

Model Use of Force Policy Beta Release Version 1.0

Chapter 12: Duty to Intervene, Duty to Render Medical Aid, and Duty to Safely Transport

March 3, 2023

OVERVIEW

This Chapter sets forth three overarching duties imposed on officers. The Model Use of Force Policy sets forth these duties in a separate Chapter to emphasize their particular importance and the consistency of these duties across all uses of force. Specifically, this policy imposes on Department officers a duty to intervene in another officer's misconduct and to report another officer's misconduct. This policy also imposes on Department officers a duty to render medical aid in specified circumstances. Finally, this policy imposes on Department officers a duty to safely transport persons within their care.

This Chapter includes a High-Level Policy Summary outlining the overarching principles of the Chapter, the full Policy Language, a Supporting Memorandum providing the policy rationale and guidance, and a Comparison Memo Summary that compares this Chapter to certain other national, state, and local-level policies.

PART 1: HIGH-LEVEL POLICY SUMMARY

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- A. This policy imposes on Department officers a duty to intervene in another officer's misconduct and to report another officer's misconduct.
1. The duty to intervene requires an officer to stop or prevent, through either verbal or physical means, another officer's misconduct, including use of excessive force, tampering, bias-based profiling, or harassment.
 2. This duty is triggered whenever an officer witnesses misconduct or has reason to believe that another officer is engaged in misconduct or is about to engage in misconduct. The duty is ongoing and continues until the misconduct ends.
 3. This duty also requires an officer to report, in detail and within 24 hours, whenever the officer observes another officer commit or attempt to commit misconduct, or has a good faith reasonable belief that another officer committed or attempted to commit misconduct. Superior officers have a duty to investigate these reports and pursue disciplinary action against officers found to have committed misconduct.
 4. This policy prohibits retaliation against an intervening or reporting officer. The policy also provides for disciplinary consequences for officers who fail either to intervene in or to report misconduct.
- B. This policy imposes on Department officers a duty to render medical aid in specified circumstances.
1. The duty to render medical aid requires an officer to immediately summon Emergency Medical Services ("EMS") and to immediately provide medical aid, to the best of their skill and training.
 2. This duty is triggered whenever officers have used force on a subject and any person has been injured, claims injury, requests medical attention, exhibits physical or mental distress, has difficulty breathing, or was struck in the head, among other scenarios. This duty also is triggered when the subject falls into certain high-risk categories or when the officers used certain weapons.
 3. This policy requires officers to continuously monitor the individual's condition and provide updates to EMS.
 4. This policy requires officers to document all injuries sustained due to a use of force on the booking form. Officers must state, at minimum, the nature and location of the injury, how it was sustained, and whether the individual has been evaluated by a medical professional or refused an evaluation.

- C. This policy imposes on Department officers a duty to safely transport persons within their care.
1. Transporting officers have a duty to safely secure a restrained person in an upright position, and avoid placing the subject's body in a position that will contribute to positional asphyxia (when the position of a person's body prevents the person from adequately breathing).
 2. This policy identifies handcuffs as the preferred restraint device. The policy expressly prohibits the transportation of a person in a face-down position or the use of a hog-tie restraint.
 3. If an officer determines that a "hobble" or leg restraint is necessary and proportionate to the risk of harm, the individual must be placed in a seated or upright position, secured with a seat belt, and closely monitored by two officers during transportation.
 4. Every officer must undergo training to recognize the risks of restraint methods.

PART 2: POLICY LANGUAGE

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12.100 – Duty to Intervene and Report Violations of Law or Policy

A. General Considerations:

1. This policy provides the requirement for Department officers to intervene and report any act that they know or should know violates law or Department policy. This policy stems from the officers' legal obligations as well as their moral obligation to the public they serve.
2. Every Department officer has the individual responsibility to intervene and stop any other officer from committing an unlawful or improper act, including, but not limited to, acts of excessive or unnecessary force, brutality, abuses of process, abuses of authority, and any other criminal acts or violations of the law or Department rules, policies and procedures.
3. The requirement that officers intervene in unlawful and improper acts increases officers' legitimacy, enhances public safety, and builds trust in the police by preventing misconduct and reducing opportunities for mistakes.

B. Definitions:

1. *Intervene:* To come between an officer and another person, through either physical or verbal means, to prevent misconduct from taking place or to end misconduct that is already taking place.
2. *Misconduct:* Any act or failure to act that violates an officer's oath of office; Department policies or procedures; the laws of the jurisdiction, the State or the United States; or the State Constitution or the United States Constitution. This includes, but is not limited to, acts of excessive, improper, prohibited, unauthorized, or unnecessary force; or acts of force that began as authorized and necessary but became unauthorized or unnecessary as the circumstances developed or changed.

C. Duty to Intervene:

1. If an officer witnesses another officer engage in misconduct or has reason to believe that another officer is engaged or about to engage in misconduct, that officer must intervene to end or prevent such misconduct. This expressly includes when the officer observes another officer's acts of force that began as authorized and necessary, but subsequently become unauthorized and unnecessary as the circumstances developed or changed. Such officer also must render medical aid, in accordance with their skill and training, to any injured persons at the earliest safe opportunity, in accordance with the Duty to Render Medical Aid set forth in Section 12.200 below.

2. This duty to intervene commences as soon as the officer has reason to believe that misconduct by another officer is likely to occur or the officer actually witnesses such misconduct occurring, whichever occurs first. This duty continues unless and until the conduct in question has completely stopped.
3. This duty to intervene applies regardless of the officer's tenure, rank or seniority.

D. Types of Intervention:

1. Verbal: Verbal interventions should be used to prevent Misconduct when an officer has reason to believe that another officer may be about to engage in misconduct. Examples include asking an agitated officer a question to redirect their attention, asking a question to the subject with whom the agitated officer is engaged to give the officer a chance to collect themselves, and asking an agitated officer to talk with you away from the subject with whom the officer is engaged. Verbal interventions may be insufficient to stop misconduct that is already taking place.
2. Physical: Physical interventions should be used to stop misconduct that is already occurring, and may be necessary to prevent misconduct if verbal interventions do not appear to be working. Physical interventions include putting one's body in between an officer and a subject, using one's body to protect a subject against whom misconduct is occurring, or forcibly restraining or removing an officer from a situation in which the officer is engaging in misconduct.

E. Duty to Report Misconduct:

1. If an officer observes another officer commit or attempt to commit misconduct or has a good faith reasonable belief that another officer committed or attempted to commit misconduct, that officer must report, within 24 hours, such wrongdoing to the subject officer's supervisor or other supervisory officer in accordance with the Department's reporting policies and procedures.
2. Reports of misconduct must include, but are not limited to:
 - a) who committed or attempted to commit the misconduct,
 - b) what specifically happened during the commission or attempted commission of the misconduct,
 - c) details regarding all other officers who were present at the time the misconduct was committed or attempted,

- d) what specifically those officers did when the misconduct was committed or attempted, and
 - e) when and where the misconduct was committed or attempted.
 - 3. All supervisory officers must investigate reports of misconduct and must implement any and all necessary corrective or disciplinary measures.
- F. Protection from Retaliation for Officers who Intervene or Report Misconduct:
 - 1. No officer who intervenes in or reports misconduct under this policy will be subject to retaliation, reassignment, or any other disciplinary action for taking such actions.
 - 2. Intervening in and reporting misconduct under this policy will not be grounds for insubordination investigations, proceedings, or disciplinary actions.
- G. Discipline for Officers who Fail to Intervene or Report Misconduct:
 - 1. An officer's failure either to intervene in or report misconduct in accordance with this policy will be grounds for disciplinary action at the same level of severity as the original act of misconduct giving rise to the duty to intervene or duty to report.

12.200 – Duty to Render Medical Aid and Report Injuries

A. General Considerations:

1. The sanctity of human life is this Department's highest priority. Ensuring that persons who require medical attention receive immediate medical aid following a use of force is essential to upholding this priority.
2. Department officers will treat all individuals with dignity, respect, and due care when attending to them after a use of force.

A. Training:

1. Officers must receive and complete regular training in providing medical aid to injured persons while awaiting the arrival of Emergency Medical Services ("EMS").

