

What You Need to Know About Officer Duty to Intervene

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The officer “duty to intervene” (or intercede) concept has recently been thrust into the spotlight, but there are many misconceptions about what this duty entails. It can be difficult to watch scenarios unfold without asking the question: Why didn’t the other officer(s) step in? By law and by department policy, officers are required to intercede in certain circumstances. How those circumstances are defined can vary depending on legislation and case law, and department policies sometimes require intervention that goes beyond what’s legally required. Having a solid understanding of what a duty to intervene entails and knowing when to intercede is crucial for all law enforcement officers.

Defining the Duty to Intervene

While the duty to intervene is a seemingly simple concept, different people often have different interpretations. It is not possible to set “if then” rules to cover all possible scenarios law enforcement officers face where the duty to intervene will be relevant. The key is to understand what this duty is and is not so officers can appropriately use their judgment across circumstances, looking out for one another and serving their communities.

As Defined by the Courts: Officer duty to intervene has been defined with slightly different parameters by various jurisdictions. For example, the 2nd Circuit defines the duty to intervene as follows:

“A police officer is under a duty to intercede and prevent fellow officers from subjecting a citizen to excessive force and may be held liable for his failure to do so if he observes the use of force and has sufficient time to act to prevent.”
(Figueroa v. Mazza 2016)

Trusting the judgment of your fellow officers while being cognizant of your duty to intervene when necessary is a critical balance to obtain.

Similarly, the 7th Circuit outlines what the plaintiff must prove to demonstrate a failure to intercede in a use of force scenario (7th Pattern Jury Inst.):

An officer used excessive force on Plaintiff

The Defendant (the officer who Plaintiff alleges should have intervened) knew that the first officer was using/was about to use excessive force on Plaintiff

Defendant had a realistic opportunity to do something to prevent harm from occurring

Defendant failed to take reasonable steps to prevent harm from occurring

Defendant's failure to act caused Plaintiff to suffer harm

The definition of duty to intercede and the situations in which it is required and necessary are not always exceedingly clear. It is key to view officer duty to intervene in light of the law and safety – for officers, suspects and the community.

Law vs. Policy: In addition to thorough knowledge of legal requirements regarding the duty to intercede, officers must always be aware of what their agency's policy says on the issue. Department policies may impose or require officers to step in or take more action than what is necessitated by the law and/or court decisions. Depending on the situation, a violation of department policy may not also be a violation of the law.

From a legal perspective, an officer can be held liable for a failure to intercede if the plaintiff establishes they have suffered an underlying statutory or constitutional violation. While cases involving excessive force are most common, failure to intervene can also be proven in false arrest and deprivation of medical care cases.

Issues Affecting Officer Duty to Intercede

When an officer is called for backup, they have no way of knowing what has already transpired on the scene. Is it excessive force or it is objectively reasonable based on what has just occurred? Trusting the judgment of your fellow officers while being cognizant of your duty to intervene when necessary is a critical balance to obtain. Even without all of the information, the argument "It was their call, I was just the backup," may not be enough to shield you from liability if you enter the scene and fail to intervene when an individual's statutory or constitutional rights are violated.

Depending on the circumstances, you may have an affirmative duty to act or report based on a fellow officer's actions. This requires subjective judgment on your part as no two calls are the same. A solid understanding of how to apply the duty to intercede rule in different scenarios is crucial to prepare yourself when the time to act comes.

To learn more about other issues affecting the duty to intervene and what officer duty to intervene practically looks like, view our on-demand webinar: [Duty to Intercede: Conceptual, Cultural and Legal Aspects](#).

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