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
apparent intent to immediately cause death or serious bodily injury to the law
enforcement officer or another person. 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.

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

(b) Statewide policy.

(1) The authority to use physical force, conferred on law enforcement
officers by this section, 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 color of law.

(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.

(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 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, rather than with the benefit of hindsight, and that the totality of the circumstances shall account for occasions when officers may be forced to make quick judgments about using force.

(5) 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.

(c) Use of deadly force.

(1) Any law enforcement officer who has reasonable cause to believe that the person to be arrested has committed a crime may use objectively reasonable force to effect the arrest, to prevent escape, or to overcome resistance.
(2) 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:

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

(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.

(3) 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, unless the officer has objectively reasonable grounds to believe the person is aware of those facts.

(4) 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.

(5) 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 objectively reasonable force in compliance with subdivisions (1) and (2) of this subsection 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.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2020.