

LAW ENFORCEMENT USE OF FORCE POLICIES

Phone: (517) 373-8080
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Senate Bill 1091 (S-2) as passed by the Senate
Sponsor: Sen. Stephanie Chang
House Committee: [Pending]
Senate Committee: Civil Rights, Judiciary, and Public Safety
Complete to 12-17-24

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

Senate Bill 1091 would create a new act requiring *law enforcement agencies* to adopt (or update) a policy to regulate the use of force by *law enforcement officers*.

Law enforcement agency would mean that term as defined in the Michigan Commission on Law Enforcement Standards (MCOLES) Act.¹

Law enforcement officer would mean that term as defined in the MCOLES Act.²

Beginning six months after the bill takes effect, each law enforcement agency in Michigan would have to adopt a written use of force policy consistent with all federal, state, and local laws that includes, at a minimum, all of the following provisions:

- A requirement that a law enforcement officer may only use physical force that is *objectively reasonable*.
- Standards, procedures, and considerations for all of the following:
 - Using physical force on an individual.
 - Issuing a verbal warning.
 - Using *deadly force* on an individual only when necessary to protect the law enforcement officer or another individual from an imminent threat of death or *serious bodily harm*.
 - Using other alternatives to the use of physical or deadly force and *de-escalation techniques*.
- A statement that the intentional use of physical force that continuously restricts air flow to the throat or windpipe of an individual constitutes deadly force if it creates a substantial risk of death or serious bodily harm to that individual.

Objectively reasonable would mean an inquiry as to whether the law enforcement officer's use of force is objectively reasonable in light of the facts and circumstances known to the officer, without regard to the officer's underlying intent or motivation. The reasonableness of a particular use of force by an officer would have to be judged from the perspective of a reasonable law enforcement officer on the scene, rather than with the 20/20 vision of hindsight, and would have to take

¹ See subdivision (e): <https://www.legislature.mi.gov/documents/mcl/pdf/mcl-28-602.pdf>

² See subdivision (f): <https://www.legislature.mi.gov/documents/mcl/pdf/mcl-28-602.pdf>

into consideration the fact that law enforcement officers are often forced to make split-second decisions in circumstances that are tense, uncertain, and rapidly evolving. This reasonableness inquiry would have to consider all of the following:

- The severity of the crime at issue.
- Whether the individual posed an immediate threat to the safety of the law enforcement officer or others.
- Whether the individual was actively resisting arrest or attempting to evade arrest by flight.
- Whether the individual was experiencing a medical emergency that rendered the individual incapable of making a rational decision under the circumstances that posed an immediate threat of serious harm to the law enforcement officer or others.
- Whether some degree of force by the law enforcement officer was reasonably necessary to ameliorate the immediate threat.
- Whether the force used was more than reasonably necessary under the circumstances.

Deadly force would mean any force that a reasonable law enforcement officer would objectively consider likely to create a substantial risk of death or serious bodily harm.

Serious bodily harm would mean a bodily injury that creates a substantial risk of death, permanent disfigurement, or permanent loss or impairment of any bodily limb or organ.

De-escalation technique would mean a range of integrated strategies and tactics used by a law enforcement officer to diffuse a potentially volatile or violent situation with the aim to reduce the immediacy of the threat and level of force required for resolution while ensuring the safety of the officer and public.

Law enforcement agencies could adopt use of force policies that exceed the requirements above or add additional requirements, and they would have to continuously review their policies and update them when necessary to ensure that they are consistent with case law. Agencies would also be required to make their use of force policies publicly available via their website (if available) or by posting them at the agency's physical location.

The bill would take effect 90 days after being enacted.

BACKGROUND:

Senate Bill 1091 is similar to House Bill 6117 of the current legislative session. These bills are modified versions of Senate Bill 481 of the 2021-22 legislative session, which was introduced as part of a 12-bill law enforcement package on the one-year anniversary of the murder of George Floyd, an unarmed African American man who was subjected to (and ultimately died as a result of) the use of force by a Minneapolis police officer during an

arrest in May 2020. Senate Bill 481 was considered by (but not reported from) the Senate Committee on Judiciary and Public Safety.

FISCAL IMPACT:

Senate Bill 1091 could have a minor fiscal impact on the state and local units of government, depending on the amount of administrative costs incurred by law enforcement agencies related to the creation of new use of force policies or the updating of existing policies to bring them into compliance with the provisions of the bill.

Fiscal Analyst: Aaron A. Meek

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.