

June 23, 2020

Esteemed colleagues,

Thank you for inviting me to testify; I have a conflict Wednesday with my own committee. I'd like to just highlight just a few reactions to testimony thus far on the law enforcement reform bills.

1. We have all left out a key, relevant element. We're recognized in terms of liability for crime that brain development and judgement are not in the same place at age 18 versus age 26. Yet we hire 18-years-old with a HS diploma or GED, give them 16 weeks of training, and expect them to function at levels far above their capacity. (Towns differ, but Barre has a current job posting that lists 18 as the minimum age, and that's the minimum for the Police Academy.)
2. I think Sec Schirling's testimony about training is compelling. Legal changes to expectations on police officers must include adequate time for training. I would never have imagined or intended that H.808 take effect without that opportunity.
3. The fairly clean-cut standards on chokeholds and use of VSP body cams make sense as priorities to pass by September, perhaps effective by January. There is fairly (not total) broad consensus about them, and language revisions should not be difficult.
4. Although I agree that more time is required to change use-of-force standards, I strongly disagree with other arguments against establishing statewide **statutory** standards that change our current "minimum that meets the constitution" approach. The reason the current standard evolved under case law is because of the lack of statute. The court thus stepped in to say, "in order to not violate the constitution, you must meet (at least) this standard." We can, and must, do better.
5. Case law took decades precisely because it was case law: it evolved as a result of litigation in the absence of statute. **Well-crafted** statute will not require decades of litigation to interpret – unless it is overly vague and thus needs court interpretation. This means testimony, time, and effort on getting the language right. I don't pretend that my proposal in H.808 gets us there.
6. Statewide policy will not get us there: this is a matter of establishing a standard on behalf of Vermonters, as their legislators, not merely turning it over to the folks who do not think the that standard itself should be changed, but only that it be implemented it in a consistent and "best practices" manner. Policy can implement the details of standards established in law.
7. There are key differences in the H.808 concept and current standards. If Sec Schirling were correct that this represents nearly the same standard, then it is inadequate. But we do not currently consider the surrounding circumstances and actions of police prior to use of lethal force. If we did, then:
  - a. killing a man who was cowering in a shower until he was deliberately provoked to come out, would not have been a justified killing. It was justified because only the split second was considered: the moment that he lunged with a knife at an officer who had no space to move away. (Read the Grenon report, which was completed by the Commission we created for the purpose of getting recommendations for prevention of future deaths.)
  - b. killing a man who stopped from driving away after the officer cursed at him to "get f- out of here" would not have been justified. It was justified because after he was provoked and confronted – having committed no crime – he threw the first punch. It's not just about teaching de-escalation. We need to stop escalation and require accountability for actions that lead to "justified" responses.
8. Making the changes we think are needed, without listening to those most affected (those who are subjected to the most bias-provoked interventions, people of color, and those who have suffered the most deaths by police in VT, people with psych disabilities) is the ultimate in paternalism and attitudes of supremacy: we know what is best for you, so we are going to go ahead and do it without listening to you. But don't worry; it's on your behalf, so be grateful.

Anne Donahue