

**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: HB 7051

INTRODUCER: Judiciary Committee and Reps. Byrd, Driskell, and others

SUBJECT: Law Enforcement and Correctional Officer Practices

DATE: April 27, 2021

REVISED: \_\_\_\_\_

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ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Erickson	Phelps	RC	<b>Pre-meeting</b>

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**I. Summary:**

HB 7051 makes several changes to requirements for the operations and standards of law enforcement and correctional agencies and training for law enforcement officers, correctional officers, and correctional probation officers, including:

- Requiring an applicant for employment as a law enforcement officer, correctional officer, or a correctional probation officer to disclose by affidavit if the applicant is the subject of any pending criminal, civil, or administrative investigation and whether the applicant separated or resigned from previous criminal justice employment while under investigation;
- Requiring a law enforcement or correctional agency to:
  - Include the facts and reasons for any of the applicant’s previous separations from private or public employment or appointment as part of the pre-employment background investigation of the applicant; and
  - Maintain an officer’s employment information for a minimum of five years following the date of an officer’s termination, resignation, or retirement;
- Requiring the Criminal Justice Standards and Training Commission to establish standards for the instruction of officers and basic skills training in the subject of use of force, and requiring each correctional agency to develop policies in the use of force, including:
  - Proportional use of force;
  - Alternatives to use of force, including de-escalation techniques;
  - If the agency authorizes use of chokeholds, limits on such use to circumstances where the officer perceives an immediate threat of serious bodily injury or death to the officer or another person;
  - The duty of an on-duty officer who observes another officer engaging or attempting to engage in excessive use of force to intervene to end the excessive use of force or attempted excessive use of force when such intervention is reasonable based on the totality of the circumstances and the observing officer may intervene without jeopardizing the officer’s own health or safety;
  - The duty to render medical assistance following use of force when an officer knows, or when it is otherwise evident, that a person who is detained or in custody is injured or

- requires medical attention and the action is reasonable based on the totality of the circumstances and the officer may do so without jeopardizing the officer's safety; and
- Instruction on the recognition of the evident symptoms and characteristics of a person with a substance abuse disorder or mental illness and appropriate responses to such person;
  - Requiring law enforcement agencies to have policies regarding use of force investigations that include an independent review of a use of force incident involving death or the intentional discharge of a firearm that results in injury or death;
  - Requiring each law enforcement agency to report to the Florida Department of Law Enforcement (FDLE) on a quarterly basis use of force incidents that result in serious bodily injury, death, or the discharge of a firearm at a person; and
  - Prohibiting a child younger than seven years of age from being arrested, charged, or adjudicated delinquent for a delinquent act or violation of law, unless the violation of law is a forcible felony as defined in s. 776.08, F.S.

The FDLE states the bill will likely require workshops for developing training curricula with subject matter experts and staff time totaling approximately \$11,011. The Department of Juvenile Justice (DJJ) indicates that while the bill may divert children under the age of seven from the juvenile delinquency system, it is unclear what, if any, services such children may receive in lieu of those provided by the DJJ. Employing agencies may incur costs associated with establishing or revising policies required by the bill and submitting use of force data to the FDLE. Additional staff time may also be required for local agencies to collect required background information from private employers. See Section V. Fiscal Impact Statement.

The bill takes effect on July 1, 2021.

## II. Present Situation:

### Law Enforcement and Correctional Officer Employment

At a minimum, a person must meet the following requirements to qualify for employment as a law enforcement officer,<sup>1</sup> correctional officer,<sup>2</sup> or correctional probation officer<sup>3</sup> in Florida:

<sup>1</sup> "Law enforcement officer" means any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency. Section 943.10(1), F.S.

<sup>2</sup> "Correctional officer" means any person who is appointed or employed full time by the state or any political subdivision thereof, or by any private entity which has contracted with the state or county, and whose primary responsibility is the supervision, protection, care, custody, and control, or investigation, of inmates within a correctional institution; however, the term "correctional officer" does not include any secretarial, clerical, or professionally trained personnel. Section 943.10(2), F.S.

<sup>3</sup> "Correctional probation officer" means a person who is employed full time by the state whose primary responsibility is the supervised custody, surveillance, and control of assigned inmates, probationers, parolees, or community controllees within institutions of the Department of Corrections or within the community. The term includes supervisory personnel whose duties include, in whole or in part, the supervision, training, and guidance of correctional probation officers, but excludes

- Be at least 19 years old, except that any person employed as a full-time, part-time, or auxiliary correctional officer must be at least 18 years of age;
- Be a U.S. citizen;
- Be a high school graduate or its equivalent;
- Have no disqualifying criminal history, including a conviction for a felony, a conviction for a misdemeanor involving perjury or false statement, or a dishonorable discharge from the Armed Forces;
- Document his or her processed fingerprints on file with the employing agency;
- Pass a physical examination;
- Have good moral character,<sup>4</sup> as determined by a background investigation;
- Submit an affidavit-of-applicant form;
- Complete a commission-approved basic recruit training program;
- Pass the officer certification examination; and
- Comply with continuing training or education requirements.<sup>5</sup>

The affidavit-of-applicant form requires an applicant to affirm that he or she meets the minimum criteria for employment as a law enforcement officer, correctional officer, or correctional probation officer.<sup>6</sup> The affidavit also requires an applicant to disclose specified criminal history information; whether the applicant is under investigation for criminal, civil, or administrative wrongdoing; and whether the applicant separated or resigned from previous criminal justice employment while under investigation.<sup>7</sup>

An applicant who provides false information on the affidavit commits the crime of providing a false official statement under s. 837.06, F.S., and is guilty of a second degree misdemeanor.<sup>8</sup>

The employing agency is responsible for collecting, verifying, and maintaining documentation confirming an applicant complies with the minimum statutory qualifications under s. 943.13, F.S.<sup>9</sup> Similar to the affidavit that must be completed by an applicant, the chief officer or administrator, or his or her designee, must complete an affidavit prior to hiring the applicant affirming the applicant meets all employment qualifications, including successful completion of a background check.<sup>10</sup> The background check should include an investigation into the facts and reasons for the applicant's separation from previous employment, if applicable.<sup>11</sup> A chief officer or administrator who provides false information on the affidavit is liable for providing a false official statement under s. 837.06, F.S., and commits a second degree misdemeanor.