B. Duty to Render Medical Aid:

1. Following any use of force, the officer using force or other officers present at the scene must immediately summon EMS and immediately provide medical aid, to the best of their skill and training, to the following persons:
 - a) To any person injured,
 - b) To any person claiming injury,
 - c) To any person requesting medical attention,
 - d) To any person exhibiting physical or mental distress, and
 - e) To any person having difficulty breathing.

Exception: Officers need not call EMS for objectively minor injuries that can be treated with standard first aid (e.g. minor scrapes or bruises), but only if the officer is capable of providing that aid.

2. Regardless of subsection 1 above, officers must call EMS following the use of force, regardless of the presence of visible injury or complaint of injury, if the use of force involved:
 - a) The use of batons or other objects used to strike; electronic control devices; impact weapons; or pepper spray;
 - b) Canine bites;
 - c) Striking of the head (e.g. punching, kicking, hitting, impact against a hard object, etc.); or

d) People known to or reasonably believed to be:

- (1) Minors;
- (2) Elderly;
- (3) Physically frail or disabled; or
- (4) Pregnant.

3. The duty to render medical aid continues until any injured individuals are either in stable condition or in the care of trained emergency medical professionals. Officers must continuously monitor the person's condition and provide ongoing updates to EMS on the person's condition.
4. When calling EMS, officers must provide all pertinent information to the best of their knowledge, including the nature of the injury, symptoms, and other potentially relevant medical facts.
5. Persons have a right to refuse medical evaluation. If an individual does so, that refusal must be documented in an appropriate report and booking form, and, where possible, witnessed by a second officer.
6. Persons need not be evaluated by a medical professional for objectively minor injuries that can be treated with standard first aid (e.g. minor scrapes or bruises).

B. Protecting against Further or Exacerbated Injuries:

1. Officers will not restrain or detain persons in a way that compromises their ability to breathe.
2. Officers must immediately move any persons who are in prone positions into a recovery or seated position absent exigent circumstances (e.g. an apparent or suspected neck or spinal injury).
 - a) A prone position is a body position in which the person lies flat with the chest down and the person's back up.
 - b) A recovery or seated position is a body position in which the person is sitting up or on their side such that the position does not restrict their breathing or airway.
3. Officers must continuously check that restrained persons are able to freely breathe.

C. Reporting Injuries on Booking Forms:

1. All injuries sustained due to a use of force must be documented on the booking form.
2. In documenting injuries on the booking form, officers must state, at minimum, the nature and location of the injury and how the injury was sustained.
3. Officers will not book a person who has sustained or complains of injury following the use of force unless they accompany the booking with a form stating that person has been evaluated by a medical professional, or has refused such evaluation, or that such evaluation was not needed because it involved a minor injury such as minor scrapes or bruises.

12.300 – Duty to Safely Transport

B. General Considerations:

1. In accordance with officers' recognition of the value and sanctity of human life, Department officers must ensure the safe transportation of all persons within their care.¹
2. Positional Asphyxia occurs when the position of a person's body prevents the person from adequately breathing. In such situations, the body's position limits the mechanical and muscular function of breathing by compromising and blocking the airways. The resulting lack of oxygen may lead to unconsciousness or asphyxiation (i.e., suffocation), and presents a threat to human life and safety.
3. The body position most likely to lead to positional asphyxia is the "hog tie"—arms handcuffed behind the back, with the feet shackled or otherwise restrained and tied directly to the handcuffs. However, simply handcuffing a subject behind the back and placing them face down also can cause positional asphyxia.² In addition, "hobble" restraints—a restraint technique that limits the motion of a subject by tying both of their legs together, and is used in conjunction with handcuffs—also can cause positional asphyxia.
4. Additional factors that contribute to positional asphyxia include the mental condition of the subject, the presence of stimulants in the subject's system, and physical factors (e.g., weight, age, etc.)

C. Training:

1. Officers must receive training on positional asphyxia. Such training must include, among other requirements, certification that officers are aware of and able to recognize the risks of the restraint methods described above.
2. Officers must comply with the guidelines and procedures as taught in the most recent positional asphyxia training program.
3. Only officers who have successfully completed training in the use of a certain restraint or technique are authorized to use such specific restraint or technique.

D. Duty to Safely Transport:

1. Officers who are transporting subjects have a duty to avoid placing the subject's body in a position that risks positional asphyxia.
2. This policy expressly prohibits:

- a) The transportation of a person in a face-down position;
 - b) The use of a “hog tie” restraint; and
 - c) The use of “hobble” or other leg restraints to secure individuals to fixed positions inside a vehicle.
3. This policy identifies handcuffs as the preferred restraint device for transportation.
 - a) Officers must check any handcuffs placed on a subject for tightness and double lock as soon as it is safe to do so prior to transport.
 - b) Officers must safely secure a restrained person in an upright position upon placing the person inside a vehicle.
- B. Specific Provisions on “Hobble” and other Leg Restraints:
1. As stated above, this policy prohibits the use of “hobble” or other leg restraints to secure individuals to fixed positions inside a vehicle.
 2. For authorized uses of hobble restraints, officers first must determine whether the use of a hobble restraint is necessary and proportionate in light of:
 - a) the risk that the officer or others could be exposed to injury due to any assaultive or resistant behavior of the subject; or
 - b) the need to protect the subject from their own actions.
 3. If an officer determines that a hobble restraint is necessary and proportionate, the officer must call a supervisor to the scene where a subject has been restrained to evaluate the manner in which the officer applied the restraint and to evaluate the method of transport.
 4. The subject must be placed in a seated or upright position, secured with a seat belt, and closely monitored. Two officers must ride in the same unit when transporting the subject in a hobble restraint. The secondary officer has the duty of ensuring that the individual remains seated upright and maintains an open clear airway. The officers must ensure that the subject remains seated upright at all times and must be aware of the dangers of positional asphyxia. Any exceptions to this policy may be made only with respect to the transportation of the subject by a medical unit.
- C. Evaluating the Mental Condition of Subjects for Risk:

1. Officers must utilize their training and the following guidelines to assist in recognizing and evaluating persons suffering from mental illness (and therefore at a potential risk for positional asphyxia).³
2. Such clues include:
 - a) Behavioral Clues:
 - (1) Unusual physical appearance (inappropriate clothing)
 - (2) Unusual body movements (sluggish, pacing)
 - (3) Confusion about or unawareness of surroundings
 - (4) Lack of emotional response
 - (5) Causing injury to self (cutting, cigarette burns)
 - (6) Extreme or inappropriate expressions of sadness or grief
 - (7) Inappropriate emotional reactions
 - (8) Hearing voices
 - b) Environmental Clues:
 - (1) Strange decorations (aluminum foil, pentagrams)
 - (2) Hoarding of unusual items such as garbage, newspapers, string
 - (3) Presence of feces or urine on floors or walls

E. Documentation and Reporting:

1. Anytime the hobble restraint technique is used, the officer must document such use and report the circumstances requiring the use of the restraint and the technique applied, regardless of whether an injury occurred.⁴
2. Video and audio recording equipment will be used during the entire duration of the transportation of any individual who:
 - a) is argumentative and/or combative;
 - b) has been involved in a use of force; or
 - c) is injured or claims to be injured.⁵

PART 3: SUPPORTING MEMORANDUM

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PART 3A. DUTY TO INTERVENE

I. Recommended Policies

This memorandum discusses the elements of the duty to intervene in the Model Policy. This duty requires an officer who witnesses another officer engage in misconduct or who has reason to believe that another officer is engaged or about to engage in misconduct, to intervene to end or prevent such misconduct.⁶

Failure by an officer to intervene when witnessing excessive force by another officer can be grounds for liability under 42 U.S.C. § 1983.⁷ This means that officers have a duty to intervene in cases of excessive force regardless of whether a given police department adopts a specific duty-to-intervene policy.⁸ But having a specific and robust duty to intervene policy helps officers understand what is expected of them when confronted with another officer's misconduct as well as formalizes the expectation that misconduct will not be tolerated.⁹

Further, many police departments that include a duty to intervene in their policies limit their descriptions of the duty to a sentence or paragraph.¹⁰ A more thorough description of the duty helps to clarify expectations of police officers and eliminate ambiguity to the extent possible.¹¹

