

1 TO THE HONORABLE SENATE:

2 The Committee on Judiciary to which was referred Senate Bill No. 219
3 entitled “An act relating to impose additional review on the approval of State
4 grant funding to law enforcement agencies to ensure compliance with race data
5 reporting requirements” respectfully reports that it has considered the same and
6 recommends that the bill be amended by striking out all after the enacting
7 clause and inserting in lieu thereof the following:

8 * * * Law Enforcement Race Data Collection * * *

9 Sec. 1. 3 V.S.A. § 2222 is amended to read:

10 § 2222. POWERS AND DUTIES; BUDGET AND REPORT

11 * * *

12 (k) The Secretary of Administration or designee shall review all grants
13 from an agency of the State to a local law enforcement agency or constable,
14 and all such grants shall be subject to the approval of the Secretary or designee.
15 The Secretary or designee shall approve the grant only if the law enforcement
16 agency or constable has complied with the race data reporting requirements set
17 forth in 20 V.S.A. § 2366(e) within six months prior to the Secretary’s or
18 designee’s review.

1 Sec. 2. SECRETARY OF ADMINISTRATION; NOTICE TO LAW
2 ENFORCEMENT AGENCIES

3 On or before July 1, 2020, the Secretary of Administration shall issue a
4 notice to all Vermont law enforcement agencies and constables that the
5 provisions of 3 V.S.A. § 2222(k) become effective on January 1, 2021, and
6 that, beginning on that date, State grant funding for law enforcement shall be
7 contingent on the agency or constable complying the requirements of 20
8 V.S.A. § 2366(e).

9 Sec. 3. 20 V.S.A. § 2366 is amended to read:

10 § 2366. LAW ENFORCEMENT AGENCIES; FAIR AND IMPARTIAL
11 POLICING POLICY; RACE DATA COLLECTION

12 * * *

13 (e)(1) On or before September 1, 2014, every State, county, and municipal
14 law enforcement agency shall collect roadside stop data consisting of the
15 following:

- 16 (A) the age, gender, and race of the driver;
17 (B) the reason for the stop;
18 (C) the type of search conducted, if any;
19 (D) the evidence located, if any; ~~and~~

1 (E) the outcome of the stop, including whether force was employed
2 in effectuating the stop, and if so, the type of force employed and whether the
3 force resulted in bodily injury or death, and whether:

4 (i) a written warning was issued;

5 (ii) a citation for a civil violation was issued;

6 (iii) a citation or arrest for a misdemeanor or a felony occurred; or

7 (iv) no subsequent action was taken.

8 (2) Law enforcement agencies shall work with the Executive Director of
9 Racial Equity, the Criminal Justice Training Council, and a vendor chosen by
10 the Council with the goals of collecting uniform data, adopting uniform storage
11 methods and periods, and ensuring that data can be analyzed. Roadside stop
12 data, as well as reports and analysis of roadside stop data, shall be public.

13 (3) On or before September 1, 2016 and annually thereafter, law
14 enforcement agencies shall provide the data collected under this subsection to
15 the vendor chosen by the Criminal Justice Training Council under
16 subdivision (2) of this subsection or, in the event the vendor is unable to
17 continue receiving data under this section, to the ~~Council~~ Executive Director of
18 Racial Equity. Law enforcement agencies shall provide the data collected
19 under this subsection in an electronic format specified by the receiving entity.

20 (4) The data provided pursuant to subdivision (3) of this subsection shall
21 be posted electronically in a manner that is analyzable, user-friendly, and

1 accessible to the public on the receiving agency’s website. The receiving
2 agency shall also report the data annually to the General Assembly.

3 (5) As used in this subsection, “force” shall refer to the force employed
4 by a law enforcement officer to compel a person’s compliance with the
5 officer’s instructions.

6 (f) Nothing in this section is intended to prohibit or impede any public
7 agency from complying with the lawful requirements of 8 U.S.C. §§ 1373 and
8 1644. To the extent any State or local law enforcement policy or practice
9 conflicts with the lawful requirements of 8 U.S.C. §§ 1373 and 1644, that
10 policy or practice is, to the extent of the conflict, abolished.

11 * * * Statewide Law Enforcement Policy * * *

12 Sec. 4. 20 V.S.A. § 2368 is added to read:

13 § 2368. STATEWIDE POLICY; LAW ENFORCEMENT USE OF DEADLY

14 FORCE

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

16 (1) “Deadly force” means any use of force that creates a substantial risk
17 of causing death or serious bodily injury, including the discharge of a firearm.

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

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 harm 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 20
10 V.S.A. § 2351a.

11 (5) “Totality of the circumstances” means all facts known to the law
12 enforcement officer at the time, including the conduct of the officer and the
13 subject leading up to the use of deadly force.

14 (b) Statewide policy.

15 (1) The authority to use physical force is a serious responsibility that
16 shall be exercised judiciously and with respect for human rights and dignity
17 and for the sanctity of every human life. Every person has a right to be free
18 from excessive use of force by officers acting under color of law.

19 (2) Law enforcement officers may use deadly force only when necessary
20 in defense of human life. In determining whether deadly force is necessary,
21 officers shall evaluate each situation in light of the particular circumstances of

1 each case and shall use other available resources and techniques if reasonably
2 safe and feasible to an objectively reasonable officer.

