

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: HB 7051 PCB JDC 21-01 Law Enforcement and Correctional Officer Practices

SPONSOR(S): Judiciary Committee, Byrd and others

TIED BILLS: IDEN./SIM. BILLS:

FINAL HOUSE FLOOR ACTION: 113 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

HB 7051 passed the House on April 26, 2021, and subsequently passed the Senate on April 29, 2021.

The bill makes several 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 including:

- Requiring an applicant for employment as a law enforcement officer, correctional officer, or a correctional probation officer to disclose whether he or she is the subject of a pending investigation and whether he or she separated or resigned from previous criminal justice employment while under investigation;
- Requiring a law enforcement or correctional agency to include the facts and reasons an applicant was separated from previous employment as part of an employment background check investigation;
- Requiring a law enforcement or correctional agency to 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 develop basic skills training and each law enforcement or correctional agency to develop policies in the use of force, including:
 - Proportional use of force and alternatives to use of force, including de-escalation techniques;
 - Limiting the use of a chokehold to circumstances where an officer perceives an immediate threat of serious bodily injury or death to any person;
 - The duty to intervene when an officer is on-duty and witnesses another officer using or attempting to use excessive force when such intervention is reasonable based on the totality of the circumstances and the observing officer may intervene without jeopardizing his or her safety;
 - The duty to render medical assistance following the 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 render aid without jeopardizing his or her safety; and
 - Instruction on the recognition and characteristics of a person with a substance abuse disorder or mental illness and appropriate responses to such a person.
- Requiring an independent review of a use of force incident involving death or the intentional discharge of a firearm that results in injury or death to any person to be conducted by another law enforcement agency, a law enforcement officer employed by another agency, or the state attorney and requiring such agency or officer to complete a report to be provided to the state attorney;
- Requiring each law enforcement agency to report use of force incidents that result in serious bodily injury, death, or the discharge of a firearm at a person to the Florida Department of Law Enforcement (FDLE) on a quarterly basis; 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.

The bill provides that the Legislature intends for the requirements of the bill to operate as minimum standards and that nothing in the bill prevents an employing agency from adopting policies that exceed such standards.

FDLE 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. Employing agencies may incur costs associated with establishing or revising policies required by the bill and submitting use of force data to FDLE, however, such costs are likely to be insignificant.

The bill was approved by the Governor on June 29, 2021, ch. 2021-241, L.O.F., and became effective on July 1, 2021.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Law Enforcement and Correctional Officer Employment

Background

At a minimum, a person must meet the following requirements to qualify for employment as a law enforcement officer,¹ correctional officer,² or correctional probation officer³ in Florida:

- 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,⁴ as determined by a background investigation;
- Submit an affidavit-of-applicant form;
- Complete a basic recruit training program approved by the Criminal Justice Standards and Training Commission;
- Pass the officer certification examination; and
- Comply with continuing training or education requirements.⁵

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.⁶ 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.⁷

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.⁸

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.⁹

¹ "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. S. 943.10(1), F.S.

² "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. S. 943.10(2), F.S.

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

⁴ See R.11B-27.0011, F.A.C.

⁵ S. 943.13, F.S.

⁶ Florida Department of Law Enforcement, *Affidavit of Applicant*, <http://www.fdle.state.fl.us/CJSTC/Documents/Rules-Forms/Table-1-Forms/PDFs/CJSTC-68.aspx> (last visited Apr. 29, 2021).

⁷ *Id.*

⁸ A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Ss. 775.082 and 775.083, F.S.

⁹ S. 943.13(1), F.S.

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.¹⁰ The background check should include an investigation into the facts and reasons for the applicant's separation from previous employment, if applicable.¹¹ 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 guilty of a second degree misdemeanor.

Effect of the Bill – Law Enforcement or Correctional Officer Employment

The bill amends s. 943.13, F.S., to statutorily 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 requires an employing agency conducting an applicant's background check to determine the facts and reasons for any of the applicant's previous separations from employment, rather than the permissive standard under current law.

Employment Information

Background

Section 943.134, F.S., requires an employing agency¹² to disclose specified employment information¹³ 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.¹⁴ 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.¹⁵ 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.¹⁶

Effect of the Bill – 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.

¹⁰ S. 943.133(2), F.S.

¹¹ S. 943.133(3), F.S.

¹² "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. S. 943.10(4), F.S.

¹³ "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. S. 943.134(1)(b), F.S.

