



STATEMENT RE: LC-80 ***(DUTY TO REPORT AND INTERVENE)***

To: Joint Committee on the First Special Session of 2020
From: Michael Selvaggio, Oregon Coalition of Police and Sheriffs
Date: June 22, 2020

Co-Chairs and Members of the Joint Committee:

For the record, my name is Michael Selvaggio, representing the Oregon Coalition of Police and Sheriffs (ORCOPS). I am speaking to LC 80, which requires law enforcement officers to report and intervene when they (presumably) witness another officer engaging in any act that is unethical or that violates law, rules or policy.

ORCOPS generally supports the notion that a law enforcement agency must have reasonable rules instructing officers to intervene and report when they see clearly excessive use of force. It is in our interest, and indeed the interest of all public safety officers, to continue to improve not only the integrity of ourselves and our units, but also to improve the culture surrounding law enforcement.

However, using DPSST as a “clearinghouse” for these policies creates several challenges, including that there is no mechanism outlined for how a complaint related to a failure to intervene that is received directly by a law enforcement agency would find its way to DPSST. More alarmingly, the bill in its current form is plagued with excessive vagueness, To wit:

- The phrase “that is unethical or that violates law, rules or policy” in LC 80 is hilariously broad. For example, DPSST would need to investigate whether a Portland officer failed to intervene when her partner officer forgot to provide a community member with his business card. An officer visiting a co-worker in Springfield and discovering that the co-worker keeps a pet snake would be required to report the violation of Springfield Municipal Code 5.476(1). This breadth would saddle DPSST with a tidal wave of low level issues.

- LC 80 also fails to ensure that the duty to intervene can only occur if the intervening officer sees or has direct knowledge of a problem. (Our members are well-trained, but often fall short of exhibiting omniscient tendencies!)

The primary goal of this legislation -- ensuring that an officer intervenes and reports clearly excessive force -- is best served through clear and practical instructions. Given the overbreadth and vagueness written into the existing draft, the law would undoubtedly face legal challenges.

Rather than setting such important policy via a rough sketch of a legislative mandate, we would recommend this bill should:

- Instruct each law enforcement agency in the State adopt a policy that requires an employee officer to intervene and report,

As an example, ORCOPS would support language, as follows, that would be required to be integrated into a law enforcement agency's policy manual:

An officer present and visually observing another officer using force that is clearly excessive under the law shall intervene and attempt to prevent or stop the use of excessive force, if it is safe and feasible to do so. An officer's duty to intervene will be reviewed under an objectively reasonable officer standard. An officer who visually observes another officer use force that is clearly excessive under the law shall promptly report those observations and actions to their immediate supervisor and record those observations and actions in an official report. The law enforcement agency shall investigate the matter consistent with its investigation policies and determine whether force was excessive under the law and whether the intervening officer acted in accordance with this provision.

There would also need to be some form of retaliation protection, given that officers may sometimes be required to intervene or report against their superiors.

- Require that an officer must follow such law enforcement agency policies under the threat of discipline up to and including termination, and
- Require that if an officer is terminated or otherwise separated from employment for failing to intervene, such officer's termination will be reported to DPSST consistent with current reporting requirements for officer terminations/separations.

ORCOPS would support such a result.

(In addition, we stand ready to support legislation conferring a similar “report and intervene” duty to Legislators and other elected officials with regard to ethics and campaign violations, if it is the Legislature’s desire to pursue such a policy.)