



# NYSBA Support's Enactment of Duty to Intervene Legislation A.7283-A/ S.1619-A

One of the most asked questions in America when witnessing police misconduct is “why didn’t the other officer stop them?” The longstanding culture within the policing profession, commonly referred to as the “blue wall of silence,” can discourage officers from intervening or reporting when they see their colleagues acting inappropriately, or even illegally. Creating a statutory mandate for intervention and reporting when excessive force is used will break through this wall. Creating a statutory mandate will help shift the dynamic in policing culture to prop up the good officers, remove those who are unfit to serve, and to stop senseless injuries and fatalities within our communities.

**Current New York Law** delegates the Municipal Police Training Counsel (MPTC) with the ability to create use of force policies, including policies on intervention and reporting of excessive force. The MPTC has created duty to intervene guidelines, but ultimately leaves the final decision for policies with the individual police agencies. This lack of uniformity creates inconsistent use of force procedures throughout the state and across police agencies – an inconsistency that benefits no one, officer and civilian alike.

## **This legislation would create the much-needed duty to intervene by:**

- Creating an affirmative duty for police officers to safely intervene when excessive force is being used and to report any instances of excessive force
- Establishing a balanced test for determining whether the officer reasonably believed the force was objectively excessive considering the totality of the circumstances.
- Providing appropriate recourse for bad actors including criminal liability, civil liability, and possible termination for failure to intervene.
- Holding the bad actor directly liable for any civil judgments levied on the state resulting from their misconduct.

## **Why it is needed:**

- Most officers support duty to intervene policies, however, many officers often feel unable to speak up or act due to the “blue wall of silence” that is embedded in many policing cultures.
- Studies in behavior psychology show bystanders are more likely to intervene when encouraged by a superior to do so and witnessing peers intervening in similar situations;
- Statutory mandates provide a consistent framework across all police departments when excessive or illegal force is being used – A policy that needs no flexibility for geographical considerations.
- Supports and rewards law-abiding police officers while deterring and holding bad actors accountable.
- To stop unjustified force against any and all individuals.

9 Minutes and 29 seconds is how long Derek Chauvin knelt on George Floyd’s neck while bystanders plead for him to stop. 9 minutes and 29 seconds passed as officers stood idly watching a peer murder a subdued, handcuffed man, without any legal obligation to intervene. Since George Floyd’s last breath, 11 states now have affirmative statutory duties to intervene with sanctions for failure to do so ranging from terminations to incarceration. It is time for New York State to enact a statewide mandate to support our officers and protect our communities. The New York State Bar Association Strongly Supports the enactment of A.7283-A/S.1619-A.

# States with Statutory Duty to Intervene Laws

State Law	Duty to Intervene	Duty to Report	Penalties for Failure
<b>Colorado</b> Rev. Stat. §§ 18-8-802	x	x	Criminal Liability and Mandatory Decertification
<b>Connecticut</b> Gen. Stat. § 7-282e	x	x	Criminal Liability and Discretionary Decertification
<b>Illinois</b> Public Act 101-0652	X	X	Discretionary Decertification
<b>Kentucky</b> SB 80-Chapter 73 2021	x		Discretionary Decertification
<b>Massachusetts</b> SB 2963- Chapter 6E	x	x	Mandatory Decertification
<b>Maryland</b> Ch. 60 of 2021	x		N/A
<b>Minnesota</b> Stat. § 626.8475	x	x	Discipline for Violating Standards of Conduct
<b>Nevada</b> Rev. State. §193.355	x	x	N/A
<b>Oregon</b> HB 4205	x	x	Disciplinary Action or Discretionary Decertification
<b>Vermont</b> 20 V.S.A 2368 and 20 V.S.A 2401	x	x	N/A
<b>Virginia</b> § 19.2-83.6	x	x	Disciplinary Action or Discretionary Decertification
<b>Washington</b> Chap. 321 and 323 of 2021	x	x	Mandatory Decertification

Source: National Conference of State Legislatures and Brennan Center for Justice

For more information and background surrounding enactment of Duty To Intervene legislation, please contact **NYSBA's Governmental Relations team at 518.487.5652 or GR@NYSBA.org.**