¹⁴ S. 943.134(3), F.S.

¹⁵ Florida Department of State, *General Records Schedule GS1-SL for State and Local Government Agencies*, <https://files.floridados.gov/media/703328/gs1-sl-2020.pdf> (last visited Apr. 29, 2021).

¹⁶ *Id.*

Law Enforcement and Correctional Officer Training

Background

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.¹⁷ 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.¹⁸

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, correctional officers, 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 CJSTC 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.¹⁹

Law Enforcement Officers

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.²⁰ 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;

¹⁷ Florida Department of Law Enforcement, *Criminal Justice Standards & Training Commission*, <https://www.fdle.state.fl.us/CJSTC/Commission/CJSTC-Home.aspx> (last visited Apr. 29, 2021).

¹⁸ S. 943.11, F.S.

¹⁹ *Id.*

²⁰ S. 943.17, F.S.

- 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.²¹

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.²² The training on such subjects are incorporated throughout the curriculum.²³ 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.²⁴ 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.²⁵

Correctional Officers

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

- Introduction to corrections;
- 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.²⁶

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;

²¹ Florida Department of Law Enforcement, *Florida Law Enforcement Academy (Version 2020.07) #2000*, <http://www.fdle.state.fl.us/CJSTC/Curriculum/Active-Courses/2000.aspx> (last visited Apr. 29, 2021).

²² Florida Department of Law Enforcement, Agency Analysis of 2021 Senate Bill 1970, p. 2 (Mar. 22, 2021).

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ Florida Department of Law Enforcement, *Florida Correctional Basic Recruit Training Program (Version 2020.07) #1190*, <https://www.fdle.state.fl.us/CJSTC/Curriculum/Active-Courses/1190.aspx> (last visited Apr. 29, 2021).

- Legal foundations for correctional probation officers;
- Intake and orientation;
- Caseload management;
- Supervision of offenders;
- Field Supervision; and
- Crossover program updates.²⁷

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; 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 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.²⁸

De-escalation Techniques

“De-escalation” is the process of using strategies and techniques intended to decrease the intensity of a situation.²⁹ Specific to law enforcement, de-escalation is a useful strategy for successfully managing and resolving conflict without injury to the subject, the public, or the officer.³⁰ De-escalation training involves the use of effective communication and active listening skills in order to minimize the need for physical force.³¹

Mental Health and Substance Abuse Training

A law enforcement officer may often be called to intervene in situations where individuals with mental illness or who are abusing controlled substances behave in ways that disturb the public or lead to concerns for the safety of others. An individual with a mental illness or who is under the influence of a controlled substance may not respond well to standard law enforcement approaches.³² Additionally, when an officer perceives a person’s mental state to be dangerous, he or she may approach the person with increased force to resolve the situation, which may result in an encounter that is dangerous for both the officer and the person with a mental illness or substance abuse problem.³³

Duty to Intervene

²⁷ Florida Department of Law Enforcement, *Correctional Officer Cross-Over Training to Florida Correctional Probation Basic Recruit Training Program (Version 2020.07) #3003*, <https://www.fdle.state.fl.us/CJSTC/Curriculum/Active-Courses/3003.aspx> (last visited Apr. 29, 2021).

²⁸ A law enforcement officer may also be justified in the use of force under s. 776.012, F.S., commonly referred to as the “Stand Your Ground” law. See *State v. Peraza*, 259 So. 3d 728 (Fla. 2018).

²⁹ California Commission on Peace Officer Standards and Training, *De-escalation Strategies & Techniques*, https://post.ca.gov/Portals/0/post_docs/publications/DeEscalation.pdf (last visited Apr. 29, 2021).

³⁰ *Id.*

³¹ Janet R. Oliva, Rhiannon Morgan, and Michael Compton, *A Practical Overview of De-escalation Skills in Law Enforcement: Helping Individuals in Crisis While Reducing Police Liability and Injury*, <https://de-escalate.org/wp-content/uploads/2019/02/A-Practical-Overview-of-De-Escalation-Skills-in-Law-Enforcement.pdf> (last visited Apr. 29, 2021).

³² Watson, Amy, et. al., *Improving police response to persons with mental illness: A Multilevel conceptualization of CIT*, National Institutes of Health, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2655327/pdf/nihms69181.pdf> (last visited Apr. 29, 2021).