A. Underpinnings and Recent Developments

In 2015, Corporal Eric Casebolt, a White male police officer, was dragging Dajerria Becton, a fifteen-year old Black girl, across the ground while investigating a reported disturbance at a community pool when two unarmed Black teen boys stepped in to assist Ms. Becton.¹² Corp. Casebolt unholstered his gun and drew it towards the two unarmed Black teens. While Casebolt's fellow officers had not intervened as they watched his conduct escalate from yelling and chasing youths, shoving one boy to the ground, and then grabbing and dragging Becton, upon seeing Casebolt draw his gun, two officers intervened.¹³ The two officers chased away the two Black teens, and consequently, Corp. Casebolt withdrew his gun and returned it to his holster.¹⁴ Had those two officers not intervened, the two Black teen boys might have ended up like the Black men that have died, and continue to die, because of police misconduct.¹⁵

One of those Black men is Freddie Carlos Gray Jr., who died a week after four officers of the Baltimore Police Department did nothing while he screamed in pain as two of their colleagues held him face-down on the sidewalk with his legs bent "like he was a crab or piece of origami."¹⁶ After arresting Mr. Gray, one of the officers transported him to a local trauma care facility, but not without knowingly neglecting to secure Gray with a seatbelt and purposefully driving erratically to further injure him.¹⁷ Mr. Gray arrived at the local trauma care facility unresponsive and would shortly die there after sustaining injuries to his voice box, three fractured vertebrae, and a spinal injury severing 80% of his neck.¹⁸

Similarly, eleven officers of the New York Police Department did nothing while Eric Garner pleaded for his life, muttering "I can't breathe" eleven times while one of their colleagues held Garner in a chokehold.¹⁹ Mr. Garner's plea would be unsuccessful, and continued to be unsuccessful six years after his death when George Floyd repeatedly invoked Mr. Garner's plea,

“I can’t breathe,” when three officers of the Minneapolis Police Department did nothing while one of their colleagues held Mr. Floyd to the ground with a knee to his throat for nearly nine minutes.²⁰

The deaths of these three Black men – Messrs. Gray, Garner, and Floyd – were unnecessary and could have been avoided had any of the officers on-scene been compelled by a duty to intervene.²¹

B. Definitions

A strong duty to intervene policy should define at the outset at least two crucial terms: (1) intervene and (2) misconduct. Regarding “intervene,” the policy should emphasize that intervention includes both verbal and physical measures.²² It should also stress that the duty to intervene is triggered prior to officers witnessing misconduct. The policy should require officers to intervene to prevent misconduct from occurring in the first place when it appears reasonably likely that the use of such misconduct will occur.²³

Regarding “misconduct,” the policy should take a broad view of the types of actions that trigger the duty to intervene. Specifically, the policy should not limit the duty just to situations involving excessive force, but should instead cover any violation by an officer of the department’s policies, of state and/or federal criminal law, or of the state’s constitution or the U.S. Constitution.²⁴ Such a broad policy would still require officers to intervene to prevent or stop the use of excessive force, but would also require intervention to prevent or stop, for example, instances of dishonesty, evidence planting or tampering, bias-based profiling, harassment, or the use of racial epithets or slurs.²⁵

C. Intervention

A strong duty to intervene policy should make the following points clear: First, the duty applies to every officer, regardless of rank, seniority, or title.²⁶ Second, this duty should be triggered prior to the actual occurrence of misconduct. Even when an officer only has reason to believe that another officer is about to engage in misconduct (e.g., witnessing another officer become agitated with respect to a subject, or hearing from an officer that a third officer is becoming “heated” with respect to a subject), the duty to intervene should be triggered.²⁷ Third, after being triggered, the duty should continue until the misconduct completely ends.²⁸

D. Medical Aid

Any duty to intervene policy also should include a requirement that officers render medical aid to any person who sustain injuries as a result of another officer’s misconduct.²⁹ This requirement should further specify that the duty to render medical aid remains in effect until any injured persons are either in stable condition or are being treated by emergency medical professionals.³⁰

E. Reporting

An effective policy on intervention in instances of misconduct also should impose a duty to immediately report misconduct.³¹ The reporting requirement should specify precisely when the intervening officer must report misconduct, rather than include an open-ended variation of “as soon as practicable” or “with reasonable promptness.”³² The reporting requirement also should list any mandatory details that must be included in any report, such as the who, what, when, where, and how regarding the misconduct, information about other officers who were present when the misconduct occurred, and any actions other officers took or failed to take in response to the misconduct.³³ Furthermore, the reporting requirement should impose an affirmative duty on supervising officers to both investigate reports of misconduct and pursue disciplinary action against officers found to have committed misconduct.³⁴

F. Disciplinary Action

A duty to intervene policy would not be effective without enforcement and consequences.³⁵ Accordingly, such policies should include a provision specifying that the failure either to intervene to prevent/stop misconduct or to report such misconduct will be grounds for disciplinary action at the same level of severity as the original act of misconduct.³⁶

F. Retaliation

Similarly, a duty to intervene policy would not be effective without protecting officers who comply with their duties from retaliation.³⁷ Any duty to intervene policy therefore should specify that officers are immune from retaliation, reassignment, or any other disciplinary action as a result of preventing, stopping, or reporting the misconduct or attempted misconduct of another officer.³⁸ To reinforce the requirement that the duty to intervene applies even where the intervening officer is outranked by the offending officer, the anti-retaliation clause also should specify that intervening and reporting cannot be a basis for any disciplinary action for insubordination or other grounds.³⁹

G. Types of Intervention

To help officers understand what intervention looks like in practice, we recommend that the duty-to-intervene policy explain and provide examples of both verbal and physical interventions, as well as generally highlight when the two types of intervention would be most appropriate.⁴⁰ The policy should explain that verbal interventions are usually preventative measures used when an officer suspects another officer is on the path toward engaging in misconduct, and caution that verbal interventions may be insufficient to satisfy an officer’s duty to intervene when actual misconduct is occurring.⁴¹ Conversely, the policy should explain that physical interventions should be used when verbal interventions have not worked or seem unlikely to work, and explicitly note that physical interventions include both putting one’s body between an officer and the victim of misconduct, as well as forcibly restraining or removing an officer committing or attempting to commit misconduct.⁴²

II. Selected Resources Consulted

A. Police Department Policies

- Baltimore Police Department Policy 319 re Duty to Intervene

- Baltimore Police Department Policy 1115 re Use of Force
- City of Cambridge Police Department General Order 20-13 re Duty to Intervene
- Detroit Police Department Directive No. 102.12 re Duty to Intervene
- Houston Police Department General Order 600-17 re Response to Resistance
- Metropolitan Nashville Police Department, Roll Call Training: Policy Briefing re Duty to Intervene
- Milwaukee Police Department Standard Operating Procedure Section 460 re Use of Force
- Minneapolis Police Department Policy and Procedure Manual Section 5-300 re Use of Force
- New Jersey Office of the Attorney General Use of Force Policy
- New York City Police Department Patrol Guide 221-02 re Use of Force
- New York State Municipal Police Training Council Use of Force Model Policy
- Philadelphia Police Department Directive 10.2 re Use of Moderate/Limited Force
- San Francisco Police Department General Order 5.01 re Use of Force
- Stockton Police Department General Order No. Q-1 re Use of Force and Reporting Use of Force
- Tucson Police Department General Order 2000 re Use of Force
- Urbana Police Department Policy Section 300 re Use of Force
- Washington State Office of the Attorney General Model Use of Force Policy

