

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

BILL: CS/SB 1970

INTRODUCER: Criminal Justice Committee and Senator Pizzo and others

SUBJECT: Law Enforcement Reform

DATE: March 23, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Jones</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Dale</u>	<u>Harkness</u>	<u>ACJ</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1970 makes the following changes to training and practices:

- Includes a declaration of an important state interest.
- Limits use of restraint techniques that require the application of pressure to the neck, throat, esophagus, trachea, or carotid arteries alongside the trachea to those situations in which deadly force is authorized.
- Requires the Criminal Justice Standards and Training Commission (CJSTC) to:
 - Provide data to the National Decertification Index on final commission orders regarding revocation or relinquishment of certification of law enforcement officers, correctional officers, and correctional probation officers;
 - Establish and maintain standards for instruction of officers in the subjects of de-escalation techniques, procedural justice training, implicit bias training, and the duty to intervene if another officer uses excessive or unnecessary force;
 - Specify what must be included in the minimum standards for de-escalation training;
 - Provide written guidance to law enforcement agencies on compliance with minimum standards relating to de-escalation training;
 - Create a model written policy on de-escalation training; and
 - Collect data regarding the implementation of training programs and annually report such data to the Legislature (as specified in bill).
- Requires that law enforcement agencies adopt a written policy stating that each of the law enforcement officers in its employ has an affirmative duty to use de-escalation techniques in his or her interactions with citizens whenever possible.

- Requires that de-escalation techniques and other specified aspects of law enforcement be addressed in the state law enforcement accreditation program.
- Requires de-escalation training in basic recruit training and continued employment training.

The bill contains numerous training requirements and other requirements that may impact local law enforcement agencies. These requirements may cause county and municipal governments to spend funds. The impact of the bill on local governments is indeterminate.

The Florida Department of Law Enforcement (FDLE) states that development of the training curricula will cost approximately \$12,648 and the bill will require technological modifications totaling approximately \$37,000. See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2022.

II. Present Situation:

“The killing of George Floyd in Minneapolis has prompted police departments around Florida to review their policies, procedures and training.”¹ A 2017 workgroup of the CJSTC noted that “[o]ne of the biggest challenges in law enforcement today involves strengthening the bonds of trust between law enforcement officers and the communities they serve.”² “The relationship between communities and their law enforcement agencies are often characterized by varying degrees of suspicion and mistrust. Over time, that contributes to cynicism in both groups and creates barriers to good faith cooperation.”³

There are numerous measures that police agencies are taking to improve law enforcement-community relations and enhance the effectiveness of policing, including, but not limited to, standards and training on limiting the use of chokeholds and neck restraints, a duty of an officer to intervene when the officer witnesses another officer using excessive force, de-escalation techniques, mental health issues, procedural justice, and implicit bias.

Training Requirements for Florida Law Enforcement Officers

In compliance with s. 943.13, F.S., applicants must complete the 770-hour law enforcement basic recruit training program to meet the qualifications for becoming a certified law enforcement officer. The FDLE provided the following information regarding basic recruit training on subjects addressed in the bill:

The law enforcement basic recruit training curriculum incorporates training on implicit bias, de-escalation, procedural justice, crisis intervention with individuals suffering from

¹ Amy Martinez, Florida police departments review policies, procedures and training (Nov. 25, 2020), Florida Trend, available at <https://www.floridatrend.com/article/30313/florida-police-departments-review-policies-procedures-and-training>

² *Strengthening the Bonds of Trust between Law Enforcement and the Public* (Community Safety Recommendations) (May 11, 2017), Florida Criminal Justice Standards and Training Commission (CJSTC), available at https://www.fdle.state.fl.us/CJSTC/Documents/Publications/Community_Safety_Report_Adopt_May_11_17.aspx (last visited March 10, 2021). This report is further cited as “CJSTC report (May 11, 2017).”

³ As Volusia County Sheriff Mike Chitwood noted, “[w]e’re not the Marines. We’re not at war with our community. The overwhelming majority of the people we come into contact with are law-abiding citizens[.]” See footnote 1, *supra*.

physical or mental disabilities and recognition of individuals with physical and mental disabilities, mental health issues, and substance abuse issues. The training may be threaded through the curriculum as opposed to a specific course within the curriculum.

Currently, most of the training required in the bill is included in the basic recruit training programs (BRTPs), especially law enforcement BRTP. For instance, use of force, de-escalation, diversity and mental health/crisis intervention are covered, but duty to intervene is not. Additionally, the law enforcement BRTP is not broken down by lesson hours. Therefore, it's not possible to pinpoint how many hours are devoted to specific topics, as they are threaded throughout the BRTP and within the scenario-based role play and communication exercises....⁴

According to the FDLE, CJSTC staff surveyed the state's training centers and was provided the following range/breakdown of hours included in the law enforcement BRTP for use of force, de-escalation, diversity and mental health/crisis intervention:

- Use of Force: 26-152 hours.
- De-escalation: 22-90 hours.
- Diversity: 15-101 hours.
- Mental Health/Crisis Intervention: 6-78 hours.⁵

The FDLE also provided the following information on continued employment training:

In addition, in order to maintain their certification, law enforcement officers must satisfy the continuing training and education requirements of s. 943.135, F.S. This statute requires officers, as a condition of continued employment or appointment, to receive continuing training or education at the rate of 40 hours every four years. The employing agency must document continuing training or education is job-related and consistent with the needs of the employing agency and report completion to CJSTC through the Automated Training Management System (ATMS).⁶

Additional information on training is provided in the discussion below of subject matter addressed by the bill.

