



TEXAS HOUSE *of* REPRESENTATIVES

James White

*House District 19
Jasper, Newton, Hardin, Polk, Tyler*

CORRECTIONS
CHAIR

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Office of the Attorney General
Attention Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548
opinion.committee@oag.texas.gov

Attorney General Ken Paxton,

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“Duty to Intervene” is a policy approach that requires law enforcement officers to intervene to stop colleagues from using unreasonable force, i.e., violating a citizen’s constitutional and civil rights. Recently, the Dallas Police Department has adopted this policy.¹ Departmental strategies that hold law enforcement officers accountable are admirable, constructive, and productive. Many Texans are hopeful that all law enforcement agencies, local and state, will unanimously adopt these “duty to intervene” policies.

Texas peace officers in varying forms swear an oath to discharge their duties constitutionally. Our US Constitution² and Texas Constitution³ celebrates and enumerates a list of rights the citizens had before the drafting of these governing documents. The best the government can do is protect these rights. In fact, these governing documents place limits on government. If a Texas peace officer has no explicit or implicit duty to cite/intervene/report constitutional violations of the rights of citizens it seems that neither the U.S. or Texas Constitution is working as designed.

The Texas Code of Criminal Procedure provides an exhaustive list of Texas peace officers.⁴ However, there seems to be an assumption that since there is not *specific* state statutory guidance for one Texas peace officer to ascertain if another peace officer is violating the rights of a

¹ <https://www.npr.org/sections/live-updates-protests-for-racial-justice/2020/06/05/870414038/dallas-police-adopts-duty-to-intervene-policy-to-prevent-abuse>

² <https://www.archives.gov/founding-docs/constitution-transcript>

³ <https://statutes.capitol.texas.gov/Docs/CN/htm/CN.1.htm>

⁴ <https://statutes.capitol.texas.gov/Docs/CR/htm/CR.2.htm#2.12>



detainee. Thus, there is not a requirement of any Texas peace officer to guarantee any constitutional protections.

In Art. 2.13. of the Code of Criminal Procedure, a Texas peace officer has the duty “to preserve the peace within the officer’s jurisdiction.”⁵

Is preserving the peace consonant with a Texas peace officer intervening and stopping another Texas peace officer from violating the rights of a citizen?

Expressly, in subsection (b)(1) of Art 2.13 of the Code of Criminal Procedure, the “officer shall: . . . interfere without warrant to prevent or suppress crime.”⁶

Is violating the constitutional rights of a citizen a crime? If so, would subsection (b)(1) of Art 2.13 of the Code of Criminal Procedure direct a Texas peace officer to interfere and suppress a crime of violating a citizen’s constitutional rights by another peace officer?

Furthermore, the Texas Penal Code Section 39.03 (a)(1) strongly prohibits “a public servant acting under color of his office . . . intentionally subjects another to mistreatment or to arrest, detention, search, seizure, dispossession, assessment, or lien that he knows is unlawful.”⁷

Is a Texas peace officer, as listed in Art 2.12 of the Texas Code of Criminal Procedure a public servant? If no, please elaborate? Otherwise, if so, is mistreatment, in the Texas Penal Code Section 39.03 (a)(1), consistent with “cruel and unusual punishment prohibitions in both the federal and state constitutions? If so, Texas peace officers enforce the Penal Code. Does a Texas peace officer enforcement of this section of the Penal Code constitute intervening to stop the constitutional violation?

Is there a current duty to intervene and if so what is the punishment/sanction for a Texas peace officer, who fails to intervene and attempt to protect the federal and state constitutional rights of Texas citizens?

⁵ <https://statutes.capitol.texas.gov/Docs/CR/htm/CR.2.htm#2.13>

⁶ Ibid.

⁷ <https://statutes.capitol.texas.gov/Docs/PE/htm/PE.39.htm#39.03>



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Is there any constitutional/statutory duty or responsibility, explicit or implicit, that a Texas peace officer has to cite/intervene/report the violations of the constitutional rights of Texas citizens by another Texas peace officer. If no, could the Attorney General explain how a Texas peace officer would protect any citizen's constitutional rights?

In conclusion, I must reiterate that constitutionalism is a bedrock of our American and Texas political culture. Constitutionalism, that is, an enumeration of rights that are God-given, and that the people create a government to protect those rights. Moreover, constitutionalism limits government power. If we cannot expect executive branch government officials to intervene when other executive branch government officials are violating the constitutional rights of citizens why even have a constitution? Therefore, let's just frankly admit that we are a society of governed by the whims of men (that is, chaos) and not a society governed by laws (order).

For God & Texas!

James White
State Representative
House District 19