B. Secondary Sources

- *Addressing Police Misconduct Laws Enforced By the Department of Justice*, DEP'T OF JUST. (October 13, 2020)
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- Ashley Southall, *Daniel Pantaleo, Officer Who Held Eric Garner in Chokehold, Is Fired*, N.Y. TIMES (Aug. 19, 2019), <https://www.nytimes.com/2019/08/19/nyregion/daniel-pantaleo-fired.html>
- Ashley Southall & Johanna Barr, *Derek Chauvin Trial: Chauvin Found Guilty of Murdering George Floyd*, N.Y. TIMES (Apr. 21, 2021), <https://www.nytimes.com/live/2021/04/20/us/derek-chauvin-verdict-george-floyd>
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- International Association of Chiefs of Police, Peer Bystander Intervention in Law Enforcement Agencies
- Juliet Linderman & Curt Anderson, *Lawyer Says Fatally Injured Arrestee Lacked Belt*, DETROIT FREE PRESS (Apr. 23, 2015), <https://www.freep.com/story/news/nation/2015/04/23/rough-ride-lawyer-says-fatally-injured-arrestee-lacked-belt/26274573/>
- Kristine Phillips, *Black Teen Who Was Slammed to the Ground By a White Cop at Texas Pool Party Sues for \$5 Million*, WASH. POST (Jan. 5, 2017), <https://www.washingtonpost.com/news/post-nation/wp/2017/01/05/black-teenager-who-was-slammed-to-the-ground-at-texas-pool-party-sues-ex-cop-city-for-5m>
- Oliver Laughland & Jon Swaine, *Six Baltimore Officers Suspended over Police-Van Death of Freddie Gray*, THE GUARDIAN (Apr. 20, 2015), <https://www.theguardian.com/us-news/2015/apr/20/baltimore-officers-suspended-death-freddie-gray>
- Ralph Gerstein, *Prosecution and Defense of Claims Brought Under 42 U.S.C.A. § 1983 Alleging Excessive Force by Law Enforcement Officers*, 168 Am. Jur. Proof of Facts 3d 1 (2018)
- Robert J. Duran & Oralia Loza, *Exploring the Two Trigger Fingers Thesis: Racial and Ethnic Differences in Officer Involved Shootings*, 20 CONTEMP. JUST. REV. 71 (2018)
- Sanja Kutnjak Ivković et al., *Decoding the Code of Law Sentencing*, 29 CRIM. JUST. L. REV. (2016)
- Statement of Mr. Ronald L. Davis, Chair of the Legislative Committee of the National Organization of Black Law Enforcement Executives, before the United States House Committee on the Judiciary Hearing on “Policing Practices and Law Enforcement Accountability” (June 10, 2020)
- Todd Pinckley, *The Right to Remain Silent: Law Enforcement and the Duty to Intervene*, 56-DEC Tenn. B.J. 16, 18 (2020).

PART 3B. DUTY TO RENDER MEDICAL AID

I. Recommended Policies

Imposing a duty in police department policies to immediately provide medical aid following the use of force is essential to centering the sanctity of human life.⁴³ Police officers on the scene are the first responders following a use of force. As first responders, they should be required by department policy to administer medical aid without delay and until EMS arrives.⁴⁴

Numerous police departments around the country have come under scrutiny in recent years for officers' failure to administer aid in such circumstances, even when officers called EMS to the scene.⁴⁵ For example, in Rochester, NY in 2020, police officers restrained Daniel Prude by placing a spit hood on his head and forcibly pushing his face into the asphalt.⁴⁶ While restraining Mr. Prude, the officers noticed Mr. Prude vomiting.⁴⁷ Rather than render medical assistance, the officers continued to restrain him for three minutes and ten seconds before EMS arrived to perform chest compressions on an unresponsive Mr. Prude.⁴⁸ Prude was subsequently taken to a hospital, where he was declared brain dead and proceeded to die a week later as a result of complications of asphyxia.⁴⁹

Further, in 2016 in Tulsa, OK, officers waited over two minutes to begin first aid on Terrence Crutcher, who they had shot and who later died from his wounds.⁵⁰ In 2019 in Charlotte, NC, officers at the scene never provided first aid after they shot Danquirs Franklin. Four minutes passed before EMS arrived to treat Mr. Franklin, who died of his injuries.⁵¹

Medical professionals have found that delaying medical care, even for mere minutes, substantially increases the risk of death or severe disability following a traumatic event.⁵² Even though EMS may arrive on the scene within minutes, that delay may have a profound impact on the individual's prognosis.⁵³ Nonetheless, police officers have no common-law duty to provide medical aid.⁵⁴ This highlights the importance of incorporating a duty to provide medical aid in police department policies.

Overall, police departments, related associations, and researchers agree that police officers should be required to provide medical assistance to individuals following the use of force.⁵⁵ However, the requirements under police department policies in this area vary widely. The greatest split is what is considered "medical aid." Some department policies simply state that medical aid must be given but do not give more specific instructions.⁵⁶ Many departments consider the duty to render aid fulfilled when officers call for EMS, but do not require officers to give first aid themselves.⁵⁷ Other departments require (or explicitly permit) officers to provide aid in addition to calling for EMS.⁵⁸ Finally, some departments go one step further and detail instances where EMS must be called regardless of an individual's apparent injury.⁵⁹ These include when certain weapons, such as capsicum spray, are used;⁶⁰ when the individual at issue falls into certain categories such as pregnant or elderly;⁶¹ or when someone has been struck in the head.⁶² Additionally, departments differ on whether they require the immediate provision of aid, with some departments not mentioning a timeframe at all.⁶³

As the cases of Rochester, Tulsa, and Charlotte instruct, waiting to give aid or merely calling for EMS does not suffice to protect human life or ensure public trust in police.⁶⁴ For

these reasons, the Model Policy requires that officers immediately call for EMS and immediately administer first aid until EMS arrives following the use of force to any person injured; claiming injury; requesting medical attention;⁶⁵ exhibiting physical or mental distress;⁶⁶ having difficulty breathing;⁶⁷ who was struck in the head; who falls into certain high-risk categories; or when officers use certain weapons.⁶⁸

Furthermore, this Model Policy, as do many across the country, requires officers to continuously monitor individuals impacted by the use of force until EMS takes over care.⁶⁹ Oftentimes, officers may not immediately perceive injuries or a subject's injuries may worsen over time, rendering it insufficient to assess injuries only at a single point in time.⁷⁰ Additionally, even though officers should not place or restrain an individual in a way that restricts their airway in the first place, officers should continue to check that restrained individuals are able to freely breathe.⁷¹

Finally, the Model Policy requires officers to document any medical aid given following the use of force, including describing injuries sustained, how those injuries were caused, and the nature of the aid administered (or the individual's refusal of aid).⁷² This documentation protects police officers and departments, especially in instances where an individual refuses medical care, as is their right.⁷³ Additionally, a duty to document reinforces to officers that medical aid is an essential and required part of their job.⁷⁴

This policy is designed to give human life the highest protection, however it will only be successful if officers are equipped to carry out this task.⁷⁵ Improper medical care undoubtedly can do more harm than good, therefore police departments must provide officers with proper and ongoing training,⁷⁶ but full emergency medical technician training is not required.⁷⁷ The skills needed to provide life-saving care while awaiting EMS are not complicated to learn or execute.⁷⁸ More and more police departments around the country now offer the appropriate training and require their officers to complete it.⁷⁹ Departments must additionally provide officers with the necessary tools to administer first aid. This too is becoming more commonplace, with many departments outfitting every police vehicle, and in some departments every officer, with a trauma kit.⁸⁰ With the appropriate tools and training, officers can better fulfill their duty to protect the citizens they serve.

II. Selected Resources Consulted

A. Police Department Policies

- Bakersfield Police Department Policy Manual Section 300 re Use of Force
- Baltimore Police Department Policy 1115 re Use of Force
- California Commission on Peace Officer Standards and Training re Use of Force
- Chicago Police Department General Order 03-02 re Use of Force
- City of Buffalo Department of Police Use of Force Policy Section 6
- City of Cambridge Police Department General Order 20-13 re Duty to Intervene
- Cleveland Division of Police, General Police Order § 2.01.03(V)
- District of Columbia Metropolitan Police General Order 901.07 re Use of Force
- Houston Police Department General Order 600-17 re Response to Resistance
- Indianapolis Metropolitan Police Department, General Order 1.30 – Use of Force § V

- Las Vegas Metropolitan Police Department, 6/002.00 Use of Force Policy § VII
- Minneapolis Police Department Policy and Procedure Manual Section 5-300
- New Jersey Office of the Attorney General Use of Force Policy
- New York City Police Department Patrol Guide 221-02 re Use of Force
- New York State Municipal Police Training Council Use of Force Model Policy
- New Orleans Police Department, Operations Manual ch. 1.3(7)
- Philadelphia Police Department Directive 10.2 re Use of Moderate/Limited Force
- Portland Police Bureau Directive 1010.00 Use of Force
- San Francisco Police Department General Order 5.01 re Use of Force
- Seattle Police Department Manual §§ 8.200(7)-(8), 8.400.
- St. Paul Police Department, Manual § 246.00(IV)
- State of Connecticut Police Officer Standards and Training Council re Use of Force Policy
- Tucson Police Department General Order Section 2000 re Use of Force
- Tulsa Police Department, *Training and Equipment*, <https://www.jointpd.com/training-and-equipment>
- Utah Department of Public Safety Policy Section 500 re Use of Force
- Washington State Office of the Attorney General Model Use of Force Policy
- Winston-Salem Police Order General Order 1.27 re Use of Force