Chokeholds and Neck Restraints

The case of George Floyd focused national attention on the use of chokeholds and neck restraints and the duty on an officer to intervene when the officer witnesses another officer using excessive force. Mr. Floyd, a resident of Minneapolis, was arrested and restrained by a Minneapolis police officer named Derek Chauvin. According to news reports, for nearly nine minutes and despite Mr. Floyd repeatedly complaining that he could not breathe, Officer Chauvin pinned Mr. Floyd's head to the ground by pressing his knee to the side of Mr. Floyd's neck. It was also reported that three other Minneapolis police officers at the scene who witnessed the neck restraint did not

⁴ 2021 FDLE Legislative Bill Analysis (SB 1970) (March 8, 2021), Florida Department of Law Enforcement (on file with the Senate Committee on Criminal Justice). This analysis is further cited as "2021 FDLE Legislative Bill Analysis (SB 1970)."

⁵ *Id.* "This information is based on the current 2020 law enforcement BRTP. The 2021 law enforcement BRTP, effective July 1, 2021, includes additional training on these topics." *Id.*

⁶ *Id.*

intervene to stop it. Mr. Floyd's death was assessed to be a homicide and Officer Chauvin and the witnessing officers were charged.⁷

There is a dispute over whether Minneapolis police officers were trained in the knee-to-neck technique used on Mr. Floyd,⁸ but some law enforcement experts consider the technique to be dangerous and unnecessary⁹ and some police departments have banned its use.⁹

The FDLE states that "CJSTC considers excessive use of force as a moral character violation and can discipline an officer's certification for a sustained violation, including the use of any technique if the use of that technique is deemed to be excessive by the officer's employing agency."¹⁰

Use of Force

Section 776.05, F.S., provides that a law enforcement officer need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. The officer is justified in the use of any force:

- Which he or she reasonably believes to be necessary to defend himself or herself or another from bodily harm while making the arrest;
- When necessarily committed in retaking felons who have escaped;¹¹ or
- When necessarily committed in arresting felons fleeing from justice. However, this does not constitute a defense in any civil action for damages brought for the wrongful use of deadly force unless the use of deadly force¹² was necessary to prevent the arrest from being defeated by such flight and, when feasible, some warning had been given, and:

⁷ See, e.g., *Timeline: Key events in the month since George Floyd's death* (June 25, 2020), Reuters, available at <https://www.reuters.com/article/us-minneapolis-police-usa-onemonth-timel/timeline-key-events-in-the-month-since-george-floyds-death-idUSKBN23W1NR> (last visited March 10, 2021) and Amir Vera, *Independent autopsy and Minnesota officials say George Floyd's death was homicide* (June 2, 2020), CNN, available at <https://www.cnn.com/2020/06/01/us/george-floyd-independent-autopsy/index.html> (last visited March 10, 2021).

⁸ Gregory Hoyt, *Report: Minneapolis Police Department training materials show knee-to-neck restraint similar to the one used on Floyd* (July 9, 2020), Law Enforcement Today, available at <https://www.lawenforcementtoday.com/former-officer-in-floyd-case-cites-mpd-training-on-neck-restraints/> (last visited March 10, 2021).

⁹ Scottie Andrew, *The move used to restrain George Floyd is discouraged by most police. Here's why* (May 29, 2020), CNN, available at <https://www.cnn.com/2020/05/28/us/george-floyd-knee-to-neck-excessive-force-trnd/index.html> (last visited March 10, 2021).

¹⁰ *2021 FDLE Legislative Bill Analysis* (SB 1970), *supra*.

¹¹ See s. 776.07, F.S., which provides that a law enforcement officer or other person who has an arrested person in his or her custody is justified in the use of any force which he or she reasonably believes to be necessary to prevent the escape of the arrested person from custody. The statute further provides that a correctional officer or other law enforcement officer is justified in the use of force, including deadly force, which he or she reasonably believes to be necessary to prevent the escape from a penal institution of a person whom the officer reasonably believes to be lawfully detained in such institution under sentence for an offense or awaiting trial or commitment for an offense.

¹² As applied to a law enforcement officer or correctional officer acting in the performance of his or her official duties, the term "deadly force" means force that is likely to cause death or great bodily harm and includes, but is not limited to: the firing of a firearm in the direction of the person to be arrested, even though no intent exists to kill or inflict great bodily harm; and the firing of a firearm at a vehicle in which the person to be arrested is riding. Section 776.06(1), F.S. "Deadly force" does not include the discharge of a firearm by a law enforcement officer or correctional officer during and within the scope of his or her official duties which is loaded with a "less-lethal munition" (a projectile that is designed to stun, temporarily incapacitate, or cause temporary discomfort to a person without penetrating the person's body). Section 776.06(2)(a), F.S. A

- The officer reasonably believes that the fleeing felon poses a threat of death or serious physical harm to the officer or others; or
- The officer reasonably believes that the fleeing felon has committed a crime involving the infliction or threatened infliction of serious physical harm to another person.¹³

An excessive force claim under 42 U.S.C. s. 1983¹⁴ which “arises in the context of an arrest or investigatory stop of a free citizen ... is most properly characterized as one invoking the protections of the Fourth Amendment.”¹⁵ An “objective reasonableness” standard is used, the “proper application” of which “requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.”¹⁶ “The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.”¹⁷ “The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.”¹⁸

According to the FDLE, training on use of force is interwoven into the following curricula:

Basic Recruit Training

- Legal (64-hour course)
 - Contains all of the legal terminology related to use of force;
 - Firearms (80-hour course);
 - Contains a section on making use-of-force decisions;
 - Defensive tactics (80-hour course); and
 - Contains a section on making use-of-force decisions.
- Conducted Electrical Weapon/Dart-Firing Stun Gun (8-hour course)
 - Contains a section on making use-of-force decisions.
- Traffic Stops (30-hour course)
 - Discusses discriminatory profiling and how to interact with drivers.

law enforcement officer is not liable in any civil or criminal action arising out of the use of any less-lethal munition in good faith during and within the scope of his or her official duties. Section 776.06(2)(b), F.S.

¹³ Section 776.05, F.S. Law enforcement officers are also “eligible to assert Stand Your Ground immunity, even when the use of force occurred in the course of making a lawful arrest.” See *State v. Peraza*, 259 So.3d 728, 733 (Fla. 2018), discussing ss. 776.012 and 776.032(1), F.S.

