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H.145

Introduced by Representatives Grad of Moretown and Christie of Hartford

Referred to Committee on

Date:

Subject: Government operations; law enforcement training; use of force policy

Statement of purpose of bill as introduced: This bill proposes to amend the standards for law enforcement use of force to make clarifying changes and: 1) prevent the use of hindsight in evaluating law enforcement conduct; and 2) narrow the definition of prohibited restraints.

An act relating to amending the standards for law enforcement use of force

It is hereby enacted by the General Assembly of the State of Vermont:

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

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

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
6 fear 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 immediately
8 addressed and confronted.

9 (4) “Law enforcement officer” has the same meaning as in 20 V.S.A.
10 § 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
13 prevents or hinders breathing, reduces intake of air, or impedes the flow of
14 blood or oxygen to the brain, or the use of such maneuver with the intent to
15 cause unconsciousness, serious bodily injury, or death.

16 (6) “Totality of the circumstances” means the conduct and decisions of
17 the law enforcement officer, the person or persons involved, and any
18 bystanders leading up to the use of force and all facts known to the law
19 enforcement officer at the time.

20 ~~(b) Use of force.~~

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

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

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

16 ~~(4) Whether the decision by a law enforcement officer to use force was~~
17 ~~objectively reasonable shall be evaluated from the perspective of a reasonable~~
18 ~~officer in the same situation, based on the totality of the circumstances,~~
19 ~~without the benefit of hindsight. A law enforcement officer's failure to use~~
20 ~~feasible and reasonable alternatives to force shall be a consideration for~~
21 ~~whether its use was objectively reasonable.~~

1 ~~(5) When a law enforcement officer knows that a subject's conduct is~~
2 the result of a medical condition, mental impairment, developmental disability,
3 physical limitation, language barrier, drug or alcohol impairment, or other
4 factor beyond the subject's control, the officer shall take that information into
5 account in determining the amount of force appropriate to use on the subject, if
6 any.

7 (6) A law enforcement officer who makes or attempts to make an arrest
8 need not retreat or desist from his or her efforts by reason of the resistance or
9 threatened resistance of the person being arrested. A law enforcement officer
10 shall not be deemed an aggressor or lose the right to self-defense by the use of
11 proportional force if necessary in compliance with subdivision (b)(2) of this
12 section to effect the arrest or to prevent escape or to overcome resistance. For
13 the purposes of this subdivision, "retreat" does not mean tactical repositioning
14 or other de-escalation tactics.

15 (c) Use of deadly force.

16 (1) A law enforcement officer is justified in using deadly force upon
17 another person only when, based on the totality of the circumstances, such
18 force is objectively reasonable and necessary to:

19 (A) defend against an imminent threat of death or serious bodily
20 injury to the officer or to another person, or

1 ~~(B) apprehend a fleeing person for any felony that threatened or~~
2 resulted in death or serious bodily injury if the officer reasonably believes that
3 the person will cause death or serious bodily injury to another unless
4 immediately apprehended.

5 (2) The use of deadly force is necessary when, given the totality of the
6 circumstances, an objectively reasonable law enforcement officer in the same
7 situation would conclude that there was no reasonable alternative to the use of
8 deadly force that would prevent death or serious bodily injury to the officer or
9 to another person.

10 (3) A law enforcement officer shall cease the use of deadly force as
11 soon as the subject is under the officer's control or no longer poses an
12 imminent threat of death or serious bodily injury to the officer or to another
13 person.

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

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

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

3 Sec. 2. 13 V.S.A. § 1032 is amended to read:

4 § 1032. LAW ENFORCEMENT USE OF PROHIBITED RESTRAINT

5 (a) As used in this section:

6 (1) "Law enforcement officer" has the same meaning as in 20 V.S.A.
7 § 2351a.

8 (2) "Prohibited restraint" means the use of any maneuver on a person
9 that applies pressure to the neck, throat, windpipe, or carotid artery that ~~may~~
10 ~~prevent or hinder~~ prevents or hinders breathing, ~~reduce~~ reduces intake of air,
11 ~~or impede~~ impedes the flow of blood or oxygen to the brain, or the use of such
12 maneuver with the intent to cause unconsciousness, serious bodily injury, or
13 death.

14 (3) "Serious bodily injury" has the same meaning as in section 1021 of
15 this title.

16 (b) A law enforcement officer acting in the officer's capacity as law
17 enforcement who employs a prohibited restraint on a person that causes serious
18 bodily injury to or death of the person shall be imprisoned for not more than
19 ~~20 years or fined not more than \$50,000.00, or both.~~

1 ~~Sec. 3. 20 V.S.A. § 2401(7) is amended to read:~~

2 (7) "Prohibited restraint" means the use of any maneuver on a person
3 that applies pressure to the neck, throat, windpipe, or carotid artery that ~~may~~
4 ~~prevent or hinder~~ prevents or hinders breathing, ~~reduce~~ reduces intake of air,
5 or ~~impede~~ impedes the flow of blood or oxygen to the brain, or the use of such
6 maneuver with the intent to cause unconsciousness, serious bodily injury, or
7 death.

8 Sec. 4. 2020 Acts and Resolves No. 165, Sec. 5 is amended to read:

9 Sec. 5. EFFECTIVE DATES

10 (a) Sec. 1 (standards for law enforcement use of force) ~~and Sec. 2~~
11 ~~(justifiable homicide)~~ shall take effect on July 1, 2021.

12 (b) Sec. 2 (justifiable homicide) shall take effect on September 1, 2021.

13 (c) The remainder of this act shall take effect on passage.

