

# STATE OF NEW YORK

---

6615

2021-2022 Regular Sessions

## IN SENATE

May 10, 2021

---

Introduced by Sen. PARKER -- (at request of the Attorney General) --  
read twice and ordered printed, and when printed to be committed to  
the Committee on Codes

AN ACT to amend the penal law, in relation to justifying the use of  
force by police officers and peace officers and to the excessive use  
of police force

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

Section 1. Section 35.30 of the penal law, as added by chapter 73 of  
the laws of 1968, the opening paragraph of subdivision 1, subdivisions 2  
and 3, the opening paragraph and paragraph (a) of subdivision 4 and  
subdivision 5 as amended by chapter 511 of the laws of 2004, paragraph  
(c) of subdivision 1 as amended by chapter 843 of the laws of 1980, and  
paragraph (b) of subdivision 4 as amended by chapter 264 of the laws of  
2003, is amended to read as follows:

§ 35.30 Justification; use of physical force in making an arrest or in  
preventing an escape.

1. A police officer or a peace officer, in the course of effecting or  
attempting to effect an arrest that the officer reasonably believes is  
lawful, or of preventing or attempting to prevent the escape from custo-  
dy, of a person whom he or she reasonably believes to have committed an  
offense, may use physical force when and to the extent he or she reason-  
ably believes such to be necessary to effect the arrest, or to prevent  
the escape from custody, or in self-defense or to defend a third person  
from what he or she reasonably believes to be the use or imminent use of  
physical force; except that deadly physical force may be used for such  
purposes only when he or she reasonably believes that:

(a) [~~The offense committed by such person was:~~  
~~(i) a felony or an attempt to commit a felony involving the use or~~  
~~attempted use or threatened imminent use of physical force against a~~  
~~person; or~~

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

LBD10783-02-1

~~(ii) kidnapping, arson, escape in the first degree, burglary in the first degree or any attempt to commit such a crime]~~ There is probable cause to believe that the person has committed a felony involving death or serious bodily injury, and the officer reasonably believes (i) such person is armed with a firearm or other deadly weapon, (ii) the individual would cause death or serious bodily injury to another if not immediately apprehended, (iii) that no less-lethal force alternatives or non-force tactics or techniques are sufficient to subdue the person, and (iv) that the officer's use of deadly force does not create a substantial risk of serious bodily injury to any persons other than the person against whom the deadly force is directed; or

~~(b) [The offense committed or attempted by such person was a felony and that, in the course of resisting arrest therefor or attempting to escape from custody, such person is armed with a firearm or deadly weapon, or~~

~~(c)]~~ Regardless of the particular offense which is the subject of the arrest or attempted escape, the use of deadly physical force is necessary to defend the police officer or peace officer or another person from what the officer reasonably believes to be the use or imminent use of deadly physical force.

2. For the purposes of this section, a person reasonably believes a use of force is necessary when (a) he or she actually holds that belief, and (b) a reasonable person under the same circumstances would hold that belief.

3. For the purposes of this section, physical force shall be considered necessary when there are no reasonable alternative means to effect the lawful objective and avoid the use of force or reduce the severity of the force used, including the use of less-lethal force alternatives, non-force tactics or techniques that are intended to stabilize the situation and reduce the immediacy of the threat, such as distance, cover, containment, tactical repositioning, requesting additional officers, and surveillance, verbal communication or de-escalation and the deployment of specialized equipment or resources, such as officers trained in crisis intervention, or mental health professionals. An alternative to the use of physical force may be a reasonable alternative even if it extends the overall duration of the interaction.

4. For the purposes of this section, a threat shall be considered imminent when the person reasonably appears to have the present ability, opportunity, and apparent intent to immediately inflict injury.

5. The use of any level of force by a police officer or peace officer may be deemed not justified pursuant to subdivision one of this section if such officer engaged in conduct that created a substantial and unjustifiable risk that force would become necessary.

6. The use of any level of force by a police officer or peace officer shall be presumptively not justified pursuant to subdivision one of this section if applied to a person who has been rendered incapable of resisting arrest.

7. The fact that a police officer or a peace officer is justified in using deadly physical force under circumstances prescribed in [para-  
~~graphs (a) and (b) of]~~ subdivision one of this section does not constitute justification for reckless conduct by such police officer or peace officer amounting to an offense against or with respect to innocent persons whom he or she is not seeking to arrest or retain in custody.