¹⁴ “Section 1983 provides an individual the right to sue state government employees and others acting ‘under color of state law’ for civil rights violations. Section 1983 does not provide civil rights; it is a means to enforce civil rights that already exist.” *Civil Rights in the United States*, Law Library, Univ. of Minn. Law School, available at <https://libguides.law.umn.edu/c.php?g=125765&p=2893387#:~:text=Section%201983%20provides%20an%20individual,civil%20rights%20that%20already%20exist> (last visited March 10, 2021).

¹⁵ *Graham v. Connor*, 490 U.S. 386, 394 (1989).

¹⁶ *Id.* at 396 (citation omitted).

¹⁷ *Id.*

¹⁸ *Id.* at 396-397.

Post-Basic Training

- Defensive Tactics Instructor Course (Instructor course #802) (80-hour course). This course is divided into 6 units:
 - The role of the instructor in teaching use of force;
 - Decision-making;
 - Levels of resistance;
 - De-escalation;
 - Use-of-force guidelines; and
 - Legal issues around use of force.
- Advanced Defensive Tactics Course (Advanced course #1405). This course contains information regarding:
 - The use of reasonable and necessary force when taking a suspect into custody, when working in a correctional environment, or when defending self or others;
 - Objective reasonableness;
 - Authority to use force;
 - Structure of the force guidelines;
 - Subject resistance levels;
 - Officer response options;
 - Factors for deciding to use deadly force; and
 - Totality of circumstances.
- Advanced Report Writing and Review (Advanced course #068). It is estimated that 3 hours of this 40-hour course covers the use of force. This course contains:
 - Writing a use-of-force report;
 - Factors of the *Graham v. Connor* case related to the use of force;
 - Factors that help an officer articulate a reasonable response to resistance;
 - The difference between the use of specific facts and vague conclusions when articulating force;
 - The importance of an accurate use-of-force report; and
 - Writing an accurate and complete use-of-force report.
- Line Supervision (Advanced course #006). It is estimated that 2 hours of this 80-hour course cover the use of force. This course discusses:
 - Officers must follow their department's use-of-force policy;
 - The potential liability associated with use-of-force incidents;
 - An officer's response should be objectively reasonable and necessary based upon the subject's resistance and the totality of the circumstances;
 - Section 776.05, F.S.—Law enforcement officers; use of force in making an arrest;
 - Section 944.35, F.S.—Authorized use of force (corrections); and
 - A review of the CJSTC force guidelines.
- Discipline and Special Confinement Techniques (Advanced course #057). It is estimated that 4 hours of this 40-hour course covers the use-of-force topic. The course discusses:
 - Use of force as legal guidelines regarding the use of force to apprehend a suspect, make an arrest, or defend self or others;
 - Statutes, rules, and policies and procedures which relate to the use of force within county and state correctional facilities;
 - Guidelines for handling violent inmates as per s. 944.35, F.S.; and

- Procedures for reporting use of physical force in state, county, and municipal correctional facilities.¹⁹

Duty to Intervene

Florida law does not specify that a law enforcement officer has a duty to intervene when the officer witnesses another officer using excessive force. However, “an officer who is present at the scene and who fails to take reasonable steps to protect the victim of another officer’s use of excessive force, can be held liable [under 42 U.S.C. s. 1983] for his nonfeasance.”²⁰

According to the FDLE, the duty to intervene is not taught at the basic recruit training level, since the duty is dictated at the agency level by agency policy. At the post-basic training level, a course titled Line Supervision (Advanced course #006):

- Describes federal and state laws that impact supervisory practices and methods for successful interventions. The most common area of liability against a supervisor over the last decade is “failure to intervene,” which applies to any supervisor who fails to stop or intercede in an unconstitutional act;
- Instructs that a supervisor may be held criminally liable if he or she knows that their officers are violating peoples’ constitutional rights and chooses not to intervene; and
- Instructs that if a supervisor knows his or her officers are involved in misconduct and fails to take corrective action, the supervisor may be held liable.²¹

De-escalation Techniques

“The term de-escalation generally refers to the act of moving from a state of high tension to a state of reduced tension[.] In law enforcement, minimizing danger and tension in potentially volatile situations is a daily responsibility.”²² As one commentary notes, “[o]ne of the enduring myths about policing involves the idea that police officers are primarily crime fighters.”²³ The majority of a patrol officer’s duties “are focused on service activities, maintaining peace and order, and problem-solving[.]”²⁴

In an ideal situation, the officer may evaluate the nature of the call by, for example (1) allowing people to give their side of the story; (2) explaining what the officer is doing, what the person can do, and what is going to happen; (3) telling the person why the officer is taking action; and (4) acting with dignity and leaving the person with their dignity. Knowing that even in the most reasonable circumstance, people will not always

¹⁹ *Senate CJ Committee Questions, 7-24-2020*, Florida Department of Law Enforcement (on file with the Senate Committee on Criminal Justice). This document is further cited as “*Senate CJ Committee Questions, 7-24-2020*.”

²⁰ *Fundiller v. City of Cooper City*, 777 F.2d 1436, 1442 (11th Cir. 1995).

²¹ *Senate CJ Committee Questions, 7-24-2020, supra*.

²² Janet R. Oliva, Rhiannon Morgan, and Michael T. Compton, *A Practical Overview of De-Escalation Skills in Law Enforcement: Helping Individuals in Crisis While Reducing Police Liability and Injury*, *Journal of Police Crisis Negotiations*, 10:15–29, 2010, at p. 18, available at <https://de-escalate.org/wp-content/uploads/2019/02/A-Practical-Overview-of-De-Escalation-Skills-in-Law-Enforcement.pdf> (last visited March 10, 2021). This resource is further cited as “Oliva, Morgan, and Romano (2010).”

²³ *Id.* at 15.

