

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 Committee on Criminal Justice

BILL: CS/SB 1818

INTRODUCER: Criminal Justice Committee and Senator Burgess

SUBJECT: Law Enforcement Officer Training

DATE: March 16, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Jones</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	_____	_____	<u>AP</u>	_____
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1818 authorizes the Criminal Justice Standards and Training Commission (CJSTC) to incorporate instruction on use of force, deescalation techniques, and suicide awareness and prevention techniques into the course curriculum required for law enforcement officers obtaining initial certification. The bill also authorizes the CJSTC to adopt rules authorizing each officer to receive instruction on use of force, deescalation techniques and suicide awareness and prevention techniques as part of required instruction for continued employment or appointment as an officer.

According to the Florida Department of Law Enforcement (FDLE), development of the CJSTC's post-basic course(s) on use of force, suicide awareness and prevention and, possibly, deescalation, if the intent of the bill is meant to offer all subjects within one course, would cost \$4,278. Should the CJSTC require this instruction as mandatory retraining, there would also be \$37,000 in costs for analysis, design, programming, and testing the existing Automated Training Management System (ATMS). See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2022.

II. Present Situation:

Training Requirements for Florida Law Enforcement Officers

The training requirements for a Florida law enforcement officer have been described by the FDLE as follows:

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. To maintain their certification, law enforcement officers must satisfy the continuing training and education requirements of s. 943.135, F.S., which 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 the continuing training or education is job-related and consistent with the needs of the employing agency and report completion of the training to CJSTC through the [ATMS].¹

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;² 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 force³ was necessary to prevent the arrest from being defeated by such flight and, when feasible, some warning had been given, and:
 - The officer reasonably believes that the fleeing felon poses a threat of death or serious physical harm to the officer or others; or

¹ 2021 FDLE Legislative Bill Analysis (SB 1818) (March 8, 2021), Florida Department of Law Enforcement (on file with the Senate Committee on Criminal Justice).

² 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.

³ 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 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.

- 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.⁴

An excessive force claim under 42 U.S.C. s. 1983⁵ that “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.”⁶ 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.”⁷ “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.”⁸ “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.”⁹

Deescalation 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.”¹⁰ As one commentary notes, “[o]ne of the enduring myths about policing involves the idea that police officers are primarily crime fighters.”¹¹ The majority of a patrol officer’s duties “are focused on service activities, maintaining peace and order, and problem-solving[.]”¹²

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.¹³

⁴ 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.

⁵ “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).

⁶ *Graham v. Connor*, 490 U.S. 386, 394 (1989).

⁷ *Id.* at 396 (citation omitted).

⁸ *Id.*

⁹ *Id.* at 396-397.

¹⁰ 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).”

¹¹ *Id.*, at p. 15.

¹² *Id.*

¹³ Oliva, Morgan, and Romano (2010), *supra*, at p. 18. “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

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.¹⁴

Some have criticized the use-of-force continuum as being oversimplistic and suggesting that the only response to a conflict is escalating force until the conflict is resolved.¹⁵ For example, the Police Executive Research Forum (PERF) has recommended the Critical Decision-Making Model (CDM).¹⁶ 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.¹⁷

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

¹⁴ 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).

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

¹⁶ *Id.*

¹⁷ *Id.*

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.”¹⁸

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., 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[.]¹⁹

“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.”²⁰ “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[.]”²¹ To enhance such communication, the officer might learn active listening skills and behaviors to avoid and also engage in role-playing.²²

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.”²³

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.”²⁴ Further, DOJ states that “[i]n-service and roll-call training provide law enforcement agencies with the opportunities to convey new policies

¹⁸ *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 3, 2021).

¹⁹ Oliva, Morgan, and Romano (2010), *supra*, at p. 16.

²⁰ *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 3, 2021).

²¹ Oliva, Morgan, and Romano (2010), *supra*, at p. 19 (citation omitted).

²² *Id.*

²³ *Id.*

²⁴ *Id.*

and tactics to officers, to refresh knowledge, and to reinforce skills learned in previous recruit or specialized training courses.”²⁵

Florida Law Enforcement Training on Use of Force, Deescalation Techniques, and Suicide Awareness and prevention Techniques

The FDLE describes current training relating to use of force, deescalation techniques, and suicide awareness and prevention techniques:

Currently, instruction on use of force, de-escalation techniques and suicide awareness and prevention techniques is included in the law enforcement basic recruit training program (BRTP).

