

**S.119**

**Side by side comparison of Senate passed version and House Judiciary amendment draft 4.1**  
**September 17, 2020**

<b>As passed the Senate: An act relating to a statewide use of deadly force policy for law enforcement</b>	<b>House Judiciary draft 4.1: An act relating to a statewide standard and policy for law enforcement use of force</b>	<b>Notes</b>
Sec. 1. 20 V.S.A. § 2368 is added to read:  <u>§ 2368. STATEWIDE POLICY; LAW ENFORCEMENT USE OF DEADLY FORCE</u>  (a) <u>Definitions. As used in this section:</u>  (1) <u>“Deadly force” means any use of force that creates a substantial risk of causing death or serious bodily injury.</u>	Sec. 1. 20 V.S.A. § 2368 is added to read:  <u>§ 2368. STANDARDS FOR LAW ENFORCEMENT USE OF FORCE</u>  (a) <u>Definitions. As used in this section:</u>  (1) <u>“Deadly force” means any use of force that creates a substantial risk of causing death or serious bodily injury.</u>  (2) <u>“Force” means the physical coercion employed by a law enforcement officer to compel a person’s compliance with the officer’s instructions.</u>	House version adds definition of “force”

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<p><u>(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</u></p>	<p><u>(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</u></p>	
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<p><u>appearances, must be instantly confronted and addressed.</u></p> <p><u>(3) “Law enforcement officer” shall have the same meaning as in 20 V.S.A. § 2351a.</u></p> <p><u>(4) “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.</u></p>	<p><u>appearances, must be <b>immediately</b> addressed and confronted.</u></p> <p><u>(4) “Law enforcement officer” shall have the same meaning as in 20 V.S.A. § 2351a.</u></p> <p><u>(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.</u></p>	
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<p><u>(5) "Totality of the circumstances"</u></p> <p><u>means all facts known to the law</u></p> <p><u>enforcement officer at the time, including</u></p> <p><u>the conduct of the officer and the words and</u></p> <p><u>conduct of the subject leading up to the use</u></p> <p><u>of deadly force.</u></p>	<p><u>(6) "Totality of the circumstances"</u></p> <p><u>means the conduct and decisions of the law</u></p> <p><u>enforcement officer leading up to the use of</u></p> <p><u>force and all facts known or reasonably</u></p> <p><u>available</u> to the law enforcement officer at</p> <p><u>the time, including whether a medical</u></p> <p><u>condition, mental impairment,</u></p> <p><u>developmental disability, physical</u></p> <p><u>limitation, language barrier, drug or alcohol</u></p> <p><u>impairment, or other factor beyond the</u></p> <p><u>subject's control interferes with the</u></p> <p><u>subject's ability to understand or comply</u></p> <p><u>with law enforcement commands.</u></p>	
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<p><u>(b) Statewide policy.</u></p> <p><u>(1) The authority 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.</u></p> <p><u>(2) Law enforcement officers may use deadly force only when necessary in defense of human life. In determining whether deadly force is necessary, officers</u></p>	<p><u>(b) Use of force.</u></p> <p><u>(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.</u></p> <p><u>(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</u></p>	<p>House language in (b)(2) language is in Senate version (b)(5)</p>
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<p><u>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.</u></p> <p><u>(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</u></p>	<p><u>resistance of a person the officer has reasonable cause to believe has committed a crime, or to achieve any other lawful law enforcement objective.</u></p> <p><u>(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</u></p>	<p>House version provides for expanded circumstances for law enforcement use of force.</p>
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<p><u>force consistent with law and agency policies.</u></p> <p><u>(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.</u></p>	<p><u>force consistent with law and with agency policies.</u></p> <p><u>(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.</u></p>	
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<p>(5) Any law enforcement officer who has reasonable cause to believe that the person to be arrested has committed a crime may use proportional force if necessary to effect the arrest, to prevent escape, or to overcome resistance.</p>		Senate version of (b)(5) is in House version (b)(2)
	<p>(5) When a law enforcement officer knows or reasonably should know that 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</p>	