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management and administrative personnel above, but not including, the probation and parole regional administrator level. Section 943.10(3), F.S.

<sup>4</sup> See Rule 11B-27.0011, F.A.C.

<sup>5</sup> Section 943.13, F.S.

<sup>6</sup> *Affidavit of Applicant*, FDLE, available at <http://www.fdle.state.fl.us/CJSTC/Documents/Rules-Forms/Table-1-Forms/PDFs/CJSTC-68.aspx> (last visited Apr. 20, 2021).

<sup>7</sup> *Id.*

<sup>8</sup> A second degree misdemeanor is punishable by up to 60 days in county jail and a fine of up to \$500. Sections 775.082 and 775.083, F.S.

<sup>9</sup> Section 943.133(1), F.S.

<sup>10</sup> Section 943.133(2), F.S.

<sup>11</sup> Section 943.133(3), F.S.

The FDLE provided the following additional information relevant to the application for employment:

The Criminal Justice Standards and Training Commission (CJSTC) currently uses a form, Affidavit of Applicant CJSTC-68, that includes information on pending investigations and resignations while under investigation. Section 943.133, F.S., allows the employing agency discretion regarding information they gather on prior employments. Rule 11B-27.022(1), F.A.C., requires the use of the Employment Background Investigative Report form CJSTC-77 and the agency maintains a summary of the background investigation findings in the applicant's file. Additionally, Rule 11B-27.0022(1)(a), F.A.C., requires agencies to verify the facts and reasons for separation from all criminal justice employments.<sup>12</sup>

### **Employment Information**

Section 943.134, F.S., requires an employing agency<sup>13</sup> to disclose specified employment information<sup>14</sup> if a law enforcement officer, correctional officer, or correctional probation officer who is, or was formerly employed by the agency, is the subject of a background investigation while applying for employment at another law enforcement agency or correctional facility. Under s. 943.134, F.S., an employing agency is only required to maintain such employment information that it keeps in the regular course of business.<sup>15</sup> Under s. 119.021(2)(a), F.S., the Division of Library and Information Services of the Department of State is required to develop a retention schedule for public records, including personnel records. Personnel records have varying retention requirements depending on the employer, the nature of the record, and the status of the employee.<sup>16</sup> The retention schedules for personnel records range from three fiscal years following the separation or termination of employment for a volunteer, intern, or temporary employee, to as many as 50 years following the separation or termination of employment for a local government employee.<sup>17</sup>

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<sup>12</sup> 2021 FDLE Legislative Bill Analysis (HB 7051) (Apr. 14, 2021), FDLE (on file with the Senate Committee on Rules). This analysis is further cited as "2021 FDLE Legislative Bill Analysis (HB 7051)."

<sup>13</sup> "Employing agency" means any agency or unit of government or any municipality or the state or any political subdivision thereof, or any agent thereof, which has constitutional or statutory authority to employ or appoint persons as officers. The term also includes any private entity which has contracted with the state or county for the operation and maintenance of a nonjuvenile detention facility. Section 943.10(4), F.S.

<sup>14</sup> "Employment information" includes, but is not limited to, written information relating to job applications, performance evaluations, attendance records, disciplinary matters, reasons for termination, eligibility for rehire, and other information relevant to an officer's performance, except information that any other state or federal law prohibits disclosing or information that is subject to a legally recognized privilege the employer is otherwise entitled to invoke. Section 943.134(1)(b), F.S.

<sup>15</sup> Section 943.134(3), F.S.

<sup>16</sup> *General Records Schedule GS1-SL for State and Local Government Agencies*, Florida Department of State, available at <https://files.floridados.gov/media/703328/gsl-sl-2020.pdf> (last visited Apr. 20, 2021).

<sup>17</sup> *Id.*

## Law Enforcement and Correctional Officer Training

### *Criminal Justice Standards and Training Commission*

The Criminal Justice Standards and Training Commission (CJSTC) was established for the purpose of ensuring criminal justice officers in Florida are ethical, qualified, and well-trained.<sup>18</sup>

The CJSTC is comprised of:

- Three sheriffs.
- Three chiefs of police.
- Five law enforcement officers who are neither sheriffs nor chiefs, who are the rank of Sergeant or below.
- Two correctional officers, one of which is an administrator of a state correctional institution and one who is of the rank of sergeant or below.
- One Florida resident who falls into none of the above categories.
- The Attorney General or his or her designated proxy.
- The Secretary of Department of Corrections or his or her designated proxy.
- The Director of the Florida Highway Patrol.<sup>19</sup>

The primary responsibilities of the CJSTC are to:

- Establish uniform minimum standards for employment and training of full-time, part-time, and auxiliary law enforcement, and correctional and correctional probation officers.
- Establish and maintain officer training programs, curricula requirements, and certification of training schools and training school instructors.
- Certify officers who complete a Florida Basic Recruit Training Program, or who are diversely qualified through experience and training, and who meet minimum employment standards.
- Review and administer appropriate administrative sanctions in instances when an officer, a training school instructor, or a training school is found in violation of law or the CJSTC's standards.
- Promulgate rules and procedures to administer the requirements of ss. 943.085–943.257, F.S., relating to standards and training for officers.
- Conduct studies of compensation, education, and training for the correctional, correctional probation, and law enforcement disciplines.
- Maintain a central repository of records of all certified officers.
- Conduct quarterly meetings to discuss issues and approve rules that relate to officer standards and training.
- Develop, maintain, and administer the State Officer Certification Examination for criminal justice officers.<sup>20</sup>

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<sup>18</sup> *Criminal Justice Standards & Training Commission*, FDLE, available at <https://www.fdle.state.fl.us/CJSTC/Commission/CJSTC-Home.aspx> (last visited Apr. 20, 2021).

