

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Judiciary to which was referred Senate Bill No. 219
3 entitled “An act relating to addressing racial bias and excessive use of force by
4 law 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. LEGISLATIVE INTENT

9 (a) This act is a continuation of the General Assembly’s work over the past
10 several years to create meaningful reforms to address systemic racism and
11 disproportionate use of force by law enforcement. Such reforms include 2017
12 Act No. 54, an act relating to the Racial Disparities in the Criminal and
13 Juvenile Justice System Advisory Panel; 2018 Act No. 9, an act relating to
14 racial equity in State government; 2013 Act No. 180, an act relating to a
15 statewide policy on the use of and training requirements for electronic control
16 devices; and 2017 Act No. 56, an act relating to the professional regulation of
17 law enforcement officers by the Vermont Criminal Justice Training Council.
18 The ongoing effort includes the work on S.338 (2020), an act relating to justice
19 reinvestment, a data-driven approach to improve public safety, reduce criminal
20 justice spending, and reinvest savings in strategies that can decrease crime and
21 reduce recidivism. Additionally, several legislative committees continue to

1 study law enforcement policies, training standards, and discipline, including
2 work on updating a model policy for the use of body cameras. Therefore, this
3 act represents one step in the legislature’s ongoing effort to combat racial bias
4 and increase accountability in policing. The General Assembly is committed
5 to continually assessing the progress made by the State towards developing a
6 system of public safety that is effective, equitable, and maintains the public
7 trust, and continuing its work to achieve that goal.

8 (b) It is the intent of the General Assembly that law enforcement agencies
9 in Vermont use community policing strategies that develop collaborative
10 partnerships between law enforcement and communities, adopt policies and
11 practices that reflect a guardian mindset towards the citizens they serve, and
12 establish a culture of transparency and accountability to promote public safety
13 and foster public trust. To this end, it is the intent of the General Assembly
14 that law enforcement use de-escalation strategies first and foremost before
15 using force in every community-police interaction.

16 (c) It is the intent of the General Assembly that when the 2020 legislative
17 session reconvenes in August, the standing committees will take up the
18 following work:

19 (1) considering whether to require all Vermont law enforcement
20 agencies and constables to adopt the six pillars of 21st Century Policing as
21 developed by President Obama’s Task Force on 21st Century Policing;

- 1 (2) considering whether to require all Vermont law enforcement
2 agencies and constables to be accredited through the Commission on
3 Accreditation for Law Enforcement Agencies within the next five years;
- 4 (3) empowering Vermont’s Executive Director of Racial Equity to issue
5 subpoenas, administer oaths and take the testimony of any person under oath,
6 and require production of data, papers, and records in order to assist the
7 Director in the performance of the duties set forth in 3 V.S.A. chapter 68;
- 8 (4) adding two FTE positions to include a data analyst and a policy
9 analyst to the Agency of Administration to assist the Executive Director of
10 Racial Equity in the performance of the duties set forth in 3 V.S.A. chapter 68;
- 11 (5) resituating the Criminal Justice Training Council to the jurisdiction
12 of the Department of Public Safety;
- 13 (6) requiring body cameras for all law enforcement agencies;
- 14 (7) reforming qualified immunity for law enforcement;
- 15 (8) expanding the data law enforcement is required to collect to include
16 data stemming from all law enforcement initiated interactions with civilians;
- 17 (9) evaluating whether to create a new crime that imposes criminal
18 penalties on a law enforcement officer that, while acting in the officer’s
19 capacity as law enforcement, uses a prohibited restraint that causes serious
20 bodily injury or death to another person; and

1 contingent on the agency or constable complying with the requirements of
2 20 V.S.A. § 2366(e).

3 Sec. 4. 20 V.S.A. § 2366 is amended to read:

4 § 2366. LAW ENFORCEMENT AGENCIES; FAIR AND IMPARTIAL
5 POLICING POLICY; RACE DATA COLLECTION

6 * * *

7 (e)(1) On or before September 1, 2014, every State, county, and municipal
8 law enforcement agency shall collect roadside stop data consisting of the
9 following:

- 10 (A) the age, gender, and race of the driver;
- 11 (B) the reason grounds for the stop;
- 12 (C) the grounds for the search and the type of search conducted, if
13 any;
- 14 (D) the evidence located, if any; ~~and~~
- 15 (E) the outcome of the stop, including whether physical force was
16 employed or threatened during the stop, and if so, the type of force employed
17 and whether the force resulted in bodily injury or death, and whether:
- 18 (i) a written warning was issued;
- 19 (ii) a citation for a civil violation was issued;
- 20 (iii) a citation or arrest for a misdemeanor or a felony occurred; or
- 21 (iv) no subsequent action was taken.

1 (2) Law enforcement agencies shall work with the Executive Director of
2 Racial Equity, the Criminal Justice Training Council, and a vendor chosen by
3 the Council with the goals of collecting uniform data, adopting uniform storage
4 methods and periods, and ensuring that data can be analyzed. Roadside stop
5 data, as well as reports and analysis of roadside stop data, shall be public.

6 (3) On or before September 1, 2016 and annually thereafter, law
7 enforcement agencies shall provide the data collected under this subsection to
8 the Executive Director of Racial Equity and the vendor chosen by the Criminal
9 Justice Training Council under subdivision (2) of this subsection or, in the
10 event the vendor is unable to continue receiving data under this section, to the
11 Council. Law enforcement agencies shall provide the data collected under this
12 subsection in an electronic format specified by the receiving entity.