B. Secondary Sources

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- Delores Jones-Brown et al., *Am I My Brother's Keeper: Can Duty to Intervene Policies Save Lives and Reduce the Need for Special Prosecutors in Officer-Involved Homicide Cases?*, 57 No. 5 Crim. Law Bulletin ART 1 (2021)
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- *Images from a Day of Protest over Daniel Prude's Death*, USA TODAY (Sept. 3, 2020), <https://www.usatoday.com/picture-gallery/news/2020/09/02/daniel-prude-death-rochester-police-hunker-down/5695985002/>
- Joseph Serna, *Police Commission Approves 8,000 Trauma Aid Kits for LAPD Officers*, L.A. TIMES (Jan. 28, 2014)
- Police Executive Research Forum, *Critical Issues in Policing Series: Guiding Principles on Use of Force* (2016), <https://www.policeforum.org/assets/30%20guiding%20principles.pdf>
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PART 4: COMPARISON MEMO SUMMARY

PART 4: COMPARISON MEMO SUMMARY

We have evaluated numerous other model policies, use-of-force guidelines, and state law mandates and compared them to the Model Policy provisions. The following memo reflects a summary of our opinions about the key differences or similarities between the reviewed policies and the Model Policy. In particular, this Comparison Memo Summary compares our Model Policy provisions concerning the Duty to Intervene and the Duty to Render Medical Aid with other policies.

The national, state, and local policies we compared⁸¹—and the comparisons derived from them—provide a general opinion on differences in use-of-force options. We will continually review and update these comparisons. We present this Comparison Memo Summary in draft form as a part of the Model Policy Beta Release. Some of the information provided may be subject to change.

DUTY TO INTERVENE

- Some policies do not establish an affirmative duty to intervene. Examples include Texas.
The SCRJ MUOF Policy imposes an affirmative duty to intervene in misconduct and report misconduct.
- Some policies set forth narrow triggering circumstances for the duty to intervene. Examples include Minnesota.
The SCRJ MUOF Policy imposes a duty to intervene whenever an officer (1) witnesses another officer engage in misconduct; (2) has reason to believe that another officer is engaged in misconduct; and (3) has reason to believe that another officer is about to engage in misconduct.
- Some policies specify that the duty to intervene includes a duty to prevent future misconduct. Examples include New York.
The SCRJ MUOF Policy does not limit the duty to intervene to situations where misconduct already is occurring. Instead, the duty also is triggered when an officer has reason to believe that another officer is about to engage in misconduct.
- Some policies include qualifications on the duty to intervene, such as if intervention is “safe and reasonable” or “possible.” Examples include Lexipol, IACP, New York, and New Jersey.
The SCRJ MUOF Policy does not contain similar qualifications and also makes clear that intervention includes both verbal and physical interventions.
- Most policies are silent as to when the officer’s duty ends.
The SCRJ MUOF Policy specifies that an officer’s duty to intervene ends only when the conduct in question has completely stopped.

DUTY TO RENDER MEDICAL AID

- Some policies do not mandate that officers render medical aid. Examples include Santa Monica, Lexipol, and the Police Executive Research Forum (PERF).

The SCRJ MUOF Policy mandates that officers immediately call for EMS as well as immediately administer first aid until EMS arrives following the use of force in specified circumstances.

- Most policies do not specify whether the duty applies only to the officer who causes injury or also to any officer in the vicinity. Examples include the IACP, Lexipol, Campaign Zero, New York, TPS, Minnesota, Santa Monica, PERF, and NYU policies.

The SCRJ MUOF Policy expressly imposes the duty to render medical aid on both the officer using force and other officers present at the scene.

- Some policies do not specify the circumstances under which officers must render medical aid. Examples include New York, New Jersey, PERF, and NYU policies.

The SCRJ MUOF Policy expressly specifies that, following any use of force, the officers must render medical aid to any person injured; claiming injury; requesting medical attention; exhibiting physical or mental distress; having difficulty breathing; who was struck in the head; who falls into certain high-risk categories; or when officers use certain weapons.

- Many policies do not specify that officers must call EMS to treat injured individuals. Examples include Lexipol, IACP, Minnesota, New York, Santa Monica, PERF, and NYU policies.

The SCRJ MUOF Policy expressly requires officers to call EMS as well as provide medical aid when the duty to render medical aid is triggered.

- Many policies do not require medical aid to be rendered “immediately.” Examples include New Jersey, Santa Monica, and PERF and NYU policies.

The SCRJ MUOF Policy requires officers to “immediately” summon EMS and “immediately” provide medical aid.

ENDNOTES

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- ¹ Albuquerque Police Department Procedural Orders (2020).
- ² Charlotte-Mecklenburg Police Department Interactive Directives Guide (2021).
- ³ Charlotte-Mecklenburg Police Department Interactive Directives Guide (2021).
- ⁴ Minneapolis Police Department Use of Force Policy (2020).
- ⁵ Charlotte-Mecklenburg Police Department Interactive Directives Guide (2021).
- ⁶ *Turner v. Scott*, 119 F.3d 425, 429 (6th Cir. 1997); *see, e.g.*, San Francisco Police Department General Order 5.01 re Use of Force, § I(F).
- ⁷ *See, e.g., Smith v. Mensinger*, 293 F.3d 641, 650 (3d Cir. 2002); *Putman v. Gerloff*, 639 F.2d 415, 423 (8th Cir. 1981); *Byrd v. Brishke*, 466 F.2d 6, 11 (7th Cir. 1972).
- ⁸ § 1983 is a source of procedural rights, providing a cause of action for vindication of constitutionally or federally conferred rights to those who have been deprived of them by persons acting under the color of the law, such as police officers. Ralph Gerstein, *Prosecution and Defense of Claims Brought Under 42 U.S.C.A. § 1983 Alleging Excessive Force by Law Enforcement Officers*, 168 Am. Jur. Proof of Facts 3d 1, § 3 (2018). Because a suspect has the right to be free from excessive force under the Fourth, Eighth, and Fourteenth Amendment, the suspect’s excessive force claim against a police officer is actionable under § 1983, irrespective of whether a police department’s policies contain a duty to intervene provision. *See id.* at § 2; Douglas B. Mckechnie, *Don’t Daze, Phase, or Lase Me, Bro! Fourth Amendment Excessive-Force Claims, Future Nonlethal Weapons, and Why Requiring an Injury Cannot Withstand A Constitutional or Practical Challenge*, 60 U. Kan. L. Rev. 139, 141 (2011).
- ⁹ There were several minutes in which one of the eleven officers on the scene could have intervened to save Mr. Garner’s life but did not do so. The duty-to-intervene policy of the New York Police Department in effect at the time of Mr. Garner’s death did not provide guidance regarding “the specific conduct that is expected to satisfy the obligation to intervene.” *See Delores Jones-Brown et al., Am I My Brother’s Keeper: Can Duty to Intervene Policies Save Lives and Reduce the Need for Special Prosecutors in Officer-Involved Homicide Cases?*, 57 No. 5 Crim. Law Bulletin ART 1, § I, IV(B) (2021) (recognizing that, for duty to intervene policies to be effective, they must provide “specific guidance to intervening officers in terms of their expected behavior” and “address internal structural factors impact[ing] officer conduct” by “includ[ing] detailed and clear instructions about what is required for effective intervention.”).
- ¹⁰ *See, e.g.*, San Francisco Police Department General Order re Use of Force, § I(F) (which duty-to-intervene policy reads in full, “When in a position to do so, officers shall intervene when they know or have reason to know, that another officer is about to use, or is using, unnecessary force. Officers shall promptly report any use of unnecessary force and the efforts made to intervene to a supervisor.”).
- ¹¹ The Baltimore Police Department provided intervening officers with little to no guidance on how to comply with its one-sentence duty-to-intervene directive, which it had adopted in response to the protests and unrest following Mr. Gray’s death, merely articulating that “[m]embers have a duty to intercede to prevent the use of excessive force by another member toward any person.” Baltimore Police Department Policy 1115 re Use of Force, at 1; Jones-Brown et al., *supra* note 9, § III(A).
- ¹² Kristine Phillips, *Black Teen Who Was Slammed to the Ground By a White Cop at Texas Pool Party Sues for \$5 Million*, WASH. POST (Jan. 5, 2017), <https://www.washingtonpost.com/news/post-nation/wp/2017/01/05/black-teenager-who-was-slammed-to-the-ground-at-texas-pool-party-sues-ex-cop-city-for-5m/>.
- ¹³ *Id.*
- ¹⁴ *Id.*
- ¹⁵ *See* Robert J. Duran & Oralia Loza, *Exploring the Two Trigger Fingers Thesis: Racial and Ethnic Differences in Officer Involved Shootings*, 20 CONTEMP. JUST. REV. 71, 71–93 (2017).
- ¹⁶ Amelia McDonnell-Parry & Justine Barron, *Death of Freddie Gray: 5 Things You Didn't Know*, ROLLING STONE (Apr. 12, 2017), <https://www.rollingstone.com/culture/culture-features/death-of-freddie-gray-5-things-you-didnt-know-129327/>; Juliet Linderman & Curt Anderson, *Lawyer Says Fatally Injured Arrestee Lacked Belt*, DETROIT FREE PRESS (Apr. 23, 2015), <https://www.freep.com/story/news/nation/2015/04/23/rough-ride-lawyer-says-fatally-injured-arrestee-lacked-belt/26274573/> (quoting a witness’ account of Mr. Gray’s arrest).
- ¹⁷ Linderman & Anderson, *supra* note 16.

