

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Judiciary to which was referred Senate Bill No. 119
3 entitled “An act relating to a statewide use of deadly force policy for law
4 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. 20 V.S.A. § 2368 is added to read:

9 § 2368. STANDARDS FOR LAW ENFORCEMENT USE OF FORCE

10 (a) Definitions. As used in this section:

11 (1) “Force” means the physical coercion employed by a law
12 enforcement officer to compel a person’s compliance with the officer’s
13 instructions.

14 (2) “Deadly force” means any use of force that creates a substantial risk
15 of causing death or serious bodily injury.

16 (3) “Imminent threat of death or serious bodily injury” means when,
17 based on the totality of the circumstances, a reasonable officer in the same
18 situation would believe that a person has the present ability, opportunity, and
19 apparent intent to immediately cause death or serious bodily injury to the law
20 enforcement officer or another person. An imminent threat is not merely a fear
21 of future harm, no matter how great the fear and no matter how great the

1 likelihood of the harm, but is one that, from appearances, must be instantly
2 confronted and addressed.

3 (4) “Law enforcement officer” shall have the same meaning as in
4 20 V.S.A. § 2351a.

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

9 (6) “Totality of the circumstances” means the conduct and decisions of
10 the law enforcement officer leading up to the use of force and all facts known
11 to the law enforcement officer or that should have been known to the law
12 enforcement officer at the time. These facts may include:

13 (A) the seriousness of the crime or suspected offense;

14 (B) the conduct of the subject being confronted as reasonably
15 perceived by the officer at the time, to include whether the subject is physically
16 or mentally impaired in a manner that interferes with the subject’s ability to
17 understand or comply with law enforcement commands;

18 (C) the time available to the officer to make a decision;

19 (D) the availability of other resources, including nonlethal means, to
20 gain compliance of a subject;

1 (E) factors such as the age, size, and relative strength of the officer
2 and the subject, ~~the skill level and training of the officer,~~ and whether the
3 officer or the subject is injured or exhausted; and

4 (F) ~~the environmental factors and any exigent circumstances~~ whether
5 the subject has access to weapons and the proximity of those weapons.

6 (b) Use of force.

7 (1) The authority of law enforcement to use physical force is a serious
8 responsibility that shall be exercised judiciously and with respect for human
9 rights and dignity and for the sanctity of every human life. Every person has a
10 right to be free from excessive use of force by officers acting under authority
11 of the State.

12 (2) A law enforcement officer shall use only the force objectively
13 reasonable, necessary, and proportional to effect an arrest, to prevent escape, or
14 to overcome resistance of a person the officer has reasonable cause to believe
15 has committed a crime, while protecting the life and safety of all persons.

16 (3) The decision by a law enforcement officer to use force shall be
17 evaluated carefully and thoroughly, in a manner that reflects the gravity of that
18 authority and the serious consequences of the use of force by law enforcement
19 officers, in order to ensure that officers use force consistent with law and with
20 agency policies.

1 (4) Whether the decision by a law enforcement officer to use force was
2 objectively reasonable shall be evaluated from the perspective of a reasonable
3 officer in the same situation, based on the totality of the circumstances. A law
4 enforcement officer’s failure to use feasible and reasonable alternatives to
5 force shall be a consideration for whether its use was objectively reasonable.

6 (5) Force is necessary if no reasonably effective alternative to the use of
7 force appears to exist and the amount of force used is reasonable to effect the
8 lawful purpose intended. Whether using force is necessary is based on the
9 totality of the circumstances at the time of the use of force.

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

17 (7)(A) Prior to using force, a law enforcement officer shall, if feasible,
18 take proactive actions to stabilize the situation so that more time, options, and
19 resources are available to gain a person’s voluntary compliance and reduce or
20 eliminate the need to use force, including verbal persuasion, warnings, tactical
21 techniques, slowing down the pace of an incident, waiting out a subject,

1 creating distance between the officer and the threat, and requesting additional
2 resources to resolve the incident.

