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Side by side comparison of Senate passed version and House Judiciary amendment DR 3.5
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As passed the Senate: An act relating to a statewide use of deadly force policy for law enforcement	House Judiciary amendment: An act relating to a statewide policy and standard for law enforcement use of force (Draft 3.5)	Notes
[No corresponding section]	<p>Sec. 1. STATEWIDE USE OF FORCE POLICY; CRIMINAL JUSTICE TRAINING COUNCIL</p> <p>(a) <u>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</u></p>	

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	<p><u>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, and individuals with expertise in mental health issues. The Council shall be responsible for the collaborative development of the policy in partnership with these representatives as well as obtaining the input of a broad cross section of Vermonters. The policy shall provide comprehensive, plain language standards that meet the requirements of this section and Sec. 2 of this act and are consistent with best practices while strengthening relationships between law</u></p>	
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	<p><u>enforcement agencies and the diverse communities they serve.</u></p> <p><u>(b) The use of force policy shall address, at a minimum:</u></p> <p><u>(1) detailed explanations of the different levels of force and the circumstances where they may come into play;</u></p> <p><u>(2) detailed explanations of standards of officer decision-making and conduct as they relate to the duty to use force only when necessary;</u></p> <p><u>(3) detailed explanations of the “totality of the circumstances” standard as it relates to a variety of encounters with the public;</u></p> <p><u>(4) detailed explanations of officers’ duty to de-escalate actual or potential</u></p>	
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	<p><u>conflict when feasible, including specific examples of de-escalation techniques;</u></p> <p><u>(5) standards for documenting and assessing officers' use of force;</u></p> <p><u>(6) a mechanism for incorporating lessons learned from use of force incidents into improved policies, practices, and training;</u></p> <p><u>(7) a mechanism for reviewing and updating the policy at reasonable intervals;</u></p> <p><u>and</u></p> <p><u>(8) the required duration and frequency of training on the policy.</u></p> <p><u>(c) Upon the approval of the use of force policy by the Criminal Justice Training Council, it shall become the use of force policy for every State, county, and municipal law enforcement agency and</u></p>	
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	<p><u>every constable who exercises law enforcement authority pursuant to 24 V.S.A. § 1936a and who is trained in compliance with section 2358 of this title.</u></p> <p><u>(d) If a law enforcement agency or constable that is required to adopt a policy pursuant to subsection (c) of this section fails to do so on or before September 1, 2021, that agency or constable shall be deemed to have adopted, and shall follow and enforce, the model policy issued by the Criminal Justice Training Council.</u></p>	
<p>Sec. 1. 20 V.S.A. § 2368 is added to read:</p> <p><u>§ 2368. STATEWIDE POLICY; LAW ENFORCEMENT USE OF DEADLY FORCE</u></p>	<p>Sec. 2. 20 V.S.A. § 2368 is added to read:</p> <p><u>§ 2368. STANDARDS FOR LAW ENFORCEMENT USE OF FORCE</u></p>	

