

No. 165. An act relating to a statewide standard and policy for law enforcement use of force.

(S.119)

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 20 V.S.A. § 2368 is added to read:

§ 2368. STANDARDS FOR LAW ENFORCEMENT USE OF FORCE

(a) Definitions. As used in this section:

(1) “Deadly force” means any use of force that creates a substantial risk of causing death or serious bodily injury.

(2) “Force” means the physical coercion employed by a law enforcement officer to compel a person’s compliance with the officer’s instructions.

(3) “Imminent threat of death or serious bodily injury” means when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the law enforcement officer or another person. An imminent threat is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be immediately addressed and confronted.

(4) “Law enforcement officer” shall have the same meaning as in 20 V.S.A. § 2351a.

(5) “Prohibited restraint” means the use of any maneuver on a person that applies pressure to the neck, throat, windpipe, or carotid artery that may prevent or hinder breathing, reduce intake of air, or impede the flow of blood or oxygen to the brain.

(6) “Totality of the circumstances” means the conduct and decisions of the law enforcement officer leading up to the use of force and all facts known to the law enforcement officer at the time.

(b) Use of force.

(1) The authority of law enforcement to use physical force is a serious responsibility that shall be exercised judiciously and with respect for human rights and dignity and for the sanctity of every human life. Every person has a right to be free from excessive use of force by officers acting under authority of the State.

(2) A law enforcement officer shall use only the force objectively reasonable, necessary, and proportional to effect an arrest, to prevent escape, or to overcome resistance of a person the officer has reasonable cause to believe has committed a crime or to achieve any other lawful law enforcement objective.

(3) The decision by a law enforcement officer to use force shall be evaluated carefully and thoroughly, in a manner that reflects the gravity of that authority and the serious consequences of the use of force by law enforcement

officers, in order to ensure that officers use force consistent with law and with agency policies.

(4) Whether the decision by a law enforcement officer to use force was objectively reasonable shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances. A law enforcement officer's failure to use feasible and reasonable alternatives to force shall be a consideration for whether its use was objectively reasonable.

(5) When a law enforcement officer knows that a subject's conduct is the result of a medical condition, mental impairment, developmental disability, physical limitation, language barrier, drug or alcohol impairment, or other factor beyond the subject's control, the officer shall take that information into account in determining the amount of force appropriate to use on the subject, if any.

(6) A law enforcement officer who makes or attempts to make an arrest need not retreat or desist from his or her efforts by reason of the resistance or threatened resistance of the person being arrested. A law enforcement officer shall not be deemed an aggressor or lose the right to self-defense by the use of proportional force if necessary in compliance with subdivision (b)(2) of this section to effect the arrest or to prevent escape or to overcome resistance. For the purposes of this subdivision, "retreat" does not mean tactical repositioning or other de-escalation tactics.

(c) Use of deadly force.

(1) A law enforcement officer is justified in using deadly force upon another person only when, based on the totality of the circumstances, such force is objectively reasonable and necessary to:

(A) defend against an imminent threat of death or serious bodily injury to the officer or to another person; or

(B) apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended.

(2) The use of deadly force is necessary when, given the totality of the circumstances, an objectively reasonable law enforcement officer in the same situation would conclude that there was no reasonable alternative to the use of deadly force that would prevent death or serious bodily injury to the officer or to another person.

(3) A law enforcement officer shall cease the use of deadly force as soon as the subject is under the officer's control or no longer poses an imminent threat of death or serious bodily injury to the officer or to another person.

(4) A law enforcement officer shall not use deadly force against a person based on the danger that person poses to himself or herself, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the law enforcement officer or to another person.

(5) When feasible, a law enforcement officer shall, prior to the use of force, make reasonable efforts to identify himself or herself as a law enforcement officer and to warn that deadly force may be used.

(6) A law enforcement officer has a duty to intervene when the officer observes another officer using a prohibited restraint on a person.

Sec. 2. 13 V.S.A. § 2305 is amended to read:

§ 2305. JUSTIFIABLE HOMICIDE

If a person kills or wounds another under any of the circumstances enumerated below, he or she shall be guiltless:

(1) in the just and necessary defense of ~~his or her~~ the person's own life or the life of ~~his or her husband, wife~~ the person's spouse, parent, child, ~~brother, sister, master, mistress, servant~~ sibling, guardian, or ward; or

(2) in the forceful or violent suppression of a person attempting to commit murder, sexual assault, aggravated sexual assault, burglary, or robbery, ~~with force or violence~~; or

(3) in the case of a ~~civil officer; or a military officer or private soldier~~ law enforcement officer as defined in 20 V.S.A. § 2351(a) using force in compliance with 20 V.S.A. § 2368(b)(2), (4), and (5) or deadly force in compliance with 20 V.S.A. § 2368(c)(1)–(4).

Sec. 3. 2020 Acts and Resolves No. 147, Sec. 9 is amended to read:

Sec. 9. REPEALS

(a) ~~13 V.S.A. § 1032 (law enforcement use of prohibited restraint) is repealed on July 1, 2021. [Repealed.]~~

(b) ~~13 V.S.A. § 2305(3) (justifiable homicide) is repealed on July 1, 2021. [Repealed.]~~

Sec. 4. DEPARTMENT OF PUBLIC SAFETY; REPORT ON MODEL
STATEWIDE POLICY FOR LAW ENFORCEMENT USE OF
FORCE

On or before February 2, 2021, the Department of Public Safety and the Executive Director of Racial Equity shall report to the House and Senate Committees on Judiciary and on Government Operations regarding the development of a uniform statewide model policy on the use of force for all law enforcement agencies and officers as directed by Executive Order No. 03-20 (Governor's Public Safety Reform Initiative). The report shall include:

(1) the process undertaken by the Department, including a list of the community representatives and other stakeholders that were included in the development of the policy, the number of times the stakeholders met, and any opportunities given for public comment and the participation in and outcome of that public comment; and

(2) the final proposed policy.

Sec. 4a. 20 V.S.A. § 2358 subsection (f) is added to read:

(f) The Council shall not offer or approve any training on the use of a prohibited restraint as defined in section 2401 of this chapter, except for training designed to identify and prevent the use of prohibited restraints.

Sec. 5. EFFECTIVE DATES

(a) Sec. 1 (standards for law enforcement use of force) and Sec. 2 (justifiable homicide) shall take effect on July 1, 2021.

(b) The remainder of this act shall take effect on passage.

Date on which Governor allowed bill to become law without (his/her) signature: October 7, 2020