

UNEDITED DRAFT FOR COMMITTEE DISCUSSION

Note, this draft/amendment contains VSAs that were affected by a 2020 Act. The text has been updated based on the text in the Act.

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. STATEWIDE USE OF FORCE POLICY; CRIMINAL JUSTICE TRAINING COUNCIL

(a) On or before July 1, 2021, the Criminal Justice Training Council shall develop a statewide use of force policy in accordance with Sec. 2 (standards for law enforcement use of force) of this act. The Council shall create the policy in consultation with stakeholders including the Department of Public Safety, the Attorney General, the Vermont chapter of the American Civil Liberties Union, the Human Rights Commission, the Mental Health Crisis Response Commission, the Executive Director for Racial Equity, the Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel, Vermont Psychiatric Survivors, Inc., individuals representing communities of color, individuals representing other historically marginalized communities,

1 and individuals with expertise in mental health issues. The Council shall be
2 responsible for the collaborative development of the policy in partnership with
3 these representatives as well as obtaining the input of a broad cross section of
4 Vermonters. The policy shall provide comprehensive, plain language standards
5 that meet the requirements of this section and Sec. 2 of this act and are
6 consistent with best practices while strengthening relationships between law
7 enforcement agencies and the diverse communities they serve.

8 (b) The use of force policy shall address, at a minimum:

9 (1) detailed explanations of the different levels of force and the
10 circumstances where they may come into play;

11 (2) detailed explanations of standards of officer decision-making and
12 conduct as they relate to the duty to use force only when necessary;

13 (3) detailed explanations of the “totality of the circumstances” standard
14 as it relates to a variety of encounters with the public;

15 (4) detailed explanations of officers’ duty to de-escalate actual or
16 potential conflict when feasible, including specific examples of de-escalation
17 techniques;

18 (5) standards for documenting and assessing officers’ use of force;

19 (6) a mechanism for incorporating lessons learned from use of force
20 incidents into improved policies, practices, and training;

1 (7) a mechanism for reviewing and updating the policy at reasonable
2 intervals; and

3 (8) the required duration and frequency of training on the policy.

4 (c) Upon the approval of the use of force policy by the Criminal Justice
5 Training Council, it shall become the use of force policy for every State,
6 county, and municipal law enforcement agency and every constable who
7 exercises law enforcement authority pursuant to 24 V.S.A. § 1936a and who is
8 trained in compliance with section 2358 of this title.

9 (d) If a law enforcement agency or constable that is required to adopt a
10 policy pursuant to subsection (c) of this section fails to do so on or before
11 September 1, 2021, that agency or constable shall be deemed to have adopted,
12 and shall follow and enforce, the model policy issued by the Criminal Justice
13 Training Council.

14 Sec. 2. 20 V.S.A. § 2368 is added to read:

15 § 2368. STANDARDS FOR LAW ENFORCEMENT USE OF FORCE

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

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

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

1 (3) “Imminent threat of death or serious bodily injury” means when,
2 based on the totality of the circumstances, a reasonable officer in the same
3 situation would believe that a person has the present ability, opportunity, and
4 apparent intent to immediately cause death or serious bodily injury to the law
5 enforcement officer or another person. An imminent threat is not merely a fear
6 of future harm, no matter how great the fear and no matter how great the
7 likelihood of the harm, but is one that, from appearances, must be instantly
8 confronted and addressed.

9 (4) “Law enforcement officer” shall have the same meaning as in
10 20 V.S.A. § 2351a.

11 (5) “Prohibited restraint” means the use of any maneuver on a person
12 that applies pressure to the neck, throat, windpipe, or carotid artery that may
13 prevents or hinders breathing, reduces intake of air, or impedes the flow of
14 blood or oxygen to the brain.

15 (6) “Totality of the circumstances” means the conduct and decisions of
16 the law enforcement officer leading up to the use of force and all facts known
17 to the law enforcement officer at the time, including whether a medical
18 condition, mental impairment, developmental disability, physical limitation,
19 language barrier, drug or alcohol impairment, or other factor beyond the
20 subject’s control interferes with the subject’s ability to understand or comply
21 with law enforcement commands.

1 (b) Use of force.