¹⁸ Oliver Laughland & Jon Swaine, *Six Baltimore Officers Suspended over Police-Van Death of Freddie Gray*, THE GUARDIAN (Apr. 20, 2015), <https://www.theguardian.com/us-news/2015/apr/20/baltimore-officers-suspended-death-freddie-gray>.

¹⁹ Todd Pinckley, *The Right to Remain Silent: Law Enforcement and the Duty to Intervene*, 56-DEC Tenn. B.J. 16, 18 (2020); Ashley Southall, *Daniel Pantaleo, Officer Who Held Eric Garner in Chokehold, Is Fired*, N.Y. TIMES (Aug. 19, 2019), <https://www.nytimes.com/2019/08/19/nyregion/daniel-pantaleo-fired.html>.

²⁰ Pinckley, *supra* note 19; Ashley Southall & Johanna Barr, *Derek Chauvin Trial: Chauvin Found Guilty of Murdering George Floyd*, N.Y. TIMES (Apr. 21, 2021), <https://www.nytimes.com/live/2021/04/20/us/derek-chauvin-verdict-george-floyd>; Amended Complaint and Statement of Probable Cause at 3–4, *State v. Chauvin*, No. 27-CR-20-12646 (Minn. Dist. Ct. June 3, 2020), <http://mncourts.gov/mncourtsgov/media/High-Profile-Cases/27-CR-20-12646/AmendedComplaint06032020.pdf>.

²¹ See Jones-Brown et al., *supra* note 9, § III(A)–(D).

²² See Jones-Brown et al., *supra* note 9, § X; see, e.g., Baltimore Police Department Policy 319 re Duty to Intervene, § 5, at 3; City of Cambridge Police Department General Order 20-13 re Duty to Intervene, at 1–2; Minneapolis Police Department Policy and Procedure Manual Section 5-300 re Use of Force, § 5-301(III)(C)(2), at 7 (updating its duty to intervene policy in the wake of George Floyd’s death to state, “any sworn employee who observes another employee use any prohibited force, or inappropriate or unreasonable force . . . must attempt to safely intervene by verbal and physical means.”).

²³ *Turner*, 119 F.3d at 429; *Anderson v. Branen*, 17 F.3d 552, 557 (2d Cir.1994); see, e.g., San Francisco Police Department General Order 5.01 re Use of Force, § I(F).

²⁴ 34 U.S.C. § 12601(a); see, e.g., Baltimore Police Department Policy 319 re Duty to Intervene, § 2, at 2.

²⁵ See Utah Code Ann. § 53-6-210.5(1)(d)(i)–(iii); *Addressing Police Misconduct Laws Enforced By the Department of Justice*, DEP’T OF JUST. (October 13, 2020), <https://www.justice.gov/crt/addressing-police-misconduct-laws-enforced-department-justice>; see, e.g., Baltimore Police Department Policy 319 re Duty to Intervene, § 2, at 2.

²⁶ “It is widely recognized that all law enforcement officials have an affirmative duty to intervene to protect the constitutional rights of citizens from infringement by other law enforcement officers in their presence.” *Anderson*, 17 F.3d at 557. Even more illustrative of this proposition is the opinion in *Smith v. Mensinger*, 293 F.3d 641 (3d Cir. 2002), stating,

“[t]he duty to uphold the law does not turn upon an officer’s rank. It is neither affected by, nor proportional to, a non-intervening officer’s relationship to an offending colleague. The approving silence emanating from the officer who stands by and watches as others unleash an unjustified assault contributes to the actual use of excessive force, and we cannot ignore the tacit support such silence lends to those who are actually striking the blows. Such silence is an endorsement of the constitutional violation resulting from the illegal use of force.”

293 F.3d at 650–51.

²⁷ *Turner*, 119 F.3d at 429; see, e.g., San Francisco Police Department General Order 5.01 re Use of Force, § I(F).

²⁸ See *Byrd*, 466 F.2d at 11 (stating “it is clear that one who is given the badge of authority of a police officer may not ignore the duty imposed by his office and fail to stop other officers who summarily punish a third person in his presence or otherwise within his knowledge.”) (emphasis added); Fla. Stat. Ann. § 943.1735 (West) (recognizing the duty to intervene “requires[s] an on-duty officer who observes another officer engaging or attempting to engage in excessive force to intervene to end the excessive force.”) (emphasis added).

²⁹ See *Coley v. Lucas County*, Ohio, 799 F.3d 530, 539–40 (6th Cir. 2015) (finding a county sheriff to be liable under § 1983 for failing to render medical assistance to a pretrial detainee who suffered fatal injuries when struck by and placed in a chokehold by a police sergeant); Fla. Stat. Ann. § 943.1735(d); see, e.g., Houston Police Department General Order 600-17 re Response to Resistance, § 10, at 8; New Jersey Office of the Attorney General Use of Force Policy, § 6, at 19.

³⁰ See, e.g., Houston Police Department General Order 600-17 re Response to Resistance, § 10, at 8; New Jersey Office of the Attorney General Use of Force Policy, § 6, at 19; Washington State Office of the Attorney General Model Use of Force Policy, § (2)(c)–(d)(i), at 9.

³¹ Campaign Zero, Model Use of Force Policy, § V (stating, “[t]o promote transparency and accountability of actions involving the use of force . . . law enforcement officers shall report any use of force.”); see

Utah Code Ann. § 53-6-210.5 (West); 720 Ill. Comp. Stat. Ann. 5/7-16(b); *see, e.g.*, New York City Police Department Patrol Guide 221-02 re Use of Force, at 2 (articulating “[i]f a member of the service becomes aware of the use of excessive force or failure to request or to ensure timely medical treatment for an individual, the member *must* report such misconduct.”) (emphasis in the original).

³² *See* Minn. Stat. Ann. § 626.8475(b) (West) (requiring that officers who observe their colleague(s) employ excessive force report the incident within twenty-four hours); Colo. Rev. Stat. Ann. § 18-8-802(1.5)(b)(II) (West) (mandating that officers who witness their colleague(s) use excessive force report the incident within ten days of its occurrence); *see, e.g.*, New Jersey Office of the Attorney General Use of Force Policy, § 5.4, at 18 (demanding an “officer who observes or who has knowledge of” unauthorized or excessive force to report the incident “before reporting off duty on the day the officer becomes aware of the misconduct.”).

³³ *See* 720 Ill. Comp. Stat. Ann. 5/7-16(b); Colo. Rev. Stat. Ann. § 18-8-802(b) (West); Conn. Gen. Stat. Ann. § 7-282e(3)(b) (West).

³⁴ *See, e.g.*, New York State Municipal Police Training Council Use of Force Model Policy, § X(B), at 5; New Jersey Office of the Attorney General Use of Force Policy, § 7, at 20; Urbana Police Department Policy Section 300 re Use of Force, § 300.7(h).

³⁵ Rank and file officers across multiple police agencies are more inclined to report a fellow officer when they expect the offending officer’s misconduct to be met with harsh discipline. Sanja Kutnjak Ivković et al., *Decoding the Code of Law Sentencing*, 29 CRIM. JUST. L. REV. 172, 172–178 (2016).

