

1 TO THE HONORABLE SENATE:

2 The Committee on Judiciary to which was referred House Bill No. 145
3 entitled “An act relating to amending the standards for law enforcement use of
4 force” respectfully reports that it has considered the same and recommends that
5 the Senate propose to the House that the bill be amended by striking out all
6 after the enacting clause and inserting in lieu thereof the following:

7 Sec. 1. 20 V.S.A. § 2368 is added to read:

8 § 2368. STANDARDS FOR LAW ENFORCEMENT USE OF FORCE

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

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

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

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

19 (4) “Imminent threat of death or serious bodily injury” means when,
20 based on the totality of the circumstances, a reasonable officer in the same
21 situation would believe that a person has the present ability, opportunity, and

1 apparent intent to immediately cause death or serious bodily injury to the law
2 enforcement officer or another person. An imminent threat is not merely a fear
3 of future harm, no matter how great the fear and no matter how great the
4 likelihood of the harm, but is one that, from appearances, must be immediately
5 addressed and confronted.

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

8 (6) “Totality of the circumstances” means the conduct and decisions of
9 the law enforcement officer leading up to the use of force and all facts known
10 to the law enforcement officer at the time, including the conduct of the person
11 or persons involved.

12 (b) Use of force.

13 (1) Whether the decision by a law enforcement officer to use force was
14 objectively reasonable shall be evaluated from the perspective of a reasonable
15 officer in the same situation, based on the totality of the circumstances. A law
16 enforcement officer’s failure to use feasible and reasonable alternatives to
17 force shall be a consideration for whether its use was objectively reasonable.

18 (2) A law enforcement officer shall use only the force objectively
19 reasonable, necessary, and proportional to effect an arrest, to prevent escape, or
20 to overcome resistance of a person the officer has reasonable cause to believe

1 has committed a crime or to achieve any other lawful law enforcement
2 objective.

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

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

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

19 (6) A law enforcement officer who makes or attempts to make an arrest
20 need not retreat or desist from his or her efforts by reason of the resistance or
21 threatened resistance of the person being arrested. A law enforcement officer

1 shall not be deemed an aggressor or lose the right to self-defense by the use of
2 proportional force if necessary in compliance with subdivision (2) of this
3 subsection to effect the arrest or to prevent escape or to overcome resistance.
4 For the purposes of this subdivision, “retreat” does not mean tactical
5 repositioning or other de-escalation tactics.

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

8 (c) Use of deadly force.

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

12 (A) defend against an imminent threat of death or serious bodily
13 injury to the officer or to another person; or

14 (B) apprehend a fleeing person for any felony that threatened or
15 resulted in death or serious bodily injury if the officer reasonably believes that
16 the person will cause death or serious bodily injury to another unless
17 immediately apprehended.

18 (2) The use of deadly force is necessary when, given the totality of the
19 circumstances, an objectively reasonable law enforcement officer in the same
20 situation would conclude that there was no reasonable alternative to the use of

1 deadly force that would prevent death or serious bodily injury to the officer or
2 to another person.

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

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

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

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

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

18 § 1032. LAW ENFORCEMENT USE OF ~~PROHIBITED RESTRAINT~~

19 CHOKEHOLDS

20 (a) As used in this section:

1 (1) “Law enforcement officer” ~~shall have~~ has the same meaning as in
2 20 V.S.A. § 2351a.

3 (2) ~~“Prohibited restraint” means the use of any maneuver on a person~~
4 ~~that applies pressure to the neck, throat, windpipe, or carotid artery that may~~
5 ~~prevent or hinder breathing, reduce intake of air, or impede the flow of blood~~
6 ~~or oxygen to the brain~~ “Chokehold” means the use of any maneuver on a
7 person that employs a lateral vascular neck restraint, carotid restraint, or other
8 action that applies any pressure to the throat, windpipe, or neck in a manner
9 that limits the person’s breathing or blood flow.

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

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

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

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

1 Sec. 4. 13 V.S.A. § 2305 is amended to read:

2 § 2305. JUSTIFIABLE HOMICIDE

3 If a person kills or wounds another under any of the circumstances
4 enumerated below, he or she shall be guiltless:

5 (1) in the just and necessary defense of ~~his or her~~ the person's own life
6 or the life of ~~his or her husband, wife~~ the person's spouse, parent, child,
7 ~~brother, sister, master, mistress, servant~~ sibling, guardian, or ward; or

8 (2) in the forceful or violent suppression of a person attempting to
9 commit murder, sexual assault, aggravated sexual assault, burglary into an
10 occupied dwelling, as defined in subdivision 1201(b)(2) of this title, or
11 robbery; ~~with force or violence~~; or

12 (3) in the case of a ~~civil officer; or a military officer or private soldier~~
13 ~~when lawfully called out to suppress riot or rebellion, or to prevent or suppress~~
14 ~~invasion, or to assist in serving legal process, in suppressing opposition against~~
15 ~~him or her in the just and necessary discharge of his or her duty~~ law
16 enforcement officer as defined in 20 V.S.A. § 2351(a) using force in
17 compliance with 20 V.S.A. § 2368(b)(1), (2), and (5) or deadly force in
18 compliance with 20 V.S.A. § 2368(c)(1)–(4) and (6).

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

20 § 2401. DEFINITIONS

21 As used in this subchapter:

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(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~~

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

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

7 § 2407. LIMITATION ON COUNCIL SANCTIONS; FIRST OFFENSE OF
8 CATEGORY B CONDUCT

9 (a) Category B conduct; first offense. If a law enforcement agency
10 conducts a valid investigation of a complaint alleging that a law enforcement
11 officer committed a first offense of Category B conduct, the Council shall take
12 no action, except that the Council may take action for a first offense under
13 subdivision 2401(2)(C) (excessive use of force under authority of the State),
14 2401(2)(F) (placing a person in a ~~prohibited restraint~~ chokehold), or
15 2401(2)(G) (failing to intervene and report to a supervisor when an officer
16 observes another officer placing a person in a ~~prohibited restraint~~ chokehold or
17 using excessive force) of this chapter.

18 * * *

19 Sec. 7. REPEALS

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

4 Sec. 8. EFFECTIVE DATES

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

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

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13 (Committee vote: _____)

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Senator _____

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FOR THE COMMITTEE