

S.119

Introduced by Senators Ingram, Pearson and Pollina

Referred to Committee on Judiciary

Date: February 21, 2019

Subject: Government operations; law enforcement training; systemic racism

Statement of purpose of bill as introduced: This bill proposes to require 1) the collection and distribution of data regarding the use of force used in a traffic stop; 2) the Criminal Justice Training Council to develop a model policy regarding the use of force, de-escalation, and cross-cultural awareness, and for law enforcement agencies to adopt a policy containing each component of the model policy; and 3) the Criminal Justice Training Council to report to the Executive Director of Racial Equity regarding trainings on the model policy and race based data collection.

~~An act relating to law enforcement training on appropriate use of force, de-escalation tactics, and cross-cultural awareness~~

~~An act relating to a statewide use of deadly force policy for law enforcement~~

An act relating to a statewide standard and policy for law enforcement use of force

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

~~Sec. 1. 20 V.S.A. § 2366 is amended to read:~~

~~§ 2366. LAW ENFORCEMENT AGENCIES; FAIR AND IMPARTIAL
POLICING POLICY; RACE DATA COLLECTION~~

1 ~~(c)(1) On or before September 1, 2014, every State, county, and municipal~~
2 law enforcement agency shall collect roadside stop data consisting of the
3 following:

- 4 (A) the age, gender, and race of the driver;
- 5 (B) the reason for the stop;
- 6 (C) the type of search conducted, if any;
- 7 (D) the evidence located, if any; and
- 8 (E) the outcome of the stop, including the type of force employed to

9 effectuate the stop or during the stop, if any, and whether:

- 10 (i) a written warning was issued;
- 11 (ii) a citation for a civil violation was issued;
- 12 (iii) a citation or arrest for a misdemeanor or a felony occurred; or
- 13 (iv) no subsequent action was taken.

14 (2) Law enforcement agencies shall work with the Executive Director of
15 Racial Equity, the Criminal Justice Training Council, and a vendor chosen by
16 the Council and the Executive Director with the goals of collecting uniform
17 data, adopting uniform storage methods and periods, and ensuring that data
18 can be analyzed. Roadside stop data, as well as reports and analysis of
19 roadside stop data, shall be public.

20 (3) On or before September 1, 2016 and annually thereafter, law
21 ~~enforcement agencies shall provide the data collected under this subsection to~~

1 ~~the vendor chosen by the Criminal Justice Training Council under subdivision~~
2 (2) of this subsection or, in the event the vendor is unable to continue
3 receiving data under this section, to the Council Executive Director of Racial
4 Equity. Law enforcement agencies shall provide the data collected under this
5 subsection in an electronic format specified by the receiving entity.

6 (4) The data provided pursuant to subdivision (3) of this subsection
7 shall be posted electronically in a manner that is analyzable, user-friendly, and
8 accessible to the public on the receiving agency's website.

9 (f) Nothing in this section is intended to prohibit or impede any public
10 agency from complying with the lawful requirements of 8 U.S.C. §§ 1373 and
11 1644. To the extent any State or local law enforcement policy or practice
12 conflicts with the lawful requirements of 8 U.S.C. §§ 1373 and 1644, that
13 policy or practice is, to the extent of the conflict, abolished.

14 Sec. 2. 20 V.S.A. § 2368 is added to read:

15 § 2368. APPROPRIATE USE OF FORCE, DE-ESCALATION, AND

16 CROSS-CULTURAL AWARENESS POLICY

17 (a) On or before October 1, 2019, the Criminal Justice Training Council, in
18 consultation with stakeholders, including the Vermont League of Cities and
19 Towns, the Vermont Human Rights Commission, and the Executive Director
20 of Racial Equity shall create a model use of force, de-escalation tactics, and

21 ~~cross-cultural awareness policy. On or before January 1, 2020, every State,~~

1 ~~local, county and municipal law enforcement agency and every constable who~~
2 exercises law enforcement authority pursuant to 24 V.S.A. § 1936a and who is
3 trained in compliance with section 2358 of this title shall adopt a use of force,
4 de-escalation tactics, and cross-cultural awareness policy that includes, at a
5 minimum, the elements of the Criminal Justice Training Council model policy.

6 (b) If a law enforcement agency or constable that is required to adopt a
7 policy pursuant to subsection (a) of this section fails to do so on or before
8 January 1, 2020, that agency or constable shall be deemed to have adopted,
9 and shall follow and enforce, the model policy issued by the Criminal Justice
10 Training Council.

11 (c) On or before September 15, 2020, and annually thereafter as part of
12 their annual training report to the Council, every law enforcement agency and
13 constable required to adopt a policy pursuant to subsection (a) of this section
14 shall report to the Council on whether the agency or officer has adopted a use
15 of force, de-escalation tactics, and cross-cultural awareness policy in
16 accordance with subsections (a) and (b) of this section. The Criminal Justice
17 Training Council shall determine, as a part of the Council's annual
18 certification of training requirements, whether current officers have received
19 training on the use of force, de-escalation tactics, and cross-cultural awareness
20 policy as required by subsection 2358(1) of this title.

