

S.119
Side by side comparison
September 1, 2020

As passed the Senate: An act relating to a statewide use of deadly force policy for law enforcement	House Judiciary amendment: An act relating to a statewide standard for law enforcement use of force
<p>Sec. 1. 20 V.S.A. § 2368 is added to read:</p> <p><u>§ 2368. STATEWIDE POLICY; LAW ENFORCEMENT USE OF DEADLY FORCE</u></p> <p><u>(a) Definitions. As used in this section:</u></p> <p><u>(1) “Deadly force” means any use of force that creates a substantial risk of causing death or serious bodily injury.</u></p> <p><u>(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</u></p>	<p>Sec. 1. 20 V.S.A. § 2368 is added to read:</p> <p><u>§ 2368. STANDARDS FOR LAW ENFORCEMENT USE OF FORCE</u></p> <p><u>(a) Definitions. As used in this section:</u></p> <p><u>(1) “Deadly force” means any use of force that creates a substantial risk of causing death or serious bodily injury.</u></p> <p><u>(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</u></p>

S.119
Side by side comparison
September 1, 2020

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.

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 words and conduct of the subject and the conduct **and decisions** of the

S.119
Side by side comparison
September 1, 2020

	<p>officer leading up to the use of deadly force. <u>Consideration of the totality of the circumstances may include:</u></p> <p><u>(A) the seriousness of the crime or suspected offense;</u></p> <p><u>(B) the conduct of the subject being confronted as reasonably perceived by the officer at the time, to include:</u></p> <p><u>(i) signs of intoxication, impairment, or disordered thought related to the use or consumption of alcohol or controlled substances; or</u></p> <p><u>(ii) signs that the subject is suffering the effects of a mental disease or defect, or has a physical disability that impairs the subject's ability to understand or comply with law enforcement commands;</u></p> <p><u>(C) the time available to the officer to make a decision;</u></p>
--	---

S.119
Side by side comparison
September 1, 2020

<p>(b) <u>Statewide policy.</u></p> <p>(1) <u>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.</u></p>	<p><u>(D) the availability of other resources, including non-lethal means, to gain compliance of a subject;</u></p> <p><u>(E) factors such as the age, size, and relative strength of the officer and the subject, the skill level and training of the officer, and whether the officer or the subject are injured or exhausted;</u></p> <p><u>and</u></p> <p><u>(F) the environmental factors and any exigent circumstances.</u></p> <p>(b) <u>Use of force.</u></p> <p>(1) <u>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</u></p>
--	--

S.119
Side by side comparison
September 1, 2020

<p><u>(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.</u></p> <p><u>(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</u></p>	<p><u>excessive use of force by officers acting under authority of the State.</u></p> <p><u>(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, while protecting the life and safety of all persons.</u></p> <p><u>(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</u></p>
--	---

S.119
Side by side comparison
September 1, 2020

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.

order to ensure that officers use force consistent with law and 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.

(5) Force is necessary if no reasonably effective alternative to the use of force appears to exist and the amount of force used is reasonable to effect the lawful purpose intended. Whether

S.119
Side by side comparison
September 1, 2020

using force is necessary is based on the totality of the circumstances at the time of the use of force.

(6) Force is proportional if the level of force applied reflects the totality of the circumstances, including the nature and immediacy of any threats posed to the law enforcement officer or others. Proportional force does not require officers to use the same type or amount of force used by the subject. The more immediate the threat and the more likely that the threat will result in death or serious bodily injury, the greater the level of force that may be proportional, objectively reasonable, and necessary to counter it.

(7) Prior to using force, a law enforcement officer shall, if feasible, take proactive actions to stabilize the situation so that

S.119
Side by side comparison
September 1, 2020

<p>(c) <u>Use of deadly force.</u></p> <p>(1) <u>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:</u></p> <p><u>(A) defend against an imminent threat of death or serious bodily injury to the officer or to another person; or</u></p>	<p><u>more time, options, and resources are available to gain a person's voluntary compliance and reduce or eliminate the need to use force, including verbal persuasion, warnings, tactical techniques, slowing down the pace of an incident, waiting out a subject, creating distance between the officer and the threat, and requesting additional resources to resolve the incident.</u></p> <p>(c) <u>Use of deadly force.</u></p> <p>(1) <u>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:</u></p> <p><u>(A) defend against an imminent threat of death or serious bodily injury to the officer or to another person; or</u></p>
---	--

S.119
Side by side comparison
September 1, 2020

<p><u>(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.</u></p>	<p><u>(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.</u></p> <p><u>(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. When feasible, an officer shall employ all other reasonable means before resorting to the use of deadly force.</u></p>
---	--

S.119
Side by side comparison
September 1, 2020

<p><u>(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.</u></p> <p><u>(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.</u></p>	<p><u>(3) A law enforcement officer shall cease the use of deadly force as soon as the subject surrenders or no longer poses an imminent danger of death or serious bodily injury to the officer or to another person.</u></p> <p><u>(4) 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.</u></p> <p><u>(5) 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</u></p>
--	--

S.119
Side by side comparison
September 1, 2020

<p><u>(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.</u></p>	<p><u>serious bodily injury to the law enforcement officer or to another person.</u></p> <p><u>(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.</u></p>
--	---

S.119
Side by side comparison
September 1, 2020

<p><u>(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.</u></p>	<p><u>(7) A law enforcement officer may use a prohibited restraint only in a situation where use of deadly force is justified and only if no other intervention is available to defend against an imminent threat of death or serious bodily injury to the officer or to another person. A law enforcement officer is not justified in continuing the use of a prohibited restraint when there is no longer an objectively reasonable belief that the suspect continues to pose an immediate threat of death or serious bodily injury to the officer or to another person.</u></p> <p><u>(8) A law enforcement officer has a duty to intervene when the officer observes another officer using a prohibited restraint on a person.</u></p>
--	--

S.119
Side by side comparison
September 1, 2020

<p>[No corresponding section in Senate version]</p>	<p>Sec. 2. 13 V.S.A. § 1032 is added to read:</p> <p><u>§ 1032. LAW ENFORCEMENT USE OF PROHIBITED RESTRAINT</u></p> <p>(a) <u>As used in this section:</u></p> <p>(1) <u>“Law enforcement officer” shall have the same meaning as in 20 V.S.A. § 2351a.</u></p> <p>(2) <u>“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.</u></p> <p>(3) <u>“Serious bodily injury” shall have the same meaning as in section 1021 of this title.</u></p>
---	---

S.119
Side by side comparison
September 1, 2020

	<p><u>(b) A law enforcement officer acting in the officer's capacity as law enforcement who employs a prohibited restraint on a person in a manner inconsistent with § 2368(c)(7) that causes serious bodily injury to or death of the person shall be imprisoned for not more than 20 years or fined not more than \$50,000.00, or both.</u></p>
[No corresponding section in Senate version]	<p>Sec. 3. REPEALS</p> <p><u>13 V.S.A. § 2305(3) (justifiable homicide) and 2020 Acts and Resolves No. 147, Sec. 6 (law enforcement use of prohibited restraint) is repealed.</u></p>

S.119
Side by side comparison
September 1, 2020

<p>Sec. 2. EFFECTIVE DATE</p> <p><u>This act shall take effect on October 1, 2020.</u></p>	<p>Sec. 4. EFFECTIVE DATE</p> <p><u>This act shall take effect on passage.</u></p>
--	--