this language is contained in the Use of Force General Order it would be understandable to read as just applying to force related misconduct; however the actual language includes “any type of misconduct.” If officers are expected to intervene when other officers are engaging in misconduct, then there must be guidelines and training in place that teaches them the best ways to do so. It is commonly understood that there is strong loyalty among police officers, and this is necessary for them to do their jobs, but the culture needs to accept that intervening supports loyalty and will ultimately protect all officers and the community. This report identifies opportunities for MPD to ensure the duty to intervene is clear and that officers are given the tools and training to correctly implement it and best serve the public.²

Background:

In the past several years MPD has updated the Use of Force General Order multiple times in order to meet legal standards and make them clear to officers. The importance that MPD has placed on this directive reflects the gravity use of force incidents carry. MPD’s efforts to improve this General Order are commendable.

¹ GO.901.07, effective November, 3, 2017.

² The Police Complaints Board (PCB) is issuing this report pursuant to D.C. Code § 5-1104(d), which authorizes the Board to recommend to the District of Columbia Mayor, Council, MPD Police Chief, and the Director of District of Columbia Housing Authority reforms that have the potential to improve the complaint process or reduce the incidence of police misconduct.

The most recent version of the Use of Force General Order, dated November 3, 2017, replaced the prior version issued less than a year before.³ Section IV: Regulations, includes the language “[members are required to] Intervene in and subsequently report any use of force incident in which they observe another member utilizing excessive force or engaging in any type of misconduct.” By including the duty to intervene in the Use of Force General Order, MPD has made it possible to misconstrue the requirement as only applying to use of force incidents.

General Order 201.26: Duties, Responsibilities, and Conduct of Members of the Department, requires officers to “immediately report to their supervisor any violations of the rules and regulations of the MPD committed by any other member(s).”⁴ However, this is a different requirement than the duty to intervene outlined in the Use of Force General Order, as this responsibility is only to report misconduct after the fact, not to step in while the misconduct is occurring. This too can explain officers’ confusion over what their duty actually is.

Office of Police Complaints (OPC) investigators repeatedly come across incidents where there are allegations of misconduct against officers, yet other officers were on-scene who witnessed the alleged misconduct. In some cases the complainant themselves will identify the specific officers whom they are complaining about, and note other officers were present. Other times, when OPC investigators review the body-worn camera footage (BWC) they can identify several officers present for the alleged misconduct. The BWC also identifies witness officers who were in close enough proximity to be aware of alleged misconduct. It is apparent that officers who are witnessing misconduct are not taking steps to intervene.

This lack of intervention may be the result of officers not interpreting the conduct as misconduct, not being aware of the duty to intervene, and/or not feeling equipped to intervene in the actions of another officer. MPD takes action to make sure officers are aware of what is misconduct, through such practices as Professional Development Training and Roll Call Trainings. In addition, MPD includes some by-stander training in the training it conducts with the Holocaust Memorial Museum, and has done so for at least 25 years.⁵ Still more can be done to ensure officers understand their duty to intervene, and that officers are equipped with the skills to do so and how to accept intervention from a fellow officer. Active bystander training would help facilitate this goal.

Lessons from Other Jurisdictions:

An active bystander is someone who witnesses a situation and takes steps to intervene and ensure that the situation does not escalate. Active bystander training is used in a variety of circumstances. Many fields utilize such training, including universities, colleges, businesses,

³ GO.901.07

⁴ GO. 201.26, effective date April 5, 2011, page 4, Part V.A.18.

⁵ Letter from MPD Chief Peter Newsham to OPC Executive Director Michael Tobin, dated August 2, 2019.

faith organizations, and public health organizations.⁶ It has more recently become an area of focus in the corporate world as leaders look for ways to prevent sexual harassment.⁷ The military is evaluating the use of bystander training for sexual violence prevention.⁸ Training results show those who receive training are more likely to intervene and report than those who are not trained.

A basic principle of such training is being an active bystander is “contagious.”⁹ Once one bystander steps in, others are more likely to follow suit. Passive bystanders have a similar effect on others’ actions. When one person does not intervene, others are likely to follow suit by not acting. When bystanders do not intervene in a situation, the transgressor as well as other bystanders may feel as though the transgressor’s behavior is not incorrect. When transgressors repeat these behaviors without bystander intervention, the transgressor’s behavior becomes the socially accepted norm.¹⁰

Police departments first incorporated active bystander training into policing in 1992. In 1991, three Los Angeles Police Department (LAPD) officers beat Rodney King. Seventeen other officers stood by passively, not intervening.¹¹ In 1992, the three officers and sergeant were all acquitted, leading to the Rodney King protests. The Department of Justice (DOJ) placed the LAPD under a consent decree. The DOJ consulted with Dr. Ervin Staub, a social psychologist from the University of Massachusetts.¹² Dr. Staub created a peer intervention program with the goal of lowering the number and degree of uses of force.¹³

More recently, in 2016, the New Orleans Police Department found itself in a similar situation to the LAPD of the 1990s. The DOJ placed NOPD under a consent decree after the highly publicized Danziger Bridge shootings in which NOPD officers killed two unarmed citizens and wounded four more. The DOJ recommended a peer intervention system. In researching peer intervention programs, NOPD reviewed Dr. Staub’s work with the LAPD and then consulted with him. Dr. Staub recommended many of the same goals he provided to the

⁶ Miller, Claire Cain. “Sexual Harassment Training Doesn’t Work. But Some Things Do.” *The New York Times*. 11 Dec. 2017. <https://www.nytimes.com/2017/12/11/upshot/sexual-harassment-workplace-prevention-effective.html>.