1 ~~(d) On or before October 15, 2020, and annually thereafter on April 1, the~~
2 Criminal Justice Training Council shall report to the House and Senate
3 Committees on Judiciary regarding which departments and officers have
4 adopted a use of force, de-escalation tactics, and cross-cultural awareness
5 policy, and whether officers have received training on the policy.

6 (e) On or before October 1, 2021, and every odd-numbered year thereafter,
7 the Criminal Justice Training Council, in consultation with others, including
8 the Attorney General and the Human Rights Commission, shall review and, if
9 necessary, update the model use of force, de-escalation tactics, and cross-
10 cultural awareness policy.

11 (f) To encourage consistent fair and impartial policing practices statewide,
12 the Criminal Justice Training Council, in consultation with the Office of the
13 Attorney General, shall review the policies of law enforcement agencies and
14 constables required to adopt a policy pursuant to subsection (a) of this section,
15 to ensure those policies establish each component of the model policy on or
16 before April 15, 2021. If the Council finds that a policy does not meet each
17 component of the model policy, it shall work with the law enforcement agency
18 or constable to bring the policy into compliance. If, after consultation with its
19 attorney or with the Council, or with both, the law enforcement agency or
20 constable fails to adopt a policy that meets each component of the model

1 ~~policy that agency or constable shall be deemed to have adopted, and shall~~
2 follow and enforce, the model policy issued by the Council.

3 Sec. 3. 20 V.S.A. § 2358 is amended to read:

4 § 2358. MINIMUM TRAINING STANDARDS; DEFINITIONS

5 (a) Unless waived by the Council under standards adopted by rule, and
6 notwithstanding any statute or charter to the contrary, no person shall exercise
7 law enforcement authority as a law enforcement officer without completing a
8 basic training course and annual in-service training within a time and manner
9 prescribed by the Council by rule.

10 * * *

11 (e)(1) The criteria for all minimum training standards under this section
12 shall include anti-bias training approved by the Vermont Criminal Justice
13 Training Council; ~~and training on the State, county, or municipal law~~
14 ~~enforcement agency's fair and impartial policing policy, adopted pursuant to~~
15 ~~subsection 2366(a) of this title; appropriate use of force, de-escalation~~
16 ~~tactics, and cross-cultural awareness policy, adopted pursuant to~~
17 ~~subsection 2368(a) of this title.~~

18 (2) On or before December 31, 2018, law enforcement officers shall
19 receive a minimum of four hours of anti-bias training as required by this
20 subsection. On or before March 31, 2020, law enforcement officers shall

21 ~~receive a minimum of four hours of training on the appropriate use of force,~~

1 ~~de-escalation tactics, and cross-cultural awareness policy as required by this~~
2 subsection.

3 (3) In order to remain certified, law enforcement officers shall receive a
4 refresher course on the training required by this subsection during every odd-
5 numbered year in a program approved by the Vermont Criminal Justice
6 Training Council.

7 (4) The Criminal Justice Training Council shall, on an annual basis,
8 report to the Racial Disparities in the Criminal and Juvenile Justice System
9 Advisory Panel regarding:

10 (A) the adoption and implementation of the Panel's recommended
11 data collection methods and trainings and policies pursuant to 3 V.S.A.
12 § 168(f)(2) and (3);

13 (B) the incorporation of implicit bias training into the requirements
14 of basic training pursuant to this subsection; and

15 (C) the implementation of all trainings as required by this
16 subsection (e).

17 Sec. 4. EFFECTIVE DATE

18 ~~This act shall take effect on passage.~~

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

~~§ 2368. STATEWIDE POLICY: LAW ENFORCEMENT USE OF DEADLY
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) "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 harm 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 instantly confronted and addressed.

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

(4) "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.

(5) "Totality of the circumstances" means all facts known to the law enforcement officer at the time, including the conduct of the officer and the words and conduct of the subject leading up to the use of deadly force.

(b) Statewide policy.

(1) The authority 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) Law enforcement officers may use deadly force only when necessary in defense of human life. In determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstances of each case and shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer.

(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 agency policies.

(4) The decision by a law enforcement officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time.

~~(5) Any law enforcement officer who has reasonable cause to believe that the person to be arrested has committed a crime may use proportional force if necessary to effect the arrest, to prevent escape, or to overcome resistance.~~

~~(c) Use of deadly force.~~

~~(1) A law enforcement officer is justified in using deadly force upon another person only when the officer reasonably believes, based on the totality of the circumstances, that such force is 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) 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.~~

~~(3) 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.~~

~~(4) 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)(5) 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.~~

~~(5) A law enforcement officer shall not use a prohibited restraint on a person for any reason. A law enforcement officer has a duty to intervene when the officer observes another officer using a prohibited restraint on a person.~~

~~Sec. 2. EFFECTIVE DATE~~

~~This act shall take effect on October 1, 2020.~~

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 when lawfully called out to suppress riot or rebellion, or to prevent or suppress invasion, or to assist in serving legal process, in suppressing opposition against him or her in the just and necessary discharge of his or her duty 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.