²⁴ *Id.*

comply, an officer maintains a set of strategies that consider officer and public safety, and what actions are in the best interest of the public.²⁵

“When police officers de-escalate a crisis, they conduct an intervention that will assist the individual in crisis in regaining control emotionally and resolve or reduce the crisis to a manageable state. This response is similar to other law enforcement strategies that require communication and negotiation skills, knowledge, tactics, and officer-safety techniques.”²⁶ Intervention techniques have often focused on the traditional, linear use of force continuum:

- Officer presence (officer at the scene as deterrence);
- Verbalization (e.g., calm, nonthreatening commands);
- Empty-hand control (e.g., soft restraint techniques like grabbing, holding, and joint locks, and hard restraint techniques like hitting, kicking, or other physical action);
- Less-than-lethal methods of physical force (e.g., chemicals sprays, Tasers, batons, or nonlethal projectiles); and
- Lethal force.²⁷

Some have criticized the use of force continuum as being over simplistic and suggesting that the only response to a conflict is escalating force until the conflict is resolved.²⁸ For example, the Police Executive Research Forum (PERF) has recommended the Critical Decision-Making Model (CDM).²⁹ PERF explains:

The CDM teaches officers to start asking themselves the following types of questions as soon as they get a call:

“What do I know about what is happening at the scene of this call? Is there a history of previous calls at this location? What do we know about the person who made the call? Is there any indication of a mental health issue at this call? Is there a person with a weapon at the scene?”

And then, after arriving at the scene, officers are taught to keep asking questions as they work through a 5-step process:

1. Collect information.
2. Assess the situation, threats, and risks.
3. Consider police powers and agency policy.
4. Identify options and determine best course of action.
5. Act, review, and re-assess.³⁰

According to the FDLE, training on de-escalation is interwoven into the following curricula:

²⁵ CJSTC report (May 11, 2017), *supra*, at p. 11.

²⁶ Oliva, Morgan, and Romano (2010), *supra*, at p. 18.

²⁷ See Oliva, Morgan, and Romano (2010), *supra*, at pp. 18-19 and The Use-of-Force Continuum (Aug. 3, 2009), The National Institute of Justice, available at <https://nij.ojp.gov/topics/articles/use-force-continuum> (last visited March 10, 2021).

²⁸ PERF Daily Critical Issue Report (June 15, 2020), Police Executive Research Forum, available at <https://www.policeforum.org/criticalissuesjune15> (last visited March 10, 2021).

²⁹ *Id.*

³⁰ *Id.*

Basic Recruit Training

- Defensive Tactics (80-hour course)
 - De-escalation is taught in Defensive Tactics from a different standpoint than deescalating through communication. De-escalation in Defensive Tactics teaches the officer to immediately reduce their use of force during an already established use-of-force situation once they gain the subject’s compliance.
- Interactions in a Diverse Community (40-hour course)
 - De-escalation of a situation through communication is taught as a part of professional communication and resolving conflicts.

Post-Basic Training

- Defensive Tactics Instructor Course (Instructor course #802). This course is divided into 6 units:
 - The role of the instructor in teaching use of force;
 - Decision-making;
 - Levels of resistance;
 - De-escalation;
 - Use-of-force guidelines; and
 - Legal issues around the use of force.
- Advanced Defensive Tactics Course (course #1405). This course contains a unit on the use of force, including a discussion of escalation, de-escalation, and disengagement.
- Field Training Officer Course (Advanced course #809). This course contains:
 - Use-of-force evaluation: Maintains control without excessive force; applies appropriate force by policy; deescalates force when resistance is overcome; and precedes to apply force with appropriate warnings; and
 - Role-play exercise assesses if the new officer knows how to use interpersonal skills to de-escalate a volatile situation.
- Crisis Intervention for School Resource Officers (Specialized course #1401)
 - De-escalation is one of the primary skills incorporated throughout the course, including:
 - Deescalating students with mental health challenges (e.g., anxiety, autism, aggressive behaviors); and
 - De-escalation techniques to calm students and respond to crisis situations.³¹

Crisis Intervention and Mental Health Issues

According to the National Alliance on Mental Illness (NAMI), “[t]he lack of mental health crisis services across the U.S. has resulted in law enforcement officers serving as first responders to most crises.”³²

While the causes [of a crisis] can vary greatly, anyone can be susceptible to experiencing a crisis. Individuals with serious mental illnesses like psychotic disorders (e.g.,

³¹ *Senate CJ Committee Questions, 7-24-2020, supra.*

³² *Crisis Intervention Team (CIT) Programs*, National Alliance on Mental Illness, available at [https://www.nami.org/Advocacy/Crisis-Intervention/Crisis-Intervention-Team-\(CIT\)-Programs](https://www.nami.org/Advocacy/Crisis-Intervention/Crisis-Intervention-Team-(CIT)-Programs) (last visited March 10, 2021).

schizophrenia) who are in crisis may have trouble with reality testing, experiencing delusions (fixed false beliefs) or hallucinations (a misperception commonly experienced as hearing voices). These individuals may also be experiencing fear, insecurity, difficulty concentrating, agitation, over-stimulation, and poor judgment. They may become preoccupied, withdrawn, or argumentative. Other crisis events may involve family altercations, intoxicated or chemically dependent individuals, suicide attempts, victims of accidents, physical or sexual assaults, or other taxing situations[.]³³

“Many agencies have determined that because all their officers respond to mental health calls, they need to have the specialized training, knowledge, and skills to respond appropriately.”³⁴

“The task of crisis intervention is that of communicating with people[.] The purpose of crisis intervention is to help individuals in crisis achieve -with assistance of the crisis intervener- equilibrium within themselves so they resume their normal activities[.]”³⁵ To enhance such communication, the officer might learn active listening skills and behaviors to avoid and also engage in role-playing.³⁶