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	<p><u>subject's control, the officer shall take that information into account in determining the amount of force appropriate to use on the subject, if any.</u></p> <p><u>(6) 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</u></p>	House version (b)(6) is in Senate version (c)(4)
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	<p><u>subdivision (b)(2) of this section to effect</u> <u>the arrest or to prevent escape or to</u> <u>overcome resistance. For the purposes of</u> <u>this subdivision, “retreat” does not mean</u> <u>tactical repositioning or other de-escalation</u> <u>tactics.</u></p> <p><u>(c) Use of deadly force.</u></p> <p><u>(1) A law enforcement officer is</u> <u>justified in using deadly force upon another</u> <u>person only when the officer reasonably</u> <u>believes, based on the totality of the</u> <u>circumstances, that such force is necessary</u> <u>to:</u></p>	
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<p><u>(A) defend against an imminent threat of death or serious bodily injury to the officer or to another person; or</u></p> <p><u>(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.</u></p>	<p><u>(A) defend against an imminent threat of death or serious bodily injury to the officer or to another person; or</u></p> <p><u>(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.</u></p> <p><u>(2) The use of deadly force is necessary when, given the totality of the circumstances, an objectively reasonable law enforcement officer in the same</u></p>	
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<p>(2) When feasible, a law enforcement officer shall, prior to the use of force, make</p>	<p><u>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.</u></p> <p><u>(3) A law enforcement officer shall cease the use of deadly force as soon as the subject is under the officer's control or no longer poses an imminent threat of death or serious bodily injury to the law enforcement officer or to another person.</u></p> <p><u>(4) A law enforcement officer shall not use deadly force against a person based</u></p>	<p>Explanation of the word "necessary" added in House version</p>
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<p><u>reasonable efforts to identify himself or herself as a law enforcement officer and to warn that deadly force may be used.</u></p> <p><u>(3) 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.</u></p>	<p><u>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.</u></p> <p><u>(5) 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.</u></p>	<p>House version swaps order of (c)(2) and (3) in Senate version.</p>
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<p><u>(4) 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)(5) of this section to effect the arrest or to prevent escape or to overcome resistance. For the purposes of this subdivision, “retreat” does</u></p>		<p>Senate (c)(4) is rearranged and placed in (b)(6) in House version</p>
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<p><u>not mean tactical repositioning or other de-</u></p> <p><u>escalation tactics.</u></p> <p><u>(5) A law enforcement officer shall</u></p> <p><u>not use a prohibited restraint on a person for</u></p> <p><u>any reason. A law enforcement officer has a</u></p> <p><u>duty to intervene when the officer observes</u></p> <p><u>another officer using a prohibited restraint</u></p> <p><u>on a person.</u></p>	<p><u>(6) A law enforcement officer shall</u></p> <p><u>not use a prohibited restraint on a person</u></p> <p><u>for any reason.</u></p> <p><u>(7) A law enforcement officer has a</u></p> <p><u>duty to intervene when the officer observes</u></p> <p><u>another officer using a prohibited restraint</u></p> <p><u>on a person.</u></p>	<p>House version breaks (c)(5) in Senate version into two subdivisions</p>
<p>[No corresponding section in Senate bill]</p>	<p>Sec. 2. 13 V.S.A. § 2305 is amended to read:</p> <p>§ 2305. JUSTIFIABLE HOMICIDE</p>	<p>House version updates justifiable homicide statute and provides defenses to law enforcement use of</p>

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	<p>If a person kills or wounds another under any of the circumstances enumerated below, he or she shall be guiltless:</p> <p>(1) in the just and necessary defense of <del>his or her</del> <u>the person's</u> own life or the life of <del>his or her husband, wife</del> <u>the person's</u> spouse, parent, child, <del>brother, sister</del> <u>sibling</u>, <del>master, mistress, servant</del>, guardian, or ward; or</p> <p>(2) in the <u>forceful or violent</u> suppression of a person attempting to commit murder, sexual assault, aggravated</p>	force that is in compliance with the standards set out in Sec. 1.
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	sexual assault, burglary, or robbery, <del>with force or violence; or</del>  (3) in the case of a <del>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</del> <u>law enforcement officer as defined in 20 V.S.A. § 2351(a) using force in compliance with 20 V.S.A. § 2368(b)(2), (4), and (5)</u> or	
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	<p><u>deadly force in compliance with 20 V.S.A.</u> <u>§ 2368(c)(1)-(4).</u></p>	
[No corresponding section in Senate bill]	<p>Sec. 3. 2020 Acts and Resolves No. 147, Sec. 9 is amended to read: Sec. 9. REPEALS (a) <del>13 V.S.A. § 1032 (law enforcement use of prohibited restraint) is repealed on July 1, 2021. [Repealed.]</del> (b) <del>13 V.S.A. § 2305(3) (justifiable homicide) is repealed on July 1, 2021. [Repealed.]</del></p>	House version repeals the future repeals of the prohibited restraint crime and the justifiable homicide statute from S.219.

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[No corresponding section in Senate bill]	<p>Sec. 4. DEPARTMENT OF PUBLIC SAFETY; REPORT ON MODEL STATEWIDE POLICY FOR LAW ENFORCEMENT USE OF FORCE</p> <p><u>On or before February 2, 2021, the Department of Public Safety and the Executive Director of Racial Equity shall report to the House and Senate Committees on Judiciary and on Government Operations regarding the development of a uniform statewide model policy on the use of force for all law enforcement agencies and officers as directed by Executive Order</u></p>	House version directs DPS and the ED of Racial Equity to report to the standing committees in Feb. 2021 on the process and outcome of their work to develop a statewide model use of force policy for law enforcement as directed by E.O. 03-20.
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<p><u>No. 03-20 (Governor's Public Safety Reform Initiative). The report shall include:</u></p> <p><u>(1) the process undertaken by the Department, including a list of the community representatives and other stakeholders that were included in the development of the policy, the number of times the stakeholders met, and any opportunities given for public comment and the participation in and outcome of that public comment; and</u></p> <p><u>(2) the final proposed policy.</u></p>	
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Sec. 2. EFFECTIVE DATE  <u>This act shall take effect on October 1, 2020.</u>	Sec. 5. EFFECTIVE DATES  (a) <u>Sec. 1. (standards for law enforcement use of force) shall take effect on July 1, 2021.</u>  (b) <u>The remainder of this act shall take effect on passage.</u>	House version moves back effective date of use of force standards.
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