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Senate Bill 1091 (as introduced 11-13-24)
Sponsor: Senator Stephanie Chang
Committee: Civil Rights, Judiciary, and Public Safety

Date Completed: 12-3-24

CONTENT

The bill would enact a new law to do the following:

- **Require each law enforcement agency to adopt a use of force policy and prescribe requirements of the policy, beginning six months after the bill's effective date.**
- **Require each law enforcement agency to review and update its use of force policy to comply with the bill and case law precedent.**
- **Require each law enforcement agency to make its use of force policy publicly available.**

Definitions

"Law enforcement agency" would mean an entity that is established and maintained in accordance with the State law and is authorized by the State to appoint or employ law enforcement officers. The term would include a public body corporate that satisfied the following conditions:

- Was established and maintained as a separate legal entity pursuant to an interlocal agreement under the Urban Cooperation Act between a city that was authorized by State law to appoint or employ law enforcement officers and an authority under the Metropolitan Transportation Authorities Act.¹
- Was authorized by State law to appoint or employ law enforcement officers.

"Law enforcement officer" would mean that term as defined in the Michigan Commission on Law Enforcement Officers Act (see **BACKGROUND**).

"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 law enforcement officer, without regard to the law enforcement officer's underlying intent or motivation. For purposes of this definition, the reasonableness of a particular use of force by a law enforcement 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 consider the fact that law enforcement officers are often forced to make split-second decisions in circumstances that are tense, uncertain, and rapidly evolving. An inquiry would have to consider 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

¹ Generally, the Urban Cooperation Act and the Metropolitan Transportation Authorities Act govern standards for agreements between interlocal public agencies and govern metropolitan transportation authorities, respectively.

experiencing a medical emergency that rendered the individual incapable of making a rational decision under 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; and 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 substantial risk of death or serious bodily harm. "Serious bodily harm" would mean any bodily injury that creates a substantial risk of death, permanent disfigurement, or permanent loss of 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 of reducing the immediacy of the threat and level of force required for resolution while ensuring the safety of the law enforcement officer and the public.

Use of Force Policy

Beginning six months after the bill's effective date, each law enforcement agency would have to adopt a use of force policy. The policy would have to be consistent with all applicable Federal, State, and local laws and include the following minimum standards:

- A requirement that a law enforcement officer could only use physical force that was objectively reasonable.
- A statement that the use of physical force that restricted air or blood flow to the throat or windpipe of an individual would constitute deadly force.

Additionally, the policy would have to include standards, procedures, and considerations for all the following:

- Using physical force on an individual.
- Issuing a verbal warning.
- Using deadly force on an individual only when the use of deadly force was necessary to protect the law enforcement officer or other individual from imminent threat of death or serious bodily harm.
- Using other alternatives to the use of physical or deadly force and de-escalation techniques.

The bill would not prohibit a law enforcement agency from adopting a policy that exceeded the law's requirements.

Each law enforcement agency would have to continuously review, and when necessary, update its policy to ensure that its updated policy complied with the law and was consistent with case law precedent. Also, each agency would have to make its use of force policy publicly available by posting it on the agency's website, if available, or posting it at the agency's physical location.

BACKGROUND

Under the Michigan Commission on Law Enforcement Standards Act, the term "law enforcement officer" broadly refers to an individual employed by a law enforcement agency with the authority to prevent and detect crime and to enforce State laws. The term encompasses a range of positions, including the following:

- State, Tribal, and Legislative officers.
- Specialized and local officers, such as conservation officers, township constables, marshals, park rangers, police officers, and officers appointed by certain local governments.
- University and educational officers, including public safety officers employed by community colleges, universities, and certain authorized institutions.
- Public transportation officers, such as transit and railroad police and airport security.
- Certain investigators, including Medicaid fraud investigators, highway reciprocity board officers, fire arson investigators, and prosecuting attorneys' investigators.

Under the Act, certain individuals, although involved with security or enforcement, are not considered law enforcement officers under the definition, including citation issuers, Michigan Department of Agricultural and Rural Development personnel with limited peace officer authority, certain non-licensed or volunteer officers, railroad conductors, and other inspectors and agents with limited authority.

Legislative Analyst: Eleni Lionas

FISCAL IMPACT

The bill would have a moderate fiscal impact on State and local law enforcement, as it would require law enforcement agencies (which would include conservation officers as well as police) to develop policies and procedures on the use of force, following standards prescribed in the bill. Developing procedures and use-of-force policies could result in additional administrative and in-house training costs for State and local law enforcement agencies, and for the Michigan Commission on Law Enforcement Standards to develop training curricula that reflected the bill's requirements, at a cost that cannot be determined at this time.

The bill would have a small negative fiscal impact on local units of government as it would require local law enforcement agencies to adopt use of force policies and continually review them. The negative fiscal impact would be in terms of additional administrative labor to create and review these policies and the potential cost of training officers on the new policies.

Fiscal Analyst: Bruce R. Baker
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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.