Some law enforcement agencies have addressed crisis intervention by engaging in Crisis Intervention Team (CIT) Training, which is a training curriculum that “emphasizes understanding of mental illness and incorporates the development of communication skills, practical experience and role-playing. Officers are introduced to mental health professionals, consumers and family members both in the classroom and through site visits.”³⁷

Mental illness training may also occur during recruit academy training, in-service training, and roll-call training. The U.S. Department of Justice (DOJ) asserts that “[r]ecruit academy training is not sufficient by itself to prepare a police force to respond appropriately to individuals experiencing a mental health crisis. Recruit academy training must exist alongside a more comprehensive and robust program to be effective.”³⁸ Further, DOJ states that “[i]n-service and roll-call training provide law enforcement agencies with the opportunities to convey new policies and tactics to officers, to refresh knowledge, and to reinforce skills learned in previous recruit or specialized training courses.”³⁹

The FDLE states that “[c]urrently, post-basic mental illness training is covered by a “Crisis Intervention for School Resource Officers (SROs) course. However, because this course is primarily taken by SROs, many officers do not receive this training.”⁴⁰ Additionally, according to the FDLE, accreditation standards for those law enforcement agencies that are accredited require annual mental illness training.

³³ Oliva, Morgan, and Romano (2010), *supra*, at p. 16.

³⁴ *Training/Police-Mental Health Collaboration (PMHC) Toolkit*, U.S. Department of Justice, available at <https://bja.ojp.gov/program/pmhc/training#:~:text=Mental%20Health%20First%20Aid%20for%20Public%20Safety%20is%20an%20eight,effective%20response%20options%20to%20deescalate> (last visited March 10, 2021).

³⁵ Oliva, Morgan, and Romano (2010), *supra*, at p. 19 (citation omitted).

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* However, the DOJ also asserts that roll-call training, like recruit academy training, “is not sufficient by itself to prepare a police force to respond appropriately to individuals experiencing a mental health crisis.” *Id.*

⁴⁰ *2021 FDLE Legislative Bill Analysis* (SB 1192) (Feb. 25, 2021), Florida Department of Law Enforcement (on file with Senate Committee on Criminal Justice).

Law enforcement agencies accredited through the Commission on Accreditation for Law Enforcement Agencies, Inc. (CALEA) must comply with an accreditation standard that requires agencies to have annual training for their law enforcement officers and other agency personnel who may come into contact with the public in dealing with individuals who suffer from mental illness (CALEA standard 41.2.7). The standard further directs that the training should be developed in collaboration with mental health professionals and should include access to the court system and applicable case law. The standard indicates that alternatives to arrest, such as citations, summonses, referrals, informal resolutions and warnings, should be considered to ensure the best treatment options are used and to keep those with mental health issues out of the criminal justice system. The training is to be reviewed and updated annually. Currently, 43 states and local law enforcement agencies in Florida are accredited through CALEA.⁴¹

Procedural Justice Training

In the context of law enforcement, “procedural justice” has been described as a “practical concept that promotes healthy and reciprocal relations with the community to enhance safety for both officers and the community.”⁴² The CJSTC workgroup noted that in many police encounters that garnered national attention over the last several years, “the officer actions during the encounter had just as much of an effect on public perception as the outcome of the encounter.”⁴³

The CJSTC workgroup explained that procedural justice amounts to four basic actions for police officers: treating people with respect; listening to what they have to say; making fair decisions; and explaining your actions.⁴⁴

Implicit Bias Training

“Implicit bias describes the automatic association people make between groups of people and stereotypes about those groups. Under certain conditions, those automatic associations can influence behavior—making people respond in biased ways even when they are not explicitly prejudiced.”⁴⁵ The 2017 CJSTC workgroup explained the “purpose of providing training on fair, unbiased policing (also known as fair and impartial policing) is to help individuals to be aware of their own biases and learn how to manage them effectively.” This is important because “being self-aware” of these biases aids in communication between law enforcement and the public “whether it is a town hall meeting, traffic stop, or some other interaction.”⁴⁶

⁴¹ *Id.*

⁴² CJSTC report (May 11, 2017), *supra*, at p. 10.

⁴³ *Id.*

⁴⁴ *Id.* at 11.

⁴⁵ *Implicit Bias*, The National Initiative for Building Community Trust and Justice, available at <https://trustandjustice.org/resources/intervention/implicit-bias> (last visited March 10, 2021). “Discussions of implicit bias in policing tend to focus on implicit racial biases; however, implicit bias can be expressed in relation to non-racial factors, including gender, age, religion, or sexual orientation. As with all types of bias, implicit bias can distort one’s perception and subsequent treatment either in favor of or against a given person or group. In policing, this has resulted in widespread practices that focus undeserved suspicion on some groups and presume other groups innocent.” *Id.*

⁴⁶ CJSTC report (May 11, 2017), *supra*, at p. 10. “Studies find that bias, both implicit and explicit, exists in all people. This does not necessarily lead citizens and officers to treat others unfairly, but it makes that more likely.” *Id.* at 7.

According to the FDLE, training on “diversity” is interwoven into the following curricula at the basic recruit training level:

- Introduction to Law Enforcement (10-hour course)
- Interactions in a Diverse Community (40-hour course)
- Calls for Service (36-hour course)
- Traffic Stops (30-hour course)
 - Professional communication, conflict resolution, avoiding bias, and working with diverse groups are woven throughout the basic recruit program. In addition to the textbook content describing these topics, recruits get hands-on practice through communication exercises and role-play scenarios.

Peer Support Programs

Peer support programs are a means to help law enforcement officers and other first responders deal with work-related and family stress. Some law enforcement agencies offer peer support programs during crisis events or through full-time staff. According to the National Sheriffs Association,

[h]aving a Peer Support program in place not only helps to decrease day-to-day stress, but it can also countercheck the emotional strain of critical incidents and prevent the accumulation of emotions that can lead to alcohol abuse, depression, domestic violence, and suicide.