<sup>19</sup> Section 943.11, F.S.

<sup>20</sup> *Id.*

### ***Law Enforcement Officers***

The CJSTC is required to design, implement, maintain, evaluate, and revise entry requirements and job-related curricula and performance standards for the basic recruit training program.<sup>21</sup> The basic recruit training program for a law enforcement officer is 770 hours and consists of the following topics:

- Introduction to law enforcement;
- Legal;
- Interactions in a diverse community;
- Interviewing and report writing;
- Fundamentals of patrol;
- Calls for service;
- Criminal investigations;
- Crime scene to courtroom;
- Critical incidents;
- Traffic stops;
- DUI traffic stops;
- Traffic crash investigations;
- Law enforcement vehicle operations;
- First aid for criminal justice officers;
- Firearms;
- Defensive tactics;
- Dart-firing stun gun; and
- Criminal justice officer physical fitness training.<sup>22</sup>

The basic recruit training curriculum for law enforcement officers incorporates training in use of force, de-escalation techniques, and interactions with persons suffering from a substance abuse disorder or mental illness.<sup>23</sup> The training on such subjects are incorporated throughout the curriculum.<sup>24</sup> Since the components of the basic recruit training curriculum are not divided by hours, it is difficult to determine the exact amount of training a recruit receives in specific topics.<sup>25</sup> The CJSTC surveyed criminal justice training centers in Florida to gather data on the amount of hours devoted to training in certain subjects. The results are as follows:

- Use of Force: 26 – 152 hours.
- De-escalation: 22 – 90 hours.
- Mental health and substance abuse: 6 – 78 hours.<sup>26</sup>

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<sup>21</sup> Section 943.17, F.S.

<sup>22</sup> *Florida Law Enforcement Academy (Version 2020.07) #2000*, FDLE, available at <http://www.fdle.state.fl.us/CJSTC/Curriculum/Active-Courses/2000.aspx> (last visited Apr. 20, 2021).

<sup>23</sup> *2021 FDLE Legislative Bill Analysis (SB 1970)* (Mar. 22, 2021), FDLE, available at <http://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=32389> (last visited Apr. 20, 2021).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

### ***Correctional Officers***

The basic recruit training program for a correctional officer is 420 hours and consists of the following topics:

- Communications;
- Officer safety;
- Facility and equipment;
- Intake and release;
- Supervising in a correctional facility;
- Supervising special populations;
- Responding to incidents and emergencies;
- First aid for criminal justice officers;
- Criminal justice firearms;
- Criminal justice defensive tactics; and
- Officer wellness and physical abilities.<sup>27</sup>

### ***Correctional Probation Officers***

The basic recruit training program for a correctional probation officer is 290 hours and consists of the following topics:

- Introduction to correctional probation;
- Legal foundations for correctional probation officers;
- Intake and orientation;
- Caseload management;
- Supervision of offenders;
- Field Supervision; and
- Crossover program updates.<sup>28</sup>

### ***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;<sup>29</sup> or

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<sup>27</sup> *Florida Correctional Basic Recruit Training Program (Version 2020.07) #1190*, FDLE, available at <https://www.fdle.state.fl.us/CJSTC/Curriculum/Active-Courses/1190.aspx> (last visited Apr. 20, 2021).

<sup>28</sup> *Correctional Officer Cross-Over Training to Florida Correctional Probation Basic Recruit Training Program (Version 2020.07) #3003*, FDLE, available at <https://www.fdle.state.fl.us/CJSTC/Curriculum/Active-Courses/3003.aspx> (last visited Apr. 20, 2021).

<sup>29</sup> *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.

- 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<sup>30</sup> unless the use of deadly force 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
  - 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.<sup>31</sup>

The “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.”<sup>32</sup>

An excessive force claim under 42 U.S.C. s. 1983<sup>33</sup> 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.”<sup>34</sup> 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.”<sup>35</sup> “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.”<sup>36</sup> “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.”<sup>37</sup>

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<sup>30</sup> 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.

<sup>31</sup> 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.

<sup>32</sup> 2021 FDLE Legislative Bill Analysis (HB 7051), *supra*.

<sup>33</sup> “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 Apr. 20, 2021).

<sup>34</sup> *Graham v. Connor*, 490 U.S. 386, 394 (1989).

<sup>35</sup> *Id.* at 396 (citation omitted).

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 396-397.



### *Chokeholds and Neck Restraints*

There is no statutory ban on use of chokeholds or neck restraints. Restrictions or bans on chokeholds or neck restraints are pursuant to the policy of each law enforcement agency.<sup>38</sup> Chokeholds are not taught in basic recruit training.<sup>39</sup> “Recruits are taught how to escape from a chokehold but, they are not instructed on the application of a chokehold since it is not an approved technique in Florida. However, CJSTC’s basic recruit training curriculum includes minimum training standards related to use of force and the use of neck restraints.”<sup>40</sup>

### *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.”<sup>41</sup> As one commentary notes, “[o]ne of the enduring myths about policing involves the idea that police officers are primarily crime fighters.”<sup>42</sup> The majority of a patrol officer’s duties “are focused on service activities, maintaining peace and order, and problem-solving[.]”<sup>43</sup>

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 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.<sup>44</sup>

“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.”<sup>45</sup> 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);

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<sup>38</sup> 2021 FDLE Legislative Bill Analysis (HB 7051), *supra*.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> 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 Apr. 10, 2021). This resource is further cited as “Oliva, Morgan, and Romano (2010).”

<sup>42</sup> *Id.* at 15.

