Senate Fiscal Agency
P.O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 1093 (as introduced 11-13-24)
Sponsor: Senator Ruth Johnson
Committee: Civil Rights, Judiciary, and Public Safety

Date Completed: 12-3-24

CONTENT

The bill would enact the "Law Enforcement Officer Duty to Intervene Act" to require each law enforcement agency to adopt a duty to intervene policy and require agencies to provide a copy of the policy to their employees. The Act would prescribe minimum standards for the policy.

"Law enforcement agency" would mean an entity that is established and maintained in accordance with 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**).

Beginning six months after the Act's effective date, each law enforcement agency in the State would have to adopt a written duty to intervene policy. The policy would have to include the following minimum standards:

-- That a law enforcement officer acting in the course of duty as a law enforcement officer who was present and visually observed another law enforcement officer engaging in the use of excessive force against an individual would have to intervene when in a position and as soon as it was safe and feasible to do so to end or prevent the use or further use of excessive force.
-- That a law enforcement officer acting in the course of duty as a law enforcement officer who visually observed another law enforcement officer use excessive force would have to report those observations and actions to the immediate supervisor of the law enforcement officer who used excessive force immediately or within 72 hours after the date the law enforcement officer observed the use of excessive force by another law enforcement officer, whichever was feasible.
-- That a violation of the policy would be grounds for disciplinary action against the law enforcement officer, including dismissal, demotion, suspension, or transfer of the law enforcement officer.

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[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.

"Excessive force" would mean 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 the United States Constitution, the State Constitution, a Federal or State law, or 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 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, and its calculus would have to embody an allowance for the fact that law enforcement officers are often forced to make split-second decisions about the amount of force necessary in a particular situation.

Each law enforcement agency would have to provide a copy of its policy to the law enforcement officers it employed.

Additionally, the Act would not prohibit a law enforcement agency from adopting a policy that exceeded the Act's requirements or that added additional requirements.

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 attorney's 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 negligible fiscal impact on State and local law enforcement agencies, requiring them to develop "duty to intervene" policies that contain certain procedural requirements proposed under the bill.

Fiscal Analyst: Bruce R. Baker