

# SENATE BILL NO. 967

June 11, 2020, Introduced by Senators JOHNSON, VICTORY, MACDONALD, SHIRKEY, RUNESTAD, SANTANA, CHANG, BULLOCK and VANDERWALL and referred to the Committee on Judiciary and Public Safety.

A bill to require law enforcement agencies to regulate law enforcement officers' failure to intervene during the use of excessive force; to enable law enforcement agencies to impose certain disciplinary actions in instances of law enforcement officers' failure to intervene during the use of excessive force; to provide for the adoption of certain policies; and to prescribe powers and duties of certain state agencies and departments.

## **THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 1. This act shall be known and may be cited as the "law  
2 enforcement officer duty to intervene act".

3           Sec. 2. As used in this act:

4           (a) "Law enforcement agency" means that term as defined in  
5 section 2 of the Michigan commission on law enforcement standards  
6 act, 1965 PA 203, MCL 28.602.

7           (b) "Law enforcement officer" means that term as defined in  
8 section 2 of the Michigan commission on law enforcement standards  
9 act, 1965 PA 203, MCL 28.602.

10          Sec. 3. (1) Beginning on January 1, 2021, each law  
11 enforcement agency in this state shall adopt a written duty to  
12 intervene policy.

13          (2) The policy required under subsection (1) must include,  
14 at a minimum, all of the following:

1 (a) A law enforcement officer in the employ of a law  
2 enforcement agency has an affirmative duty to intervene verbally  
3 or physically to prevent an observed use of excessive force by  
4 another law enforcement officer.

5 (b) A law enforcement agency shall take appropriate  
6 disciplinary actions against a law enforcement officer who  
7 observes the use of excessive force by another law enforcement  
8 officer and fails to intervene.

9 (3) Each law enforcement agency in this state shall provide  
10 a copy of the policy required under subsection (1) to a law  
11 enforcement officer in its employ.

## LAW ENFORCEMENT DUTY TO INTERVINE

Senate Bill No. 967 as introduced

Sponsor: Sen. Ruth Johnson

Committee: Judiciary and Public Safety

### SUMMARY:

**Senate Bill 967** would create a new act requiring law enforcement agencies to create and enforce policies providing discipline to officers' who fail to intervene, either verbally or physically, to excessive use of force by another officer.

This act defines a *law enforcement agency* as is described in section 2 of the Michigan commission on law enforcement standards act of 1965. A law enforcement agency is authorized by the state to appoint or employ law enforcement officers.

This act defines *law enforcement officer* as described in section 2 of the law enforcement standards act of 1965. This includes individuals authorized to detect and enforce criminal law, tribal law enforcement officers, the sergeant at arms of the Michigan House and Senate, sheriffs and deputies, public safety officers for college campuses, conservation officers, and park rangers.

Under this act, each law enforcement agency in the state shall adopt a written duty to intervene policy which will be provided to its officers. This policy must include statements that:

- a) Officers employed by said agency have an affirmative duty to physically or verbally intervene in cases of observed excessive force, and
- b) The agency will take appropriate disciplinary actions against officers who fail to do so.

### APPARENT PROBLEM

The bill sponsors hold that

- 1) law enforcement officers are or have the potential to use excessive force while carrying out their duties, and
- 2) fellow officers are or have the potential to be complicit in said abuse.

This act would seek to restore or secure accountability within state law enforcement and help to restore or secure public trust in law enforcement by requiring law enforcement agencies to create policies requiring intervention from observing law enforcement officers.

### SUPPORTING ARGUMENTS

This bill recognizes the very real possibility of abuse of power within law enforcement. By adopting policies that hold officers accountable for their inaction, this will set a greater standard of responsibility for the officers which is necessary for the protection of this state's citizens.

Much of the implementation of this bill is left to local discretion. By establishing a minimum standard of how the policy is to be enforced, the state leaves the specific categories of excessive force, discipline, and enforcement to the individual entities. This allows for decentralization of authority and greater local control in understanding the needs of each community.

## **OPPOSING ARGUMENTS**

Opponents of this legislation would argue that the definitions in the bill are far too general, which will lead to confusion about how it would be applied. Excessive force is not defined, and a relative term such as this is difficult to enforce. Officers must have a unity in their decision making, and if officers are not provided with guidelines of what constitutes an excessive use of force, it could lead to conflict in the line of duty further damaging law enforcement effectiveness and public perception.

Other opponents of the bill argue that it does not go far enough. By leaving the specific disciplinary actions and standards of excessive force to the local levels, there is great potential for local entities to be lenient with complicit officers. Additionally, the provision for verbal intervention may give complicit officers an opportunity to speak up but not stop the excessive force.

## **FISCAL IMPACT**

Senate Bill 967 would have an intermittent fiscal impact upon state and local law enforcement agencies as well as the criminal and civil courts depending on the number of cases arising because of officer complacency.

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Legislative and Fiscal Analyst: J.J.P

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