<sup>43</sup> *Id.*

<sup>44</sup> *Strengthening the Bonds of Trust between Law Enforcement and the Public* (Community Safety Recommendations) (May 11, 2017), Florida Criminal Justice Standards and Training Commission, available at [https://www.fdle.state.fl.us/CJSTC/Documents/Publications/Community\\_Safety\\_Report\\_Adopt\\_May\\_11\\_17.aspx](https://www.fdle.state.fl.us/CJSTC/Documents/Publications/Community_Safety_Report_Adopt_May_11_17.aspx) (last visited Apr. 20, 2021).

<sup>45</sup> Oliva, Morgan, and Romano (2010), *supra*, at p. 18.

- 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.<sup>46</sup>

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.<sup>47</sup> For example, the Police Executive Research Forum (PERF) has recommended the Critical Decision-Making Model (CDM).<sup>48</sup> 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.<sup>49</sup>

### ***Mental Health and Substance Abuse Training***

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.”<sup>50</sup>

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

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<sup>46</sup> 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 Apr. 20, 2021).

<sup>47</sup> *PERF Daily Critical Issue Report* (June 15, 2020), Police Executive Research Forum, available at <https://www.policeforum.org/criticalissuesjune15> (last visited Apr. 20, 2021).

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *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 Apr. 20, 2021).

altercations, intoxicated or chemically dependent individuals, suicide attempts, victims of accidents, physical or sexual assaults, or other taxing situations[.]<sup>51</sup>

“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.”<sup>52</sup> “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[.]”<sup>53</sup> To enhance such communication, the officer might learn active listening skills and behaviors to avoid and also engage in role-playing.<sup>54</sup>

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.”<sup>55</sup>

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.”<sup>56</sup> Further, the 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.”<sup>57</sup>

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.”<sup>58</sup> Additionally, according to the FDLE, accreditation standards for those law enforcement agencies that are accredited require annual mental illness training.

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

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<sup>51</sup> Oliva, Morgan, and Romano (2010), *supra*, at p. 16.

<sup>52</sup> *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 Apr. 10, 2021).

<sup>53</sup> Oliva, Morgan, and Romano (2010), *supra*, at p. 19 (citation omitted).

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *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.*

<sup>58</sup> *2021 FDLE Legislative Bill Analysis* (SB 1192) (Feb. 25, 2021), FDLE (on file with Senate Committee on Rules).

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.<sup>59</sup>

### ***Duty to Intervene***

In Florida, there is no statutory duty requiring a law enforcement officer to intervene if the officer witnesses another officer use excessive force. Thus, it is not part of the basic recruit training curriculum.<sup>60</sup> However, many law enforcement agencies have independently developed policies requiring an officer to intervene to stop another officer from using force inappropriately or when force is no longer required.<sup>61</sup> Further, “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.”<sup>62</sup>

### ***Duty to Render Medical Assistance***

Although there is no statutory duty requiring a law enforcement officer to render medical assistance to an injured person, an officer has a common law duty to render aid in an emergency situation.<sup>63</sup> At common law, there is no distinction between the duty owed by a law enforcement officer to a person injured prior to his or her arrival and the duty owed to a person injured as a result of an officer’s use of force.

### **Use of Force Investigations**

Under current law, there are no statutory requirements for a law enforcement agency to comply with when conducting a use of force investigation. As such, law enforcement agencies have adopted policies that take a variety of approaches to investigating use of force incidents. In July 2020, major Pinellas County law enforcement agencies announced a joint policy prohibiting an agency from investigating its own officers after a use of force incident.<sup>64</sup> Instead, the investigation is conducted by a member of the Pinellas County Use of Deadly Force Investigative Task Force, which is comprised of homicide detectives from the Pinellas County Sheriff’s Office and three police departments.<sup>65</sup> In Hillsborough County, law enforcement agencies refer officer involved shootings and “in-custody” deaths to the FDLE for

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<sup>59</sup> *Id.*

<sup>60</sup> 2021 FDLE Legislative Bill Analysis (HB 7051), *supra*.

<sup>61</sup> Tess Sheets, *Do local cops have a duty to stop excessive force? Here’s what their policies say* (June 11, 2020), Orlando Sentinel, available at <https://www.orlandosentinel.com/news/breaking-news/os-ne-george-floyd-orlando-duty-to-intervene-20200611-ecrrnmdxtfa45azjbpp3riq2eu-story.html> (last visited Apr. 20, 2021).

<sup>62</sup> *Fundiller v. City of Cooper City*, 777 F.2d 1436, 1442 (11th Cir. 1995).

<sup>63</sup> *Webster v. State*, 201 So.2d 789 (Fla. 4th DCA 1967). *See also* 89-62 Fla. Op. Att’y Gen. (1989) and 78-140 Fla. Op. Att’y Gen. Op. (1978).

<sup>64</sup> Kavitha Surana and Rose Wong, *‘It’s time to change:’ Police in Pinellas to partner on use-of-force investigations* (Jul. 21, 2020), Tampa Bay Times, available at <https://www.tampabay.com/news/2020/07/21/its-time-to-change-police-in-pinellas-to-partner-on-use-of-force-investigations/> (last visited Apr. 20, 2021).

<sup>65</sup> *Id.*

investigation.<sup>66</sup> In contrast, the Jacksonville Sheriff’s Office in Duval County conducts its own review of “officer-involved critical incidents” and, following the initial investigation, refers the case to the State Attorney for an independent review.<sup>67</sup>

### Use of Force Data Collection

Since January 1, 2019, the Federal Bureau of Investigation (FBI) has collected data on use of force incidents involving law enforcement agencies.<sup>68</sup> Participation in the data collection program is voluntary for law enforcement agencies.<sup>69</sup> The goal of the program is to collect national-level statistics on use of force incidents and gather basic information on such incidents, not to assess whether force was used appropriately.<sup>70</sup> As of August 2020, there were 67 law enforcement agencies in Florida participating in the FBI database.<sup>71</sup> The information collected by the FBI includes:

