STATE OF NEW YORK

1619--A

2021-2022 Regular Sessions

IN SENATE

January 14, 2021

Introduced by Sen. SANDERS -- read twice and ordered printed, and when printed to be committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the executive law and the labor law, in relation to enacting "Cariol's Law"

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

Section 1. This act shall be known and may be cited as "Cariol's law" or "duty to intervene".

§ 2. The executive law is amended by adding a new section 839-a to read as follows:

§ 839-a. Excessive use of force; duty to intervene. 1. Definitions. For the purposes of this section, the following terms shall have the following meanings:

(a) "police officer" shall have the same meaning as provided for in subdivision thirty-four of section 1.20 of the criminal procedure law;

(b) "use of force" shall include, but shall not be limited to:

(i) brandishing, pointing, using or discharging a firearm at or in the direction of another person;

(ii) using a chokehold or similar restraint that applies pressure to the throat or windpipe of a person in a manner that may hinder breathing or reduce intake of air;

(iii) displaying, using or deploying a chemical agent, including, but not limited to, oleoresin capsicum, pepper spray or tear gas;

(iv) brandishing, using or deploying an impact weapon, including, but not limited to, a baton or billy club;

(v) brandishing, using or deploying an electronic control weapon, including, but not limited to, an electronic stun gun, flash bomb or long-range acoustic device; or

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

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(vi) engaging in conduct which results in the death or serious bodily injury of another person.

(c) "objectively reasonable" shall mean a standard used to judge a police officer's use of force which are reasonable based on the totality of the circumstances known to such officer at the time of such use of force;

(d) "physical injury" shall have the same meaning as provided for in subdivision nine of section 10.00 of the penal law; and

(e) "serious physical injury" shall have the same meaning as provided for in subdivision ten of section 10.00 of the penal law.

2. Duty to intervene. An on-duty police officer who is present and observes another police officer using physical force that he or she reasonably believes to be clearly excessive or beyond that which is objectively reasonable under the circumstances, shall be required, when such officer has a realistic opportunity to do so safely, to intervene to prevent the use of such excessive force.

3. Failure to intervene. (a) A police officer who fails to intervene when appropriate may:

(i) be held criminally liable for any offense under the penal law for which failure to intervene satisfies every element of such offense, or for any offense resulting from such officer's failure to intervene;

(ii) be subject to termination by his or her employer if such officer:

(1) had a realistic opportunity to intervene safely;

(2) acted while purporting or pretending to act within the scope and performance of his or her official duties; and

(3) deprived an individual of rights, privileges, or immunities secured by the Constitution or the laws of the United States.

(iii) be held civilly liable to any aggrieved party when such officer observes or has reason to know that:

(1) excessive force is being used;

(2) an individual has been unjustifiably arrested; or

(3) any constitutional violation has been committed by a fellow officer.

(b) When a police officer fails to intervene in an incident which results in death or serious physical injury, such incident shall be referred to the district attorney.

(c) The commissioner shall authorize an investigation of any allegations of a police officer's failure to intervene. Such officer may be placed on administrative leave during the period of such investigation. Any final disciplinary action shall be subject to arbitration pursuant to article seventy-five of the civil practice law and rules.

(d) Police officers who falsely report incidents of inappropriate or excessive use of force by a fellow police officer may be subject to criminal liability pursuant to section 240.60 of the penal law.

4. Liability. Notwithstanding any provision of law to the contrary, any police officer found to be civilly liable for excessive force shall be liable for any judgments made against the municipality, state agency or public authority if such judgment is directly connected to such officer's use of excessive force.

5. Reporting. Upon a police officer's observation of the use of physical force by another police officer who he or she reasonably believes to be clearly excessive or beyond that which is objectively reasonable under the circumstances, such officer shall file a formal complaint with the chief of his or her police department, the county sheriff or the superintendent of the state police. Reporting requirements shall apply whether the use of physical force occurred while the offending officer

was on or off-duty. Failure to report shall be grounds for discipline, including termination.

6. Retroactive protection for intervening officers. Any police officer terminated for reporting the use of physical force by another police officer who he or she reasonably believes to be clearly excessive or beyond that which is objectively reasonable under the circumstances, within the twenty year period prior to the effective date of this section, may have such termination reviewed.

§ 3. Subdivision 2 of section 740 of the labor law, as added by chapter 660 of the laws of 1984, paragraph (a) as amended by chapter 442 of the laws of 2006, is amended to read as follows:

2. Prohibitions. An employer shall not take any retaliatory personnel action against an employee because such employee does any of the following:

(a) discloses, or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer that is in violation of law, rule or regulation which violation creates and presents a substantial and specific danger to the public health or safety, or which constitutes health care fraud;

(b) provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any such violation of a law, rule or regulation by such employer; [~~or~~]

(c) objects to, or refuses to participate in any such activity, policy or practice in violation of a law, rule or regulation[~~.~~]; or

(d) if such employee is a police officer, as such term is defined in subdivision thirty-four of section 1.20 of the criminal procedure law, observes any police officer using physical force against an individual that he or she reasonably believes to be clearly excessive or beyond that which is objectively reasonable under the circumstances and such police officer intervenes.

§ 4. This act shall take effect immediately.