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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 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 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, or  
8           to overcome resistance of a person the officer has reasonable cause to believe  
9           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, without  
19          the benefit of hindsight. A law enforcement officer's failure to use feasible  
20          and reasonable alternatives to force shall be a consideration for whether its use  
21          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 soon  
11           as the subject is under the officer's control or no longer poses an imminent  
12           threat of death or serious bodily injury to the officer or to another person.

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

18           (5) When feasible, a law enforcement officer shall, prior to the use of  
19           force, make reasonable efforts to identify himself or herself as a law  
20           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, or  
11           ~~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 20  
19           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, or  
5 ~~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.