³³ *Id.*

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. 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.³⁴ Although there is no duty to intervene under Florida law, an officer who fails to take reasonable steps to protect a victim of another officer's use of excessive force may be held liable under Federal law for violating a person's civil rights.³⁵

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.³⁶ 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.

Effect of the Bill - 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;
- Limiting the use of a chokehold to circumstances where the officer perceives an immediate threat of serious bodily injury or death to any person;
- The duty to intervene when another officer uses or attempts to use excessive force, if such intervention is reasonable based on the totality of the circumstances and the officer may intervene without jeopardizing his or her own health or safety;
- The duty to render medical assistance following the use of force, when an officer knows or when it becomes otherwise evident, that a person who is detained or in custody is injured or requires medical attention when such action is reasonable based on the totality of the circumstances and the officer may render medical assistance without jeopardizing his or her own health or safety; and
- Instruction on the recognition of the evident symptoms and characteristics of an individual with a substance abuse disorder or mental illness and appropriate responses to such an individual.

By July 1, 2023, such standards developed by 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 his or her 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 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

³⁴ Tess Sheets, *Do local cops have a duty to stop excessive force? Here's what their policies say*, Orlando Sentinel (June 11, 2020), <https://www.orlandosentinel.com/news/breaking-news/os-ne-george-floyd-orlando-duty-to-intervene-20200611-ecrrnmdxf45azjbbp3riq2eu-story.html> (last visited Apr. 29, 2021).

³⁵ *Fundiller v. City of Cooper City*, 777 F.2d 1436 (11th Cir. 1985).

³⁶ *Webster v. State*, 201 So.2d 789 (Fla. 4th DCA 1967). See also 89-62 Fla. Op. Att'y Gen. (1989), 78-140 Fla. Op. Att'y Gen. Op. (1978).

Background

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.³⁷ 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.³⁸ In Hillsborough County, law enforcement agencies refer officer involved shootings and "in-custody" deaths to FDLE for investigation.³⁹ 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.⁴⁰

Effect of the Bill – 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 an investigation must include, at a minimum, an independent review by:

- A different law enforcement agency;
- A law enforcement officer employed by a different law enforcement agency; or
- The state attorney of the judicial circuit.

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

Background

Since January 1, 2019, the Federal Bureau of Investigation (FBI) has collected data on use-of-force incidents involving law enforcement agencies.⁴¹ Participation in the data collection program is voluntary for law enforcement agencies.⁴² 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.⁴³ As of August 2020, there were 67 law enforcement agencies in Florida participating in the FBI database.⁴⁴ 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.).

³⁷ Kavitha Surana and Rose Wong, *'It's time to change.'* Police in Pinellas to partner on use-of-force investigations, Tampa Bay Times (Jul. 21, 2020) <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. 29, 2021).

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Office of the State Attorney for the Fourth Judicial Circuit, *Officer Involved Critical Incidents*, <https://www.sao4th.com/resources/for-the-public/officer-involved-shootings/> (last visited Apr. 29, 2021).

⁴¹ Federal Bureau of Investigation, *National Use-of-Force Data Collection*, <https://www.fbi.gov/services/cjis/ucr/use-of-force> (last visited Apr. 29, 2021).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Federal Bureau of Investigation, *Crime Data Explorer*, <https://crimedataexplorer.app.cloud.gov/proxy/api/participation/dl/uof/national/2020/3> (last visited Apr. 29, 2021).

- 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?
- 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?⁴⁵

Effect of the Bill – Use of Force Data Collection

The bill creates s. 943.6872, F.S., which, beginning July 1, 2022, requires each law enforcement agency to record data, including all data collected by the FBI 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, and report such data to FDLE on a quarterly basis.

Minimum Age of Arrest

Background

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.⁴⁶

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 12.⁴⁷ 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

⁴⁵ Federal Bureau of Investigation, *National Use-of-Force Data Collection*, <https://www.fbi.gov/services/cjis/ucr/use-of-force> (last visited Apr. 29, 2021).

⁴⁶ Mihir Zaveri, *Body Camera Footage Shows Arrest by Orlando Police of 6-Year-Old at School*, New York Times, (Feb. 27, 2021) <https://www.nytimes.com/2020/02/27/us/orlando-6-year-old-arrested.html> (last visited Apr. 29, 2021).

