Legislative Analysis

LAW ENFORCEMENT OFFICERS:
REQUIRE ADDITIONAL TRAINING

Senate Bill 945 (S-1) as passed by the Senate
Sponsor: Sen. Jeff Irwin

House Bill 5837 as introduced
Sponsor: Rep. Ronnie D. Peterson

House Committee: Judiciary
Senate Committee (SB 945): Judiciary and Public Safety
Complete to 6-10-20

SUMMARY:

Senate Bill 945 and House Bill 5837 would amend the Michigan Commission on Law Enforcement Standards Act to require individuals who are licensed or seeking licensure as law enforcement officers to complete training that includes de-escalation techniques, implicit bias training, procedural justice training, and mental health resources and support for law enforcement officers. The requirement would begin January 1, 2022. In addition, SB 945 would establish continuing education requirements for all licensed law enforcement officers. HB 5837 would require the Department of Attorney General to provide guidance to law enforcement agencies regarding compliance with the bills' requirements, collect data regarding implementation of training programs, and report the data annually to the legislature.

The bills, which are almost identical, would each add a new section to the act to require the Michigan Commission on Law Enforcement Standards (MCOLES) to promulgate rules, not later than September 1, 2021, establishing minimum standards for training in all of the following areas:
- De-escalation techniques.
- Implicit bias training.
- Procedural justice training.
- Mental health resources and support available for law enforcement officers.

De-escalation techniques would mean a method or methods for assessing and managing a situation in order to resolve it with the least use of force that is safe and practicable by a law enforcement officer.

Implicit bias training would mean an evidence-based program to provide fair and impartial law enforcement by increasing awareness of and improving response strategies to unconscious bias.

Procedural justice training would mean a system of law enforcement that prioritizes legitimacy over deterrence in obtaining citizen compliance with law

enforcement directions and emphasizes fair process and respectful two-way communication conveying the rationale behind directions given by a law enforcement officer to a citizen.

Beginning January 1, 2022, all law enforcement officers who are licensed under the act, and all individuals seeking to be licensed under the act, would have to complete training that meets the minimum standards described above. The bills also would apply to tribal officers, fire arson investigators, and private college security officers. An officer licensed on December 31, 2021, who had not previously completed training that meets the bills' minimum standards would have to do so. The bills would not apply to an individual elected or appointed as a sheriff.

De-escalation techniques minimum standards
The minimum standards for de-escalation techniques would have to include all of the following:
- Use of alternative nonlethal methods of applying force and techniques that prevent an officer from escalating situations where force is likely to be used.
- Verbal and physical tactics to minimize the need for the use of force, emphasizing communication, negotiation, de-escalation techniques, and providing the time needed to resolve an incident safely for each individual involved.
- Use of the lowest level of force that is a possible and safe response to an identified threat and reevaluation of an identified threat as it progresses.
- Techniques providing officers with awareness and recognition of physical and mental disabilities, mental health issues, and substance abuse issues with an emphasis on communication strategies, and training officers simultaneously in teams on de-escalation and use of force to improve group dynamics and diminish excessive use of force during critical incidents.
- Principles of using distance, cover, and time when approaching and managing critical incidents, and elimination of other techniques in favor of using distance and cover to create a reaction gap (the minimum amount of distance necessary to ensure that a law enforcement officer is able to react appropriately to a potential threat).
- Crisis intervention strategies to appropriately identify and respond to an individual suffering from physical or mental disabilities, mental health issues, or substance abuse issues, with an emphasis on de-escalation techniques and promoting effective communication.
- Other evidence-based approaches, found to be appropriate by MCOLES, that enhance de-escalation techniques and skills.

Meeting the minimum standards
Individuals seeking to become a licensed law enforcement officer under the act, or who already are licensed, could meet the minimum standards for implicit bias training by completing an implicit bias training course offered by the U.S. Department of Justice.

Not later than January 1, 2022, each law enforcement agency would have to adopt a written policy stating that each officer in its employ has an affirmative duty to utilize de-escalation techniques in his or her interactions with citizens whenever possible. MCOLES would have

to make a model written policy available on its website, adoption of which would satisfy the requirement to adopt a written policy.

