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## **0305.00, Active Bystandership, Intervention, and Anti-Retaliation**

*First Universal Review: 11/1/23 – 12/1/23*

### **Refer:**

- Oregon House Bill 4205 (Enrolled)
- City of Portland, Human Resources Administrative Rule 2.02, Prohibition Against Workplace Harassment, Discrimination, and Retaliation
- DIR 0240.00, Employee Assistance Program (EAP)
- DIR 0310.00, Professional Conduct and Courtesy
- DIR 0310.20, Discrimination, Harassment, and Retaliation Prohibited
- DIR 0315.30, Satisfactory Performance
- DIR 0330.00, Internal Affairs, Complaint Intake, and Processing
- DIR 0333.00, Criminal Investigations of Police Bureau Employees and Other Law Enforcement Agency Sworn Employees
- DIR 0335.00, Discipline Process
- DIR 0338.00, Discipline Guide
- DIR 0500.00 Portland Police Bureau Wellness Program (NEW)
- DIR 1010.00, Use of Force

### **Definitions:**

- **Active Bystandership:** Actively stepping forward, speaking up, and taking action to intervene to address harmful behavior and/or prevent harmful behavior from escalating.
- **Bystander:** A witnessing member who is in a position to know that there is a need for positive action and is in a position to safely take some form of action.
- **Passive Bystandership:** Failing to intervene by modeling inaction or passivity. Passive bystandership may discourage intervention by other members, or may appear to support the misconduct or harmful behavior.
- **Misconduct:** Conduct by a member that violates Bureau regulations, orders, directives, or other standards of conduct required of City employees.
- **Mitigating Factor:** A circumstance, fact, or influence that may reduce the level of corrective action or discipline recommended.
- **Retaliation:** Adverse conduct towards an individual, not otherwise authorized by law or policy, which is in response to an action taken or perceived to be taken by the individual. Conduct that would likely deter an individual from reporting or supporting a claim of harassment or discrimination may constitute retaliation.

### **About the Active Bystandership for Law Enforcement (ABLE) Project:**

Georgetown University Law Center’s “Innovative Policing Program” created ABLE Project as an innovative approach to tackling deep-rooted challenges in policing. The project includes

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wide-ranging strategies that emphasize community involvement and engagement, focused training, officer wellness, improving accountability, and consistency across police departments. The foundational pillars of the project are preventing misconduct, reducing mistakes, and promoting officer health and wellness. With these pillars as the focus, the project aims to give officers the tools to effectively intervene and create an institutional culture that supports and encourages peer intervention.

### **Policy:**

1. This policy establishes guidelines for members to comply with Bureau policy and state law regarding the duty to intervene, instructs members on intervention and active bystandership strategies and techniques, and outlines existing policies and procedures for intervening in and reporting misconduct.
2. The Portland Police Bureau recognizes the important role that peer-intervention and active bystandership play in reducing harm for both members, and the community. The Bureau further recognizes that member attempts at and receptiveness to intervention should be a potential mitigating factor in any resulting discipline proceeding, as long as accountability is achieved. As a result, the Bureau is committed to creating a culture of active bystandership and peer intervention, and following the ABLE Project standards.
3. The Bureau acknowledges that giving members the tools to identify potential warning signs and intervene is critical to community trust, harm reduction, and member wellness. The goal is for members to be proactive in identifying certain conduct before it escalates.
4. Integrity and accountability are key factors in creating institutional changes. Affirming its commitment to the ABLE Project’s objective centered on changing law enforcement culture, the Bureau will enhance its efforts to create a work environment that promotes active bystandership, accountability, encourages proactive intervention, and does not tolerate retaliation for intervention.

### **Procedure:**

#### **1. ABLE Program Principles.**

##### **1.1. Member Wellness.**

- 1.1.1. Wellness plays a critical role in a member’s ability to perform their duties at an optimal level.
- 1.1.2. Work-induced stress, sleep deprivation, and poor fitness habits, among other harmful practices, may have a negative impact on a member’s judgment and actions.
- 1.1.3. Fostering a culture of peer intervention and receptiveness to peer intervention promotes member wellness by potentially reducing member exposure to mistakes, misconduct, and the discipline process. Intervention may also reduce the occupational risks associated with law enforcement work, such as suicide and depression.

