TO THE HOUSE OF REPRESENTATIVES:

The Committee on Judiciary to which was referred Senate Bill No. 119 entitled “An act relating to a statewide use of deadly force policy for law enforcement” respectfully reports that it has considered the same and recommends that the House propose to the Senate that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

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

§ 2368. STANDARDS FOR LAW ENFORCEMENT USE OF FORCE

(a) Definitions. As used in this section:

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

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

(3) “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 threat 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.

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

(5) “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.

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

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

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

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

(D) the availability of other resources, including nonlethal means, to
gain compliance of a subject;
(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 is injured or exhausted; and

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

(b) Use of force.

(1) The authority of law enforcement 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.

(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.

(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 with 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. A law enforcement officer’s failure to use feasible and reasonable alternatives to force shall be a consideration for whether its use was objectively reasonable.

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

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

(8) 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.

(c) Use of deadly force.

(1) 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:
(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.

(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.

(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.

(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.

(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 serious bodily injury to the law enforcement officer or to another person.

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

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

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

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

§ 2305. JUSTIFIABLE HOMICIDE

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

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

(2) in the forceful or violent suppression of a person attempting to commit murder, sexual assault, aggravated sexual assault, burglary, or robbery, with force or violence; or
(3) in the case of a civil officer; or a military officer or private soldier when lawfully called out to suppress riot or rebellion, or to prevent or suppress invasion, or to assist in serving legal process, in suppressing opposition against him or her in the just and necessary discharge of his or her duty. law enforcement officer as defined in 20 V.S.A. § 2351(a) using force or deadly force in compliance with 20 V.S.A. § 2368.

Sec. 4. EFFECTIVE DATE

This act shall take effect on passage.

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

(Committee vote: ___________

_______________________
Representative ___________

FOR THE COMMITTEE