Benefits of developing a Peer Support program include the ability to provide peers with immediate assistance, provide additional support, allow for ventilation and sharing to take place, and works in tandem with the services provided by chaplains and mental health professionals. A successful Peer Support program reduces long-term critical incident stress, turn-over and health insurance costs, worker’s compensation claims, fitness-for-duty evaluations and supports supervisor referrals.⁴⁷

In 2020, legislation was enacted into Florida law to provide confidentiality for peer support communications between a first responder and a first responder peer.⁴⁸ A “first responder” includes a law enforcement officer and a “first responder peer” includes a person who:

- Is not a health care practitioner;
- Has experience working as or with a first responder regarding any physical or emotional conditions or issues associated with the first responder’s employment; and
- Has been designated by the first responder’s employing agency to provide peer support (as provided in the bill) and has received training for this purpose.⁴⁹

⁴⁷ *The Benefits of Developing a Peer Support Program*, National Sheriffs Association, Justice Clearinghouse, available at <https://www.justiceclearinghouse.com/webinar/the-benefits-of-developing-a-peer-support-program/> (last visited March 10, 2021).

⁴⁸ Chapter 2020-104 L.O.F (effective July 1, 2020).

⁴⁹ *Id.* The bill provided four exceptions to such confidentiality: (1) the first responder peer is a defendant in a civil, criminal, administrative, or disciplinary proceeding arising from a complaint filed by the first responder who was a party to the peer support communication, in which case such information may be divulged but is limited to the scope of the proceeding; (2) the first responder who was a party to the peer support communication agrees, in writing, to allow the first responder peer to testify about or divulge information related to the peer support communications; (3) based on the peer support

National Decertification Index

“In July 1999, the International Association of Directors of Law Enforcement Standards and Training (IADLEST) established a database, with funding from the DOJ’s Bureau of Justice Administration (BJA), to track decertified officers across the United States.”⁵⁰ The National Decertification Index (NDI) is intended “to serve as a national registry of certificate or license revocation actions relating to officer misconduct. The records contained in the NDI are provided by participating state government agencies and should be verified with the contributing authority. Inclusion in the database does not necessarily preclude any individual from appointment as an officer.”⁵¹ “The NDI is a pointer system only. There are no records contained in the NDI. Records are housed in participating state government agency databases.....”⁵²

The NDI “contains no information about what the officer did to be decertified; it merely refers the person seeking information about a particular officer to the state POST⁵³ that decertified him or her. POST agencies are permitted to query the NDI, as are hiring departments as long as the POST has granted access for the agency’s pre-hire screening process.” As of March 10, 2020, the NDI contained 29,882 actions reported by 45 certifying agencies.⁵⁴

The FDLE states that “[o]fficer disciplinary actions resulting in revocation or relinquishment of an officer’s certification are currently reported to NDI.”⁵⁵

Accreditation

Section 943.125, F.S., addresses voluntary accreditation of state and local law enforcement agencies, correctional facilities, public agency offices of inspectors general, and certain pretrial diversion programs. Accreditation standards relating to law enforcement and inspectors general used by the accreditation programs established in s. 943.125, F.S., are determined by the Commission for Florida Law Enforcement Accreditation, Inc. (CFA). Accreditation standards

communications, the first responder peer suspects that the first responder who was a party to the peer support communications has committed a criminal act or intends to commit a criminal act; and (4) there are articulable facts or circumstances that would lead a reasonable, prudent person to fear for the safety of the first responder who was a party to the peer support communication, another person, or society, and the first responder peer communicates the information only to a potential victim and law enforcement or other appropriate authorities. *Id.*

⁵⁰ Roger L. Goldman, *NDI: Tracking Interstate Movement of Decertified Police Officers*, The Police Chief, International Association of Chiefs of Police, available at <https://www.policechiefmagazine.org/ndi-tracking-decertified-police-officers/> (last visited March 10, 2021).

⁵¹ *About NDI*, International Association of Directors of Law Enforcement Standards and Training, available at <https://www.iadlest.org/our-services/ndi/about-ndi> (last visited March 10, 2021).

⁵² *Do you really know who you are hiring? (Become better informed through the National Decertification Index (NDI))*, International Association of Directors of Law Enforcement Standards and Training, available at <https://www.iadlest.org/Portals/0/NDI%20brochure%20July%202020.pdf> (last visited March 10, 2021).

⁵³ “POST” is an acronym for Peace Officer Standards and Training Commission.

⁵⁴ *About NDI, supra.*

⁵⁵ Section 943.125(6), F.S.

related to corrections functions and pretrial diversion programs are determined by the Florida Corrections Accreditation Commission, Inc. (FCAC).⁵⁶

Section 943.125, F.S., requires that the law enforcement accreditation program address, at a minimum, the following aspects of law enforcement:

- Vehicle pursuits;
- Seizure and forfeiture of contraband articles;
- Recording and processing citizens' complaints;
- Use of force;
- Traffic stops;
- Handling natural and manmade disasters.
- Special operations;
- Prisoner transfer;
- Collection and preservation of evidence;
- Recruitment and selection;
- Officer training;
- Performance evaluations;
- Law enforcement disciplinary procedures and rights; and
- Use of criminal investigative funds.⁵⁷

III. Effect of Proposed Changes:

Providing a Declaration of an Important State Interest

The bill provides the following declaration of an important state interest:

The Legislature finds that effective policing requires that the use of chokeholds and neck restraints be limited; that law enforcement basic recruit training and retraining include deescalation training; that minimum standards of instruction be developed relating to deescalation techniques, procedural justice, implicit bias, and the duty of an officer to intervene if another officer uses excessive or unnecessary force; that the state law enforcement accreditation program address these matters as well as mental health and wellness resources and support available for law enforcement officers; and that written policies incorporate an affirmative duty to use deescalation techniques whenever possible. The Legislature further finds and declares that this act fulfills an important state interest in protecting the safety of both law enforcement officers and the public by ensuring law enforcement officers receive sufficient and similar training to prevent unnecessary or excessive use of force and to develop skills to enhance understanding of and communication with the communities they serve.