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<p><u>(a) Definitions. As used in this section:</u></p> <p><u>(1) “Deadly force” means any use of force that creates a substantial risk of causing death or serious bodily injury.</u></p> <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</u></p>	<p><u>(a) Definitions. As used in this section:</u></p> <p><u>(1) “Force” means the physical coercion employed by a law enforcement officer to compel a person’s compliance with the officer’s instructions.</u></p> <p><u>(2) “Deadly force” means any use of force that creates a substantial risk of causing death or serious bodily injury.</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</u></p>	
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<p><u>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.</u></p> <p>(3) <u>“Law enforcement officer” shall have the same meaning as in 20 V.S.A. § 2351a.</u></p>	<p><u>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.</u></p> <p>(4) <u>“Law enforcement officer” shall have the same meaning as in 20 V.S.A. § 2351a.</u></p>	
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<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>(5) “Totality of the circumstances” means all facts known to the law enforcement officer at the time, including the conduct of the officer and the words and conduct of the subject leading up to the use of deadly force.</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 prevents or hinders breathing, reduces intake of air, or impedes the flow of blood or oxygen to the brain.</u></p> <p><u>(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 at the time, including whether a medical condition, mental</u></p>	
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<p>(b) <u>Statewide policy.</u></p> <p>(1) <u>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</u></p>	<p><u>impairment, developmental disability, physical limitation, language barrier, drug or alcohol impairment, or other factor beyond the subject's control interferes with the subject's ability to understand or comply with law enforcement commands.</u></p> <p>(b) <u>Use of force.</u></p> <p>(1) <u>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</u></p>	
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<p><u>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 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</u></p>	<p><u>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 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</u></p>	<p>House language in (b)(2) language is in Senate version (b)(5)</p>
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<p><u>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.</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</u></p>	<p><u>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.</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</u></p>	
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<p><u>known to or perceived by the officer at the time.</u></p> <p><u>(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.</u></p>	<p><u>officer's failure to use feasible and reasonable alternatives to force shall be a consideration for whether its use was objectively reasonable.</u></p> <p><u>(5) A law enforcement officer's failure to take into account a subject's</u></p>	<p>Senate version of (b)(5) is in House version (b)(2)</p>
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	<p><u>known to the law enforcement officer to result from a medical condition, mental impairment, developmental disability, physical limitation, language barrier, drug or alcohol impairment, or other factor beyond the subject's control shall be a consideration in determining whether a law enforcement officer's use of force was objectively reasonable, necessary, and proportional.</u></p> <p><u>(8) A law enforcement officer who makes or attempts to make an arrest need not retreat or desist from his or her efforts</u></p>	<p>House version (b)(8) is in Senate version (c)(4)</p>
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<p><u>(c) Use of deadly force.</u></p>	<p><u>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.</u></p> <p><u>(c) Use of deadly force.</u></p>	
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<p><u>(1) 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:</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</u></p>	<p><u>(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:</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</u></p>	
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<p><u>cause death or serious bodily injury to another unless immediately apprehended.</u></p>	<p><u>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 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</u></p>	<p>Explanation of the word “necessary” added in House version</p>
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<p><u>(2) 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><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</u></p>	<p><u>subject surrenders or no longer poses an imminent danger of death or serious bodily injury to the officer or to another person.</u></p> <p><u>(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.</u></p> <p><u>(5) When feasible, a law enforcement officer shall, prior to the use of</u></p>	<p>House version swaps order of (c)(2) and (3) in Senate version.</p>
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<p><u>pose 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 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</u></p>	<p><u>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>Senate (c)(4) is rearranged and placed in (b)(8) in House version</p>
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<p><u>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.</u></p> <p><u>(5) A law enforcement officer shall not use a prohibited restraint on a person for any reason. A law enforcement officer has a duty to intervene when the officer observes another officer using a prohibited restraint on a person.</u></p>	<p><u>(6) A law enforcement officer shall not use a prohibited restraint on a person for any reason.</u></p> <p><u>(7) A law enforcement officer has a duty to intervene when the officer observes another officer using a prohibited restraint on a person.</u></p>	<p>House version breaks (c)(5) in Senate version into two subdivisions</p>
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	<p><u>(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 subdivisions (c)(1)-(4) of this section.</u></p>	
<p>[No corresponding Senate section]</p>	<p><u>Sec. 3. 13 V.S.A. § 1032 is added to read:</u></p> <p><u>§ 1032. LAW ENFORCEMENT USE OF PROHIBITED RESTRAINT</u></p> <p><u>(a) As used in this section:</u></p> <p><u>(1) “Law enforcement officer” shall have the same meaning as in 20 V.S.A. § 2351a.</u></p>	<p>House version amends the prohibited restraint crime from S.219 to change the definition of prohibited restraint (removes “may”) and to add language regarding when law enforcement may</p>