A specialized post-basic 16-hour de-escalation course will be presented for CJSTC approval in May 2021.... While the department has information on use of force and suicide awareness and prevention, there is no specific post-basic course(s) devoted specifically to these two topics.

Currently, CJSTC required mandatory retraining is determined by an officer’s employing agency. All criminal justice agency heads have the discretion to determine the training to fulfill the mandatory retraining requirements for their officers. As such, many agencies already contract with outside vendors to deliver training on these topics.²⁶

III. Effect of Proposed Changes:

The bill creates s. 943.1719, F.S., which authorizes the CJSTC to incorporate instruction on use of force, deescalation techniques, and suicide awareness and prevention techniques into the course curriculum required for law enforcement officers obtaining initial certification. Use of force training may include, but need not be limited to, instruction on legal use of force, including deadly force.

The bill defines the following terms relevant to this new statute:

- “Deescalation techniques” includes, but is not limited to:
 - The use of alternative, nonlethal methods of applying force and techniques that prevent the officer from escalating any situation where force is likely to be used;
 - The use of verbal and physical tactics to minimize the need for the use of force, with an emphasis on communication, negotiation, and deescalation tactics, and to provide the time needed to resolve the incident safely for everyone;
 - The use of the lowest level of force that is a possible and safe response to an identified threat and reevaluating the threat as it progresses;
 - The use of techniques that provide all officers with awareness and recognition of mental health and substance abuse issues with an emphasis on communication strategies, and

²⁵ *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.*

²⁶ 2021 FDLE Legislative Bill Analysis (SB 1818) (March 8, 2021), Florida Department of Law Enforcement (on file with the Senate Committee on Criminal Justice).

- training officers simultaneously in teams on deescalation 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
- Crisis intervention strategies to appropriately identify and respond to individuals suffering from mental health or substance abuse issues, with an emphasis on deescalation tactics and promoting effective communication.
- “Suicide awareness and prevention techniques” includes, but is not limited to, methods and tools for recognizing signs that an individual is in crisis and promoting awareness of, and training in recognizing, symptoms of post-traumatic stress disorder.

The bill also creates s. 943.17191, F.S., which authorizes the CJSTC to adopt rules authorizing each officer to receive instruction on use of force, deescalation techniques and suicide awareness and prevention techniques as part of required instruction for continued employment or appointment as an officer.

The bill takes effect July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, s. 18, of the State Constitution.

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 FDLE provides the following comments regarding the bill's impact:

The bill specifies CJSTC “may” authorize each officer to receive, as part of the 40 hours of required instruction for continued employment or appointment as an officer, instruction on use of force, de-escalation techniques and suicide awareness and prevention techniques. The term “may” indicates training is at the discretion of CJSTC. However, if the Commission develops a course(s) on these topics, CJSTC staff will be required to pull together all the material described in this bill and design and develop the new post-basic course(s). Since each component came from or has been vetted by subject matter experts (SMEs), staff will consult with individual SMEs as needed for each piece (e.g., suicide, use of force, etc.) and send the final product to a group of SMEs for review. While this will not require the typical costs for developing a course – as the department has material already - it will still require costs to vet all of the information....²⁷

In addition, if CJSTC votes to make it mandatory for all officers, ATMS will have to be programmed to ensure each officer receives instruction on the material.

According to the FDLE, development of the CJSTC's post-basic course(s) on use of force, suicide awareness and prevention and, possibly, deescalation, if the intent of the bill is meant to offer all subjects within one course, would cost \$4,278 (nonrecurring).²⁸

Analysis

- Consult with topic-specific SMEs as needed (\$186 for 10 hours)
- Review and select existing material (\$744 for 40 hours)

Design/Development

- Develop a cohesive course (\$2,232 for 120 hours)

Review/Revisions (\$744 for 40 hours)

Implementation

- Course edit (\$372 for 20 hours)

Total cost: \$ 4,278²⁹

Should the CJSTC require this instruction as mandatory retraining, there would also be \$37,000 in (nonrecurring) costs for analysis, design, programming and testing the

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

existing Automated Training Management System (ATMS). The FDLE estimates these technological modifications/updates would take three months to complete.³⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 943.1719 and 943.17191.

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 changes the effective date from July 1, 2021, to July 1, 2022.

- B. **Amendments:**

None.

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

³⁰ *Id.*