³⁶ Jones-Brown et al., *supra* note 9, § V (explaining effective duty to intervene policies “incentivize bystander officers to intervene by giving fair notice of the consequences at stake for failure to do so.”); *see* Colo. Rev. Stat. Ann. § 18-8-802(d) (West) (articulating that any officer who fails to intervene commits a class 1 misdemeanor); Colo. Rev. Stat. Ann. § 18-3-204(1)(a) (West) (classifying “knowingly or recklessly caus[ing] bodily injury to another person” as a class 1 misdemeanor); *see, e.g.*, Minneapolis Police Department Policy and Procedure Manual Section 5-300 re Use of Force, § 5-301(III)(C)(2), at 7 (following the death of George Floyd, the Minneapolis Police Department revised its policy to explain that any officer who does not attempt to safely intervene when witnessing another officer exercise excessive force will “be subject to discipline *to the same severity* as if they themselves engaged in the prohibited, inappropriate or unreasonable use of force.”) (emphasis added).

³⁷ Jones-Brown et al., *supra* note 9, § X (concluding an effective duty to intervene policy “make[s] clear that officers who follow the policy will be protected from retaliation” because in the absence of such protection, police officers are less likely to summon the courage to intervene); *see* Milwaukee Police Department Standard Operating Procedure Section 460 re Use of Force, § 460.20 (acknowledging a bystander officer needs courage to prevent an offending officer from using excessive force).

³⁸ *See* 720 Ill. Comp. Stat. Ann. 5/7-16(c); Utah Code Ann. § 53-6-210.5(4)(a)–(b) (West) (explaining any retaliation by a law enforcement officer towards another officer because that officer satisfied his duty to intervene and reported the retaliating officer’s misconduct “shall be cause for discipline.”).

³⁹ *See* 720 Ill. Comp. Stat. Ann. 5/7-16(c); Utah Code Ann. § 53-6-210.5(4)(a)–(b) (West); Wash. Rev. Code Ann. § 10.93.190(3).

⁴⁰ Jones-Brown et al., *supra* note 9, § X (explaining “[s]trong duty to intervene policies . . . specify that officers must use verbal and physical means to terminate the unlawful conduct of peers.”).

⁴¹ *See, e.g.*, Baltimore Police Department Policy 319 re Duty to Intervene, § 5, at 3.

⁴² *See, e.g.*, City of Cambridge General Order 20-13 re Duty to Intervene, § 3, at 2.

⁴³ *See, e.g.*, Minneapolis Police Department Policy and Procedure Manual Section 5-300 re Use of Force, § 5-301(I)(A); New Jersey Office of the Attorney General Use of Force Policy, § 1, at 1; Chicago Police Department General Order 03-02 re Use of Force, § II(A), at 1; San Francisco Police Department General Order 5.01 re Use of Force, at 1.

⁴⁴ *See, e.g.*, Washington State Office of the Attorney General Model Use of Force Policy, § (1)–(3)(b)(ii); Houston Police Department General Order 600-17 re Response to Resistance, § 10, at 8; New Jersey Office of the Attorney General Use of Force Policy, § 6, at 19.

⁴⁵ Protests over Mr. Prude’s death spanned over a week in Rochester, with demonstrations beginning outside of Rochester’s City Public Safety Building on September 2nd, 2020 and ending with more than dozen protestors wearing mesh hoods in front of Rochester’s City Hall on September 10th, 2020. *Images from a Day of Protest over Daniel Prude’s Death*, USA TODAY (Sept. 3, 2020), <https://www.usatoday.com/picture-gallery/news/2020/09/02/daniel-prude-death-rochester-police-hunker-down/5695985002/>; *Warren Confirms National Search for New RPD Chief, Says Interim Appointment under Way*, ROCHESTER DEMOCRAT & CHRON (Sept. 10, 2020), <https://www.democratandchronicle.com/story/news/2020/09/10/rpd-chief-singleetary-and-mayor-warren-brief-city-council-thursday/5767418002/>.

⁴⁶ Taylor Romaine et al., *7 Rochester Police Officers Suspended over Daniel Prude's Death*, Mayor Says, CNN (Sept. 4, 2020), <https://www.cnn.com/2020/09/03/us/rochester-police-daniel-prude-death/index.html>.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Tom Dart & Joanna Walters, *Tulsa Police Under Scrutiny for Delayed Medical Aid Given to Terence Crutcher*, GUARDIAN (Sept. 22, 2016), <https://www.theguardian.com/us-news/2016/sep/22/tulsa-police-terence-crutcher-medical-assistance>.

⁵¹ Ames Alexander & Anna Douglas, *Under Criticism, Charlotte Police Push to Get Faster Medical Help to Shooting Victims*, CHARLOTTE OBSERVER (Apr. 25, 2019), <https://www.charlotteobserver.com/news/local/article229572044.html>.

⁵² See, e.g., Chen C-H et al., *Association Between Prehospital Time and Outcome of Trauma*, PLoS Med. 17(10): e1003360, available at <https://doi.org/10.1371/journal.pmed.1003360> (finding that every 10-minute delay in care increased the risk of severe disability or death by 6%).

⁵³ As noted, EMS arrived to perform chest compressions mere minutes after police officers restrained Prude by pressing his head to the ground; nonetheless, Mr. Prude was announced brain dead when he arrived to the hospital and died shortly afterwards. Romaine et al., *supra* note 46.

⁵⁴ See *Jackson v. City of Joliet*, 715 F.2d 1200, 1202 (7th Cir. 1983) (noting “a mere failure to rescue [someone in distress] is not tortious just because the defendant is a public officer whose official duties include aiding people in distress.”).

⁵⁵ In SCRJ’s review of more than 100 police department policies, 94 policies required officers to render aid following the use of force. See also The Leadership Conference on Civil and Human Rights, *New Era of Public Safety: A Guide to Fair, Safe, and Effective Community Policing*, at 143 (2019), https://civilrights.org/wp-content/uploads/Policing_Full_Report.pdf; Police Executive Research Forum, *Critical Issues in Policing Series: Guiding Principles on Use of Force*, at 43 (2016), <https://www.policeforum.org/assets/30%20guiding%20principles.pdf>; The President’s Task Force on 21st Century Policing, *Final Report of the President’s Task Force on 21st Century Policing*, at 66 (2015), https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

⁵⁶ See, e.g., New York State Municipal Police Training Council Use of Force Model Policy, § IX(A), at 5; City of Cambridge Police Department General Order 20-13 re Duty to Intervene, at 1.

⁵⁷ See, e.g., Utah Department of Public Safety Policy Section 500 re Use of Force, § 500.4.2; Bakersfield Police Department Policy Manual Section 300 re Use of Force, § 300.6, at 65.

⁵⁸ See, e.g., New Jersey Office of the Attorney General Use of Force Policy, § 6, at 19; Houston Police Department General Order 600-17 re Response to Resistance, § 10, at 8; Baltimore Police Department Policy 1115 re Use of Force, at 9; District of Columbia Metropolitan Police General Order 901.07 re Use of Force, § II(A)(9), at 6; Philadelphia Police Department Directive 10.2 re Use of Moderate/Limited Force, § 4(D), at 6.

⁵⁹ See, e.g., Cleveland Division of Police, General Police Order 2.01.03(V)(C); Las Vegas Metropolitan Police Department, , 6/002.00 Use of Force Policy § VII; Portland Police Bureau Directive 1010.00 Use of Force § 9; Seattle Police Department Manual § 8.200(8); St. Paul Police Department, Manual § 246.00(IV).

⁶⁰ See, e.g., New Jersey Office of the Attorney General Use of Force Policy, § 6.1, at 19; State of Connecticut Police Officer Standards and Training Council re Use of Force Policy, § 4(A), at 3.

⁶¹ See, e.g., New Jersey Office of the Attorney General Use of Force Policy, § 6.3, at 19; District of Columbia Metropolitan Police General Order 901.07 re Use of Force, § II(A)(9)(b), at 6; California Commission on Peace Officer Standards and Training re Use of Force, § 46, at 22.

⁶² See, e.g., Seattle Police Department Manual § 8.200(7) (requiring officers to automatically request medical aid in every Type III use of force); Seattle Police Department Manual § 8.400 (classifying a strike to the head as a Type III use of force).