Continuing education (SB 945)
Senate Bill 945 would add a new section to require, subject to appropriation, a licensed officer to complete not less than 12 hours of continuing education in subjects related to law enforcement on or after January 1, 2022, and before January 1, 2023, and to complete not less than 24 hours of continuing education annually thereafter. MCOLES would have to promulgate rules to implement the continuing education requirement.

Attorney general duties (HB 5837)
House Bill 5837 would require that, not later than November 30, 2021, the Department of the Attorney General provide written guidelines to law enforcement agencies employing officers under section 9, 9b, 9c, or 9d of the act with regard to compliance with the minimum standards described in the bill. (The sections cited respectively pertain to law enforcement officers, tribal officers, fire arson investigators, and private college security officers.)

The department would also be required to collect data regarding the implementation of training programs under the bill and provide an annual report to the legislature describing the data.

MCL 28.609 et seq.

FISCAL IMPACT:

Senate Bill 945 would have significant fiscal implications for the Department of State Police (MSP), other law enforcement agencies (including county and local law enforcement), and law enforcement training entities. Primary responsibility for implementing the provisions of the bill would be vested in MCOLES, housed within MSP. Given historical funding levels and pressures on MCOLES funding and staffing (including declining revenues from the Michigan Justice Training Fund), MCOLES would face significant obstacles in implementing this bill without additional appropriations. It should be noted that the bill stipulates that continuing education requirements for licensed law enforcement officers would be subject to appropriation. The Fiscal Year 2020 appropriation for MCOLES totals approximately $11.0 million Gross ($1.3 million GF/GP). An initial estimate from MCOLES projects at least four additional staff members would be required to implement and maintain the bill's provisions (including an In-Service Curriculum Developer, Behavioral Health and Services Developer, Agency Inspector, and Mandatory Training Analyst), at a cost of approximately $562,000 annually. Factoring in other recurring costs (DTMB IT Charges, Telecom, etc.), the department estimates the bill would require expenditures of $1.68 million annually. One-time costs would also be incurred, with the department initially estimating an expenditure of approximately $513,000. The department estimates that in-service training under the bill would cost $11.4 million in FY 2022 and $22.8 million in FY 2023, with future fiscal years requiring an expenditure of similar magnitude. This amount was estimated based on a training cost of

$50/hour with a total officer population of 19,000. The distribution of costs for training between the state and local funding units is presently indeterminate.

House Bill 5837 would have a significant, but presently indeterminate, fiscal impact on MSP, other law enforcement agencies (including county and local law enforcement), and law enforcement training entities. Responsibility for implementation of the bill would be vested in MCOLES. Given historical funding levels and pressures on MCOLES funding and staffing (including declining revenues from the Michigan Justice Training Fund), MCOLES would likely require additional appropriations of indeterminate magnitude to implement the bill. The Fiscal Year 2020 appropriation for MCOLES totals approximately $11.0 million Gross ($1.3 million GF/GP). Costs for other units are presently indeterminate.

The bill may result in marginal technology and administrative costs to the Department of Attorney General (AG). The bill would require the AG to collect data regarding the implementation of training programs required under the bill and to submit a report on this data. If the AG cannot accommodate the data compilation and reporting requirements of the bill with existing personnel, it may incur the costs of additional personnel resources.

The AG reports that if it is required to compile data from its own resources, it may require 0.5 to 1.0 FTE position, but if it can utilize data compiled by MCOLES, it may only require 0.25 to 0.5 FTE position. Furthermore, the AG reported that the cost for additional resources would be $50,000 for 0.25 FTE, $100,000 for 0.5 FTE, and $200,000 for 1.0 FTE. This is equivalent to the cost of an additional attorney FTE position. The average annual classified FTE cost for the State of Michigan is approximately $110,000.

Legislative Analyst: Susan Stutzky
Fiscal Analysts: Marcus Coffin
Michael Cnossen