13 (4) The data provided pursuant to subdivision (3) of this subsection shall
14 be posted electronically in a manner that is ~~analyzable and~~ accessible to the
15 public on the receiving agency's website, and clear, understandable, and
16 analyzable to a reasonably prudent person. The receiving agency shall also
17 report the data annually to the General Assembly.

18 (5) As used in this subsection, "physical force" shall refer to the force
19 employed by a law enforcement officer to compel a person's compliance with
20 the officer's instructions that constitutes a greater amount of force than
21 handcuffing a compliant person.

1 (f) Nothing in this section is intended to prohibit or impede any public
2 agency from complying with the lawful requirements of 8 U.S.C. §§ 1373 and
3 1644. To the extent any State or local law enforcement policy or practice
4 conflicts with the lawful requirements of 8 U.S.C. §§ 1373 and 1644, that
5 policy or practice is, to the extent of the conflict, abolished.

6 *** Prohibited Restraints; Unprofessional Conduct ***

7 Sec. 5. 20 V.S.A. chapter 151 (Vermont Criminal Justice Training Council),
8 subchapter 2 is amended to read:

9 Subchapter 2. Unprofessional Conduct

10 § 2401. DEFINITIONS

11 As used in this subchapter:

12 (1) “Category A conduct” means:

13 (A) A felony.

14 (B) A misdemeanor that is committed while on duty and did not
15 involve the legitimate performance of duty.

16 (C) Any of the following misdemeanors, if committed off duty:

17 (i) simple assault, second offense;

18 (ii) domestic assault;

19 (iii) false reports and statements;

20 (iv) driving under the influence, second offense;

1 (v) violation of a relief from abuse order or of a condition of
2 release;

3 (vi) stalking;

4 (vii) false pretenses;

5 (viii) voyeurism;

6 (ix) prostitution or soliciting prostitution;

7 (x) distribution of a regulated substance;

8 (xi) simple assault on a law enforcement officer; or

9 (xii) possession of a regulated substance, second offense.

10 (2) “Category B conduct” means gross professional misconduct
11 amounting to actions on duty or under ~~color of~~ authority of the State, or both,
12 that involve willful failure to comply with a State-required policy or substantial
13 deviation from professional conduct as defined by the law enforcement
14 agency’s policy or if not defined by the agency’s policy, then as defined by
15 Council policy, ~~such as~~ and shall include:

16 (A) sexual harassment involving physical contact or misuse of
17 position;

18 (B) misuse of official position for personal or economic gain;

19 (C) excessive use of force under ~~color of~~ authority of the State,
20 ~~second~~ first offense;

21 (D) biased enforcement; ~~or~~

1 (E) use of electronic criminal records database for personal, political,
2 or economic gain;

3 (F) placing a person in a prohibited restraint; or

4 (G) failing to intervene when the officer observes another officer
5 placing a person in a prohibited restraint or using excessive force.

6 * * *

7 (5) “Unprofessional conduct” means Category A, B, or C conduct.

8 * * *

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

13 * * *

14 § 2407. LIMITATION ON COUNCIL SANCTIONS; FIRST OFFENSE OF
15 CATEGORY B CONDUCT

16 (a) Category B conduct; first offense. If a law enforcement agency
17 conducts a valid investigation of a complaint alleging that a law enforcement
18 officer committed a first offense of Category B conduct, the Council shall take
19 no action, except that the Council may take action for a first offense under
20 subdivision 2401(2)(F) (placing a person in a prohibited restraint) or
21 2401(2)(G) (failing to intervene when an officer observes another officer

1 placing a person in a prohibited restraint or using excessive force) of this
2 chapter.

3 * * *

4 Sec. 5. 13 V.S.A. § 1032 is added to read:

5 § 1032. LAW ENFORCEMENT USE OF PROHIBITED RESTRAINT

6 (a) As used in this section:

7 (1) “Law enforcement officer” shall have the same meaning as in 20

8 V.S.A. § 2351a.

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

13 (3) “Serious bodily injury” shall have the same meaning as in section
14 1021 of this title.

15 (b) A law enforcement officer acting in the officer’s capacity as law
16 enforcement who employs a prohibited restraint on a person that causes serious
17 bodily injury to or death of the person shall be imprisoned for not more than 20
18 years or fined not more than \$50,000.00, or both.

19 * * * Body Cameras * * *

1 Sec. 6. 20 V.S.A. § 1818 is added to read:

2 § 1818. EQUIPMENT OF OFFICERS WITH VIDEO RECORDING

3 DEVICES

4 The Department shall ensure that every Department law enforcement officer
5 who exercises law enforcement powers is equipped with a body camera or
6 other video recording device on his or her person and that the device is
7 recording whenever the officer has contact with the public for law enforcement
8 purposes.

9 Sec. 7. DEPARTMENT OF PUBLIC SAFETY; VIDEO RECORDING

10 DEVICES; ONGOING COSTS

11 The Department of Public Safety shall immediately initiate the acquisition
12 and deployment of video recording devices to comply with the requirements of
13 20 V.S.A. § 1818. The ongoing costs of the devices that cannot be
14 accommodated within the Department's budget shall be included in the
15 Department's FY21 budget proposal to the General Assembly in August of
16 2020.

17 * * * Effective Dates * * *

18 Sec. 8. EFFECTIVE DATES

19 (a) Sec. 2 (powers and duties; budget and report) of this act shall take effect
20 on January 1, 2021.

1 (b) Sec. 6 (equipment of officers with video recording devices) shall take
2 effect on August 1, 2020.

3 (c) The remaining sections shall take effect on passage.

4

5

6 (Committee vote: _____)

7

8

Representative _____

9

FOR THE COMMITTEE

DRAFT