⁴⁷ NJDC, *The Criminalization of Childhood*, (July 2019) <https://njdc.info/wp-content/uploads/Criminalization-of-Childhood-WEB.pdf> (last visited Apr. 29, 2021).

exhibit negative moral character, which lowers the likelihood of repeated offenses and results in better rehabilitative outcomes.⁴⁸

Florida 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.⁴⁹ In addition to providing services to juveniles within the court system, 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.⁵⁰ DJJ indicates that in FY 2019-2020, 990 children under the age of seven were admitted to a prevention program.⁵¹

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 18.⁵² 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.

Alternatives to Arresting a Child

When a juvenile is alleged to have committed a delinquent act, a law enforcement officer or authorized agent of 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.⁵³

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 children committing less serious offenses away from the juvenile delinquency system when appropriate.⁵⁴

Taking a Juvenile into Custody

⁴⁸ See *Roper v. Simmons*, 542 U.S. 551 (2005) (regarding the juvenile death penalty – The Court ruled that imposing the death penalty on a juvenile under age 18 violates the Eighth Amendment's prohibition against cruel and unusual punishment. The decision effectively banned the juvenile death penalty nationwide) and *Graham v. Florida*, 560 U.S. 48 (2010) (regarding life without parole for juveniles – The Court ruled that sentencing a juvenile to life without parole for committing a nonhomicide offense constituted cruel and unusual punishment). See also Morgan Tyler, *Understanding the Adolescent Brain and Legal Culpability*, The American Bar Association, (Aug. 1, 2015) 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. 29, 2021).

⁴⁹ S. 985.0301(1), F.S.

⁵⁰ The Department of Juvenile Justice, *Prevention & Victim Services*, <http://www.djj.state.fl.us/services/prevention> (last visited Apr. 29, 2021).

⁵¹ Email from Rachel Moscoso, Legislative Affairs Director, RE: Agency Bill Analysis for SB 626, (Feb. 8, 2021) (noting that prevention services serve at-risk youth and the participation of the 990 children was not a result of a delinquent act or charge).

⁵² S. 985.03(7), F.S.

⁵³ Fla. R. Juv. P. 8.045

⁵⁴ See s. 985.12, F.S.

“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.^{55, 56} 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.⁵⁷

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 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).⁵⁸

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 whether further detention is necessary.⁵⁹ 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.⁶⁰ 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.⁶¹ At a disposition hearing, the court may order residential commitment at a specified restrictive level,⁶² a probation program including community-based sanctions⁶³ or rehabilitative components, or both.⁶⁴

Effect of the Bill – Minimum Age of Arrest

⁵⁵ S. 985.03(48), F.S. In the juvenile justice system, youth are taken into custody, whereas adults are arrested. Florida Department of Juvenile Justice, *Juvenile Justice Process; Taken into Custody*, <http://www.djj.state.fl.us/youth-families/juvenile-justice-process> (last visited Apr. 29, 2021).

⁵⁶ Although the juvenile justice system requires a youth to be “taken into custody” rather than “arrested,” the terms are used interchangeably in statute. See ss. 985.033 and 985.255, F.S.

⁵⁷ Florida Department of Juvenile Justice, *Agency Analysis of SB 626*, p. 2 (Feb. 8, 2021).

⁵⁸ *Id.*

⁵⁹ S. 985.26, F.S. This type of hearing is similar to a first appearance in an adult criminal case.

⁶⁰ 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. S. 985.56, F.S.

⁶¹ 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. S. 985.35(3)–(4), F.S.

⁶² Residential programs include minimum-risk nonresidential, nonsecure residential, high-risk residential, or maximum risk residential. S. 985.03(44), F.S.

⁶³ 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. S. 985.435(3), F.S.

⁶⁴ S. 985.433, F.S.

The bill creates s. 985.031, F.S., to prohibit a child from being arrested, charged, or adjudicated delinquent for a delinquent act or violation of law based on an act occurring before he or she is seven years of age, unless the act committed is a forcible felony.

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.⁶⁵

Legislative Intent

The bill provides that the Legislature intends for the requirements of the bill to operate as minimum standards and that nothing in the bill prevents an employing agency from adopting policies that exceed such standards.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

FDLE 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. According to DJJ, in Fiscal Year 2019-2020, two youth under the age of seven were referred to DJJ. Therefore any impact to DJJ is likely to be insignificant.⁶⁶

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Employing agencies may incur costs associated with establishing or revising policies required by the bill and submitting use of force data to FDLE, however, such costs are likely to be insignificant.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

⁶⁵ S. 776.08, F.S.

⁶⁶ DJJ Agency Analysis, *supra* note 57.

