

Legislative Analysis



LAW ENFORCEMENT OFFICERS: REQUIRE ADDITIONAL TRAINING

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

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

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

House Bill 5837 (proposed substitute H-1)
Sponsor: Rep. Ronnie D. Peterson

House Committee: Judiciary
Senate Committee (SB 945): Judiciary and Public Safety
Complete to 6-24-20

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. (HB 5837 specifies that the requirement would be subject to appropriations.) The requirement would begin January 1, 2022. In addition, the bills would establish continuing education requirements for all licensed law enforcement officers.

Senate Bill 945 would 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 standards for training in all of the following areas, and House Bill 5837 would require, not later than December 31, 2021, and subject to appropriation, that MCOLES conduct or contract for research and analysis to identify training gaps and begin to adapt, adopt, or develop curriculum standards for training in the following areas or areas MCOLES determines to be substantially similar:

- De-escalation techniques.
- Implicit bias training.
- Procedural justice training.
- Mental health resources and support available for law enforcement officers.

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 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 (or, under HB 5837, June 1, 2022), who had not previously completed training that meets the bills' standards would have to do so. The bills would not apply to an individual elected or appointed as a sheriff.

The de-escalation techniques standards would differ between the two bills. Under Senate Bill 945, 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.

Under House Bill 5837, the curriculum standards for training on de-escalation techniques could include any of the following:

- The employment of verbal and physical tactics to diffuse [**Note:** defuse?] volatile or potentially violent situations, including when they are safe and feasible, with an emphasis on using communication, negotiation, and de-escalation techniques.
- The level of force that is an objectively reasonable response to an identified and articulable threat or resistance that is based on information available at the time of the incident and that requires constant reevaluation as circumstances dictate and allow.
- Training that provides law enforcement officers with awareness and recognition of indicators of physical and mental disabilities, mental health issues, developmental disabilities, and substance abuse issues with an emphasis on effective communication and de-escalation techniques.
- As appropriate with the nature and immediacy of the threat to public safety, the use of distance, cover, and time when approaching and managing critical incidents, in order to help create a safety zone between the law enforcement officer and subject, to afford the officer more time to react to the circumstances.
- A law enforcement officer's responsibility to intervene in a situation if another law enforcement officer's actions indicate that officer has lost self-control or use of force is not objectively reasonable to the level of resistance encountered.

- Other evidence-based approaches, found to be appropriate by MCOLES, that enhance de-escalation techniques and skills.

Meeting the standards

Individuals seeking to become a licensed law enforcement officer under the act, or who already are licensed, could meet the standards for implicit bias training by completing an implicit bias training course offered by the U.S. Department of Justice (SB 945) or a course approved by MCOLES (5837).

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 (SB 945). HB 5837 would require the written policy to state that each officer utilize de-escalation techniques in his or her interactions with citizens to the extent that is as reasonable and safe as 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

The bills 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.

Definitions

Each of the bills define the following terms, albeit slightly differently: “de-escalation technique,” “implicit bias training,” and “procedural justice training.”

Senate Bill 945 would add a definition for “reaction gap,” whereas House Bill 5837 would define “training gap.” House Bill 5837 would also add a definition for “curriculum.”

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.

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Legislative Analyst: Susan Stutzky
Fiscal Analyst: Marcus Coffin

■ 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.