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1.1.4. Members may refer to Directives 0240.00, Employee Assistance Program (EAP), and 0500.00, Bureau Wellness Program (NEW), for guidance on accessing assistance resources and developing positive wellness practices.

## 1.2. Active Bystandership and Recognizing the Need to Intervene.

### 1.2.1. Notice.

1.2.1.1. Situational awareness applies to peer intervention. It refers to the conscious recognition or perception of an officer’s environment and the interaction of officers’ and community members’ individual and shared experiences, and the situational factors that influence behavior and decision-making. Having self-awareness and an awareness of others and the environment can help members recognize the need to intervene before misconduct occurs or to prevent harmful behavior from unreasonably escalating.

1.2.1.2. With an increased awareness, members may be able to recognize in themselves and other officers, physical and/or emotional indicators that suggest that a situation may escalate and require intervention.

1.2.1.3. Members should strive to be self-aware and mindful of others in an effort to recognize the need for intervention.

### 1.2.2. Decide.

1.2.2.1. Active bystandership requires recognizing when intervention may be necessary and being decisive and deliberate in your actions to intervene.

1.2.2.2. Intervention is necessary when the risk or cost of not intervening (e.g., escalating harmful behavior, safety issue, possibility of member or subject injury, etc.) outweighs the risk of intervening (e.g., member tension or discord.).

1.2.2.3. The Bureau shall prepare members to recognize the need for intervention and employ effective strategies to intervene, when appropriate or necessary.

### 1.2.3. Act.

1.2.3.1. Successful intervention requires members to act when it is safe and feasible to do so.

1.2.3.2. Opportunities for active bystandership may include, but are not limited to;

1.2.3.2.1. Members intervening before the harmful behavior or misconduct occurs. For example, when a member notices a change in a peer’s behavior, outside the context of an incident or call.

1.2.3.2.2. Members intervening when they witness harmful behavior or misconduct occurring. This may occur at the outset of the incident or if the member believes the harmful behavior has unreasonably escalated.

1.2.3.2.3. Members reporting harmful behavior or misconduct that they witnessed or of which they become aware.

1.2.3.3. The Bureau encourages members to act early when intervening. Members should endeavor to prevent harmful behavior and misconduct at the earliest intervention point when it is safe and reasonable to do so.

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1.2.3.4. Members are encouraged to assist members in addressing health and wellness concerns even where those concerns are not currently resulting in violating law or policy.

## 2. **Duty to Intervene.**

2.1. To protect the safety of the community, their colleagues, and themselves, members have a duty to intervene to prevent, mitigate, or stop another member from conduct they know, or reasonably should know, violates law or policy when:

2.1.1. They are in a position to know that there is a need for positive action; and

2.1.2. They are in a position to safely take some form of action.

2.2. This duty applies regardless of rank.

## 3. **Additional Member Intervention and Reporting Requirements as Established by Bureau Directives and State Law.**

3.1. Duty to Intervene and Report Misconduct as Required by Bureau Policy.

3.1.1. Pursuant to Directive 1010.00, Use of Force, members must intervene to prevent or stop what they know or reasonably should know to be unlawful or out-of-policy force, unless the member is unable to intervene safely.

3.1.2. Pursuant to Directive 0310.00, Professional Conduct and Courtesy, when a member becomes aware of an act of misconduct, they must report the act to a supervisor as soon as possible.

3.1.3. Pursuant to Directive 0333.00, Criminal Investigations of Police Bureau Employees and Other Law Enforcement Agency Sworn Employees, members must immediately notify a member in their chain of command, any Assistant Chief, the IA Captain, or the Independent Police Review when they receive a complaint of criminal conduct by another member or when they have knowledge of any criminal conduct by a member.

3.1.3.1. Any member who observes criminal conduct by another member has a duty to reasonably intervene if safe and feasible. After intervening, members shall immediately notify their supervisor or any individual listed in Section 3.1.3.