⁵⁶ Some agencies are accredited through national accreditation organizations, such as the Commission on Accreditation for Law Enforcement Agencies, Inc. (CALEA) or the Commission on Accreditation for Corrections (ACA), rather than through the state accrediting body.

⁵⁷ Section 943.125(4), F.S.

Limiting Certain Restraint Techniques

The bill amends s. 943.12, F.S., relating to the powers, duties, and functions of the CJSTC, to require the CJSTC to adopt rules prohibiting any law enforcement officer, correctional officer, or correctional probation officer from using any technique that requires the application of pressure to the neck, throat, esophagus, trachea, or carotid arteries alongside the trachea. The use of such a technique by any such officer is prohibited unless deadly force is authorized under the law. The CJSTC must adopt rules requiring employing agencies to report to the CJSTC any use of such technique by such officer employed by that agency. The CJSTC must also cause to be investigated any law enforcement officer, correctional officer, or correctional probation officer who uses such technique in violation of this statute, and set disciplinary guidelines and penalties prescribed in rules applicable to such violation.

Providing Data to the National Decertification Index

The bill further amends s. 943.12, F.S., to require the CJSTC to provide data to the National Decertification Index on final commission orders regarding revocation or relinquishment of certification of law enforcement officers, correctional officers, and correctional probation officers.

Requiring Minimum Standards for De-escalation Training and Other Training Subjects

The bill creates s. 943.121, F.S., to require the CJSTC to establish and maintain standards for instruction of officers in the subjects of de-escalation techniques,⁵⁸ procedural justice training,⁵⁹ implicit bias training,⁶⁰ and the duty to intervene⁶¹ if another officer uses excessive or unnecessary force in order to build upon and improve police community relations.

The bill provides that the following minimum standards for de-escalation training must include all of the following:

- Training on verbal and physical tactics that would help avoid a physical response to resistance with an emphasis on communication, negotiation, de-escalation techniques,

⁵⁸ The bill amends s. 943.10, F.S., relating to definitions in ch. 943, F.S., to define “de-escalation technique” as a method or methods for assessing and managing a situation in order to resolve it with the least response to resistance which is safe and practicable by a law enforcement officer.

⁵⁹ The bill amends s. 943.10, F.S., relating to definitions in ch. 943, F.S., to define “procedural justice training” as a system of law enforcement that prioritizes obtaining citizen compliance with law enforcement direction through fair and respectful two-way communication and, where possible and safe, provides explanation of the rationale behind directions given by law enforcement officers to build trust. This training allows for both community and police to be treated with respect and dignity, thereby cultivating stronger police-community relations.

⁶⁰ The bill amends s. 943.10, F.S., relating to definitions in ch. 943, F.S., to define “implicit bias training” as a program designed to go beyond producing fair and impartial enforcement of the law by bringing awareness to or increasing awareness of, and improving response strategies to, unconscious bias towards diverse communities. Such training should allow law enforcement to serve the community with a deeper understanding of the diversities within the community, thereby mitigating community tension and improving police-community relations.

⁶¹ The bill amends s. 943.10, F.S., relating to definitions in ch. 943, F.S., to define “intervene” as stopping the use of excessive or unnecessary force.

creating and maintaining a reaction gap,⁶² and obtaining the time needed to resolve the incident safely for each individual involved;

- Training officers simultaneously and in teams on de-escalation and appropriate responses to resistance to improve group dynamics and diminish excessive responses to resistance while managing critical incidents;
- Training that intentional chokeholds must never be used, except in deadly force situations;
- Training on the principles of using distance, cover, and time when approaching and managing critical incidents, and the elimination of other techniques in favor of using distance and cover to create and sustain a reaction gap;
- Training on the use of the lowest response to resistance which is a possible and safe response to an identified threat;
- Training on the reevaluation of an identified threat as the management of the critical incident progresses;
- Training on procedural justice training;
- Training on crisis intervention strategies to appropriately identify and respond to individuals suffering from physical or mental disabilities, mental health issues, or substance abuse issues with an emphasis on de-escalation techniques and promoting effective communication with such individuals;
- Training on techniques that provide all officers with awareness and recognition of an individual's physical and mental disabilities, mental health issues, and substance abuse issues with an emphasis on communication strategies;
- Training on other evidence-based approaches found to be appropriate by the CJSTC which enhance deescalation techniques and skills; and
- Training on implicit bias.

The bill also requires the CJSTC to:

- Not later than November 30, 2022, provide written guidance to law enforcement agencies in this state which employ law enforcement officers with regard to compliance with minimum standards relating to de-escalation training;
- Create and publish on its website a model written policy on de-escalation training, which a law enforcement agency may adopt to fulfill written policy requirements under the statute; and
- Collect data regarding the implementation of training programs under the statute and provide by July 1 of each year an annual report to the President of the Senate, the Senate Minority Leader, the Speaker of the House of Representatives, and the House Minority Leader describing that data.

The bill also requires each law enforcement agency in this state to adopt, not later than January 1, 2023, a written policy stating that each of the law enforcement officers in its employ has an affirmative duty to use de-escalation techniques in his or her interactions with citizens wherever possible.

⁶² The bill amends s. 943.10, F.S., relating to definitions in ch. 943, F.S., to define “reaction gap” as the minimum amount of distance necessary to ensure that a law enforcement officer will have time to be able to react appropriately to a potential threat.

Requiring that De-escalation Techniques and other Specified Aspects of Law Enforcement be Addressed in Law Enforcement Agency Accreditation

The bill amends s. 943.125, F.S., relating, in part, to accreditation of state and local law enforcement agencies, to expand the list of aspects of law enforcement that a law enforcement accreditation program must, at a minimum, address. The bill adds the following aspects of law enforcement:

- Response to resistance (replacing the current to “use of force”);⁶³
- Deescalation techniques;
- Implicit bias training;
- Procedural justice training;
- Mental health and wellness resources and support available for law enforcement officers, including any peer-support teams and sworn or unsworn chaplaincy programs; and
- The duty to intervene if another officer uses excessive or unnecessary force.