- Incident Information:
  - Date and time of the incident.
  - Total number of officers who applied force.
  - Number of officers from reporting agency who applied force.
  - Location.
  - Location type (street, business, home, etc.).
  - Did the officer(s) approach the subjects?
  - Was it an ambush incident?
  - Was a supervisor or senior officer consulted during the incident?
  - Reason for initial contact (routine patrol, traffic stop, etc.).
  - If the initial contact was due to unlawful activity, what was the most serious offense the individual was suspected of?
  - The National Incident-Based Reporting System record or local incident number of the report detailing criminal incident information on the subject and/or assault or homicide of a law enforcement officer.
- Subject Information:
  - Age, sex, race, ethnicity, height, and weight.
  - Injury/death of subject.
  - Type of force used.
  - Did the subject direct a threat to the officer or another person?
  - Did the subject resist?
  - Types of resistance or weapon involvement (threats, active aggression, firearms, etc.).
  - Did the subject have a known or apparent impairment, such as mental health condition or being under the influence of drugs or alcohol?
  - Was the subject believed to have a weapon?

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<sup>66</sup> *Id.*

<sup>67</sup> *Officer Involved Critical Incidents*, Office of the State Attorney for the Fourth Judicial Circuit, available at <https://www.sao4th.com/resources-for-the-public/officer-involved-shootings/> (last visited Apr. 20, 2021).

<sup>68</sup> *National Use-of-Force Data Collection*, Federal Bureau of Investigation, available at <https://www.fbi.gov/services/cjis/ucr/use-of-force> (last visited Apr. 20, 2021).

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Crime Data Explorer*, Federal Bureau of Investigation, available at <https://crime-data-explorer.app.cloud.gov/proxy/api/participation/dl/uof/national/2020/3> (last visited Apr. 20, 2021).

- Officer Information.
- Age, sex, race, ethnicity, height, and weight.
- Years of service in law enforcement.
- Was the officer a full-time employee?
- Was the officer on duty?
- Did the officer discharge a firearm?
- Was the officer injured?
- If so, what was the officer's injury type?<sup>72</sup>

The FDLE provided the following information on state use of force data collection efforts:

FDLE's Florida Incident-Based Reporting System (FIBRS) Use-of-Force (UoF) module is accessible for all Florida law enforcement agencies who voluntarily report use-of-force incidents. The information collected meets the reporting requirements established by the Federal Bureau of Investigation (FBI). Use-of-force is considered any action that resulted in the death or serious bodily injury of a person or the discharge of a firearm at or in the direction of a person. Through FIBRS, agencies can submit their use-of-force data manually through the user interface or by a submission via the Florida Criminal Justice Information System (CJIS) Portal. Portal submissions allow agencies to provide a single report for UoF and other FIBRS incidents. The UoF module also allows agencies to submit a "Zero Report" attesting there were no UoF incidents in a given month. Florida's voluntary UoF data collection began in 2020. Agency participation is expected to increase as more agencies complete the changes to their local systems to participate fully in FIBRS. Nationally, 27 percent of agencies and 42 percent of officers participate in UoF reporting.<sup>73</sup>

### **Minimum Age of Arrest**

In September 2019, an Orlando school resource officer handcuffed six-year-old Kaia Rolle and took her into custody at the Lucious and Emma Nixon Academy after she reportedly had a temper tantrum at school and kicked a school staff member. According to Orlando Police Department officials, Kaia Rolle was one of two six-year-old children arrested by the same officer that day.<sup>74</sup>

Under ch. 985, F.S., "child," "juvenile," or "youth" means any person under the age of 18 or any person alleged to have committed a violation of law before he or she turned 18.<sup>75</sup> Florida law does not presently restrict the age at which a child, juvenile, or youth may be arrested, charged with a violation of the law, or adjudicated delinquent. As such, under current law, unless a law enforcement officer chooses an alternative option, he or she may arrest a child of any age.

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<sup>72</sup> *National Use-of-Force Data Collection*, Federal Bureau of Investigation, available at <https://www.fbi.gov/services/cjis/ucr/use-of-force> (last visited Apr. 20, 2021).

<sup>73</sup> *2021 FDLE Legislative Bill Analysis* (HB 7051), *supra*.

<sup>74</sup> Mihir Zaveri, *Body Camera Footage Shows Arrest by Orlando Police of 6-Year-Old at School* (Feb. 27, 2021), *New York Times*, available at <https://www.nytimes.com/2020/02/27/us/orlando-6-year-old-arrested.html> (last visited Apr. 20, 2021).

<sup>75</sup> Section 985.03(7), F.S.



While many states do not set a minimum age for juvenile arrest or prosecution, in recent years more than 20 states have instituted minimum age restrictions for juvenile court prosecution, ranging from age six up to age 12.<sup>76</sup> In addition to the growing number of states placing age limitations on juvenile prosecution, the United States Supreme Court has also considered neuroscience research when sentencing youth who commit crimes. The Court has found that juveniles have less impulse control, are more susceptible to peer influence, lack the same decision-making skills as adults, and are less likely to exhibit negative moral character, which lowers the likelihood of repeated offenses and results in better rehabilitative outcomes.<sup>77</sup>

### ***Department of Juvenile Justice***

The Department of Juvenile Justice (DJJ) manages Florida's juvenile justice system, and the juvenile delinquency process is governed primarily by ch. 985, F.S. The circuit courts have exclusive original jurisdiction over juvenile delinquency proceedings.<sup>78</sup> In addition to providing services to juveniles within the court system, the DJJ also provides prevention services, including voluntary programs throughout the state designed to reduce juvenile crime and protect public safety by targeting high-risk juveniles and those exhibiting problem behaviors.<sup>79</sup>

### ***Alternatives to Arresting a Child***

When a juvenile is alleged to have committed a delinquent act, a law enforcement officer or authorized agent of the DJJ may, in lieu of taking a child into custody or detaining a child, issue a notice to appear. If the child is taken into custody by a law enforcement officer who chooses to release him or her to a parent, responsible adult relative, or legal guardian, the officer may issue to the child a written notice to appear, unless the child:

- Fails or refuses to sufficiently identify himself or herself or provide required information;
- Refuses to sign the notice to appear;
- May pose an unreasonable risk of bodily injury to himself, herself, or others;
- Has no ties to the jurisdiction which are reasonably sufficient to ensure his or her appearance or there is a substantial risk the child will refuse to respond to the notice to appear;
- May be wanted in any jurisdiction; or
- Has previously failed to respond to a notice or a summons.<sup>80</sup>

Additionally, under s. 985.12, F.S., each judicial circuit in the state must establish a civil citation or similar prearrest diversion program for misdemeanor juvenile offenses, designed to divert

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<sup>76</sup> *The Criminalization of Childhood* (July 2019), National Juvenile Defender Center, available at <https://njdc.info/wp-content/uploads/Criminalization-of-Childhood-WEB.pdf> (last visited Apr. 20, 2021).