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	<p><u>(2) “Prohibited restraint” means the use of any maneuver on a person that applies pressure to the neck, throat, windpipe, or carotid artery that prevents or hinders breathing, reduces intake of air, or impedes the flow of blood or oxygen to the brain.</u></p> <p><u>(3) “Serious bodily injury” shall have the same meaning as in section 1021 of this title.</u></p> <p><u>(b) A law enforcement officer acting in the officer’s capacity as law enforcement who employs a prohibited restraint on a</u></p>	<p>be justified in using a prohibited restraint</p>
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	<p><u>person that causes serious bodily injury to</u> <u>or death of the person shall be imprisoned</u> <u>for not more than 20 years or fined not</u> <u>more than \$50,000.00, or both.</u></p> <p><u>(c) A law enforcement officer acting in</u> <u>the officer's capacity as law enforcement</u> <u>may use a prohibited restraint if the use of</u> <u>deadly force is justified pursuant to 20</u> <u>V.S.A. § 2368. A law enforcement officer</u> <u>is not justified in continuing the use of a</u> <u>prohibited restraint when there is no longer</u> <u>an objectively reasonable belief that the</u> <u>person subjected to the restraint continues</u></p>	
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	<p><u>to pose an imminent danger of death or serious bodily injury to the officer or to another person.</u></p>	
<p>[No corresponding Senate section]</p>	<p>Sec. 4. 20 V.S.A. § 2401 is amended to read:</p> <p>§ 2401. DEFINITIONS</p> <p>As used in this subchapter:</p> <p style="text-align: center;">* * *</p> <p>(7) “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 <u>prevents or hinders</u> breathing,</p>	<p>House version amends the definition of prohibited restraint that S.219 added to the unprofessional conduct chapter of title 20. Amends the definition in the same way the definition is amended in the new prohibited restraint crime.</p>

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	<p>reduce <u>reduces</u> intake of air, or impede <u>impedes</u> the flow of blood or oxygen to the brain.</p>	
<p>[No corresponding Senate version]</p>	<p>Sec. 5. 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 <u>the person's</u> own life or the life of his or her husband, wife <u>the person's</u> <u>spouse</u>, parent, child, brother, sister <u>sibling</u>,</p>	

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	<p>master, mistress, servant, 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 sexual assault, burglary, or robbery; with force or violence; or</p> <p>(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</p>	
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	<p>him or her in the just and necessary discharge of his or her duty <u>law</u> <u>enforcement officer as defined in 20 V.S.A.</u> <u>§ 2351(a) using force or deadly force in</u> <u>compliance with 20 V.S.A. § 2368.</u></p>	
<p>[No corresponding Senate section]</p>	<p>Sec. 6. 2020 Acts and Resolves No. 147, Sec. 9 is amended to read: Sec. 9. REPEALS (a) 13 V.S.A. § 1032 (law enforcement use of prohibited restraint) is repealed on July 1, 2021. [Repealed.]</p>	<p>House version repeals the future repeals of the prohibited restraint crime and the justifiable homicide statute from S.219 since the House version amends both those sections of law.</p>

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	<p>(b) 13 V.S.A. § 2305(3) (justifiable homicide) is repealed on July 1, 2021.</p> <p><u>[Repealed.]</u></p>	
<p>[No corresponding section in Senate version]</p>	<p>Sec. 7. REPEAL</p> <p><u>Acts and Resolves No. 147, Sec. 6 (law enforcement use of prohibited restraint) is repealed.</u></p>	<p>House version repeals prohibited restraint crime from S.219 and reenacts it with the changes noted above.</p>

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<p>Sec. 2. EFFECTIVE DATE</p> <p><u>This act shall take effect on October 1, 2020.</u></p>	<p>Sec. 8. EFFECTIVE DATES</p> <p>(a) <u>Sec. 2. (standards for law enforcement use of force) shall take effect on September 1, 2021.</u></p> <p>(b) <u>The remainder of this act shall take effect on passage.</u></p>	<p>House version moves back effective date of use of force standards.</p>
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