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

7 (2) A law enforcement officer shall use only the force objectively
8 reasonable, necessary, and proportional to effect an arrest, to prevent escape, or
9 to overcome resistance of a person the officer has reasonable cause to believe
10 has committed a crime or to achieve any other lawful law enforcement
11 objective while protecting the life and safety of all persons.

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

17 (4) Whether the decision by a law enforcement officer to use force was
18 objectively reasonable shall be evaluated from the perspective of a reasonable
19 officer in the same situation, based on the totality of the circumstances. A law
20 enforcement officer's failure to use feasible and reasonable alternatives to
21 force shall be a consideration for whether its use was objectively reasonable.

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

5 (6) Force is proportional if the level of force applied reflects the totality
6 of the circumstances, including the nature and immediacy of any threats posed
7 to the law enforcement officer or others. Proportional force does not require
8 officers to use the same type or amount of force used by the subject. The more
9 immediate the threat and the more likely that the threat will result in death or
10 serious bodily injury, the greater the level of force that may be proportional.

11 (7) (A) Prior to using force, a law enforcement officer shall, if feasible,
12 take proactive actions to stabilize the situation so that more time, options, and
13 resources are available to gain a person's voluntary compliance and reduce or
14 eliminate the need to use force, including verbal persuasion, warnings, tactical
15 techniques, slowing down the pace of an incident, waiting out a subject,
16 creating distance between the officer and the threat, and requesting additional
17 resources to resolve the incident.

18 (B) When feasible, a law enforcement officer shall determine whether a
19 subject's conduct is the result of a medical condition, mental impairment,
20 developmental disability, physical limitation, language barrier, drug or alcohol
21 impairment, or other factor beyond the subject's control. If an officer

1 determines that the subject's conduct is in whole or in part the result of a factor
2 listed in this subdivision, the officer shall take that information into account in
3 determining the amount of force appropriate to use on the subject, if any. A
4 law enforcement officer's failure to take into account a subject's conduct
5 known to the law enforcement officer to result from a medical condition,
6 mental impairment, developmental disability, physical limitation, language
7 barrier, drug or alcohol impairment, or other factor beyond the subject's
8 control shall be a consideration in determining whether a law enforcement
9 officer's use of force was objectively reasonable, necessary, and proportional.

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

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

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

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

8 (8) A law enforcement officer shall not lose the right to self-defense
9 pursuant to common law or a justifiable homicide defense pursuant to 13
10 V.S.A. § 2305(3) by the use of deadly force that is in compliance with
11 subdivisions (c)(1)–(4) of this section.

12 Sec. 3. 13 V.S.A. § 1032 is added to read:

13 § 1032. LAW ENFORCEMENT USE OF PROHIBITED RESTRAINT

14 (a) As used in this section:

15 (1) “Law enforcement officer” shall have the same meaning as in
16 20 V.S.A. § 2351a.

17 (2) “Prohibited restraint” means the use of any maneuver on a person
18 that applies pressure to the neck, throat, windpipe, or carotid artery that ~~may~~
19 ~~prevent~~ prevents or ~~hinder~~ hinders breathing, ~~reduce~~ reduces intake of air, or
20 ~~impede~~ impedes the flow of blood or oxygen to the brain.

1 Sec. 5. 13 V.S.A. § 2305 is amended to read:

2 § 2305. JUSTIFIABLE HOMICIDE

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

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

8 (2) in the forceful or violent suppression of a person attempting to
9 commit murder, sexual assault, aggravated sexual assault, burglary, or robbery;
10 ~~with force or violence~~; or

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

17 Sec. 6. 2020 Acts and Resolves No. 147, Sec. 9 is amended to read:

18 Sec. 9. REPEALS

19 (a) 13 V.S.A. § 1032 (law enforcement use of prohibited restraint) is
20 repealed on July 1, 2021. [Repealed.]

1 ~~(b) 13 V.S.A. § 2305(3) (justifiable homicide) is repealed on July 1, 2021.~~

2 ~~[Repealed.]~~

3 Sec. 7. REPEAL

4 Acts and Resolves No. 147, Sec. 6 (law enforcement use of prohibited
5 restraint) is repealed.

6 Sec. 8. EFFECTIVE DATES

7 (a) Sec. 2 (standards for law enforcement use of force) shall take effect on
8 September 1, 2021.

9 (b) The remainder of this act shall take effect on passage.

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

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16 (Committee vote: _____)

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Representative _____

FOR THE COMMITTEE