

H. 145 Draft #1.2 released 2-22-21 at 1554 hours

Testimony for Wed Feb. 24th, 2021 at 9:30 – Major Ingrid Jonas, Vermont State Police

We have reviewed the most recent version of H.145 released on Monday evening 2/22/21 marked as draft 1.2. We offer the following testimony on this version of the bill.

#1 - We have no objection to changing the term from *“Prohibited Restraint”* to *“Chokehold.”*

We offer two suggestions to improve the proposed definition. First, the definition should be broader than just *“action that involves the placement of any part of law enforcement officer’s body on or around a person’s neck.”* This wording does not take into consideration scenarios where an officer might come up from behind a person and use a baton to press against their neck. It does not contemplate an officer intentionally using a person’s clothing, such as a scarf, against them to strangle them. We recommend adjusting the language accordingly.

Secondly, we feel that the definition of chokehold should include *“intention”* on the part of a police officer; intention to limit the person’s breathing or blood flow. There are times during a physical struggle, particularly on the ground or when grappling with someone trying to evade custody/arrest or detention, when a part of an officer’s body could be against or around a person’s neck without the intention of placing the person into a chokehold. Additionally, as written, this definition does not account for a hit or strike, such as a palm or knee strike, or a punch that misses its intended mark during an active struggle and causes the person momentary difficulty in breathing.

(The most recent draft states: *“Chokehold” means the use of a lateral vascular neck restraint, carotid restraint or other action that involves the placement of any part of law enforcement officer’s body on or around a person’s neck in a manner that limits the person’s breathing or blood flow.*)

#2 – We support the addition of section (c) (6) which clarifies that a chokehold is permissible when deadly force is warranted.

#3 – We note that the definition of *“totality of the circumstances”* has omitted the word *“bystanders.”* Based on the testimony of others and statements by the author of S.119, Representative LaLonde, we will trust that any actions by a bystander that are significant enough to change an officer’s course of action would be considered as part of the totality of the circumstances.

#4 – We note that the most recent draft of H.145 has omitted two of the primary language additions that we requested. Specifically, the law enforcement community asked that *“without the benefit of hindsight”* be added to section (b) (4) and that section (b) (5) be appended to start with *“To the extent feasible”* or *“When feasible”*. We are not assured that “B5 is qualified by B4” as it was stated on 02/24/21 by Leg. Counsel during the read-through, and she conveyed

that a court would “qualify” B5 with B4. But, since a court could instead approach these as separate, we feel there is a need for “to the extent feasible” or “when feasible” to be added.

The testimony that we have heard – in addition to comments from the author of S.119 and from legislative counsel – consistently stated that the addition of these words do not change anything; they are unnecessary or redundant. We want to be on record with this committee today that we believe these words do matter and they are necessary. You have heard our testimony on this through Jennifer Morrison and I do not wish to take up more committee time, but want to be clear that the addition of these two phrases is a top priority for the law enforcement community.

#5 – The joint team of DPS and Vermont League of Cities and Towns policy and legal staff have completed their review of all the feedback received to date on the draft UOF policy as posted in December. We are anxious to move forward with a second draft and look forward to seeing this bill move along so that we can understand the legislative mandates that form the framework for the statewide policy. We cannot develop training until we have a policy. In addition, we cannot finalize a policy until we have the legislation. With that in mind, **we request a pushback of the implementation date for section 1 to Sept 1, 2021.**

This is the language as currently written:

Section 5. EFFECTIVE DATES

*(a) Section 1 (standards for law enforcement use of force) shall take effect on **July 1, 2021.***

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

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

Section 7. REPEAL

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

Section 8. EFFECTIVE DATES

*(a) Section 7 (repeal) shall take effect on **July 1, 2021.***

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