Requiring Deescalation Training in Basic Recruit Training and Continued Employment Training.

The bill amends s. 943.1715, F.S., relating to law enforcement training in diverse populations, to mandate that the CJSTC require that every basic skills course include in the curriculum at least 40 hours of de-escalation training.

According to the FDLE, “the current BRTP has a lot of de-escalation training” but “it’s impossible to pinpoint the current number of hours due to the topic being threaded throughout the training. In addition, this topic is covered within role-play and communication exercises. Therefore, it is very difficult to determine the number of hours contributed solely to de-escalation.”⁶⁴

The bill also amends s. 943.1716, F.S., relating to continued employment training in diverse populations, to mandate that the CJSTC require by rule that each officer receive at least 16 hours of de-escalation training, in addition to the 40 hours of required instruction for continued employment or appointment as an officer.

Effective Date

The bill takes effect July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(a) of the State Constitution provides that: “No county or municipality shall be bound by any general law requiring such county or municipality to spend funds...unless the legislature has determined that such law fulfills an important state

⁶³ The CJSTC uses the term “use of force” throughout all training documents. *2021 FDLE Legislative Bill Analysis* (SB 1970), *supra*.

⁶⁴ *Id.*

interest and unless: ...the law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature....”

The bill contains numerous training requirements and other requirements that may impact local law enforcement agencies. These requirements may cause county and municipal governments to spend funds.

Article VII, section 18(d) of the State Constitution, provides eight exemptions, which, if any single one is met, exempts the law from the limitations on mandates. If the bill does qualify as a mandate, and no exemption applies, in order to be binding on the counties, the bill must include a finding of important state interest and final passage must be approved by two-thirds of the membership of each house of the Legislature.

The bill includes a declaration of an important state interest supporting the requirements of the bill (see “Effect of Proposed Changes” section of this analysis).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill contains numerous training requirements and other requirements that may impact local law enforcement agencies. These requirements may cause county and municipal governments to spend funds. The impact of the bill on local governments is indeterminate.

The FDLE asserts that the bill's provisions will increase training and IT costs. The department's fiscal analysis states that development of the training curricula will cost approximately \$12,648, which includes the design and development of course material, revision costs, and course implementation.⁶⁵ The department also states that the bill will require modifications to the Automated Training Management System (ATMS) (analysis, design, programming and testing) totaling approximately \$37,000. The FDLE estimates these modifications will take three months to complete.⁶⁶ The total cost to FDLE is estimated to be \$49,648 in nonrecurring funds.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Michigan Senate Bill on Law Enforcement Standards and Training

On June 4, 2020, the Michigan Senate passed a bill⁶⁷ on law enforcement standards.⁶⁸ The bill “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.”⁶⁹ The bill also “would establish continuing education requirements for all licensed law enforcement officers.”

This bill is similar to the previously-described Michigan Senate bill.

The bill also amends s. 943.1716, F.S., to mandate that the CJSTC require by rule that each officer receive at least 16 hours of de-escalation training, in addition to the 40 hours of required instruction for continued employment or appointment as an officer.

FDLE Comments on Impact of Continued Employment Deescalation Training Requirement

The FDLE states that the requirement relating to continued employment training in de-escalation “will raise the number of continuing training or education required of law enforcement officers from the rate of 40 hours every four years to 56 hours every four years. Staff will also have to amend ATMS and follow up with agencies to document completions”⁷⁰ Further “[A] specialized post-basic 16-hour de-escalation course will be presented for CJSTC approval in May 2021. This

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ Substitute for SB 0945 (S-1) (2020), Michigan Legislature, available at <http://www.legislature.mi.gov/documents/2019-2020/billengrossed/Senate/pdf/2020-SEBS-0945.pdf> (last visited March 10, 2021).

⁶⁸ The legislative history of the bill is available at [http://www.legislature.mi.gov/\(S\(ptinhtqjmmvewlwciiqd5iy\)\)/milegPrint.aspx?page=BillStatus&objectname=2020-SB-0945](http://www.legislature.mi.gov/(S(ptinhtqjmmvewlwciiqd5iy))/milegPrint.aspx?page=BillStatus&objectname=2020-SB-0945) (last visited March 10, 2021).

⁶⁹ *Legislative Analysis* (Senate Bill 945 (S-1) as passed by the Senate and proposed substitute H-1) (June 24, 2020), House Fiscal Agency, Michigan Legislature, available at <http://www.legislature.mi.gov/documents/2019-2020/billanalysis/House/pdf/2019-HLA-0945-7595C58A.pdf> (last visited March 10, 2021).

⁷⁰ *Id.*

course will meet the de-escalation training specified in the bill, with the exception of the mandatory requirement.”⁷¹

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 943.10, 943.12, 943.125, 943.1715, and 943.1716.

This bill creates section 943.121 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes: (Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on March 16, 2021:

The committee substitute:

- Includes a declaration of an important state interest;
- Requires the CJSTC to provide data to the National Decertification Index on final commission orders regarding revocation or relinquishment of certification of law enforcement officers, correctional officers, and correctional probation officers;
- Requires the CJSTC (rather than the Office of the Attorney General) to:
 - Provide written guidance to law enforcement agencies on compliance with minimum standards relating to de-escalation training; and
 - Collect data regarding the implementation of training programs and annually report such data to the Legislature (as specified in bill);
- Moves requirements relating to written guidance and policy on de-escalation training and data collection on training programs from s. 943.125, F.S., to s. 943.121, F.S. (created by the bill); and
- Changes the effective date of the bill from July 1, 2021 to July 1, 2022, and makes conforming changes to other dates relevant to requirements in the bill so that those other dates occur after the bill’s effective date.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

⁷¹ 2021 FDLE Legislative Bill Analysis (SB 1970), *supra*.