

# STATE OF NEW YORK

6664

2019-2020 Regular Sessions

## IN SENATE

August 21, 2019

Introduced by Sen. PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the penal law, in relation to the justification for the use of force in a homicide by a peace officer or police officer

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The penal law is amended by adding two new sections 35.35  
2 and 35.40 to read as follows:

3 § 35.35 Justification; use of force by a peace officer or police offi-  
4 cer.

5 Homicide is justifiable when committed by a peace officer or police  
6 officer and those acting by their command in their aid and assistance,  
7 under either of the following circumstances:

8 1. In obedience to any judgment of a competent court; or

9 2. When the homicide results from a peace officer's or police offi-  
10 cer's use of force that is in compliance with section 35.40 of this  
11 article.

12 § 35.40 Justification; use of force by a peace officer or police officer  
13 requirements.

14 1. The legislature finds and declares all of the following:

15 (a) That the authority to use physical force, conferred on peace offi-  
16 cers or police officers by this section, is a serious responsibility  
17 that shall be exercised judiciously and with respect for human rights  
18 and dignity and for the sanctity of every human life. The legislature  
19 further finds and declares that every person has a right to be free from  
20 excessive use of force by officers acting under color of law.

21 (b) As set forth in this section, it is the intent of the legislature  
22 that peace officers or police officers use deadly force only when neces-  
23 sary in defense of human life. In determining whether deadly force is  
24 necessary, officers shall evaluate each situation in light of the  
25 particular circumstances of each case and shall use other available

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

LBD13652-02-9

1 resources and techniques if reasonably safe and feasible to an objec-  
2 tively reasonable officer.

3 (c) That the decision by a peace officer or police officer to use  
4 force shall be evaluated carefully and thoroughly, in a manner that  
5 reflects the gravity of that authority and the serious consequences of  
6 the use of force by peace officers or police officers, in order to  
7 ensure that officers use force consistent with law and agency policies.

8 (d) That the decision by a peace officer or police officer to use  
9 force shall be evaluated from the perspective of a reasonable officer in  
10 the same situation, based on the totality of the circumstances known to  
11 or perceived by the officer at the time, rather than with the benefit of  
12 hindsight and that the totality of the circumstances shall account for  
13 occasions when officers may be forced to make quick judgments about  
14 using force.

15 (e) That individuals with physical, mental health, developmental or  
16 intellectual disabilities are significantly more likely to experience  
17 greater levels of physical force during police interactions, as their  
18 disability may affect their ability to understand or comply with  
19 commands from peace officers or police officers. It is estimated that  
20 individuals with disabilities are involved in between one-third and  
21 one-half of all fatal encounters with law enforcement.

22 2. Any peace officer or police officer who has reasonable cause to  
23 believe that the person to be arrested has committed a public offense  
24 may use objectively reasonable force to effect the arrest, to prevent  
25 escape or to overcome resistance.

26 3. Notwithstanding subdivision two of this section, a peace officer or  
27 police officer is justified in using deadly force upon another person  
28 only when the officer reasonably believes, based on the totality of the  
29 circumstances, that such force is necessary for either of the following  
30 reasons:

31 (a) To defend against an imminent threat of death or serious bodily  
32 injury to the officer or to another person.

33 (b) To apprehend a fleeing person for any felony that threatened or  
34 resulted in death or serious bodily injury, if the officer reasonably  
35 believes that the person will cause death or serious bodily injury to  
36 another unless immediately apprehended. Where feasible, a peace officer  
37 or police officer shall, prior to the use of force, make reasonable  
38 efforts to identify themselves as a peace officer or police officer and  
39 to warn that deadly force may be used, unless the officer has objective-  
40 ly reasonable grounds to believe the person is aware of those facts.

41 4. A peace officer or police officer shall not use deadly force  
42 against a person based on the danger that person poses to themselves, if  
43 an objectively reasonable officer would believe the person does not pose  
44 an imminent threat of death or serious bodily injury to the peace offi-  
45 cer or police officer or to another person.

46 5. A peace officer or police officer who makes or attempts to make an  
47 arrest need not retreat or desist from their efforts by reason of the  
48 resistance or threatened resistance of the person being arrested. A  
49 peace officer or police officer shall not be deemed an aggressor or lose  
50 the right to self-defense by the use of objectively reasonable force in  
51 compliance with subdivisions two and three of this section to effect the  
52 arrest or to prevent escape or to overcome resistance. For the purposes  
53 of this subdivision, "retreat" does not mean tactical repositioning or  
54 other de-escalation tactics.

55 6. For purposes of this section, the following definitions shall  
56 apply:

1     (a) "Deadly force" means any use of force that creates a substantial  
2 risk of causing death or serious bodily injury, including, but not  
3 limited to, the discharge of a firearm.

4     (b) A threat of death or serious bodily injury is "imminent" when,  
5 based on the totality of the circumstances, a reasonable officer in the  
6 same situation would believe that a person has the present ability,  
7 opportunity and apparent intent to immediately cause death or serious  
8 bodily injury to the peace officer or police officer or another person.  
9 An imminent harm is not merely a fear of future harm, no matter how  
10 great the fear and no matter how great the likelihood of the harm, but  
11 is one that, from appearances, shall be instantly confronted and  
12 addressed.

13     (c) "Totality of the circumstances" means all facts known to the peace  
14 officer or police officer at the time, including the conduct of the  
15 officer and the subject leading up to the use of deadly force.

16     § 2. This act shall take effect immediately.