STATE OF NEW YORK

2390

2021-2022 Regular Sessions

IN ASSEMBLY

January 19, 2021

Introduced by M. of A. AUBRY -- read once and referred to the Committee on Codes

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:

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

§ 35.35 Justification; use of force by a peace officer or police officer.

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

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

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

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

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

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

(b) As set forth in this section, it is the intent of the legislature that peace officers or police officers use deadly force only when necessary in defense of human life. In determining whether deadly force is necessary, officers shall evaluate each situation in light of the 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.

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resources and techniques if reasonably safe and feasible to an objectively reasonable officer.

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 2. This act shall take effect immediately.