~~[3-]~~ 8. A person who has been directed by a police officer or a peace officer to assist such police officer or peace officer to effect an arrest or to prevent an escape from custody may use physical force,

1 other than deadly physical force, when and to the extent that he or she  
2 reasonably believes such to be necessary to carry out such police offi-  
3 cer's or peace officer's direction, unless he or she knows that the  
4 arrest or prospective arrest is not or was not authorized and may use  
5 deadly physical force under such circumstances when:

6 (a) He or she reasonably believes such to be necessary for self-de-  
7 fense or to defend a third person from what he or she reasonably  
8 believes to be the use or imminent use of deadly physical force; or

9 (b) He or she is directed or authorized by such police officer or  
10 peace officer to use deadly physical force unless he or she knows that  
11 the police officer or peace officer is not authorized to use deadly  
12 physical force under the circumstances.

13 ~~[4.]~~ 9. A private person acting on his or her own account may use  
14 physical force, other than deadly physical force, upon another person  
15 when and to the extent that he or she reasonably believes such to be  
16 necessary to effect an arrest or to prevent the escape from custody of a  
17 person whom he or she reasonably believes to have committed an offense  
18 and who in fact has committed such offense; and may use deadly physical  
19 force for such purpose when he or she reasonably believes such to be  
20 necessary to[+]

21 ~~(a) Defend~~ defend himself, herself or a third person from what he or  
22 she reasonably believes to be the use or imminent use of deadly physical  
23 force[~~, or~~

24 ~~(b) Effect the arrest of a person who has committed murder,~~  
25 ~~manslaughter in the first degree, robbery, forcible rape or forcible~~  
26 ~~criminal sexual act and who is in immediate flight therefrom].~~

27 ~~[5.]~~ 10. A guard, police officer or peace officer who is charged with  
28 the duty of guarding prisoners in a detention facility, as that term is  
29 defined in section 205.00 of this chapter, or while in transit to or  
30 from a detention facility, may use physical force when and to the extent  
31 that he or she reasonably believes such to be necessary to prevent the  
32 escape of a prisoner from a detention facility or from custody while in  
33 transit thereto or therefrom.

34 § 2. The penal law is amended by adding three new sections 120.75,  
35 120.76 and 120.77 to read as follows:

36 § 120.75 Excessive use of force by a police officer or a peace officer  
37 in the third degree.

38 A peace officer or police officer is guilty of excessive use of force  
39 by a police officer or a peace officer in the third degree when, in the  
40 course of effecting an arrest, preventing an escape from custody, or  
41 otherwise in furtherance of an authorized law enforcement objective, he  
42 or she:

43 1. intentionally uses a degree of physical force against a person that  
44 is grossly in excess of the degree of force that a reasonable person  
45 under the same circumstances would believe to be necessary to achieve  
46 the intended outcome; and

47 2. such use of physical force causes physical injury to that person or  
48 to another person.

49 Excessive use of force by a police officer or a peace officer in the  
50 third degree is a class A misdemeanor.

51 § 120.76 Excessive use of force by a police officer or a peace officer  
52 in the second degree.

53 A peace officer or police officer is guilty of excessive use of force  
54 by a police officer or a peace officer in the second degree when he or  
55 she, in the course of effecting an arrest, preventing an escape from

1 custody, or otherwise in furtherance of an authorized law enforcement  
2 objective:

3 1. intentionally uses a degree of physical force against a person that  
4 is grossly in excess of the degree of force that a reasonable person  
5 under the same circumstances would believe to be necessary to achieve  
6 the intended outcome; and

7 2. such use of physical force causes serious physical injury to that  
8 person or to another person.

9 Excessive use of force by a police officer or a peace officer in the  
10 second degree is a class D felony.

11 § 120.77 Excessive use of force by a police officer or a peace officer  
12 in the first degree.

13 A peace officer or police officer is guilty of excessive use of force  
14 by a police officer or a peace officer in the first degree when he or  
15 she, in the course of effecting an arrest, preventing an escape from  
16 custody, or otherwise in furtherance of an authorized law enforcement  
17 objective:

18 1. intentionally uses a degree of physical force against a person that  
19 is grossly in excess of the degree of force that a reasonable person  
20 under the same circumstances would believe to be necessary to achieve  
21 the intended outcome; and

22 2. such use of physical force causes death to that person or to anoth-  
23 er person.

24 Excessive use of force by a police officer or a peace officer in the  
25 first degree is a class C felony.

26 § 3. This act shall take effect immediately.