



## Memorandum

**Date:** September 10, 2020

**To:** Honorable Maxine Grad, Chair, House Judiciary Committee

**From:** Karen Horn, Director, Public Policy and Advocacy (khorn@vlct.org)

**RE:** Considerations for S. 119, Use of Force Legislation

Thank you for the opportunity to testify on behalf of the 246 member cities and towns of the Vermont League of Cities and Towns regarding S. 119.

We have spent a great deal of time evaluating how to assure that policing in Vermont provides service to the public reflective of the values of diversity, equity and inclusion that inspire public confidence. The VLCT Board Perspective on Policing, which was unveiled at a press conference Tuesday September 1, provides recommendations for policing in the 21<sup>st</sup> century. A link to that document is at the end of this memo.

We welcome Governor Scott's Executive Order 03-20 on Public Safety Reform and the commitment expressed therein to involve community leaders including local officials in developing standards on hiring and promotion practices; data collection and management; body worn cameras; use of force policies; training; responding to improper conduct allegations; and development of resident involvement in advising elected officials on policing oversight.

S. 119 would establish standards for use of force by law enforcement. We support the goal of the legislation; to reduce the likelihood of encounters that result in death or serious bodily injury to people.

We have several comments on the language of draft number 2.4, dated September 7, 2020. Without exception, law enforcement officers should take every possible opportunity to de-escalate and stabilize confrontational situations, and to understand likely impairments that may render a person unable to comply with orders. In the best circumstance, a mental health professional would be on hand to render assistance in those situations.

We suggest that the definition "imminent threat of death or serious bodily injury" be amended to read, "immediate threat of death or bodily injury". Immediate is a more limited adjective than "imminent", meaning that the threat is present or next in order and not separated in space or time. "Immediate" is the standard used throughout the VLCT model policies. A copy of the pertinent policy is attached with this memo.

We urge you to amend the proposed standard that would require an officer to consider the "totality of circumstances" for assessing a person's present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury. To demand that in the moment when immediate action is required, an officer review all the facts he or she knows or "should have known" and to run through all options before deciding which level of force to use, is an impossibly high standard that would constrain the officer's ability to act, with

potentially dire consequences for the officer or other persons. In hindsight, after an event, how would the determination be made about what an officer should have known or whether his or her review of all the facts was complete?

The proposed legislation seems to recognize potential use of force only in the arrest context. Has the committee considered other lawful purposes in which officers might be involved such as medical aid and mental health crisis cases where some level of force may be necessary so that a person will receive treatment for their condition?

Thank you for your attention to these concerns. Please contact me with any questions or concerns.

VLCT Board of Directors Perspectives on Police Reform:

[https://www.vlct.org/VLCT Perspectives on Police Reform](https://www.vlct.org/VLCT_Perspectives_on_Police_Reform)