⁶³ Compare New Jersey Office of the Attorney General Use of Force Policy, § 6, at 19 (articulating police officers “shall promptly render medical assistance.”) and Houston Police Department General Order 600-17 re Response to Resistance, § 10, at 8 (explaining police officers “shall immediately request medical personnel to the scene.”) with City of Buffalo Department of Police Use of Force Policy Section 6, § 6.8(A), 6.10(A)(1) (omitting mention of when police officers “shall have the injured person taken for medical treatment” or when they “shall call for medical attention.”).

⁶⁴ Mr. Prude’s brother, whose call to the Rochester Police Department for assistance out of concern for his brother’s safety ultimately led to his brother’s death, expressed remorse for making that call in a press conference where he labeled his brother’s death as “cold-blooded murder.” Romaine et al., *supra* note 46;

Christianna Silva, *Joe Prude Remembers His Brother Daniel Following His Death in Police Custody*, NPR (Sept. 4, 2020), <https://www.npr.org/2020/09/04/909563984/joe-prude-remembers-his-brother-daniel-following-his-death-in-police-custody>. Mr. Prude’s brother was not alone in his sentiment as the protests that erupted in response to Prude’s death stemmed from frustrations of racialized policing and systemic police-perpetrated violence towards Black communities. Tracy Schuhmacher et al., “*System is Broken*”: *Black Community Expresses Anger, Fatigue After Officers Cleared in Daniel Prude’s Death*, USA TODAY (Feb. 24, 2021), <https://www.usatoday.com/story/news/nation/2021/02/24/protests-rochester-black-community-reacts-daniel-prude-decision/4572533001/>.

⁶⁵ See, e.g., Chicago Police Department General Order 03-02 re Use of Force, § IV(A)–(A)(2), at 4.

⁶⁶ See, e.g., Baltimore Police Department Policy 1115 re Use of Force, at 9; Tucson Police Department General Order Section 2000 re Use of Force, § 2010.

⁶⁷ See, e.g., State of Connecticut Police Officer Standards and Training Council re Use of Force Policy, § 4(A), at 3.

⁶⁸ See, e.g., Winston-Salem Police Order General Order 1.27 re Use of Force, § X (stating, “officers shall secure medical care without delay for any persons injured as a result of the use of deadly force.”); New Jersey Office of the Attorney General Use of Force Policy, § 4.2, at 14 (classifying “using a baton or other weapon to intentionally strike in the individual in the head” as a type of deadly force); Chicago Police Department General Order 03-02 re Use of Force, § III(C)(1)(c), at 2 (categorizing an intentional strike to the head with a weapon as an application of deadly force).

⁶⁹ See, e.g., Cleveland Division of Police, General Police Order 2.01.03(V)(E); Indianapolis Metropolitan Police Department, General Order 1.30 – Use of Force § V; Las Vegas Metropolitan Police Department, 6/002.00 Use of Force Policy § VII; New Orleans Police Department, Operations Manual ch. 1.3(7).

⁷⁰ See, e.g., Washington State Office of the Attorney General Model Use of Force Policy, § (1)–2(c); New Jersey Office of the Attorney General Use of Force Policy, § 6.2, at 19; Portland Police Bureau Directives Manual Section 1010.00 re Use of Force, § 9.3; California Commission on Peace Officer Standards and Training re Use of Force, § 47, at 22; Bakersfield Police Department Policy Manual Section 300 re Use of Force, § 300.6, at 65.

⁷¹ See, e.g., Baltimore Police Department Policy 1115 re Use of Force, § 10, at 2; New Jersey Office of the Attorney General Use of Force Policy, § 3.6, at 9; District of Columbia Metropolitan Police General Order 901.07 re Use of Force, § II(B)(3)(a); Portland Police Bureau Directives Manual Section 1010.00 re Use of Force, § 9.6–9.6.4.

⁷² Documentation of an injured suspect’s refusal of medical aid is a common requirement across the country. See, e.g., San Francisco Police Department General Order 5.01 re Use of Force, § VI(B)(1)(a)–(B)(1)(a)(viii); Baltimore Police Department Policy 1115 re Use of Force, § 2, at 9; Portland Police Bureau Directives Manual Section 1010.00 re Use of Force, § 9.1; Utah Department of Public Safety Policy Manual Section 500 re Use of Force, § 500.4.2.

⁷³ In addition to “promot[ing] transparency and accountability” and decreasing police killings per capita, restrictive use of force policies that include comprehensive reporting requirements reduce assault and killings of police officers in the line of duty. Campaign Zero, Model Use of Force Policy, § V; Campaign Zero, Police Use of Force Report, at 8, 10.

⁷⁴ Because there is no common-law duty to provide aid, officers are not liable for failing to render aid or assistance to those injured in the absence of a specific statutory or policy provision conferring a duty on them to provide aid. *Jackson v. City of Joliet*, 715 F.2d 1200, 1202 (7th Cir. 1983) (noting “a mere failure to rescue [someone in distress] is not tortious just because the defendant is a public officer whose official duties include aiding people in distress.”). However, merely having a written duty to render medical aid will not ensure compliance. See Jones-Brown et al., *supra* note 9, § I, IV(B). Rather, an effective duty to render medical aid provision must “give specific guidance to intervening officers in terms of their expected behavior” by specifying that a duty to render medical aid is mandatory and a failure to do so will result in disciplinary action. See *id.*, at § I; see, e.g., New York City Police Department Patrol Guide 221-02 re Use of Force, at 2.

⁷⁵ See, e.g., Minneapolis Police Department Policy and Procedure Manual Section 5-300 re Use of Force, § 5-301(I)(A); New Jersey Office of the Attorney General Use of Force Policy, § 1, at 1; Chicago Police Department General Order 03-02 re Use of Force, § II(A), at 1; San Francisco Police Department General Order 5.01 re Use of Force, at 1.

⁷⁶ Officers are only to provide medical assistance consistent with their training. See, e.g., Baltimore Police Department Policy 1115 re Use of Force, § 1, at 9; Houston Police Department General Order 600-17 re Response to Resistance, § 10, at 8; District of Columbia Metropolitan Police General Order 901.07 re Use of Force, § II(A)(9)(a), at 6.

⁷⁷ Emergency medical responder and/or emergency medical technician training ideally should be offered.

⁷⁸ For example, the American College of Surgeons trains everyday people on how to treat hemorrhagic traumatic wounds in a ninety minute course. *See* Stop the Bleed, <https://www.stopthebleed.org/>.

⁷⁹ *See, e.g., Training and Equipment*, Tulsa Police Department, <https://www.jointpd.com/training-and-equipment> (noting that every officer receives “specialized medical training” that “teaches evidence-based, life-saving techniques and strategies for providing the best trauma care in the field,” and offering officers the opportunity for full Emergency Medical Technician training); Bill Bush, *Columbus City Council Moves Forward on Funding for Reimagining Public Safety Initiative*, COLUMBUS DISPATCH (Apr. 6, 2021), <https://www.dispatch.com/story/news/2021/04/06/columbus-city-council-passes-string-ordinances-toward-reimagining-public-safety/7099213002/> (announcing funding for officer medical training); Emma Epperly, *Spokane Police Officers Train to Provide Critical First Aid as They Increasingly Arrive Before Medical Personnel*, SPOKESMAN (Apr. 5, 2021), <https://www.spokesman.com/stories/2021/apr/05/spokane-police-officers-train-to-provide-critical/> (noting that officers have received specialized medical training since 2011).

⁸⁰ *See, e.g. Joseph Serna, Police Commission Approves 8,000 Trauma Aid Kits for LAPD Officers*, L.A. TIMES (Jan. 28, 2014); Bush, *supra* note 79; Epperly, *supra* note 79.

⁸¹ Selected policies include:

- Lexipol National Use of Force Policy
- International Association of Chiefs of Police National Consensus Policy on Use of Force
- Campaign Zero Model Use of Force Policy
- Minnesota Use of Force and Deadly Force Model Policy
- New York Use of Force Model Policy
- Texas Police Chiefs Association Use of Force Model Policy
- New Jersey Office of the Attorney General Use of Force Policy
- Santa Monica Use of Force Policy
- Police Executive Research Forum Guiding Principles on Use of Force
- NYU Policing Project Police Use of Force Policy Guidelines