<sup>77</sup> See *Roper v. Simmons*, 542 U.S. 551 (2005) (imposing the death penalty on a juvenile under age 18 violates the Eighth Amendment's prohibition against cruel and unusual punishment) and *Graham v. Florida*, 560 U.S. 48 (2010) (sentencing a juvenile to life without parole for committing a nonhomicide offense constitutes cruel and unusual punishment). See also Morgan Tyler, *Understanding the Adolescent Brain and Legal Culpability* (Aug. 1, 2015), American Bar Association, available at

[https://www.americanbar.org/groups/public\\_interest/child\\_law/resources/child\\_law\\_practiceonline/child\\_law\\_practice/vol-34/august-2015/understanding-the-adolescent-brain-and-legal-culpability/](https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-34/august-2015/understanding-the-adolescent-brain-and-legal-culpability/) (last visited Apr. 20, 2021).

<sup>78</sup> Section 985.0301(1), F.S.

<sup>79</sup> *Prevention & Victim Services*, Department of Juvenile Justice, available at <http://www.djj.state.fl.us/services/prevention> (last visited Apr. 20, 2021).

<sup>80</sup> Fla. R. Juv. P. 8.045.

children committing less serious offenses away from the juvenile delinquency system when appropriate.<sup>81</sup>

### ***Taking a Juvenile into Custody***

In the juvenile justice system, youth are taken into custody, whereas adults are arrested.<sup>82</sup> “Taken into custody” means a child’s immediate status when a person authorized by law takes temporary physical control over the child, pending his or her release, detention, placement, or other disposition.<sup>83</sup> Under s. 985.101, F.S., a child may be taken into custody:

- Pursuant to a circuit court order;
- For a delinquent act or violation of law;
- By a law enforcement officer for failing to appear at a court hearing; or
- By a law enforcement officer who has probable cause to believe the child:
  - Is in violation of probation, supervised release, post commitment probation, or a condition of supervision;
  - Has absconded from nonresidential commitment; or
  - Has escaped from residential commitment.

While Florida does not currently provide a minimum age under which a child, juvenile, or youth may not be taken into custody, charged with a violation of the law, or adjudicated delinquent, individual law enforcement agencies may have policies prescribing how an officer should handle situations involving younger juveniles, such as requiring supervisor permission prior to taking the child into custody.<sup>84</sup>

The DJJ indicates that in FY 2019-20, two juveniles under the age of seven and 12,224 juveniles between the ages of seven and 14 were referred to the DJJ, and among those 2,200 were admitted to secure detention. The most common offenses across all referrals included misdemeanor assault/battery (19 percent), burglary (14 percent), felony aggravated assault/battery (11 percent), and petit theft (five percent).<sup>85</sup>

According to the FDLE, “[t]here is nothing in the basic recruit curriculum that addresses the arrest, charge or adjudication of a child younger than seven years old. However, it briefly discusses the possibility of considering referral services instead of arrest.”<sup>86</sup>

### **Detention and Disposition**

When a child is detained, a court must conduct a detention hearing within 24 hours to determine if there is probable cause that the child committed a delinquent act or violation of law and

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<sup>81</sup> See s. 985.12, F.S.

<sup>82</sup> *Juvenile Justice Process*, DJJ, available at <http://www.djj.state.fl.us/youth-families/juvenile-justice-process> (last visited Apr. 20, 2021).

<sup>83</sup> Section 985.03(48), F.S. Although the juvenile justice system requires a youth to be “taken into custody” rather than “arrested,” the terms are sometimes used interchangeably in statute. See ss. 985.033 and 985.255, F.S.

<sup>84</sup> *2021 Agency Legislative Bill Analysis* (SB 626), p. 2 (Feb. 8, 2021), DJJ, available at <http://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=31358> (last visited Apr. 20, 2021).

<sup>85</sup> *Id.*

<sup>86</sup> *2021 FDLE Legislative Bill Analysis* (HB 7051), *supra*.



whether further detention is necessary.<sup>87</sup> Regardless of whether a child remains in detention or is released, the State Attorney determines whether to proceed judicially or non-judicially. If the case proceeds non-judicially, the child may be placed into a diversionary program, and upon successfully completing the program, his or her delinquency case is dismissed. If the case proceeds judicially, a delinquency petition is filed and the child must enter a plea.<sup>88</sup> If the child enters a plea of guilty or nolo contendere to the alleged activity, the case proceeds directly to a disposition hearing, but if the child enters a plea of not guilty, the case proceeds to an adjudicatory hearing, which is similar to a criminal trial but determined by a judge rather than a jury.<sup>89</sup> At a disposition hearing, the court may order residential commitment at a specified restrictive level,<sup>90</sup> a probation program including community-based sanctions<sup>91</sup> or rehabilitative components, or both.<sup>92</sup>

### III. Effect of Proposed Changes:

The bill, which takes effect July 1, 2021, makes the following changes to the requirements for the operations and standards of law enforcement and correctional agencies and training for law enforcement officers, correctional officers, and correctional probation officers.

