

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:

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

3 11-a. "Injurious physical force" means physical force which, under the
4 circumstances in which it is used, is readily capable of causing phys-
5 ical injury, including but not limited to the use of a hazardous
6 substance as defined in section 240.00 of this chapter or a noxious
7 material as defined in section 270.05 of this chapter.

8 § 2. Section 35.05 of the penal law, the opening paragraph and subdi-
9 vision 1 as amended by chapter 73 of the laws of 1968, is amended to
10 read as follows:

11 § 35.05 Justification; generally.

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

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

18 (a) injurious physical force shall not be used under this subdivision
19 unless the use of injurious physical force is reasonably necessary (i)
20 to defend the public servant or another person from what the public
21 servant reasonably believes to be the use or imminent use of injurious
22 physical force or (ii) to accomplish the particular reasonable exercise
23 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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1 (b) the use of physical force under this subdivision shall be limited
2 to that which is reasonably necessary to accomplish the particular
3 reasonable exercise of official powers, duties or function; or

4 2. Such conduct is necessary as an emergency measure to avoid an immi-
5 nent public or private injury which is about to occur by reason of a
6 situation occasioned or developed through no fault of the actor, and
7 which is of such gravity that, according to ordinary standards of intel-
8 ligence and morality, the desirability and urgency of avoiding such
9 injury clearly outweigh the desirability of avoiding the injury sought
10 to be prevented by the statute defining the offense in issue. The
11 necessity and justifiability of such conduct may not rest upon consider-
12 ations pertaining only to the morality and advisability of the statute,
13 either in its general application or with respect to its application to
14 a particular class of cases arising thereunder. Whenever evidence relat-
15 ing to the defense of justification under this subdivision is offered by
16 the defendant, the court shall rule as a matter of law whether the
17 claimed facts and circumstances would, if established, constitute a
18 defense.

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

21 § 35.35 Justification; use of physical force; standards.

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

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