Falko Schilling, Advocacy Director, ACLU of Vermont
To: House Judiciary Committee
Re: H.145 An act relating to amending the standards for law enforcement use of force
Date: 2/11/2021

Thank you for the opportunity to testify on H.145 a bill relating to amending the standards for law enforcement use of force. Today we will provide some background on the standard for law enforcement use of force and our thoughts on the proposed changes in the bill. In short, we are concerned that this legislation as written will weaken the recently passed Act 165.

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Background
Just last year Governor Scott allowed S.119 – now Act 165 – to become law. This bill established the nation's strongest statutory standard for police use of force. Under this new law, use of force by law enforcement will be restricted to instances when it is reasonable, necessary, and proportional given the totality of the circumstances.

Police brutality and impunity is a growing concern in Vermont and nationwide, and Act 165 is a historic milestone that prioritizes de-escalation whenever possible and will help hold law enforcement accountable when they use excessive force.

Although this will benefit all Vermonters, we know that people of color and people with mental health conditions are disproportionately impacted by policing. Our continuing work to root out systemic racism in all its forms is far from over, but the enactment of Act 165 is an important step to making Vermont a place that is more just and equitable for everyone who calls this state home. Below are our thoughts as they relate to the proposed changes of Act 165.

Without the benefit of hindsight
We do not support adding "without the benefit of hindsight" into the determination of objective reasonableness. The language as drafted could be construed by a court to limit the inquiry of reasonableness to the event immediately superseding the use of force, not all of the actions that led to the use of force. In the definition of totality of the circumstances the language already states it is limited to what an officer knows at the time so this language is at the very least unnecessary, but it could also serve to severely limit police accountability beyond what was intended by the legislature.

Prohibited Restraint
We do not support the elimination of "may" from the definition of prohibited restraint because it creates a less restrictive prohibition on dangerous techniques that can cause serious and fatal bodily injuries. This language would change the analysis from one determining if an officer employed a restraint that may have the prohibited impact, to an after the fact determination of if the force had the intended impact. However, we do not oppose the addition of the language "or the use of such maneuver with the intent to cause unconsciousness, serious bodily injury, or death".

Adding "the person or persons involved, and any bystanders" to the totality of the circumstance's definition
We do not oppose this change and we see how this could be a helpful clarification. as discussed previously it is important to ensure that all the conduct of the officer and others involved in the incidents leading up to the use of force are taken into consideration. This is arguably already captured in the existing language regarding

all facts known to the officer, but we don't see this further clarification as weakening the bill.

Conclusion
We are concerned that H.145 will weaken the recently passed Act 165. We do not support adding new language into the determination of objective reasonableness. Additionally, we do not support the change of eliminating 'may" from prohibited restraint. We do not oppose the addition to the totality of circumstance's definition as we think it is important to ensure all conduct is taken into consideration. Thank you for the opportunity to testify.

Sincerely,

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