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

8 (4) The decision by a law enforcement officer to use force shall be
9 evaluated from the perspective of a reasonable officer in the same situation,
10 based on the totality of the circumstances known to or perceived by the officer
11 at the time, rather than with the benefit of hindsight, and that the totality of the
12 circumstances shall account for occasions when officers may be forced to
13 make quick judgments about using force.

14 (c) Use of deadly force.

15 (1) Any law enforcement officer who has reasonable cause to believe
16 that the person to be arrested has committed a crime may use objectively
17 reasonable force to effect the arrest, to prevent escape, or to overcome
18 resistance.

19 (2) A law enforcement officer is justified in using deadly force upon
20 another person only when the officer reasonably believes, based on the totality
21 of the circumstances, that such force is 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 (3) When feasible, a law enforcement officer shall, prior to the use of
8 force, make reasonable efforts to identify himself or herself as a law
9 enforcement officer and to warn that deadly force may be used, unless the
10 officer has objectively reasonable grounds to believe the person is aware of
11 those facts.

12 (4) A law enforcement officer shall not use deadly force against a
13 person based on the danger that person poses to himself or herself, if an
14 objectively reasonable officer would believe the person does not pose an
15 imminent threat of death or serious bodily injury to the law enforcement
16 officer or to another person.

17 (5) A law enforcement officer who makes or attempts to make an arrest
18 need not retreat or desist from his or her efforts by reason of the resistance or
19 threatened resistance of the person being arrested. A law enforcement officer
20 shall not be deemed an aggressor or lose the right to self-defense by the use of
21 objectively reasonable force in compliance with subdivisions (1) and (2) of this

1 subsection to effect the arrest or to prevent escape or to overcome resistance.

2 For the purposes of this subdivision, “retreat” does not mean tactical
3 repositioning or other de-escalation tactics.

4 (6) A law enforcement officer shall not use an improper restraint on a
5 person for any reason. A law enforcement officer has a duty to intervene when
6 the officer observes another officer using an improper restraint on a person.

7 *** Improper Restraints; Unprofessional Conduct ***

8 Sec. 5. 20 V.S.A. chapter 151 (Vermont Criminal Justice Training Council),
9 subchapter 2 is amended to read:

10 Subchapter 2. Unprofessional Conduct

11 § 2401. DEFINITIONS

12 As used in this subchapter:

13 (1) “Category A conduct” means:

14 (A) A felony.

15 (B) A misdemeanor that is committed while on duty and did not
16 involve the legitimate performance of duty.

17 (C) Any of the following misdemeanors, if committed off duty:

18 (i) simple assault, second offense;

19 (ii) domestic assault;

20 (iii) false reports and statements;

21 (iv) driving under the influence, second offense;

1 (v) violation of a relief from abuse order or of a condition of
2 release;

3 (vi) stalking;

4 (vii) false pretenses;

5 (viii) voyeurism;

6 (ix) prostitution or soliciting prostitution;

7 (x) distribution of a regulated substance;

8 (xi) simple assault on a law enforcement officer; or

9 (xii) possession of a regulated substance, second offense.

10 (2) “Category B conduct” means gross professional misconduct
11 amounting to actions on duty or under color of authority, or both, that involve
12 willful failure to comply with a State-required policy or substantial deviation
13 from professional conduct as defined by the law enforcement agency’s policy
14 or if not defined by the agency’s policy, then as defined by Council policy,
15 such as and shall include:

16 (A) sexual harassment involving physical contact or misuse of
17 position;

18 (B) misuse of official position for personal or economic gain;

19 (C) excessive use of force under color of authority, ~~second~~ first
20 offense;

21 (D) biased enforcement; ~~or~~

1 (E) use of electronic criminal records database for personal, political,
2 or economic gain;

3 (F) placing a person in an improper restraint; or

4 (G) failing to intervene when the officer observes another officer
5 placing a person in an improper restraint or using excessive force.

6 * * *

7 (5) “Unprofessional conduct” means Category A, B, or C conduct.

8 * * *

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

13 * * *

14 § 2407. LIMITATION ON COUNCIL SANCTIONS; FIRST OFFENSE OF
15 CATEGORY B CONDUCT

16 (a) Category B conduct; first offense. If a law enforcement agency
17 conducts a valid investigation of a complaint alleging that a law enforcement
18 officer committed a first offense of Category B conduct, the Council shall take
19 no action, except that the Council may take action for a first offense under
20 subdivision 2401(2)(F) (placing a person in an improper restraint) or
21 2401(2)(G) (failing to intervene when an officer observes another officer

1 placing a person in an improper restraint or using excessive force) of this
2 chapter.

3 * * *

4 Sec. 6. 13 V.S.A. § 1032 is added to read:

5 § 1032. LAW ENFORCEMENT USE OF IMPROPER RESTRAINT

6 (a) As used in this section:

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

9 (2) “Serious bodily injury” shall have the same meaning as in section
10 1021 of this title.

11 (3) “Improper restraint” means the use of any maneuver on a person that
12 applies pressure to the neck, throat, windpipe, or carotid artery that may
13 prevent or hinder breathing, reduce intake of air, or impede the flow of blood
14 or oxygen to the brain.

15 (b) A law enforcement officer acting in the officer’s capacity as law
16 enforcement who employs an improper restraint on a person that causes serious
17 bodily injury to or death of the person shall be imprisoned for not more than 20
18 years or fined not more than \$50,000.00, or both.