3.1.4. Members who fail to report member misconduct shall be subject to disciplinary or corrective action.

3.2. Duty to Intervene and Report as Required by State Law.

3.2.1. Pursuant to state law, sworn members shall intervene to prevent, mitigate, or stop other police officers the member knows or reasonably should know has engaged in any form of the following conduct, unless the intervening member cannot intervene safely:

3.2.1.1. Unjustified or excessive force that is objectively unreasonable under the circumstances or violates the offending officer’s agency’s use of force policy;

3.2.1.2. Sexual harassment or sexual misconduct;

3.2.1.3. Discriminating against a person based on race, color, religion, sex, sexual orientation, national origin, disability, or age;

3.2.1.4. Committing a crime; or

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- 3.2.1.5. Violating the minimum standards for physical, emotional, intellectual and moral fitness for public safety personnel established under ORS 181A.410. (i.e., conduct or qualities that would prevent a person from being certified as a police officer or would warrant their de-certification.)
  - 3.2.2. Sworn members shall intervene in this conduct without regard to the rank or assignment of the other police officer and without fear of retaliation.
  - 3.2.3. Bureau policy requires that members report all misconduct to a supervisor as soon as possible, despite the less restrictive state law requiring members to report the conduct described in 3.2.1.1. through 3.2.1.5. within 72 hours.
    - 3.2.3.1. Members should be aware that violating the state law could result in decertification as a police officer.
  - 3.2.4. Members shall report this conduct at all times, regardless of whether the member is on or off duty, regardless of whether the officer engaging in misconduct is on or off duty, regardless of whether the officer engaging in misconduct works for another agency, and regardless of whether the misconduct happens between members or between members and the public.
  - 3.2.5. Pursuant to state law, members who fail to intervene under the circumstances where intervention is required by law or fail to report that conduct shall be subject to disciplinary action.
- 4. Anti-Retaliation.**
- 4.1. The Bureau will not tolerate retaliation against members who intervene to prevent behavior or conduct described in this directive.
    - 4.1.1. No member shall punish, target, or otherwise ostracize another member for attempting to intervene or successfully intervening.
    - 4.1.2. Members shall act in accordance with Directive 310.20, Discrimination, Harassment, and Retaliation Prohibited.
  - 4.2. Reporting Retaliatory Behavior.
    - 4.2.1. Members shall report any retaliatory behavior they observe or of which they become aware, as soon as practical, in accordance with Directive 310.20, Discrimination, Harassment, and Retaliation Prohibited.
    - 4.2.2. Supervisors who observe or become aware of conduct that constitutes retaliation or a violation of Human Resources Administrative Rule 2.02, Prohibition Against Workplace Harassment, Discrimination, and Retaliation, shall notify the Bureau of Human Resources (BHR) as soon as practical, but no later than two working days after the incident.
  - 4.3. Investigating Retaliation Allegations.
    - 4.3.1. The Bureau shall fully investigate all allegations of retaliation in accordance with Directive 330.00, Internal Affairs, Complaint Intake, and Processing.

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**5. Potential Discipline Mitigation.**

5.1. Accepted member intervention that stops, prevents, or mitigates misconduct may be a potential mitigating factor when considering discipline.

**6. Supervisor Responsibilities.**

6.1. Supervisors who are notified of an act of misconduct, including a member’s failure to intervene, shall inform Internal Affairs as soon as practical and BHR when required.

**7. ABLÉ Program Coordinator Responsibilities.**

7.1. The ABLÉ Program Coordinator shall:

- 7.1.1. Facilitate the delivery of the ABLÉ program curriculum to all sworn members;
- 7.1.2. Incorporate the principles of active bystandership into relevant disciplines, including Patrol Procedures, Control Tactics, and Patrol Vehicle Operations;
- 7.1.3. Promote the program through regular internal and external communications and annual refresher training;
- 7.1.4. Coordinate with the Bureau’s Leadership, Wellness Program, EAP, Procedural Justice teams;
- 7.1.5. Make a reasonable effort to assist surrounding law enforcement agencies with ABLÉ program implementation; and
- 7.1.6. Report program status (e.g., number of officers trained) to the ABLÉ Project, as requested.

**8. ABLÉ Program Training.**

8.1. All sworn members will receive initial ABLÉ training and ongoing annual refresher training, consistent with the ABLÉ curriculum and standards.

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