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To: House Government Operations Committee and House Judiciary Committee
RE: H.808 An Act Relating to the Use of Deadly Force by Law Enforcement

Thank you for the opportunity to testify today on H.808, an act relating to the use of deadly force by law enforcement. Most people can agree police officers should use force only as a last resort, and that the force used in a given situation must be no more than is absolutely necessary. Vermont currently lacks statutory standards to better ensure that happens in practice, while research shows such standards can reduce use of force incidents.¹ At the same time, we have seen fatal use of force incidents steadily increasing over the last few decades.



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To better guarantee the safety of the communities they serve, law enforcement must prioritize a model of policing that employs force only when necessary, and that emphasizes de-escalation and mutual respect between community and police. The ACLU of Vermont believes H.808 codifies these values, and we urge the legislature to adopt the bill into law.

Vermont currently does not have a statutory standard for the use of deadly force by law enforcement officers, and we support H.808 in part because this legislation would establish a such standard. H.808 will make clear that police officers should only use deadly force when necessary to defend against an imminent threat of death or serious bodily injury.

We would underscore the contrast between the lack of any standard for deadly use of force, as compared to the existing standard for taser use. Vermont does have statutory use of force standard for the use of less deadly force in the form of tasers, and it is time to extend that same consistency to the use of deadly force.

This bill is especially timely because of the increase in the number of officer-involved shootings in Vermont. According to data gathered by the Vermont State Police, we have seen a consistent increase in officer involved shootings in recent years—there were almost as many shootings over the last decade as in the prior three decades combined, and Vermont witnessed an four-fold increase in police shootings in 2019 when compared to 1999.² States like California are moving to address increased incidences of deadly police encounters, and Vermont should take similar action before more lives are lost.

It is important to consider some of the people most likely to be affected by a lack of standards under Vermont law. As noted in the bill, *“Individuals with physical, mental health, developmental, or intellectual disabilities are significantly more likely to experience greater levels of physical force during police interactions, as their disability may affect their ability to understand or comply with commands from law enforcement officers,”*³ and too often this has been the case in Vermont. The adoption of a *“necessary”* standard could help address this disparity by prioritizing the use of de-escalation techniques.

¹ Sinyangwe, Samuel, Examining the Role of Use of Force Policies in Ending Police Violence (September 20, 2016). Available at SSRN: <https://ssrn.com/abstract=2841872> or <http://dx.doi.org/10.2139/ssrn.2841872>

² <https://vsp.vermont.gov/public/oisdata>

³ H.808 as introduced, Sec. 1. 20 V.S.A. § 2368 (b)(5)

The “*necessary*” standard established by H.808 requires officers to use other techniques and resources, other than deadly force, when reasonably safe and feasible to do so. The bill also requires that when determining the propriety of deadly force, decisionmakers must consider the conduct leading up to the use of force.

Importantly, the requirement that force be “*necessary*” means that if de-escalation is possible, deadly force is not necessary. This is further borne out by the definition of “*totality of the circumstances*,” which includes officer conduct leading up to use of force. This standard requires decisionmakers to examine whether officers unnecessarily escalated situations leading up to a use of force or failed to deescalate when it would have been reasonable to do so. In addition, the statutory language clarifies that “[i]n determining whether deadly force is necessary, officers ... shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer.”⁴ This language focuses the evaluation of a use of deadly force on the officer’s use of other options, including de-escalation.

H.808 also establishes an important statutory definition for an “*imminent threat*” by enunciating “*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.*”⁵ Stated differently, H.808 authorizes the use of deadly force when a reasonable officer on the scene would believe, based on the facts and circumstances known to the officer, that the subject appears to have the ability, opportunity, and intention to kill or cause serious bodily injury to an officer or another person, and the use of deadly force is necessary to address that threat. To be clear, nothing in this bill bans the use of force *when* such force is necessary—it simply reinforces that force *must be* necessary.

H.808 is a necessary step to ensuring the safety of all people and affirming the sanctity of human life. Furthermore, community trust in law enforcement is undermined when force is used unnecessarily and disproportionately. Police are less able to do their job when community distrust leads to decreased respect and cooperation, a situation that increases the risks to officers and the people they are sworn to protect.

In conclusion, we thank the committees assembled here today for their interest in this important matter, and urge you to pass H.808 in order to create a consistent state wide standard that authorizes the use of deadly force only when necessary to defend against an imminent threat of death or serious bodily injury. Thank you.

⁴ H.808 as introduced, Sec. 1. 20 V.S.A. § 2368 (b)(2)

⁵ H.808 as introduced, Sec. 1. 20 V.S.A. § 2368 (a)(2)