3 (B) When feasible, a law enforcement officer shall determine whether a
4 subject's conduct is the result of a medical condition, mental impairment,
5 developmental disability, physical limitation, language barrier, drug or alcohol
6 impairment, or other factor beyond the subject's control. If an officer
7 determines that the subject's conduct is in whole or in part the result of a factor
8 listed in this subdivision, the officer shall take that information into account in
9 determining the amount of force appropriate to use on the subject, if any.

10 (8) A law enforcement officer who makes or attempts to make an arrest
11 need not retreat or desist from his or her efforts by reason of the resistance or
12 threatened resistance of the person being arrested. A law enforcement officer
13 shall not be deemed an aggressor or lose the right to self-defense by the use of
14 proportional force if necessary in compliance with subdivision (b)(2) of this
15 section to effect the arrest or to prevent escape or to overcome resistance. For
16 the purposes of this subdivision, "retreat" does not mean tactical repositioning
17 or other de-escalation tactics.

18 (c) Use of deadly force.

19 (1) A law enforcement officer is justified in using deadly force upon
20 another person only when, based on the totality of the circumstances, such
21 force is objectively reasonable and necessary to:

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

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

7 (2) The use of deadly force is necessary when, given the totality of the
8 circumstances, an objectively reasonable law enforcement officer in the same
9 situation would conclude that there was no reasonable alternative to the use of
10 deadly force that would prevent death or serious bodily injury to the officer or
11 to another person. When feasible, an officer shall employ all other reasonable
12 means before resorting to the use of deadly force.

13 (3) A law enforcement officer shall cease the use of deadly force as soon
14 as the subject surrenders or no longer poses an imminent danger of death or
15 serious bodily injury to the officer or to another person.

16 (4) When feasible, a law enforcement officer shall, prior to the use of
17 force, make reasonable efforts to identify himself or herself as a law
18 enforcement officer and to warn that deadly force may be used.

19 (5) A law enforcement officer shall not use deadly force against a
20 person based on the danger that person poses to himself or herself, if an
21 objectively reasonable officer would believe the person does not pose an

1 imminent threat of death or serious bodily injury to the law enforcement
2 officer or to another person.

3 (6) A law enforcement officer shall not use a prohibited restraint on a
4 person for any reason.

5 (7) A law enforcement officer has a duty to intervene when the officer
6 observes another officer using a prohibited restraint on a person.

7 (8) A law enforcement officer shall not lose the right to self-defense
8 pursuant to common law or a justifiable homicide defense pursuant to 13
9 V.S.A. § 2305(3) by the use of deadly force that is in compliance with
10 subsection (c) of this section.

11 Sec. 2. 13 V.S.A. § 2305 is amended to read:

12 § 2305. JUSTIFIABLE HOMICIDE

13 If a person kills or wounds another under any of the circumstances
14 enumerated below, he or she shall be guiltless:

15 (1) in the just and necessary defense of ~~his or her~~ the person's own life or
16 the life of ~~his or her husband, wife~~ the person's spouse, parent, child, brother,
17 sister, ~~master, mistress, servant~~, guardian, or ward; or

18 (2) in the forceful or violent suppression of a person attempting to
19 commit murder, sexual assault, aggravated sexual assault, burglary, or robbery,
20 with force or violence; or

1 (3) in the case of a ~~civil officer, or a military officer or private soldier~~
2 ~~when lawfully called out to suppress riot or rebellion, or to prevent or suppress~~
3 ~~invasion, or to assist in serving legal process, in suppressing opposition against~~
4 ~~him or her in the just and necessary discharge of his or her duty- law~~
5 ~~enforcement officer as defined in 20 V.S.A. § 2351(a) using force or deadly~~
6 ~~force in compliance with 20 V.S.A. § 2368.~~

7 Sec. 4. EFFECTIVE DATE

8 This act shall take effect on passage.

9 and that after passage the title of the bill be amended to read: “An act relating
10 to a statewide standard for law enforcement use of force”

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12
13
14
15 (Committee vote: _____)

16 _____

17 Representative _____

18 FOR THE COMMITTEE