STATE OF NEW YORK

125

2021-2022 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 6, 2021

Introduced by M. of A. GOTTFRIED, PEOPLES-STOKES, VANEL, NIOU, AUBRY, COOK, J. RIVERA, SIMON -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to the use of injurious physical force by public servants

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

Section 1. Section 10.00 of the penal law is amended by adding a new subdivision 11-a to read as follows:

11-a. "Injurious physical force" means physical force which, under the circumstances in which it is used, is readily capable of causing physical injury, including but not limited to the use of a hazardous substance as defined in section 240.00 of this chapter or a noxious material as defined in section 270.05 of this chapter.

§ 2. Section 35.05 of the penal law, the opening paragraph and subdivision 1 as amended by chapter 73 of the laws of 1968, is amended to read as follows:

§ 35.05 Justification; generally.

Unless otherwise limited by the ensuing provisions of this article defining justifiable use of physical force, conduct which would otherwise constitute an offense is justifiable and not criminal when:

1. Such conduct is required or authorized by law or by a judicial decree, or is performed by a public servant in the reasonable exercise of his **or her** official powers, duties or functions; **provided that:**

(a) injurious physical force shall not be used under this subdivision unless the use of injurious physical force is reasonably necessary (i) to defend the public servant or another person from what the public servant reasonably believes to be the use or imminent use of injurious physical force or (ii) to accomplish the particular reasonable exercise of official powers, duties or functions; and

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

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(b) the use of physical force under this subdivision shall be limited to that which is reasonably necessary to accomplish the particular reasonable exercise of official powers, duties or function; or

2. Such conduct is necessary as an emergency measure to avoid an imminent public or private injury which is about to occur by reason of a situation occasioned or developed through no fault of the actor, and which is of such gravity that, according to ordinary standards of intelligence and morality, the desirability and urgency of avoiding such injury clearly outweigh the desirability of avoiding the injury sought to be prevented by the statute defining the offense in issue. The necessity and justifiability of such conduct may not rest upon considerations pertaining only to the morality and advisability of the statute, either in its general application or with respect to its application to a particular class of cases arising thereunder. Whenever evidence relating to the defense of justification under this subdivision is offered by the defendant, the court shall rule as a matter of law whether the claimed facts and circumstances would, if established, constitute a defense.

§ 3. The penal law is amended by adding a new section 35.35 to read as follows:

§ 35.35 Justification; use of physical force; standards.

The use of physical force by a public servant, and the justification of such use under this article, shall be subject to regulations which shall be made by the commissioner of the division of criminal justice services, in consultation with the commissioner of health. Such regulations may also regulate or set requirements or limitations relating to devices or substances used in the exercise of physical force.

§ 4. This act shall take effect on the thirtieth day after it shall have become a law.