#### Law Enforcement or Correctional Officer Employment

The bill amends s. 943.13, F.S., to require an applicant for employment as a law enforcement officer, correctional officer, or correctional probation officer to disclose on the affidavit-of-applicant form:

- Whether the applicant is the subject of a pending investigation by a local, state, or federal agency or entity for criminal, civil, or administrative wrongdoing; and
- Whether the applicant separated or resigned from previous criminal justice employment while he or she was under investigation.

The bill also *requires* an employing agency conducting an applicant's pre-employment background investigation to determine the facts and reasons for any of the applicant's previous separations from private or public employment or appointment, as the applicant understands them, rather than the permissive standard under current law (the agency *should* determine the facts and reasons for any of the applicant's previous separations from employment).<sup>93</sup>

<sup>87</sup> Section 985.26, F.S. This type of hearing is similar to a first appearance in an adult criminal case.

<sup>88</sup> A child of any age who is charged with a violation of state law punishable by death or by life imprisonment is subject to the jurisdiction of the juvenile court unless and until an indictment on the charge is returned by a grand jury. When such indictment is returned, the petition for delinquency, if any, must be dismissed and the child must be tried and handled in every respect as an adult on the offense that is punishable by death or life imprisonment and all other felonies or misdemeanors charged in the indictment. Section 985.56, F.S.

<sup>89</sup> If the judge finds that the child: did not commit a delinquent act, the case is dismissed; or committed a delinquent act, the judge determines whether to withhold adjudication or adjudicate the child delinquent. Section 985.35(3)-(4), F.S.

<sup>90</sup> Residential programs include minimum-risk nonresidential, nonsecure residential, high-risk residential, or maximum risk residential. Section 985.03(44), F.S.

<sup>91</sup> Community-based sanctions may include, but are not limited to: participation in substance abuse treatment; participation in a day-treatment program; restitution in money or in kind; a curfew; revocation or suspension of the child's driver license; community service; or appropriate educational programs. Section 985.435(3), F.S.

<sup>92</sup> Section 985.433, F.S.

<sup>93</sup> Section 943.133(3), F.S.

### **Employment Information**

The bill amends s. 943.134, F.S., to require each employing agency to retain employment information for a minimum of five years after the date of an officer's termination, resignation, or retirement, unless the employing agency is otherwise required to retain such information for a longer time period.

### **Law Enforcement and Correctional Officer Training**

The bill creates s. 943.1735, F.S., which requires the CJSTC to establish standards for instructing law enforcement officers, correctional officers, and correctional probation officers in the use of force, and requires each employing agency to adopt a use of force policy. The bill requires such standards and policies to include:

- Instruction on the proportional use of force;
- Alternatives to use of force, including de-escalation techniques;
- If the agency authorizes use of chokeholds, limits on such use to circumstances where the officer perceives an immediate threat of serious bodily injury or death to the officer or another person;
- The duty of an on-duty officer who observes another officer engaging or attempting to engage in excessive use of force to intervene to end the excessive use of force or attempted excessive use of force when such intervention is reasonable based on the totality of the circumstances and the observing officer may intervene without jeopardizing the officer's own health or safety;
- The duty to render medical assistance following use of force when an officer knows, or when it is otherwise evident, that a person who is detained or in custody is injured or requires medical attention and the action is reasonable based on the totality of the circumstances and the officer may do so without jeopardizing the officer's safety; and
- Instruction on the recognition of the evident symptoms and characteristics of a person with a substance abuse disorder or mental illness and appropriate responses to such person.

Beginning July 1, 2023, such standards developed by the CJSTC must be included in every basic skills course required in order for a law enforcement officer, correctional officer, or correctional probation officer to obtain the officer's initial certification.

The bill defines a "chokehold" as the intentional and prolonged application of force to the throat, windpipe, or airway of another person that prevents the intake of air. The term does not include any hold involving contact with another person's neck that is not intended to prevent the intake of air.

The bill also defines "excessive use of force" as a use of force that exceeds the degree of force permitted by law, policy, or the observing officer's employing agency.

### **Use of Force Investigations**

The bill creates s. 943.1740, F.S., to require each law enforcement agency to develop and maintain a policy for use of force investigations in which a law enforcement officer's use of force results in the death of any person or the intentional discharge of a firearm that results in

injury or death to any person. Such investigation must include, at a minimum, an independent review by:

- A law enforcement agency that did not employ the law enforcement officer under investigation at the time of the use of force;
- A law enforcement officer who is not employed by the same employing agency as the law enforcement officer under investigation; or
- The state attorney of the judicial circuit in which the use of force occurred.

Under the bill, the agency, officer, or state attorney conducting the independent review must complete an independent report upon completion of the review and, if applicable, submit such report to the state attorney of the judicial circuit in which the use of force occurred.

### **Use of Force Data Collection**

The bill creates s. 943.6872, F.S., which, beginning July 1, 2022, requires each law enforcement agency to report quarterly to the FDLE data regarding use of force by the law enforcement officers employed by the agency that results in serious bodily injury, death, or discharge of a firearm at a person. This data must include all information collected by the FBI's National Use-of-Force Data Collection, on use of force incidents that result in serious bodily injury, death, or discharge of a firearm at a person.

### **Minimum Age of Arrest**

The bill creates s. 985.031, F.S., which may be cited as the "Kaia Rolle Act" and which prohibits a child from being arrested, charged, or adjudicated delinquent for a delinquent act or violation of law based on an act occurring before the child is seven years of age, unless the act committed is a forcible felony as defined in s. 776.08, F.S.<sup>94</sup>

### **Declaration of an Important State Interest**

The bill includes the following declaration of an important state interest supporting the provisions of the bill. (See "Municipality/County Mandates Restrictions" section of this analysis for details.)

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

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<sup>94</sup> A forcible felony includes: treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual. Section 776.08, F.S.

The FDLE states that employing agencies may incur costs associated with establishing or revising policies required by the bill and submitting use of force data to the FDLE.<sup>95</sup> Additional staff time may also be required for local agencies to collect required background information from private employers.

