

Legislative Analysis



LAW ENFORCEMENT OFFICER DUTY TO INTERVENE ACT

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<http://www.house.mi.gov/hfa>

House Bill 6119 as introduced
Sponsor: Rep. Abraham Aiyash
Committee: Criminal Justice
Complete to 12-10-24

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

SUMMARY:

House Bill 6119 would create a new act, the Law Enforcement Officer Duty to Intervene Act, which would require *law enforcement agencies* to adopt a duty to intervene policy to regulate the intervention of *law enforcement officers* in situations involving the use (or attempted use) of *excessive force*.

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

Excessive force would mean the use of force beyond what is *objectively reasonably* necessary, under the totality of the circumstances, to effectively gain control of a situation to protect the safety of the law enforcement officer or other individuals, or any other use of force that violates any of the following:

- The United States Constitution.
- The State Constitution of 1963.
- A federal or state law.
- A reasonable use of force policy of the employing law enforcement agency.

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 confronting 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 and take into consideration the fact that officers are often forced to make split-second decisions about the amount of force necessary in a particular situation.

Beginning six months after the bill's effective date, each law enforcement agency in Michigan would have to adopt a written duty to intervene policy that includes, at a minimum, all of the following provisions:

- A law enforcement officer who is present and visually observes another officer engaging in the use of excessive force against an individual must intervene as soon as it is safe and feasible to do so to end the use, prevent the use, or prevent the further use of excessive force.

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>

- A law enforcement officer who visually observes another officer use excessive force must report those observations and actions to that officer's immediate supervisor immediately or within 72 hours, whichever is feasible.
- A violation of the law enforcement agency's policy is grounds for disciplinary action, such as dismissal, demotion, suspension, or transfer, against a law enforcement officer.

Under the bill, law enforcement agencies could adopt duty to intervene policies that exceed the requirements above or add additional requirements. Agencies would have to provide a copy of the policy to all law enforcement officers in their employ.

The bill would take effect 90 days after being enacted.

BACKGROUND

House Bill 6119 is identical to Senate Bill 1093 of the current legislative session. These bills are modified versions of Senate Bill 967 of the 2019-20 legislative session (and its reintroduction, Senate Bill 480 of the 2021-22 legislative session) that include more specific minimum requirements for duty to intervene policies than the earlier bills. Senate Bill 967 was originally introduced in response to the May 2020 murder of George Floyd,³ an unarmed African American man who was subjected to, and ultimately died as a result of, the use of excessive force by a Minneapolis police officer during an arrest made for suspected use of a counterfeit twenty-dollar bill. The primary arresting officer knelt on Floyd's neck for over nine minutes, while two other officers assisted with restraining him and a fourth officer prevented bystanders from intervening. Two of the officers were later found guilty by a federal jury of failing to intervene to stop the primary officer from using unreasonable force. Senate Bills 967 and 480 were both considered by (but not reported from) the Senate Committee on Judiciary and Public Safety.

FISCAL IMPACT:

House Bill 6119 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 duty to intervene policies or the updating of existing policies to bring them into compliance with the provisions of the bill.

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■ 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.

³ <https://www.senatorruthjohnson.com/sen-ruth-johnson-introduces-law-enforcement-officer-duty-to-intervene-act/>