

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Judiciary to which was referred Senate Bill No. 119  
3 entitled “An act relating to a statewide use of deadly force policy for law  
4 enforcement” respectfully reports that it has considered the same and  
5 recommends that the House propose to the Senate that the bill be amended by  
6 striking out all after the enacting clause and inserting in lieu thereof the  
7 following:

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

9 § 2368. STANDARDS FOR LAW ENFORCEMENT USE OF FORCE

10 (a) Definitions. As used in this section:

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

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

16 (3) “Imminent threat of death or serious bodily injury” means when,  
17 based on the totality of the circumstances, a reasonable officer in the same  
18 situation would believe that a person has the present ability, opportunity, and  
19 apparent intent to immediately cause death or serious bodily injury to the law  
20 enforcement officer or another person. An imminent threat is not merely a fear  
21 of future harm, no matter how great the fear and no matter how great the

1 likelihood of the harm, but is one that, from appearances, must be immediately  
2 addressed and confronted.

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

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

9 (6) “Totality of the circumstances” means the conduct and decisions of  
10 the law enforcement officer leading up to the use of force and all facts known  
11 or reasonably available to the law enforcement officer at the time, including  
12 whether a medical condition, mental impairment, developmental disability,  
13 physical limitation, language barrier, drug or alcohol impairment, or other  
14 factor beyond the subject’s control interferes with the subject’s ability to  
15 understand or comply with law enforcement commands.

16 (b) Use of force.

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

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

6           (3) The decision by a law enforcement officer to use force shall be  
7           evaluated carefully and thoroughly, in a manner that reflects the gravity of that  
8           authority and the serious consequences of the use of force by law enforcement  
9           officers, in order to ensure that officers use force consistent with law and with  
10          agency policies.

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

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

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

9           (c) Use of deadly force.

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

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

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

19           (2) The use of deadly force is necessary when, given the totality of the  
20           circumstances, an objectively reasonable law enforcement officer in the same  
21           situation would conclude that there was no reasonable alternative to the use of

1 deadly force that would prevent death or serious bodily injury to the officer or  
2 to another person.

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

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

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

14 (6) A law enforcement officer shall not use a prohibited restraint on a  
15 person for any reason.

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

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

19 § 2305. JUSTIFIABLE HOMICIDE

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

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

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

7 (3) in the case of a ~~civil officer; or a military officer or private soldier~~  
8 ~~when lawfully called out to suppress riot or rebellion, or to prevent or suppress~~  
9 ~~invasion, or to assist in serving legal process, in suppressing opposition against~~  
10 ~~him or her in the just and necessary discharge of his or her duty~~ law  
11 enforcement officer as defined in 20 V.S.A. § 2351(a) using force in  
12 compliance with 20V.S.A. § 2368(b)(2), (4), and (5) or deadly force in  
13 compliance with 20 V.S.A. § 2368(c)(1)–(4).

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

15 Sec. 9. REPEALS

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

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

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

4               On or before February 2, 2021, the Department of Public Safety and the  
5               Executive Director of Racial Equity shall report to the House and Senate  
6               Committees on Judiciary and on Government Operations regarding the  
7               development of a uniform statewide model policy on the use of force for all  
8               law enforcement agencies and officers as directed by Executive Order No. 03-  
9               20 (Governor’s Public Safety Reform Initiative). The report shall include:

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

15               (2) the final proposed policy.

16       Sec. 5. EFFECTIVE DATES

17               (a) Sec. 1 (standards for law enforcement use of force) shall take effect on  
18               July 1, 2021.

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

20               and that after passage the title of the bill be amended to read: “An act  
21               relating to a statewide standard and policy for law enforcement use of force”

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(Committee vote: \_\_\_\_\_)

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Representative \_\_\_\_\_

FOR THE COMMITTEE