

STATE OF NEW YORK

8118

IN SENATE

January 25, 2022

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

AN ACT to amend the executive law, in relation to requiring the state's model law enforcement use of force policy to conform to the United Nations basic principles on the use of force and firearms by law enforcement officials and the United Nations code of conduct for law enforcement officials

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

1 Section 1. Subparagraphs 1, 2 and 3 of paragraph (d) of subdivision 4
2 of section 840 of the executive law, as added by section 1 of part ZZ of
3 chapter 55 of the laws of 2019, are amended to read as follows:

4 (1) Establish and regularly update a model law enforcement use of
5 force policy suitable for adoption by any agency that employs police or
6 peace officers. Such model law enforcement use of force policy shall be
7 consistent with the United Nations basic principles on the use of force
8 and firearms by law enforcement officials and the United Nations code of
9 conduct for law enforcement officials, except that the council may
10 impose further and additional restrictions on the use of force.

11 (2) The model law enforcement use of force policy shall include, but
12 is not limited to:

13 (i) information on current law as it relates to the use of force by
14 police and peace officers;

15 (ii) guidelines regarding when use of force is permitted, including
16 but not limited to:

17 (A) a general definition of force;

18 (B) a separate definition of lethal force that includes any use of
19 firearms and other police actions likely to cause death or serious bodi-
20 ly harm;

21 (C) restrictions on the use of lethal force, which shall strictly
22 prohibit the use of lethal force unless:

23 (I) an officer or a third person faces a direct threat of death or
24 serious bodily harm;

25 (II) the threat faced is imminent or current; and

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

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1 (III) less extreme measures such as persuasion or verbal warning would
2 prove ineffective in neutralizing the threat to life or serious bodily
3 harm; and

4 (D) prohibition on the use of lethal force to detain a fleeing felon,
5 except when the fleeing offender offers armed resistance that represents
6 an immediate threat to life or threat of serious bodily harm and less
7 extreme measures would be ineffective in countering that threat;

8 (iii) requirements for documenting all instances of the use of lethal
9 force, including but not limited to the reporting and investigatory
10 procedures referenced in clause (iv) of this subparagraph and the data
11 collection procedures referenced in clause (x) of this subparagraph;

12 (iv) procedures for investigating use of force incidents, which shall
13 include:

14 (A) prompt reporting to an immediate superior each time an officer
15 uses any force, followed by a timely internal investigation conducted by
16 parties independent from the law enforcement officers involved in the
17 incident. This internal investigation shall provide for disciplinary
18 sanctions, including command and superior responsibility;

19 (B) prompt reporting to an independent and external oversight body
20 each time an officer discharges a firearm or otherwise uses lethal
21 force, followed by an external investigation to determine whether the
22 use of lethal force was justified under item (C) of clause (ii) of this
23 subparagraph. The external oversight body shall be comprised of members
24 of the community and have immediate access to all officers and witnesses
25 involved, as well as any reports or internal investigatory materials
26 created as a result of the use of force incident. This external investi-
27 gation shall provide for disciplinary measures, including termination,
28 of the officers involved. Persons affected by a law enforcement offi-
29 cial's use of lethal force shall be entitled to participate in the proc-
30 ess; and

31 (C) a separate, impartial, and exhaustive official investigation where
32 the independent and external oversight body concludes that the use of
33 lethal force was improper, by the state and headed by the attorney
34 general, that is initiated in a prompt and reasonable manner and is
35 subject to public scrutiny;

36 (v) guidelines regarding excessive use of force including duty to
37 intervene, reporting, and timely medical treatment for injured persons;

38 (vi) standards for failure to adhere to use of force guidelines;

39 ~~(vii) [training mandates on use of force, conflict prevention,~~
40 ~~conflict resolution and negotiation, de-escalation techniques and strat-~~
41 ~~egies, including, but not limited to, interacting with persons present-~~
42 ~~ing in an agitated condition, and~~

43 ~~(viii) prohibited uses of force]~~ guidelines regarding officers' duty
44 to intervene when another officer's use of force is excessive, arbi-
45 trary, abusive, and otherwise outside the clear restrictions contained
46 in the use of force policy established pursuant to this subdivision, as
47 well as a requirement that the officer report to his or her superior
48 when he or she has knowledge of another officer's excessive, arbitrary,
49 or abusive use of force;

50 (viii) guidelines regarding the provision of timely medical treatment
51 for all persons injured by police use of force;

52 (ix) resources for officers involved in use of force incidents includ-
53 ing but not limited to stress counseling;

54 (x) a program to collect, store, analyze and publicize data on police
55 actions, including all incidents involving police or peace officer use
56 of lethal force within the state;

1 (xi) mandated training on the use of force, conflict prevention,
2 conflict resolution and negotiation and de-escalation techniques and
3 strategies, including, but not limited to, specialized training for
4 interacting with persons in an agitated condition;

5 (xii) upstream preventative measures aimed at limiting police contact
6 in situations most likely to experience excessive force. These measures
7 may include but are not limited to reduced police stops for quality of
8 life crimes such as vandalism, drug addiction, and public intoxication;
9 and

10 (xiii) a mechanism for review and approval of any changes to police
11 use of force policies by the external oversight body referred to in item
12 (B) of clause (iv) of this subparagraph in consultation with members of
13 the community and civil society.

14 (3) The person in charge of every local police department, local
15 correctional facility, each county sheriff, the superintendent of the
16 division of the state police, the commissioner of the department of
17 corrections and community supervision, and the person in charge of every
18 agency that employs a police or peace officer in this state shall adopt
19 and implement a use of force policy in the agency of which they are in
20 charge. Such use of force policy shall be consistent with the model law
21 enforcement use of force policy established pursuant to this subdivi-
22 sion, except that such departments, county sheriffs, superintendent,
23 commissioner and agencies that employ a police or peace officer may
24 impose further and additional restrictions on the use of force, in such
25 use of force policy or otherwise.

26 § 2. This act shall take effect immediately.