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 the following declaration of an important state interest supporting the provisions of the bill:

The Legislature finds that promoting effective policing and correctional practices fulfills an important state interest in protecting the safety of both law enforcement and correctional officers and the public. The Legislature intends that the requirements of this act operate as minimum standards and that nothing in this act prevents an employing agency from adopting policies that exceed the requirements of this act.

**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.

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<sup>95</sup> 2021 FDLE Legislative Bill Analysis (HB 7051), *supra*.

C. Government Sector Impact:

**FDLE**

The FDLE states that Section 4 of the bill will likely require workshops for developing training curricula with subject matter experts and staff time totaling approximately \$11,011. The FDLE provided the following breakdown of costs for all CJSTC basic recruit training programs:

Analysis

- Identify SMEs: \$744 for 40 hours.
- Research existing material: \$744 for 40 hours.
- SME Workshop-Instructional Analysis: \$1,488 for 80 hours.

Design/Development

- Develop course content: \$5,952 for 320 hours.

Review/Revisions

- \$ 1,488 for 80 hours

Implementation

- Course edit: \$595 for 32 hours.

*Estimated total cost to develop training on Duty to Intervene and Mental Illness/CIT: \$11,011.*<sup>96</sup>

In regard to Section 5 of the bill, the FDLE states that it “currently has 233 Memorandums of Understanding (MOUs) with federal, state, local and tribal law enforcement agencies (approximately half of the sworn law enforcement agencies statewide) and conducted the following number of officer-involved shooting/use-of-force investigations the past five fiscal years:

- FY 15-16 – 82 cases;
- FY 16-17 – 84 cases;
- FY 17-18 – 78 cases;
- FY 18-19 – 92 cases; and
- FY 19-20 – 84 cases.”<sup>97</sup>

The FDLE states that if it “were to experience a significant increase in these type of investigations as specified in Section 5, the department would request future investigative and laboratory resources to manage the workload.”<sup>98</sup>

The FDLE notes that “Section 6 of the bill states use of force reporting and collection must include all information collected by the FBI’s National Use of Force Data

<sup>96</sup> 2021 FDLE Legislative Bill Analysis (HB 7051), *supra*.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

Collection.” At this time “FIBRS UoF is in compliance with the FBI’s program and agencies are reporting data to this collection through FIBRS.” The FDLE further notes:

Local agencies may require financial assistance to update systems and collection standards specified in Section 6 of the bill. FIBRS UoF is voluntary at this time, agencies not previously able to afford a new system to report data will be met with a new cost. The department’s current FY 21-22 Legislative Budget Request includes \$6 million to assist reporting agencies in modifying their existing systems to allow for collection and reporting of FIBRS data elements, including UoF information.<sup>99</sup>

The FDLE further states the department “may incur costs in developing the basic skills training and use of force data collection required by the ... bill, however such costs are likely to be insignificant.”<sup>100</sup>

## **DJJ**

The Department of Juvenile Justice (DJJ) indicates that while the proposed bill may divert children under the age of seven from the juvenile delinquency system, it is unclear what, if any, services such children may receive in lieu of those provided by the DJJ.<sup>101</sup>

## **Local Law Enforcement Agencies**

The FDLE states that “[e]mploying agencies may incur costs associated with establishing or revising policies required by the ... bill and submitting use of force data to the FDLE; however, such costs are likely to be insignificant.”<sup>102</sup> Additional staff time may also be required for local agencies to collect required background information from private employers.

## **VI. Technical Deficiencies:**

None.

## **VII. Related Issues:**

### **Private Employment**

The FDLE notes that “Section 2 of the bill requires background investigations to include all facts and reasons for previous separations from all private and public employment. Rule 11B-27.0022(1)(a), FAC, requires agencies to verify the facts and reasons for separation from all criminal justice employments, but doesn’t address private employments.” The FDLE states that “[t]his change will require agencies to verify the facts and reasons for every employment the

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> E-mail to staff of the Senate Committee on Criminal Justice from Sam Kerce, Deputy Legislative Director, Department of Juvenile Justice, dated Apr. 15, 2021 (on file with the Senate Committee on Rules).

<sup>102</sup> 2021 FDLE Legislative Bill Analysis (HB 7051), *supra*.

applicant has ever had. This could be problematic because many private employers will only verify that the person worked with the employer and the dates of employment.”<sup>103</sup>

### **Training and Standards**

According to the FDLE most of the training requirements of the bill:

Is already covered in the basic recruit training (e.g., duty to render medical aid, de-escalation techniques, etc.). However, workshops would be required to develop training on duty to intervene as well as addressing chokeholds within the training. With the assistance of subject matter experts (SMEs), FDLE will use workshops to create training that addresses all of the minimum training requirements. Substance abuse and mental illness are covered in basic recruit training and in the post-basic School Resource Officer (SRO) course. Therefore, information on this topic is already available. However, depending upon the final version of the bill, an expansion of this information may be required in both basic and the post-basic course, 053 Crisis Intervention Training (CIT).

Additionally, Florida accreditation standards would need to be modified or added to address the following topics:

- Affidavits requiring applicants to disclose pending investigations;
- Requiring policies addressing an independent review of use of force investigations by an outside agency;
- Quarterly reports to the department on data regarding use of force that results in serious bodily injury or death or discharge of a firearm at a person will be made beginning July 1, 2022; and
- A child younger than seven may not be arrested, charged, or adjudicated delinquent for a delinquent act or violation of law based on an act occurring before he or she reaches seven unless the violation of law is a forcible felony.<sup>104</sup>

### **VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 943.13, 943.133, and 943.134.

This bill creates the following sections of the Florida Statutes: 943.1735, 943.1740, 943.6872, and 985.031.

This bill reenacts the following sections of the Florida Statutes: 943.131, 943.1395, and 943.19.

### **IX. Additional Information:**

#### **A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

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<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

B. Amendments:

None.

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

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