14 Sec. 5. REPEAL

15 2020 Acts and Resolves No. 165, Sec. 1 (standards for law enforcement use
16 of force) is repealed.

17 Sec. 6. EFFECTIVE DATES

18 (a) Sec. 5 (repeal) shall take effect on July 1, 2021.

19 ~~(b) The remainder of this act shall take effect on September 1, 2021.~~

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) “Chokehold” means the use of any maneuver on a person that employs a lateral vascular neck restraint, carotid restraint, or other action that applies any pressure to the throat, windpipe, or neck in a manner that limits the person’s breathing or blood flow.

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

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

(4) “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 immediately addressed and confronted.

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

(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 the conduct of the person or persons involved.

(b) Use of force.

(1) 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.

(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.

(3) 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.

(4) 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.

(5) When a law enforcement officer knows 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 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.

(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 subdivision (2) of this subsection 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.

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

(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.

(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 officer or to another person.

(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.

(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.

(6) A law enforcement officer shall not use a chokehold on a person unless deadly force is justified pursuant to subdivisions (1)–(4) of this subsection.

Sec. 2. 13 V.S.A. § 1032 is amended to read:

§ 1032. LAW ENFORCEMENT USE OF PROHIBITED RESTRAINT

CHOKEHOLDS

(a) As used in this section:

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

(2) ~~“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~~ “Chokehold” means the use of any maneuver on a person that employs a lateral vascular neck restraint, carotid restraint, or other action that applies any pressure to the throat, windpipe, or neck in a manner that limits the person’s breathing or blood flow.

(3) "Serious bodily injury" ~~shall have~~ has the same meaning as in section 1021 of this title.

(b) A law enforcement officer acting in the officer's capacity as law enforcement who employs a ~~prohibited-restraint~~ chokehold on a person in violation of 20 V.S.A. § 2368(c)(6) that causes serious bodily injury to or death of the person shall be imprisoned for not more than 20 years or fined not more than \$50,000.00, or both.

Sec. 3. 20 V.S.A. § 2358(g) is amended to read:

(g) The Council shall not offer or approve any training on the use of a ~~prohibited-restraint~~ chokehold as defined in section 2401 of this chapter, except for training designed to identify and prevent the use of ~~prohibited restraints~~ chokeholds.

~~Sec. 4. 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 guilty:~~

~~(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 sibling, 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 in compliance with 20 V.S.A. § 2368(b)(1), (2), and (5) or deadly force in compliance with 20 V.S.A. § 2368(c)(1)-(4) and (6).~~

Sec. 4. 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~~ sibling, guardian, or ward; or

(2) if the person reasonably believed that he or she was in imminent peril and that it was necessary to repel that peril with deadly force, 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 in compliance with 20 V.S.A. § 2368(b)(1)–(2), and (5) or deadly force in compliance with 20 V.S.A. § 2368(c)(1)–(4) and (6).~~

Sec. 5. 20 V.S.A. § 2401 is amended to read:

§ 2401. DEFINITIONS

As used in this subchapter:

* * *

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

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

- (B) misuse of official position for personal or economic gain;*
- (C) excessive use of force under authority of the State, first offense;*
- (D) biased enforcement;*
- (E) use of electronic criminal records database for personal, political, or economic gain;*
- (F) placing a person in a ~~prohibited restraint~~ chokehold;*
- (G) failing to intervene and report to a supervisor when the officer observes another officer placing a person in a ~~prohibited restraint~~ chokehold or using excessive force.*

* * *

(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 or hinder breathing, reduce intake of air, or impede the flow of blood or oxygen to the brain~~ “Chokehold” means the use of any maneuver on a person that employs a lateral vascular neck restraint, carotid restraint, or other action that applies any pressure to the throat, windpipe, or neck in a manner that limits the person’s breathing or blood flow.

Sec. 6. 20 V.S.A. § 2407 is amended to read:

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

(a) Category B conduct; first offense. If a law enforcement agency conducts a valid investigation of a complaint alleging that a law enforcement officer committed a first offense of Category B conduct, the Council shall take no action, except that the Council may take action for a first offense under subdivision 2401(2)(C) (excessive use of force under authority of the State), 2401(2)(F) (placing a person in a ~~prohibited-restraint~~ chokehold), or 2401(2)(G) (failing to intervene and report to a supervisor when an officer observes another officer placing a person in a ~~prohibited-restraint~~ chokehold or using excessive force) of this chapter.

** * **

~~Sec. 7. 2020 Acts and Resolves No. 165, Sec. 5 is amended to read:~~

Sec. 5. EFFECTIVE DATES

(a) Sec. 1 (standards for law enforcement use of force) and ~~Sec. 2 (justifiable homicide)~~ shall take effect on July 1, 2021.

(b) Sec. 2 (justifiable homicide) shall take effect on September 1, 2021.

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

Sec. 8. REPEAL

2020 Acts and Resolves No. 165, Sec. 1 (standards for law enforcement use of force) is repealed.

Sec. 9. EFFECTIVE DATES

~~*(a) This section and Sec. 8 (repeal) shall take effect on July 1, 2021.*~~

~~(b) The remainder of this act shall take effect on September 1, 2021.~~

Sec. 7. REPEALS

2020 Acts and Resolves No. 165, Sec. 1 (standards for law enforcement use of force), Sec. 2 (justifiable homicide), and subsection (a) of Sec. 5 (effective dates) are repealed.

Sec. 8. EFFECTIVE DATES

(a) This section and Sec. 7 (repeals) shall take effect on July 1, 2021.

(b) The remainder of this act shall take effect on ~~September~~ October 1, 2021.