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H.808

Introduced by Representatives Donahue of Northfield, Bancroft of Westford,
Christie of Hartford, Colburn of Burlington, Jessup of
Middlesex, and Myers of Essex

Referred to Committee on

Date:

Subject: Public safety; law enforcement; use of force

Statement of purpose of bill as introduced: This bill proposes to create a
statewide policy for the use of deadly force by law enforcement.

An act relating to the use of deadly force by law enforcement

It is hereby enacted by the General Assembly of the State of Vermont:

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

§ 2368. STATEWIDE POLICY; LAW ENFORCEMENT USE OF DEADLY
FORCE

(a) Definitions. As used in this section:

(1) “Deadly force” means any use of force that creates a substantial risk
of causing death or serious bodily injury, including the discharge of a firearm.

(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

1 apparent intent to immediately cause death or serious bodily injury to the law
2 enforcement officer or another person. An imminent harm is not merely a fear
3 of future harm, no matter how great the fear and no matter how great the
4 likelihood of the harm, but is one that, from appearances, must be instantly
5 confronted and addressed.

6 (3) “Totality of the circumstances” means all facts known to the law
7 enforcement officer at the time, including the conduct of the officer and the
8 subject leading up to the use of deadly force.

9 (b) Statewide policy.

10 (1) The authority to use physical force, conferred on law enforcement
11 officers by this section, is a serious responsibility that shall be exercised
12 judiciously and with respect for human rights and dignity and for the sanctity
13 of every human life. Every person has a right to be free from excessive use of
14 force by officers acting under color of law.

15 (2) Law enforcement officers may use deadly force only when necessary
16 in defense of human life. In determining whether deadly force is necessary,
17 officers shall evaluate each situation in light of the particular circumstances of
18 each case and shall use other available resources and techniques if reasonably
19 safe and feasible to an objectively reasonable officer.

20 (3) The decision by a law enforcement officer to use force shall be
21 evaluated carefully and thoroughly, in a manner that reflects the gravity of that

1 authority and the serious consequences of the use of force by law enforcement
2 officers, in order to ensure that officers use force consistent with law and
3 agency policies.

4 (4) The decision by a law enforcement officer to use force shall be
5 evaluated from the perspective of a reasonable officer in the same situation,
6 based on the totality of the circumstances known to or perceived by the officer
7 at the time, rather than with the benefit of hindsight, and that the totality of the
8 circumstances shall account for occasions when officers may be forced to
9 make quick judgments about using force.

10 (5) Individuals with physical, mental health, developmental, or
11 intellectual disabilities are significantly more likely to experience greater levels
12 of physical force during police interactions, as their disability may affect their
13 ability to understand or comply with commands from law enforcement
14 officers.

15 (c) Use of deadly force.

16 (1) Any law enforcement officer who has reasonable cause to believe
17 that the person to be arrested has committed a crime may use objectively
18 reasonable force to effect the arrest, to prevent escape, or to overcome
19 resistance.

1 (2) A law enforcement officer is justified in using deadly force upon
2 another person only when the officer reasonably believes, based on the totality
3 of the circumstances, that such force is necessary to:

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

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

10 (3) When feasible, a law enforcement officer shall, prior to the use of
11 force, make reasonable efforts to identify himself or herself as a law
12 enforcement officer and to warn that deadly force may be used, unless the
13 officer has objectively reasonable grounds to believe the person is aware of
14 those facts.

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

20 (5) A law enforcement officer who makes or attempts to make an arrest
21 need not retreat or desist from his or her efforts by reason of the resistance or

1 threatened resistance of the person being arrested. A law enforcement officer
2 shall not be deemed an aggressor or lose the right to self-defense by the use of
3 objectively reasonable force in compliance with subdivisions (1) and (2) of this
4 subsection to effect the arrest or to prevent escape or to overcome resistance.

5 For the purposes of this subdivision, “retreat” does not mean tactical
6 repositioning or other de-escalation tactics.

7 Sec. 2. EFFECTIVE DATE

8 This act shall take effect on July 1, 2020.