⁷ *Id.*

⁸ *Id.*

⁹ Jackman, Tom. “New Orleans police pioneer new way to stop misconduct, remove ‘blue wall of silence.’” *The Washington Post*, 24 Jan. 2019. https://www.washingtonpost.com/crime-law/2019/01/24/new-orleans-police-pioneer-new-way-stop-misconduct-remove-blue-wall-silence/?utm_term=.47c95ca8bbf6.

¹⁰ Aronie, *supra* note 3.

¹¹ Lane, Emily. “In ‘EPIC’ Effort, New Orleans police work to stop officer misconduct before it happens.” *NOLA.com*. 14 June, 2017. https://www.nola.com/crime/2017/06/nopd_new_orleans_epic_police_p.html.

¹² Goleman, Daniel. “Studying the Pivotal Role of Bystanders.” *The New York Times*, 22 June, 1993. <https://www.nytimes.com/1993/06/22/science/scientist-at-work-erwin-staub-studying-the-pivotal-role-of-bystanders.html>.

¹³ Staub, Ervin. “Education for Helping, Non-Aggression, Active Bystandership.” *In the Garden of Good and Evil*, 31 Jan. 2014. <https://www.psychologytoday.com/us/blog/in-the-garden-good-and-evil/201401/education-helping-non-aggression-active-bystandership>.

LAPD, but added to the NOPD's program. He emphasized that there would need to be a drastic change in the culture. He explained that much of the culture of policing expects a loyalty between officers. Dr. Staub said that the definition of loyalty would need to shift.¹⁴ Therefore, the Ethical Police is Courageous program, also known as EPIC, was created.

In the EPIC program, loyalty means intervening when an officer suspects his fellow officer might act unethically. The intervening officer demonstrates loyalty by ensuring that his fellow officer does not face discipline, criminal charges, lose his or her job, or suffer physical harm from an escalated situation.¹⁵ EPIC empowers all officers, regardless of rank, to intervene. Additionally, EPIC trains officers to accept intervention from all officers, even an officer's subordinate.¹⁶ Dr. Staub, community members, officers, and others worked together to create these five goals for the program:

- Helping officers understand the career-saving benefits of intervention and the huge risks (including the growing legal risks) of not intervening;
- Helping officers identify the signs that intervention is necessary;
- Teaching officers how to intervene effectively and safely;
- Teaching officers how and why to accept intervention respectfully; and
- Protecting officers who intervene and those who accept intervention¹⁷

Some NOPD officers originally expressed skepticism towards the program, feeling as though EPIC asked them to "rat" on their fellow officers. However, NOPD reports officers have taken to the program quickly. NOPD credits the department's success with EPIC to officers' input in formulating the program.¹⁸

Other departments have utilized the EPIC program, including Honolulu, Hawaii; Albuquerque, New Mexico; Baton Rouge, Louisiana; St. Paul, Minnesota; Arlington, Texas; Memphis, Tennessee; Newark, New Jersey; and San Francisco, California.¹⁹ Baltimore, Maryland is beginning implementation of the program this year.²⁰ Training such as EPIC is gaining traction within police departments around the country because it is successful in giving officers the ability to do their jobs, and help their fellow officers do theirs all while protecting the

¹⁴ Garrett, Ronnie. "New Orleans (LA) Police Department." *Police Magazine*, 30 Mar. 2018. <https://www.policemag.com/342438/new-orleans-la-police-department>.

¹⁵ Lane, *supra* note 9.

¹⁶ Harrison, Michael. "New Orleans Police Superintendent Michael Harrison: We are Fully Committed to Peer Intervention." *Police Executive Research Forum*, July 2016. https://www.policeforum.org/assets/docs/Subject_to_Debate/Debate2016/debate_2016_julsep.pdf.

¹⁷ Garrett, *supra* note 12.

¹⁸ *Id.*

¹⁹ Jackman, *supra* note 7.

²⁰ *Id.*

communities they serve from having to deal with officer misconduct. This program is successful in reaching officers because officers were involved with the creation of the program.

Recommendations:

To help improve and facilitate better relations and increase trust between MPD officers and community members, the PCB recommends that:

1. MPD must ensure that all officers are aware that there is a duty to intervene, and this duty covers any type of misconduct, including but not limited to use of force. The duty to intervene should be clearly delineated, in written guidance and training, outside the use of force context to make it clear that is not the only situation where it applies. Updating the language in General Order 201.26, to include the duty to intervene and not just to report, would accomplish this goal.
2. MPD already shows a commitment to by-stander training, but should provide further guidance and training, similar to EPIC, to all officers furnishing them with the tools to effectively intervene and handle the pressures that might otherwise prevent them from doing so. This training should provide officers with the skills to accept intervention from other officers. This would complement training already in place by adding elements that were formulated by officers to inspire fellow officers.